

Major Research Paper

Uhuru Kenyatta vs. The International Criminal Court: Narratives of Injustice &
Solidarity

Stefanie Hodgins

Student Number: 5562223

Supervisor: Professor Rita Abrahamsen

University of Ottawa

Graduate School of Public and International Affairs

Date: July 23rd, 2015

Abstract

The intent of this paper is to explore the dominant narratives used by Uhuru Kenyatta to discredit the legitimacy of the International Criminal Court within Kenya and Africa. Using a framing analysis as a theoretical approach, this paper identified four primary arguments, which pertained to issues of neo-colonialism, sovereignty, ethnic polarization, and national reconciliation. This paper argues that these arguments supported narratives of injustice and solidarity and were evoked by Kenyatta in order to mobilize a domestic and regional support base throughout the course of his trial at The Hague. This paper examines how these narratives were used in the context of the 2013 Kenyan election and at Kenyatta's various appearances at the African Union. Overall, this analysis offers new insights into the effectiveness of global criminal justice and considers the importance of addressing local perceptions and realities.

Table of Contents

1.0 - Introduction	4
2.0 - Theoretical and Methodological Approach	7
3.0 - Kenya's 2007-08 Post-Election Violence	12
4.0 - The ICC's Involvement in Kenya	16
5.0 - Kenya's 2013 Election: Uhuru Kenyatta, William Ruto, and the Formation of the Jubilee Alliance Party	22
Confirmation of Charges Against Kenyatta and Ruto	23
Neo-Colonialism	29
Ethnic Polarization.....	34
Sovereignty and Foreign Interference	38
National Reconciliation.....	41
Conclusion.....	43
6.0 - Elite Solidarity and Support from the African Union	44
The Relationship Between the African Union and the International Criminal Court	45
Neo-Colonialism	49
Sovereignty	52
7.0 - Conclusion	55
8.0 - Bibliography	59

1.0 - Introduction

On 5 December 2014, the International Criminal Court (ICC) chose to formally withdraw all charges of crimes against humanity leveled against Kenyan President Uhuru Kenyatta when ICC Prosecutors were not granted additional time to compile evidence to support their case. Over seven years after the worst bout of electoral violence ever to occur in Kenya, the ICC's decision has resulted in mixed reactions amongst Kenyans. Many Kenyans were skeptical of the ICC's involvement as the alleged crimes committed by Kenyatta were largely overshadowed by arguments relating to state sovereignty, ethnic polarization, domestic reconciliation, and the perception that the ICC was intentionally "targeting Africans."¹ However, it now seems less likely that the victims of the 2007-08 electoral violence will ever see Kenyatta held fully accountable for his alleged role in the post-election violence.

This news, while disappointing to some civil society organizations and Kenyan citizens in support of the ICC's investigations, was not altogether unsurprising. The ICC's case against Kenyatta has been plagued by long delays and a flawed investigation process. ICC Prosecutor Fatou Bensouda had often criticized the Government of Kenya for failing to cooperate with the Court by refusing to hand over vital evidence, encouraging false media reports, and for threatening and intimidating potential witnesses for the prosecution.² Bensouda used this reasoning to retain her right to re-file charges against Kenyatta in the future should new evidence ever come to light that could support a future conviction. Notwithstanding this option, the withdrawal of charges against Kenyatta was widely considered to be a major blow to the ICC itself. Arguably, the failure of this case has highly damaged the credibility of the ICC and has

¹ *BBC News*. 27 May 2013. African Union Accuses ICC of 'Hunting' Africans.

² International Criminal Court. (5 December 2014). Statement of the Prosecutor of the International Criminal Court, Fatou Bensouda, on the Status of the Government of Kenya's Cooperation with the Prosecution's Investigations in the Kenyatta Case. *Press Release*. Accessed Online.

raised oft-asked questions concerning the legitimacy and effectiveness of the Court in the pursuit of international criminal justice.

Created in 2002, the ICC is mandated to hold individuals accountable for organizing or committing atrocities whenever the host country is either unable (due to weak political or legal institutions) or unwilling to prosecute. Regrettably, it appears that some individuals, particularly those in power, have proved able to easily evade both domestic and international efforts to ensure accountability for their actions. While some rued the failure of the Court in its most high-profile case to date against a sitting president, Kenyatta nevertheless said he felt "vindicated" by the withdrawal of charges and further called the proceedings a "travesty" and a "defective process."³ Kenyatta's British lawyer, Steven Kay, even stated that ICC prosecutors "owe[d] [Kenyatta] an apology for bringing proceedings based upon false witnesses and for impugning his integrity."⁴ Next, Kenyatta and the Kenyan Government have set their sights on having the current ongoing ICC case against William Ruto, Kenyatta's deputy president, dismissed.

Since his indictment in 2011, Kenyatta has denied the validity of the charges laid against him and has used his position as President to rally his domestic supporters and other African states to oppose the ICC. Most notably in the past, Kenyatta has accused the ICC of being a "neo-colonial organization" and an overzealous "Western intervention" into Kenya's domestic affairs.⁵ This is not a wholly unoriginal argument as the ICC has often been criticized in similar ways, most predominantly by the African Union (AU), for its case selection bias and for unfairly targeting Africans and African leaders. By fostering these arguments, both Kenyatta and the AU have sought to portray the ICC as an imperialist institution that is effectively seeking to re-

³ Bowcott, Owen. 5 December 2014. 'ICC Drops Murder and Rape Charges Against Kenyan President'. *The Guardian*.

⁴ *ibid.*

⁵ *BBC News*. (11 October 2013). 'Will Africa Pull Out of the International Criminal Court?' Accessed online.

colonize Africa and re-assert Western influence over the continent. Kenyatta has also strategically referenced domestic perceptions and concerns related to ethnic polarization within the country, the threat of foreign interference, and the precariousness of national reconciliation.

The overall purpose of this paper is to analyze the circumstances through which Uhuru Kenyatta has been able to rationalize his fiery condemnation of the ICC and how he has ultimately been able to use anti-ICC arguments for his own benefit. Using a framing analysis as a theoretical approach, this paper argues that Kenyatta's portrayal of the ICC as a colonial apparatus is not a solitary reaction but is actually representative of local and regional histories and concerns. In sum, by using these framing strategies Kenyatta has been able to effectively distract attention away from the charges levelled against him, gain and galvanize his supporters, and discredit the legitimacy of the ICC as an unbiased mechanism in the pursuit of global justice.

In order to advance this argument an overview of the 2007-08 electoral violence, Kenyatta's alleged level of involvement, and the circumstances that led to the ICC's intervention into Kenya will be explored. This paper will include an analysis of how Kenyatta was able to win the 2013 Kenyan election despite his impending trial date by intentionally relying on anti-ICC arguments to further substantiate his claims that the ICC is an imperialist and colonial institution that engages in selective justice to punish Africans. Third, this paper will analyze Kenyatta's interactions with the AU and explore how the language he used was consistent with the widespread regional dissatisfactions felt towards the Court. Lastly, this paper analyzes how Kenyatta has been able to successfully reframe his ICC conviction by relying on narratives of injustice and solidarity and why Kenyatta's framing strategy has proved to be so effective and convincing both domestically and regionally.

2.0 - Theoretical and Methodological Approach

In order to best examine how Kenyatta and the Jubilee Alliance Party were able to discredit the legitimacy of the ICC I adopt a framing analysis. A framing analysis is used as a theoretical approach to evaluate "the process by which people develop a particular conceptualization of an issue or reorient their thinking about an issue."⁶ The overall purpose of a framing analysis is to develop an understanding of why and how the speaker seeks to frame his or her message and to analyze what the impact of this message was on his or her audience. As such, a key element of a framing analysis is to examine the rhetoric or communication strategies of the speaker in order to understand what aspects of an argument successfully resonate with his or her audience.

Frames are a socially-shared, symbolically-powerful, dynamic and interactive process that aid to construct meaning for individuals and influence action. As described by Kristine Olson, the speaker that seeks to frame an issue will set out to accomplish three distinctive tasks.⁷ First, the speaker will identify and articulate an issue and then attribute blame. When a topic is framed for the first time its context is then determined and "individuals, groups, and organizations are assigned the roles of protagonist, antagonist, or spectator."⁸ Second, the speaker will outline a strategy or strategies to alleviate the injustice. Third, frames provide a call to action that "translates experiences of injustice into action."⁹ Framing is therefore useful to

⁶ Chong, Dennis and James N. Druckman. (2007). Framing Theory. *Annual Review of Political Science*. 10(1): 103-126. Page 106.

⁷ Olson, Kristine. (2013). Telling Our Stories: Narratives and Framing in the Movement for Same-Sex Marriage. *Journal of Social, Cultural and Political Protest*. 13(2): 248-266. Page 248.

⁸ Reese, Stephen. (2003). Framing Public Life: Perspectives on the Media and Our Understanding of the Social World. *Routledge Communication Series*. Page 148.

⁹ Olson, Kristine. (2013). Telling Our Stories: Narratives and Framing in the Movement for Same-Sex Marriage. *Journal of Social, Cultural and Political Protest*. 13(2): 248-266. Page 249.

analyze because they demonstrate how public discourse and understandings are constructed and, alternatively, how political and economic forces may influence the creation of frames.

As a part of this theoretical approach, the concept and construction of narratives play a central role in this paper. As defined by Severine Autesserre, narratives are socially constructed "stories that people create to make sense of their lives and of their environments" that ultimately become embedded in the social routines, practices, discourses, technologies, and institutions of individuals.¹⁰ Narratives and frames are closely related because frames will be composed of narratives that "organize a large amount of disparate ideas and information."¹¹ Narratives usually include a central frame or combination of frames, which is why some scholars consider narratives to be part of a broader category of frames.¹²

Autesserre further notes that simple narratives, that can be easily conveyed and justified to a large audience, are the most likely to stick in people's minds and gather prominence.¹³ The success of simplistic narratives does not imply that individuals have been outright manipulated or should be viewed as gullible. Rather, simplistic narratives help individuals to orient their perspective on the issue at hand and appear credible as they typically align with their pre-existing perceptions.¹⁴ Most importantly, as observed by Autesserre, frames and the use of narratives are

¹⁰ Autesserre, Severine.(2014). *Peaceland: Conflict Resolution and the Everyday Politics of International Interventions*. Cambridge University Press. Page 33.

¹¹ Reese, Stephen. (2003). *Framing Public Life: Perspectives on the Media and Our Understanding of the Social World*. Routledge Communication Series. Page 148.

¹² Autesserre, Severine.(2014). *Peaceland: Conflict Resolution and the Everyday Politics of International Interventions*. Cambridge University Press. Page 34.

¹³ *ibid.*

¹⁴ Desrosiers, Marie-Eve. (2011). Reframing Frame Analysis: Key Contributions to Conflict Studies. *Ethnopolitics*. 10(1): 1-23. Page 4.

not the sole cause action but they can be used to justify and authorize specific actions and policies that over time come to be seen as the only "natural, granted and conceivable ones."¹⁵

The success of frames and narratives is reliant on whether the speaker is able to persuasively convince his or her audience that a credible injustice exists and that the speaker's solution is the most effective. Desrosiers refers to this criterion of success as frame alignment, which she describes as "linking a public's pre-existing perceptions, beliefs and expectations to the speaker's views and goals."¹⁶ A secondary concept, frame resonance, posits that frames are most successful when "they reflect what publics live, what they believe, and what they believe matters."¹⁷ According to Baldwin Van Gorp, it is important that frames resonate with the culture of the audience. The culture of the audience refers to an "organized set of beliefs, values, norms, myths, and frames that are shared in a society's collective memory" and is the "base of knowledge, meaning and comprehension in the world."¹⁸ Additionally, Snow and Benford argues that "the greater the status and/or perceived expertise of the speaker [...] the more plausible and resonant the framings or claims."¹⁹ Overall, the success of frames depends on whether they align with audience pre-existing beliefs and whether these claims resonant with the audience.

A framing analysis is useful in the context of Kenya as it will help to explain how Kenyatta was able to mobilize support for the Jubilee Alliance Party throughout the 2013 election and beyond despite high levels of domestic support for an ICC-led investigation in the

¹⁵ Autesserre, Severine. (2012). *Dangerous Tales: Dominant Narratives on The Congo and Their Unintended Consequences*. *African Affairs*. 111(143): 202 - 222. Page 6.

¹⁶ *ibid.*

¹⁷ Desrosiers, Marie-Eve. (2011). Reframing Frame Analysis: Key Contributions to Conflict Studies. *Ethnopolitics*. 10(1): 1-23. Page 5.

¹⁸ Van Gorp, Baldwin. The Constructionist Approach To Framing: Bring Culture Back In. *Journal of Communication*. 57(1): 60-78. Page 62.

¹⁹ Snow, D. A., & Benford, R. D. (1988). Ideology, Frame Resonance, and Participant Mobilization. *International Social Movement Research*. 1: 197-217.

initial years following the 2007-08 violence. A framing approach is also explains why the AU has been supportive of Kenyatta's crusade against the Court. At both the domestic and regional levels Kenyatta has identified the ICC's intervention into Kenyan internal affairs as a major issue. His designated solution has come in the form of demonstrating solidarity, which has manifested into his own election win in 2013 or the withdrawal of African countries from the Rome Statute. Kenyatta has argued that by implementing these solutions (one of which has already been accomplished) it would neutralize the ICC as a threat to Kenya and African states.

This theoretical approach further highlights the complexities of implementing global criminal justice. The global narrative of the universality of international political justice has shown to be disconnected from the beliefs, ideas, understandings, or expectations of local actors. The ICC is meant to act as an apolitical organization that uses punitive measures as a universal solution to all mass crimes committed by powerful individuals. While this is an idealistic and commendable notion, this holistic approach fails to take local perceptions, histories, concerns, and realities into account. As well, the ICC fails to address the inherent political dimensions of its judicial interventions and instead relies on the language of legal universality to its own detriment. Thus, framing is a powerful tool that can be used by leaders in retaliation to charges laid against them by the ICC, especially if those leaders already enjoy a degree of credibility and legitimacy at home and are able to articulate a clearer understanding of local issues. The ICC's disconnect from the local population makes it more difficult for the organization to address the claims put forth in order to discredit it.

This essay identifies two dominant narratives that have been used by Kenyatta to frame the ICC's investigation into the 2007-08 violence in a way that is simple to understand and produces feelings of outrage. The first narrative refers to the narrative of injustice, which was

devised to evoke the sense of unfairness felt by some Kenyans concerning the intervention of a Court that has been portrayed and perceived as politically and racially-biased, reminiscent of colonial practices, and as a Western attack on Kenya's sovereignty. The second complementary narrative is of the importance of solidarity. Kenyatta has insisted that Kenyans must remain united against 'unjust' external forces that seek to manipulate domestic events and which therefore still represent a significant threat to Kenya's sovereignty. By demonstrating solidarity in defiance of the ICC, Africans and Kenyans will be able to prevent a reappearance of colonial conditions and also express their dissent against unwanted Western interference. This dual political discourse has proved effective at rallying supporters on both the domestic and regional level.

In order to identify these narratives employed by Kenyatta, this paper makes use of a number of primary and secondary sources. To provide evidence of the existence of these narratives, I will analyze the speeches and statements made by Kenyatta in reference to the ICC. To accomplish this, I mainly rely on Kenyan newspapers, such as *The Star* and *The Daily Nation*, as they contain direct quotations to speeches delivered by Kenyatta that specifically reference or allude to the ICC. One of the most significant speeches that I will analyze was delivered by Kenyatta in October 2013 to the AU. This speech is especially pivotal to understanding these narrative as it contains some of Kenyatta's most explicit criticisms of the ICC. As well, a number of secondary sources, most predominantly from books, briefing notes, and scholarly journal articles, were also consulted for background information and to substantiate the claims made in this paper.

3.0 - Kenya's 2007-2008 Post-Election Violence

The brutal outbreak of violence in the aftermath of the 2007 Kenyan election was not the first instance of electoral violence in Kenya since the return of multi-party politics in 1991, but the levels and breadth of violence it inspired was unprecedented.²⁰ Kenya has often been viewed in the past as a "bastion of peace and stability in an otherwise volatile region" with the country's consistently high voter turn-out a "testament to the democratic commitment [of its citizens]."²¹ Thus, in the eyes of the international community, Kenya quickly transformed from a stable democracy into violent chaos as the disputed election triggered a humanitarian and political crisis that lasted from December 2007 to February 2008.²²

The structural foundation of the violence has typically been blamed on the elevated importance of communal and ethnic identity in Kenyan politics and on the fact that elections are often viewed as "zero-sum games with definite winners and losers."²³ In addition, many Kenyans tend to be distrustful that elected Kenyan politicians will ultimately govern for the greater good of all Kenyan citizens. This is because Kenyan politicians often seek political support from their affiliated ethnic groups and, if they should be politically successful, will disproportionately distribute state resources to his or her own ethnic members as a reward while ethnic communities affiliated with the opposition are likely to be excluded and discriminated against.²⁴

This practice first gained traction during the presidency of Daniel arap Moi, Kenya's second president, who effectively engaged in patrimonial practices by exploiting ethnic

²⁰ Outbreaks of state-supported violence also occurred during and following the 1992 and 1997 elections. Senior government officials were also implicated during these events to have been financing and organizing attacks on rival ethnic groups.

²¹ Lynch, Gabrielle. (2011). "I Say To You: Ethnic Politics and the Kalenjin in Kenya. *The University of Chicago Press*. Accessed via ebook.

²² Gettleman, Jeffrey. (2007). "Disputed Vote Plunges Kenya Into Bloodshed." *New York Times*.

²³ Lemarchand, Rene. (1992). "Africa's Troubled Transitions". *Journal of Democracy*. 4(3):98-109. Page 104.

²⁴ Branch, Daniel and Nic Cheeseman. (2010). *Our Turn to Eat: Politics in Kenya Since 1950. Lit Verlaig*. Page 247.

cleavages and using the competition for resources as a key political strategy. The shift of political power away from the Kikuyu community towards the Moi-supported Kalenjin community in the 1980's resulted in a long-standing fracture between the Kikuyu and Kalenjin communities.²⁵ Furthermore, as argued by Michael Bratton and Mwangi S. Kimenyi, the majority of Kenyans are generally resistant to describing themselves in ethnic terms but consider the behaviour of other groups to be directly influenced by their ethnicity, ultimately leading to "defensive" voting to prevent politicians affiliated with other ethnic communities from winning.²⁶ Thus, a considerable amount of scholarly research has demonstrated that there is a significant amount of mistrust in Kenya towards politicians and between ethnic groups.

The issue of ethnic polarization was exacerbated during the lead-up to the closely-contested 2007 election, which was predominantly characterized by deliberate appeals to ethnic identity by the main political parties. Throughout the campaign, incumbent Mwai Kibaki and the Party of National Unity (PNU) was frequently portrayed by his main political opponent, Raila Odinga of the Orange Democratic Movement (ODM), to be solely interested in furthering the social standing of the governing Kikuyu ethnic group at the expense of others. Furthermore, Odinga sought to portray the ODM as the political party that represented all other ethnic groups in Kenya and was particular supportive of the Kalenjin and Luo ethnic groups.²⁷ The PNU equally engaged in divisive ethnic appeals by depicting Odinga as a dangerous man and by "playing on the fear of the unknown and highlighting negative cultural stereotypes."²⁸

²⁵ Hornsby, Charles. (2013). Kenya: A History Since Independence. *I.B. Tauris*. Page 9.

²⁶ Bratton, Michael & Mwangi S. Kimenyi. (2008). Voting in Kenya: Putting Ethnicity into Perspective. *Journal of Eastern African Studies*. 2(2): 272-289. Page 287.

²⁷ The Crisis in Kenya. International Coalition for the Responsibility to Protect. Accessed from: <http://www.responsibilitytoprotect.org/index.php/crises/crisis-in-kenya>

²⁸ Horowitz, Jeremy. (2008). Power-sharing in Kenya: Power-sharing Agreements, Negotiations and Peace Processes. *Oslo: Centre of Study for Civil War*.

As a result of persistent ethnic pandering and the alienation of ethnic groups affiliated with the opposition, the PNU was strongly backed by Kikuyu political constituencies based in Central and Eastern provinces and very strongly represented in Nairobi, the Coast Province and the Rift Valley.²⁹ Conversely, the ODM was supported mainly by individuals from the Luo, Luhya, and Kalenjin ethnic groups located in the Nyanza and Western provinces and also in the Rift Valley.³⁰ The extreme ethnic polarization that was present in the electoral campaigns conducted by Kibaki and Odinga ultimately lay the foundations for the political violence that would soon follow.

The violence began soon after Mwai Kibaki was controversially declared the winner of the presidential poll and was sworn in as president only hours later. The suspicious result quickly prompted accusations of electoral irregularities and malpractice by Odinga, who had been leading in the polls previously. The announced results and the ensuing accusation sparked off two primary strands of violence, as analyzed by David Branch and Nic Cheeseman.³¹ The first form of violence saw ethnic communities that were supportive of Kibaki and the PNU deliberately targeted by those that had supported Odinga and the ODM. The majority of this strand of violence took place in Kenya's Rift Valley and was mainly perpetrated by Kalenjin youth against the Kikuyu ethnic community. The second strand of violence saw Kenyan police and rival militias perpetrate violent reprisals against protestors in urban centers, most predominantly in Nairobi.

²⁹ The Crisis in Kenya. International Coalition for the Responsibility to Protect. Accessed from: <http://www.responsibilitytoprotect.org/index.php/crises/crisis-in-kenya>

³⁰ *ibid.*

³¹ Branch, Daniel and Nic Cheeseman. (2008). Democratization, Sequencing and State Failure in Africa: Lessons From Kenya. *African Affairs*. 180(403): 1-26. Page 2

In total, the violence lasted over the course of two months and led to the deaths of over 1,000 Kenyans and displaced over 700,000, although these figures are debated.³² While approximately 400 deaths were attributed to the police, the majority of Kenyans were killed by fellow civilians. The violence was only halted following the regional intervention of the AU and the creation of a power-sharing arrangement between Kibaki and Odinga, which was referred to as the Government of National Unity. This power-sharing agreement was facilitated by Kofi Annan acting in his role as chair of the AU's Panel of Eminent African Personalities and by a team of other prominent African leaders. Following negotiations, it was agreed that Kibaki would continue to serve as the president of Kenya while Odinga would serve as prime minister. Another key inclusion in the power-sharing agreement, although it was never formally agreed upon, was that an investigatory committee would be created to review the grievances that led to electoral violence.³³

Why the violence became so extreme has been subjected to a great deal of study by academics such as Nic Cheeseman and Daniel Branch, Gabrielle Lynch, and Stephen Brown. However, what is clear is that not all of the systemic and structural conflict drivers that lay the foundation for the 2007-08 violence have been fully addressed by the Government of Kenya. Kenya's tendency for centralized political power mutually reinforces the state's abandonment of traditional checks and balances necessary for democratic government and has allowed politicians to act in their own interests with relative impunity.³⁴ Democratic institutions that have been kept intentionally weak has further paved the way for political corruption, overt partisanship, and, at

³² This figure is likely to be underestimated as it is based on figures provided by the Kenyan Government. It is believed that the true number of those killed or displaced may be much higher.

³³ Horowitz, Jeremy. (2008). *Power-sharing in Kenya: Power-sharing Agreements, Negotiations and Peace Processes*. Oslo: *Centre of Study for Civil War*.

³⁴ Mueller, Susanne. (2013). "Kenya and the International Criminal Court: Politics, the Election, and the Law". *Journal of Eastern African Studies*. 8(1): 25-42. Page 107.

times, the provocative and dangerous incitement of ethnic communities for political gain. While other issues were certainly at play and were equally as significant, the weakness of Kenya's political and judicial institutions played a crucial role in the post-election violence and the Kenyan government's subsequent failure to establish any form of legal accountability.

The necessary task of reforming Kenya's weak state institutions and culture of impunity is monumental, and although some progress has been made, there is little incentive for Kenyan politicians to plan and implement comprehensive judicial reforms or establish legal accountability for the post-election violence as it could have detrimental implications for either themselves and/or their allies. Political self-interest has meant that little has been accomplished by the Kenyan government to ensure legal accountability even when evidence arose that implicated high-ranking politicians and community leaders at the national level for pre-meditating violence following the election results. As such, at the time it seemed that the only way to ensure any meaningful form of legal accountability in Kenya was through the involvement of an outside party.

4.0 - ICC Involvement in Kenya

The ICC made the decision to formally charge Uhuru Kenyatta for his role in the post-election violence in the absence of any domestic progress towards implementing a mechanism to establish legal accountability. As Kenyatta has frequently argued that the ICC's involvement in Kenya is unnecessary and tantamount to an attack on state sovereignty, it is important to outline exactly what led to the ICC's involvement in Kenya. First, it is important to be aware that Kenya is a State Party to the ICC Statute, meaning that Kenya has signed and ratified the Rome Statute and therefore has treaty obligations to the Court. The ICC has jurisdiction over the nationals and the territory of countries that have ratified to Rome Statute. In most situations - including four

ongoing cases before the Court - the states themselves referred cases to the ICC as they were unable to expend the resources to try the case themselves. Kenya presents a very different example as the ICC stepped in as a court of last resort without the consent or approval of the Kenyan government.

Since 2008, some positive advancement towards reform has been made to address the grievances and structural issues that contributed to the outbreak in post-election violence. This includes the drafting and passing of a new constitution and the formation of the Truth, Justice and Reconciliation Commission and the Waki Commission. The new constitution included reformed electoral laws, an advanced bill of rights, and laws that decreased executive power. It was approved by 67% of the Kenyan population through a referendum in 2010. This constitution was widely praised internationally and domestically for its comprehensive reforms to keep political corruption in check.

As well, in 2008 the Kenyan Parliament passed a bill to create a Truth, Justice and Reconciliation Commission (TJRC). The TJRC was formed to establish an "accurate, complete, and historical record of violations and human rights abuses inflicted upon persons by the state" between independence and December 2008.³⁵ However, it was only mandated to recommend prosecutions against individuals and did not have the power to implement any forms of redress for victims. Despite these steps forward, comprehensive judicial accountability has not been as forthcoming and no individual has been put on trial domestically for their alleged actions during the post-election violence. As such, the main avenue through which to establish political accountability for the 2007-08 violence has instead had to come from outside the country by ICC intervention.

³⁵ Section 5. Truth, Justice and Reconciliation Act 2008.

The establishment of an independent tribunal to prosecute individuals for the 2007-08 violence was much discussed but never instituted by the Kenyan Government. However, one of the key outcomes that emerged from the initial efforts to establish transitional justice mechanisms was the establishment of the Kenyan Commission of Inquiry into the Post-Election Violence in 2008. This Commission has been most commonly referred to as the Waki Commission, named after the chair of the Commission - Philip Waki. The Waki Commission was the first step that would eventually lead to the ICC's involvement. The purpose of this independent task-force was to "investigate the facts and circumstances surrounding the post-election violence, the conduct of state security agencies in their handling of it, and to make recommendations concerning these and other matters."³⁶ After nearly a year of investigations, the Waki Commission concluded that while most of the pre-election violence was largely spontaneous, it was discovered that there were instances when violence was found to have been planned and organized by prominent politicians and businessmen.³⁷ Shortly thereafter, the Waki Commission developed what became known as the Waki Report, which outlined every known instance of organized violence and identified the perpetrators.

The Waki Report was submitted to both president Mwai Kibaki and prime minister Raila Odinga on October 15th, 2008. However, the Waki Report did not publically disclose the names of the alleged organizers and provocateurs of electoral violence. Nor were Kibaki or Odinga ever provided the names. Instead, the Waki Commission chose to send the names of six prominent public and private figures (whom were given the moniker the Ocampo 6 named after ICC Prosecutor Moreno-Ocampo), who were implicated in the Waki Report to Kofi Annan. The

³⁶ Republic of Kenya (2008). Report of the Commission of Inquiry into Post-Election Violence (Nairobi: Government Printers).

³⁷ Bjork, Christine and Juanita Goebertus. (2014). Complementarity in Action: The Role of Civil Society and the ICC in Rule of Law Strengthening in Kenya. *Yale Human Rights and Development Journal*. 1(14): 205-230. Page 207.

Ocampo 6 comprised of Uhuru Kenyatta, Mohammed Hussein Ali, and Francis Ali who were affiliated with the Kibaki-led PNU government; and William Ruto, Henry Kosgey, and Joshua Sang who were aligned with Raila Odinga and the ODM. Annan pledged that he would hand over the private list of names directly to then-ICC prosecutor Luis Moreno-Ocampo if the Kenyan Parliament did not make any concrete progress on establishing legal accountability for these individuals or other possible suspects.

While there initially had been an agreement that a special tribunal to domestically prosecute those accused of orchestrating and encouraging the violence within the Kenyan government should be created, this domestic tribunal was never formed due to ongoing internal disagreements amongst Kenyan MPs. The primary reason for this reluctance, as Stephen Brown and Chandra Siriam have argued, is because many of those in charge of organizing the establishment of a tribunal were those whom would likely be prosecuted by the very same court.³⁸ This was clearly not conducive to the establishment of a national tribunal. As well, one of the largest areas of contention amongst Kenyan MPs was over the merits of establishing a domestic tribunal in Kenya. There were doubts expressed by a small group of MPs over the effectiveness and neutrality of Kenya's judicial system as some MPs believed that Kenyan courts could be easily manipulated by "vested interests" and so they pushed instead for ICC involvement.³⁹ Other MPs advocated against a special tribunal in Kenya even being created and against involvement of the ICC, albeit this stemmed more from a desire to delay or disrupt judicial mechanisms than out of any concerns over the capability of Kenya's judicial system to handle such a large-scale case.⁴⁰ Interestingly, both Kenyatta and William Ruto initially

³⁸ Brown, Stephen and Chandra Sriram. *The Big Fish Won't Fry Themselves: Criminal Accountability For Post-Election Violence in Kenya*. *African Affairs*. 111(114): 244-260. Page 253.

³⁹ Werle, Gerhard. (2014). *Africa and International Criminal Court*. Berlin: *T.M.C Asser Press*.

⁴⁰ *International Center Transitional Justice*. (2013). "Prosecuting International and Other Serious Crimes." 1-13.

supported an ICC-led investigation into the post-election violence as they had both believed that Raila Odinga, the leader of the ODM party during the 2007 election and their main political rival, would ultimately be indicted by the Court.⁴¹ Their own indictments would lead to a swift change in their respective positions on ICC involvement in internal Kenyan affairs.

On February 12th 2009, the Kenyan Parliament voted against a bill seeking the creation of a special domestic tribunal to put on trial individuals for their role in the 2007-08 post-election violence. Subsequent attempts to establish a national accountability mechanism also failed. Due to this and subsequent failures to establish a special domestic tribunal, in July 2009 Annan held true to his word and provided the list of names of implicated individuals given to him by the Waki Commission to the ICC. ICC Prosecutor Moreno-Ocampo officially launched an investigation upon receiving these names from Kofi Annan as he also believed that several of the accused perpetrators would avoid any meaningful domestic prosecution.

On 5 November 2009, Moreno-Ocampo announced he intended to proceed with an ICC investigation of the six individuals, but charges were only confirmed against four: former Cabinet Secretary Francis Muthaura and Radio Executive/Journalist Joshua Arap Sang, along with Uhuru Kenyatta and William Ruto. The prosecution alleges that Muthaura and Kenyatta "committed or contributed to" the killings of supporters of the opposition Orange Democratic Movement" while Ruto and Sang were accused of establishing a "network of ODM representatives, members of the media, former Kenyan police and army forces and local leaders" to support gangs of Kalenjin youth who were attacking civilians believed to be supportive of the PNU.⁴²

⁴¹ Werle, Gerhard. (2014). *Africa and International Criminal Court*. Berlin: *T.M.C Asser Press*.

⁴² *The Hague Justice Portal*. (09 March 2011). ICC Summons Six Suspects Over Kenyan Violence. Accessed Online.

Moreno-Ocampo asserted that there was a need to address Kenya's culture of impunity and to "make an example of Kenya" to the international community.⁴³ Moreno-Ocampo's decision was especially notable as this was the first ICC case to be ever initiated by an ICC prosecutor using *proprio motu* powers (prior cases were either self-referred or referred to the ICC by the United Nations Security Council). As well, the Kenya case would also eventually become the first ICC trials to have a sitting president and deputy president be prosecuted as the case against President al-Bashir of Sudan has yet to be brought to court. Lastly, this also marks the first time that crimes that incited electoral violence, rather than crimes committed during an armed conflict, has been brought before the Court. Due to these reasons the case has received an intense amount of media scrutiny in Kenya and abroad and has sparked a great deal of legal and academic examinations concerning the legality and necessity for the ICC's involvement.

With specific reference to Kenyatta, the ICC found substantial grounds that Kenyatta was affiliated with the second strand of violence as characterized by Cheeseman and Branch. Specifically, the ICC had argued that between November 2007 and January 2008, Kenyatta and the Mungiki, a youth movement that formed in 1992 in defiance of then President Moi, created a common plan to commit deadly attacks against individuals affiliated with ethnic communities who were perceived to support the ODM and Odinga. The ICC further asserts that the purpose of these attacks was to keep the PNU in power "in exchange for an end to government repression and protection of the Mungiki's interests."⁴⁴ The ICC allegedly had a very strong case against Kenyatta as there existed documents that clearly implicated Kenyatta in organizing these

⁴³ *BBC News*. (5 November 2009). Ocampo Presses Kenya For Justice. Accessed Online.

⁴⁴ The International Criminal Court. (2011). "The Prosecutor v. Uhuru Muigai Kenyatta". *Case Information Sheet*. Accessed online.

arrangements with the Mungiki.⁴⁵ As well, the ICC had access to Mungiki "insiders" that agreed to testify as witnesses for the prosecution. Kenyatta has vehemently denied these allegations against him but he nonetheless agreed to cooperate with the Court and participate in the proceedings.

However, Kenyatta's participation in the ICC trials has appeared to be little more than an inconvenience to the now-sitting president. Rather than his alleged participation in the post-election violence resulting in any major consequences, Kenyatta has successfully utilized a framing strategy to his benefit domestically and even regionally with the intended effect of discrediting the Court. What is interesting is that this strategy was incredibly effective and worked extremely well in his favour. His framing strategies were also arguably a key factor in his election win in 2013. Kenyatta and his running mate William Ruto were able to transform their position from 'perpetrators' of violence into victims of foreign interference by blasting the ICC as a neo-colonial apparatus that threatened Kenya's sovereignty. While this framing strategy cannot be seen as the sole reason for their electoral success, the ICC was nonetheless a central campaign issue during the election that worked in Kenyatta and Ruto's favour.

5.0 - Kenya's 2013 Election: Uhuru Kenyatta, William Ruto, and the Formation of the Jubilee Alliance Party

The overall purpose of this section is to examine how Uhuru Kenyatta and William Ruto jointly portrayed the ICC during the 2013 Kenyan election as a "tool for the West" that was unjustly targeting Kenyatta and Ruto and, by extension, members of the Kalenjin and Kikuyu ethnic groups. Additionally, Kenyatta and Ruto often championed themselves as defenders of Kenya's state sovereignty against foreign interference from Western countries and strongly

⁴⁵ Allison, Simon. (9 December 2014). How To Beat The International Criminal Court - Lessons from the Kenyatta Case. *Institute for Security Studies*. Accessed online.

argued that the ICC process was hampering the ability of the country to achieve national reconciliation and prevent a future recurrence of political violence. The recurrent arguments that were used by Kenyatta and Ruto framed the ICC investigations as unnecessary and detrimental to Kenya and encouraged broad narratives of injustice and solidarity.

Confirmation of Charges Against Kenyatta and Ruto

The confirmation of charges against Uhuru Kenyatta and William Ruto by the ICC in 2011 did little to deter or prevent either from participating in the 2012-13 election campaign. In fact, according to Daniel Branch, following several unsuccessful bids to have their charges dismissed, Kenyatta and Ruto found that their best hopes of avoiding prosecution at The Hague lay in winning office or at least helping a close ally to do so.⁴⁶ Despite fears to the contrary, Kenya's 2013 election did not result in the same levels of violence that had occurred following the 2007 election, and passed relatively peacefully. The election was ultimately won by Kenyatta and Ruto, although by only a slim margin needed to prevent a presidential run-off.

Odinga did challenge the outcome, but the result was verified by Kenya's Independent Electoral and Boundaries Commission (IEBC) and Kenya's Supreme Court and accepted by Odinga. The result of the election sparked a major question: why did a country, where polls had indicated that over half the population were in support of the ICC investigations in Kenya, choose to elect two individuals that had been charged with crimes against humanity by the very same Court? The answer to this question can be partially uncovered by analyzing why Kenyatta and Ruto opted to unite and form the Jubilee Alliance Party. Additionally, the high stakes of the election for Kenyatta and Ruto shaped the conditions for the creation of narratives that fit well with local concerns.

⁴⁶ Branch, Daniel. (2012). *Kenya: Between Hope and Despair, 1963-2012*. Yale University Press. Page 302.

However, at the onset of the election campaign, many Kenyans initially doubted Kenyatta's ability to act as President while simultaneously facing charges at The Hague. This became the subject of contentious and polarizing debate within Kenya. Odinga famously quipped early in the campaign in reference to Kenyatta's pending court dates that "the government cannot be run through Skype" which alluded to the fact that Kenyatta would be required to make court appearances at The Hague.⁴⁷ John Githongo, the former Permanent Secretary for Governance and Ethics for Kenya and now outspoken critic of the Government of Kenya, correctly pointed out that a legal clause in Kenya's new constitution disqualified those accused of serious crimes from running for political office, therefore making it "unthinkable" that Kenyatta and Ruto should even be allowed to campaign.⁴⁸

The 2013 Kenyan election was also significantly distinct from previous electoral contests. This was due to the fact that the election featured no clear incumbent and the two main parties featured alliances between former political rivals from the 2007 election.⁴⁹ At the onset of the election campaign, it appeared unlikely that Kenyatta would even win. In the year prior to the election, in October 2012, Raila Odinga commanded a clear lead for a 2013 electoral win for his newly formed party, the Coalition for Reform and Democracy (CORD), with 38% of the national vote.⁵⁰ The CORD party also featured Kalonzo Musyoka as Odinga's running mate, who had previously been the Vice President for Mwai Kibaki's 2007 power-sharing government and had

⁴⁷ Brownsell, James. (9 March 2013). Kenyan Voters and the ICC Factor. *Al Jazeera*.

⁴⁸ Menya, Walter. (28 July 2012). "Githongo Says Uhuru and Ruto Should Not Vie." *The Star*.

⁴⁹ Feree, Karen E., Clark C. Gibson & James D Long. (2014). Voting Behaviour and Electoral Irregularities in Kenya's 2013 Election. *Journal of Eastern African Studies*. 8(1): 153-172. Page 154.

⁵⁰ Barasa, Lucus & Jeff Otiono. (15 October 2012). Kenya: Raila's Ratings Fall But Still Ahead of the Pack. *Daily Nation*.

been a long-standing political opponent of Odinga. Initial polling was so strongly in favour of the CORD winning the election that their lead was deemed to be “unbridgeable” by the opposition.⁵¹

At this time, Kenyatta and Ruto were leading opposing parties. Kenyatta led The National Alliance (TNA) party, which had an estimated 22% of the popular vote. William Ruto led the United Republican Party (URP), which had only a meager 8% of the vote.⁵² In other words, Kenyatta and Ruto's political parties did not have adequate levels of support to win the election. Still, many Kenyans and international observers were surprised when the two former political rivals chose to abandon their respective parties in order to run together, forming the Jubilee Alliance Party in December 2012, only three months before the election in March 2013.

The astonishment by Kenyans and election observers concerning the formation of the Jubilee Alliance Party mainly emerged from the unusual fact that Kenyatta and Ruto had been on opposing sides of the election violence in 2007, with Kenyatta allegedly sponsoring Kikuyu-led violence and Ruto allegedly supporting Kalenjin-led violence. Furthermore, the two candidates appeared to have "little in common" politically other than the facts that they were both on trial at the ICC and had a mutual desire to prevent Odinga from winning the election.⁵³ Nonetheless, the formation of a political alliance between Kenyatta and Ruto was an excellent political maneuver and brought together Kenya's two largest ethnic groups - the Kikuyu and Kalenjin. These were also the ethnic communities that had been most actively involved in the post-election violence. Both Kenyatta and Ruto clearly understood the value of presenting as a united front as a delay tactic regarding their ICC trial and much of the Jubilee Alliance Party's ad campaign “merged

⁵¹ Wolf, Thomas. (2013). International Justice Versus Public Opinion? The ICC and Ethnic Polarization. *Journal of African Elections*. 12(1): 143-177. Page 146.

⁵² Ibid.

⁵³ Feree, Karen E., Clark C. Gibson & James D Long. (2014). Voting Behaviour and Electoral Irregularities in Kenya's 2013 Election. *Journal of Eastern African Studies*. 8(1):153-172. Page 156.

Kenyatta and Ruto into a single composite” in order to symbolically represent reconciliation between the two communities and to create a common enemy of the ICC.⁵⁴

Thus, there are numerous reasons that the political alliance between Kenyatta and Ruto made a great deal of political sense despite the fact that they had been aligned with opposing sides during the 2007-08 violence and had little in common politically. Additionally, as Nic Cheeseman has argued, Kikuyu-Kalenjin political alliances have not been uncommon in Kenyan political history.⁵⁵ For instance, Ruto had been a member of Kenyatta's failed election campaign in 2002 and it is speculated that both had previously collaborated to end up in Cabinet together, which shows that these two men have had no issue working together in the past.⁵⁶ This acutely demonstrates the fluid nature of political relationships in Kenya for the sake of political opportunism. As Cheeseman further notes, the recently approved 2010 Kenyan Constitution has limited the unilateral executive power held by the Kenyan president. As a result, Kenyatta recognized that he needed Ruto's URP-base to support him in Parliament in order to govern effectively after the election.⁵⁷

In another article, Susanne D. Mueller opined that the primary reason that Kenyatta and Ruto chose to run together was in order to form an 'alliance of convenience'. Essentially, this alliance between Kenyatta and Ruto mainly served as a defensive reaction and delaying tactic against the ICC's investigations.⁵⁸ Mueller argues that Kenyatta and Ruto realized that they shared a common interest in securing political power and using this power to protect themselves

⁵⁴ Kendall, Sara. (2014). "UhuRuto" and Other Leviathans: the International Criminal Court and the Kenyan Political Order. *African Journal of Legal Studies*. 7(1): 399-427. Page 409.

⁵⁵ Cheeseman, Nic. (5 November 2014). Coalition Politics and the ICC in Kenya. *Democracy in Africa*.

⁵⁶ Maliti, Tom. (2012). "Are Uhuru Kenyatta and William Ruto Really Sworn Enemies?" *International Justice Monitor*.

⁵⁷ Cheeseman, Nic. (5 November 2014). Coalition Politics and the ICC in Kenya. *Democracy in Africa*.

⁵⁸ Mueller, Susanne. (2013). "Kenya and the International Criminal Court: Politics, the Election, and the Law". *Journal of Eastern African Studies*. 8(1): 25-42. Page 25.

from international prosecution, and that they mutually understood that their best option was to construct, in effect, a 'Coalition of the Accused.'⁵⁹ In short, banding together was the most effective way to create and solidify a domestic support base that would enable them to win the election and argue for exceptional accommodations to either defer or delay the trials once they were in positions of power.⁶⁰

Ultimately, the formation of the Jubilee Alliance Party had a clear impact on the dynamics of the election as domestic support for Kenyatta and Ruto began to grow, especially within Kikuyu- and Kalenjin-dominated areas. The Jubilee Alliance Party's close victory over the CORD alliance, despite Odinga's commanding lead just three months prior to the election, can be mainly attributed to two main factors. First, political scientist Mutahi Ngunyi argued that the Jubilee Alliance Party enjoyed a "tyranny of numbers", based on the historical inclination of Kenyans to vote on the basis of ethnicity. As described in the International Crisis Group's report on the 2013 election campaign, Ngunyi calculated that the number of potential Kalenjin and Kikuyu (including the Embu and Meru communities) votes vastly outnumbered the number of potential votes Odinga would receive from Luo, Luhya, and Kamba voters by roughly 4 million votes.⁶¹ Therefore, in terms of raw numbers it seemed much more likely that the Jubilee Alliance Party would secure an electoral victory over the CORD electoral party. At the same time it would be a mistake to fully attribute the Jubilee Alliance Party's success to have been little more than the result of an 'ethnic census'.

The second rationale that explain Kenyatta and Ruto's election success, and most importantly for this paper, was that the Jubilee Alliance Party largely benefited from a more

⁵⁹ Nic Cheeseman, Gabrielle Lynch & Justin Willis. (2014). Democracy and its Discontents: Understanding Kenya's 2013 Elections. *Journal of Eastern African Studies*. 8(1): 2-24. Page 8.

⁶⁰ *ibid.*

⁶¹ International Crisis Group. (2013). Kenya: After The Elections. *Africa Briefing Number 94*. Accessed online.

well-oiled and well-funded campaign than Odinga's CORD party. The Jubilee Alliance Party was significantly aided by the British public relations firm BTP Advisors and the campaign relied on a wide array of strategies that, according to Gabrielle Lynch, “helped shape local understandings of justice, injustice, opportunity, and threat.”⁶² For instance, the Jubilee Alliance Party was presented as “young, energetic, and vibrant” in comparison to the “ailing” Odinga.⁶³ Greater voter engagement through the use of radio, social media, television appearances, and frequent political rallies were also a major facet of the Jubilee Alliance Party's campaign strategy.⁶⁴

It should be first noted that some believe the importance of the ICC in the 2013 election has been frequently overstated by both the media and academics. Using a unique dataset generated by a nationally representative exit poll, Feree et al. argue that the ICC actually “figured less centrally” to voter's evaluation of CORD and the Jubilee Alliance Party.⁶⁵ Instead, voters viewed Kenyatta as the more viable candidate to deliver on prominent domestic issues such as the economy and security.⁶⁶ This suggests that there were other influential factors that were clearly at play during the election and the electoral victory of Kenyatta was not monocausal. Yet at the same time, it is clear from the campaign speeches that Kenyatta and Ruto recognized the importance of addressing their ICC indictments and heavily incorporated it into their campaign platform. The upcoming ICC trial even came to overshadow other long-standing domestic issues

⁶² Lynch, Gabrielle. (2013). Electing the 'Alliance of the Accused': The Success Of The Jubilee Alliance in Kenya's Rift Valley. *Journal of Eastern African Studies*. 8(1) 93-114. Page 94.

⁶³ Lynch, Gabrielle. (2013). Electing the 'Alliance of the Accused': The Success Of The Jubilee Alliance in Kenya's Rift Valley. *Journal of Eastern African Studies*. 8(1) 93-114. Page 103.

⁶⁴ *ibid.*

⁶⁵ Feree, Karen E., Clark C. Gibson & James D Long. (2014). Voting Behaviour and Electoral Irregularities in Kenya's 2013 Election. *Journal of Eastern African Studies*. 8:1. Pages 153-172. Page 169.

⁶⁶ *ibid.*

such as the economy and land ownership. Indeed, as the various narratives utilized by the Jubilee Alliance Party began to gain traction, one could see a simultaneous dip in support for the ICC.⁶⁷

Overall, the ICC may have proved a less significant issue by the time exit polling occurred, but it should be noted that it created a heavy amount of discussion during the election and still remains a much-talked about issue. Gabrielle Lynch has dubbed Kenyatta's speeches and references to the ICC as engaging in "politics of persuasion" as he has effectively created overarching narratives that are easily relatable on both an individual and collective level.⁶⁸ Specifically, there were four primary arguments that Kenyatta employed that completely re-framed how the ICC came to be viewed and was more effective than the ICC's narrative of the universality of global justice. These four arguments are all inter-connected, address domestic concerns and fears more clearly, and frame the ICC investigations as unjust. These four arguments are the overt neocolonialism intent on the Court, ethnic polarization, the threat of foreign interference, and the prevention of national reconciliation.

Neo-Colonialism

The first argument that will be identified and explored refers to the argument of neo-colonialism, which served to justify narratives of injustice. A brief and high-level overview of Kenya's colonial past will first be provided to give this argument greater context. Kenya was colonized by the United Kingdom in 1885 and remained under tight colonial control until the country became independent in 1963, just over fifty years ago. Throughout the duration of British rule, the majority of Kenya's most fertile tracks of land were expropriated by the British and given to white British farmers or kept for the colonial government. In particular, the Kikuyu

⁶⁷ International Crisis Group. (2013). Kenya: After The Elections. *Africa Briefing Number 94*.

⁶⁸ Lynch, Gabrielle. (2013). Electing the 'Alliance of the Accused': The Success Of The Jubilee Alliance in Kenya's Rift Valley. *Journal of Eastern African Studies*. 8(1): 93-114. Page 109.

and Maasai communities lost a substantial range of their traditional homelands. The colonial Government was also largely visible in other aspects of Kenyan life such as agriculture, education and healthcare.

During the colonial period Kenyans had little recourse to air their political grievances. Those that protested or resisted were met with swift, violent, and sometimes fatal, police harassment and intimidation. Initial attempts to form political associations amongst the Kikuyu ethnic group proved to be ineffective. This widespread dissatisfaction ultimately led to the Mau Mau Uprising - a bloody period in Kenya's history due to the brutal British response. Governor Evelyn Baring declared a state of emergency on 22 October 1952 and British troops and police indiscriminately imprisoned or killed Kenyans suspected of being involved. The violence continued for eight years and has been estimated to have killed up to 20,000 individuals (which does not account for the hundreds that disappeared).

Context into Kenya's colonial past and the violence that was present during that time period offers an explanation as to why references to neo-colonialism, and the possibility that Western nations would seek to have such control over Kenya again, have resonated very powerfully to a Kenyan audience. Many Kenyans suffered harshly under colonial rule, in particular the Kikuyu ethnic community. To compare the ICC to the colonial period likely encourages reactions of anger and resentment. As Gabrielle Lynch writes, "remembered communal pasts, which together with colonial histories of displacement, repression, and/or marginalization, have produced a catalogue of potential grievances, which can be deployed for preferential or special treatment."⁶⁹ In sum, remembrances of marginalization influence the fluid construction and renegotiation of how individual's come to understand their sense of identity.

⁶⁹ Lynch, Gabrielle. (2011). "I Say To You: Ethnic Politics and the Kalenjin in Kenya. *The University of Chicago Press*. Accessed via ebook.

While Lynch has applied her observation to the antagonism expressed between various ethnic groups in Kenya during election periods, it can also be argued that Kenyatta has employed a very similar strategy by evoking this "remembered past" of colonialism and marginalization amongst all Kenyans.

References to Africa's colonial past can thus be very symbolically powerful and thus an effective rhetorical tool for political leaders. James Hall argues that African leaders have "long counted on the living memories of their people to recall the racism, exploitation and humiliation suffered during the colonial era."⁷⁰ By shifting the blame completely on those that participated or benefited from colonialist practices, or by making claims that there are those who may wish to reproduce these conditions, it becomes easier for African political leaders, such as Kenyatta, to deflect or reduce criticism directed towards them. Additionally, many Kenyans and Africans continue to harbor (sometimes legitimate) grievances that African countries are still not been taken seriously enough by Western countries. By associating the ICC with neo-colonialism, and by arguing that the case against him is the result of a selectivity bias against Africans, Kenyatta has further increased the perception that Kenyans are victims of a global power imbalance.

The ways in which the Jubilee Alliance Party was able to re-frame the ICC issue during the 2013 election has been extensively examined by Nic Cheeseman, Gabrielle Lynch, and Justin Willis in their article entitled *'Democracy and its Discontents'*. In this article, the authors identify the neo-colonialist intent of the ICC to have been a frequent argument employed by the Jubilee Alliance Party. According to Cheeseman et al, the campaign strategically employed an "explicitly nationalist rhetoric which focused on the ICC and cast Kenyatta and Ruto as victims

⁷⁰ Hall, James (December 2013) African Leaders Versus the International Criminal Court. *Africa Conflict Monthly Monitor*. 1-4. Page 4.

of neo-colonialism."⁷¹ Specifically, the Jubilee Alliance Party explicitly indicated that the ICC, acting on the whims of Western powers, was in effect seeking to re-colonize Kenya by infringing upon its sovereignty and preventing a domestic trial from occurring. Kenyatta and Ruto also framed themselves as victims of the Court and an international Western conspiracy.⁷² The fact that Kenyatta, Ruto, and Joshua Sang joined a list comprised only of other Africans who had been indicted by the Court only seemed to further sustain this argument.

This rhetoric of neo-colonialism also had the dual benefit for the Jubilee Alliance Party of discrediting the CORD opposition. Initially Odinga attempted to use Kenyatta and Ruto's ICC indictment to his benefit. As Sara Kendall writes, '[w]hile the Jubilee team had vowed to make the election a referendum on the case at the ICC, their opponents hoped to use it as a campaign tool.'⁷³ Throughout the election, Odinga and the CORD party frequently attacked Kenyatta and Ruto for their indictment by the ICC and sought to portray them as "war criminals" that were only vying for political power as a means to evade the justice process and legal accountability.⁷⁴

Conversely, Kenyatta and Ruto were able to combat these arguments as they portrayed Odinga as a "stooge of the West" and the secret architect behind their indictment.⁷⁵ Odinga ran afoul of his close relationships with Western countries, which negatively affected his national appeal.⁷⁶ Furthermore, rather than being the "war criminals" that Odinga asserted - Kenyatta and Ruto portrayed the ICC as "outsiders interfering in Kenya's politics" and themselves as the

⁷¹ Cheeseman, Nic, Gabrielle Lynch & Justin Willis. (2013). Democracy and its Discontents: Understanding Kenya's 2013 Election. *Journal of Eastern African Studies*. 8(1): 2-24. Page 7.

⁷² *ibid.*

⁷³ Kendall, Sara. (2014). UhuRuto" and Other Leviathans: the International Criminal Court and the Kenyan Political Order. *African Journal of Legal Studies*. 7(1): 399-427. Page 411.

⁷⁴ Feree, Karen E., Clark C. Gibson & James D Long. (2014). Voting Behaviour and Electoral Irregularities in Kenya's 2013 Election. *Journal of Eastern African Studies*. 8:1. Pages 153-172. Page 158.

⁷⁵ *BBC News*. (2013). Q's & A's: Kenya's 2013 Elections.

⁷⁶ International Crisis Group. (2013). Kenya: After The Elections. *Africa Briefing Number 94*. Page 9.

victims of an unjust neo-colonial process.⁷⁷ Specifically, Kenyatta alleged that the Court was being used as a political tool by Odinga to prevent Kenyatta from campaigning and to consequently ensure an easy CORD victory. In effect, Kenyatta and Ruto were appropriating the language of victimhood to endorse their narratives of injustice.

As an example of Kenyatta's references to neo-colonialism, on Kenya's national day to commemorate those who contributed to Kenya's independence from England, referred to as Mashujaa (Heroes) Day in Kenya, Kenyatta delivered a provocative speech in which he stated that threat of colonialism remains a factor in present-day Kenya. Notably, Mashujaa Day also coincided with the fifty year anniversary of Kenya's independence from the United Kingdom. In his speech, Kenyatta stated:

“Let us confront without flinching those external forces seeking to thwart our collective aspirations.” [...]They may be powerful and rich, but so were the colonists. They may disrespect, but we have defeated their ilk before.”⁷⁸

It is clear from this passage that Kenyatta is not referring to only himself as challenging external forces, such as the ICC, but is instead stating all Kenyans have a role. One of the perceptions that Kenyatta has been attempting to evoke by framing the ICC as a colonial apparatus has been to shift the debate from 'the ICC versus Kenyatta' but into an 'us versus them' argument. As Peter Aling'o argues, Kenyatta has used to this discourse to continually cast himself as a hero that embodies the ethos of his late father and has “stood firm in defence of Kenyan sovereignty and in defiance of the ICC.”⁷⁹ Kenyatta does not depict colonialism as an

⁷⁷ Cheeseman, Nic, Gabrielle Lynch & Justin Willis. (2013). Democracy and its Discontents: Understanding Kenya's 2013 Election. *Journal of Eastern African Studies*. 8:(1): 2-24. Page 7.

⁷⁸ Kenyatta, Uhuru. (20 October 2013). Mashujaa Day Speech.

⁷⁹ Aling'o, Peter. (October 2013). President Kenyatta's Trial Over His Impeding ICC Trial. *Institute for Security Studies*. Accessed Online.

event that has fully ended. Rather, external forces, such as the ICC, that have become involved in Kenya may be doing so with neocolonial intent and must be resisted by the Kenyan people.

Ethnic Polarization

Kenyatta and Ruto relied heavily on arguments relating to ethnicity during the election campaign as the Jubilee Alliance Party claimed that ethnic communities were being selectively prosecuted by the ICC. Partly as a result of colonialism, ethnicity is viewed as having significance importance to many Kenyans. Although ethnicity was not wholly a colonial invention, colonialism did ensure that "ethnic affiliation [would] become a key criterion" that would determine an individual's long-term success.⁸⁰ As a result, this argument resonated particularly strongly amongst individuals who identified as either Kikuyu or Kalenjin as it seamlessly integrated into pre-existing communal perceptions concerning the unjust and exclusionary nature of the ICC indictments of Ruto and Kenyatta. As a result, as Susanne Mueller has argued, "demonizing the ICC became a way of solidifying ethnic polarization, which turned the 2013 election into another zero sum ethnic contest".⁸¹ Kenyatta and Ruto were able to tap into pre-existing domestic resentment and mistrust against other ethnic parties and use those perceptions to further delegitimize the ICC.

By associating the ICC with neocolonialism it encouraged the perception that the ICC indictments against Kenyatta and Ruto served as judgments against whole ethnic communities, especially to Kenyans who identified as either Kikuyu or Kalenjin. Thus, the impending ICC trials were no longer about Kenyatta and Ruto being on trial as distinct individuals but their affiliated ethnic groups were portrayed as implicated or held completely responsible for the

⁸⁰ Lynch, Gabrielle. (2011). "I Say To You: Ethnic Politics and the Kalenjin in Kenya. *The University of Chicago Press*. Accessed via ebook.

⁸¹ Mueller, Susanne. (2013). "Kenya and the International Criminal Court: Politics, the Election, and the Law". *Journal of Eastern African Studies*. 8(1): 25-42.

2007-08 electoral violence by the ICC as well. While in 2007-08, individuals from the Kikuyu and Kalenjin communities may have viewed each other as enemies as a result from being on opposing sides of the electoral violence, anti-ICC narratives as propagated by Kenyatta created a shared enemy, representing a clear re-configuration of the domestic political landscape.⁸² This perception was widely encouraged during the Jubilee Alliance Party's campaign and aided in a resurgence of ethnic polarization during the 2013 election.

As Gabrielle Lynch indicates, the idea that Kenyatta was being victimized by foreigners and rival ethnic communities played into Kikuyu and Kalenjin communal narratives during the election, which portrayed Jubilee Alliance Party members as "community spokesmen who needed and deserved local support."⁸³ As Daniel Branch has explored, political supporters of both Kenyatta and Ruto "interwove their leaders' battle for personal survival with broader Kikuyu and Kalenjin narratives of grievance."⁸⁴ For instance, a year prior to the election the controversial KAMA-TUSA ethnic association (which brought together community leaders from the Kalenjin, Maasai, Turkana and Samburu ethnic groups) maintained that "the entire Kalenjin community [which] was on trial at the International Criminal Court by virtue of Ruto being a suspect."⁸⁵ This sentiment was similarly echoed by the equally controversial GEMA (Gikuyu, Embu, Meru Association) in 2012. The Jubilee Alliance Party made frequent reference to the limited number of investigations that had at that time been undertaken by the ICC at that time in order to further highlight this perception of injustice based on ethnicity.

⁸² Kendall, Sara. (2014). "UhuRuto" and Other Leviathans: the International Criminal Court and the Kenyan Political Order. *African Journal of Legal Studies*.7(1): 399-427. Page 426.

⁸³ Lynch, Gabrielle. (2013). Electing the 'Alliance of the Accused': The Success Of The Jubilee Alliance in Kenya's Rift Valley. *Journal of Eastern African Studies*. 8(1): 93-114. Page 106.

⁸⁴ Branch, Daniel. (2012). Kenya: Between Hope and Despair, 1963-2012. *Yale University Press*.Page 302.

⁸⁵ Werle, Gerhard. (2014). Africa and International Criminal Court. Berlin: *T.M.C Asser Press*.

Many Jubilee Alliance Party supporters began to question why Odinga had not also been charged by the ICC.⁸⁶ Many believed that this proved the ICC was ethnically biased since a Luo politician (Odinga) was not charged but Kikuyu and Kalenjin politicians and individuals were. This lent further credence to the idea that Odinga was involved in deliberately orchestrating the ICC process as a political means to win the election.⁸⁷ To further illustrate this point, as Daniel Branch examines, during the election a popular song named 'Hague Bound' was written by members of the Jubilee Alliance Party and frequently played on the radio. This song 'depicted Kenyatta as being forcefully pushed to The Hague by an uncircumcised man' (who was strongly implied to be Odinga). The song further implied that Kenyatta was being unjustly 'persecuted for the love of his community.'⁸⁸ Although this song was eventually banned from the radio for its potential to incite ethnic tensions or violence, it did little to dispel the widespread belief amongst the Kikuyu and Kalenjin communities that Odinga was acting as a political opportunist to prevent a Kalenjin or Kikuyu politician from winning the election.

Even remarks from ICC prosecutor Fatou Bensouda during her visit to Kenya did not alleviate the perception that both the entire Kalenjin and Kikuyu communities were being targeted by the ICC. During a 2012 visit, she argued that "[the ICC] are not against any community or the government of Kenya [...] this is not a political process but a judicial process."⁸⁹ To counteract this, Kenyatta has put the ICC's ability to act in an un-biased manner into doubt. For example, during his October 2013 speech to the AU, Kenyatta argued that:

⁸⁶ Lynch, Gabrielle. (2013). Electing the 'Alliance of the Accused': The Success Of The Jubilee Alliance in Kenya's Rift Valley. *Journal of Eastern African Studies*. 8(1): 93-114. Page 105.

⁸⁷ Kenya and the ICC: To Remain or to Withdraw. (10 September 2013). *East African Center for Law and Justice*.

⁸⁸ Branch, Daniel. (2012). Kenya: Between Hope and Despair, 1963-2012. *Yale University Press*. Page 303.

⁸⁹ Branch, Daniel. (2012). Kenya: Between Hope and Despair, 1963-2012. *Yale University Press*. Page 302.

“The ICC has been reduced into a painfully farcical pantomime, a travesty that adds insult to the injury of victims. It stopped being the home of justice the day it became the toy of declining imperial powers”⁹⁰

Through this quote, Kenyatta is re-enforcing the narrative of injustice and highlighting his own victimhood. According to Kenyatta, the ICC cannot be expected to deliver justice because that is not its true purpose. Instead, its role has devolved to pursuing the interests of the West at the expense of actual victims of violence. This provocative language also vilifies the ICC and also implies that the reputations of Kenyatta and Ruto (and consequently the Kikuyu and Kalenjin ethnic groups) have been tarnished without a just cause. As well, by likening the ICC to a "toy", it implies the Court will be completely ineffectual regardless.

By situating their ICC indictments in such a way, Kenyatta and Ruto effectively portrayed themselves in a sympathetic light in a way that also incited further grievances within their affiliated ethnic groups. For this reason, the International Crisis Group had designated the ICC trial to be Kenyatta's "secret weapon" during the campaign.⁹¹ This is an important observation as the IEBC reported that in Kalenjin- and Kikuyu-dominated areas there was an impressive combined voter turnout of 89.58%. Of those who voted, it is estimated that 74% of Kalenjin and 84% of Kikuyu had been persuaded to vote for the Jubilee Alliance Party.⁹²

⁹⁰ Latiff, Eric. (12 October 2013). Africa: ICC A Toy of Declining Imperial Power. *Capital FM*. Accessed Online.

⁹¹ International Crisis Group. (2013). Kenya: After The Elections. *Africa Briefing Number 94*. Accessed online.

⁹² Wolf, Thomas. (2013). International Justice Versus Public Opinion? The ICC and Ethnic Polarization. *Journal of African Elections*. 12(1): 143-177.

Sovereignty and Foreign Interference

Resentment and concerns of unwanted foreign intervention, specifically from the West, was another major motivator for the growing mistrust towards the ICC amongst Kenyans. During the 2013 election campaign, Kenyatta often made the argument that the ICC was a threat to the sovereignty and independence of Kenya. As Stephen Brown and Rosalind Raddatz note, throughout the Jubilee Coalition's 2013 campaign Kenyatta positioned himself as "a champion of African and Kenyan autonomy."⁹³ Furthermore, Cheeseman et al. note that the coalition's own name, the Jubilee Alliance, explicitly "tied Kenya's 50 years of independence to an assertion of national sovereignty against Western interference."⁹⁴ Naturally, the ICC played a very large role in the election with regards to the issue of state sovereignty due to the perception that the Court was merely a political tool that was being abused by Western countries and opposition parties to meddle in Kenyan politics. To support this perception, claims of foreign interference, especially claims that indicated that there was a foreign bias against the Jubilee Alliance Party, were high during the 2012-13 election campaign.

Due to the significant attention placed on Kenya's sovereignty during the election, the role of international observers was a key element that played into the electoral strategy employed by the Jubilee Alliance Party. Again, this argument references the oft-used motif that the ICC was unjustly targeting Kenyatta and Ruto, and in extension the Kikuyu and Kalenjin communities, which played into narratives of injustice. As detailed by Stephen Brown and Rosalind Raddatz, due to the extreme ethnic polarization that was present during the election most Western donors opted to keep a low profile during the election campaign instead of

⁹³ Brown, Stephen and Rosalind Raddatz. (2014). Dire Consequences or Empty Threats? Western Pressure for Peace, Justice and Democracy in Kenya. *Journal of Eastern African Studies*. 8(1): 43-62.

⁹⁴ Nic Cheeseman, Gabrielle Lynch & Justin Willis. (2014). Democracy and its Discontents: Understanding Kenya's 2013 Elections. *Journal of Eastern African Studies*. 8(1): 2-24.

pressing for further reforms. They did this as a way to avoid being embroiled in political controversy (knowing that overt criticism could back-fire) and to protect their own interests should the Jubilee Alliance Party win the election.⁹⁵

Nonetheless, anti-West posturing played a large role during the election. For example, the Jubilee Alliance Party's campaign had very distinct anti-British undertones circulated claims that the UK was deliberately "meddling" in the election process. A senior member of the Jubilee Alliance Party, Charity Ngilu, stated that "[t]he Jubilee Alliance is deeply concerned about the shadowy, suspicious and rather animated involvement of the British High Commissioner in Kenya's election."⁹⁶ The debate was further incited by "claims that leaked documents proved that the UK Government was leaning on the ICC to pursue Ruto and Kenyatta so that they would be unable to stand for the presidency."⁹⁷ These claims were later discovered to be forgeries, however, at the time these assertions powerfully supported the argument that the ICC was being used by western powers to meddle in Kenyan politics.

Comments made by foreign parties also inadvertently served to substantiate the claims of foreign interference made by the Jubilee Alliance Party. Poor diplomatic decisions occurred when both the governments of the United States and United Kingdom reportedly indicated to the Kenyan government that their credibility would be damaged if Kenyatta and Ruto were allowed to run for the election due to their indictments by the ICC. Then, in January 2013, British High Commissioner Christian Turner said that the United Kingdom would avoid anything but essential contact with ICC inductees, both prior and following the election. Similarly, only one month before the election Johnnie Carson, a senior American envoy to Africa, warned that "choices

⁹⁵ Brown, Stephen and Rosalind Raddatz. (2014). Dire Consequences or Empty Threats? Western Pressure for Peace, Justice and Democracy in Kenya. *Journal of Eastern African Studies*. 8(1): 43-62.

⁹⁶ *BBC News*. Kenya Elections: Kenyatta Accuses UK Over Rejected Votes (6 March 2013). Accessed Online.

⁹⁷ Lunn, Jon. Kenya Since the 2007-08 Crisis. *House of Commons Library: Briefing Note*. Page 9.

have consequences".⁹⁸ This statement was widely interpreted as a threat to Kenyans by the United States not to vote for Kenyatta. Following the comments made by Turner and Carson, other prominent donor countries also aligned with this messaging. For example, France and Switzerland stated that their policy would be to only have "essential contact" with Kenyatta and Ruto should they win the election.

Brown and Raddatz argue that these "poor choices of words" aggravated Kenyatta and Ruto further and only amplified their anti-imperial stance during the election campaign.⁹⁹ For example, in a clear attempt to capitalize from these ill-thought statements, in a February 2013 campaign speech William Ruto argued that:

"There is no difference between what Johnnie Carson and the British ambassadors are doing, intimidating our supporters using threats and blackmail, and those who use violence to intimidate voters to get their way."

The thinly-veiled warnings made by donor countries were thus equated to the brutal violence that occurred in 2007-8, which implied that Western powers were acting no better than those implicated for being involved in the violence. These comments made by Western countries, which appeared to dictate to Kenyans how they should vote, served to encourage the narratives of injustice that were circulated by the Jubilee Alliance Party.

Even prominent African leaders were labelled as "foreigners" for speaking out against Kenyatta's bid for the presidency. As an example, during a 2013 visit to Kenya, Kofi Annan urged Kenyans not to vote for the Jubilee Alliance Party, expressing concerns about the political implications of Kenya having a president that was facing trial at The Hague for crimes against

⁹⁸ Ishmael, Najma. (2013). Kenya: Choices Have Consequences – Carson. *The Star*.

⁹⁹ Brown, Stephen and Rosalind Raddatz. (2014). Dire Consequences or Empty Threats? Western Pressure for Peace, Justice and Democracy in Kenya. *Journal of Eastern African Studies*. 8(1): 43-62.

humanity. This may have indirectly played into Kenyatta's hand as Kenyatta responded to Annan's visit and dismissed his comments when he stated that "[n]o Kenyan or African, other those who come as tourists, has said that Uhuru should not vie for the presidency, so the rest should stay away if they don't want to associate with us."¹⁰⁰ By stating this, Kenyatta was clearly delineating between those who counted as "foreigner" and those who counted as a true Kenyan or African based on their support for the Jubilee Alliance Party. Even Kofi Annan (who is African) was relegated to the role of foreigner because he was considered to be a "puppet for the West" that was supporting a Court viewed as threatening the well-being of the country.¹⁰¹

Brown and Raddatz further argued that these comments made by foreign actors may have encouraged undecided Kenyans "to rally behind Kenyatta" or at least may have led to an increased voter turnout among Jubilee's ethnic constituencies.¹⁰² An Africa Confidential report similarly argued that "some electors said they wouldn't vote for Kenyatta and Ruto because of the charges but many more said they would, as a way of asserting national sovereignty."¹⁰³ Overall, these ill-advised warnings made by outside, 'foreign' parties about ICC indictees backfired and partially led to increased support for the Jubilee Alliance Party by undecided voters to combat this perceived injustice.

National Reconciliation

The final argument that was referenced by the Jubilee Alliance Party to discredit the ICC and justify narratives of injustice and solidarity referred to the prospect of national reconciliation and the prevention of future violence. Kenyatta has argued that the ICC case against him should

¹⁰⁰ Mathenge, Oliver. (27 October 2012). Consequences of a Ruto and Uhuru Presidency. *Daily Nation*.

¹⁰¹ Sririam, Chandra Lekha. (2012). Transitional Justice and Peacebuilding on the Ground. *Taylor and Francis Books*. Page 247.

¹⁰² Brown, Stephen and Rosalind Raddatz. (2014). Dire Consequences or Empty Threats? Western Pressure for Peace, Justice and Democracy in Kenya. *Journal of Eastern African Studies*. 8(1): 43-62.

¹⁰³ *Africa Confidential* (7 June 2013). 54(12).

be considered antithetical to the achievement of peace and national reconciliation in Kenya. For instance, during a December 2014 speech for Jamhuri Day, which marks the day Kenya became an independent republic from the United Kingdom, Kenyatta stated that following:

"I am convinced that the International Criminal Court is a real threat to our country's hope for reconciliation and lasting national stability. It offers no clear promise of justice for the victims of post-election violence, which traumatized this country a few years ago."¹⁰⁴

Instead, Kenyatta asserted that the "government would continue supporting the victims to resume normal life and obtain justice" and pledged that the Kenyan Government would "reconcile and unite various communities which have been involved in war."¹⁰⁵ Kenyatta argues that the ICC's focus on retributive justice would only serve to destabilize the country, put undue hardship on victims, and would not significantly contribute to reconciliation.

In the lead-up to the actual election, many Kenyans were concerned that the 2013 election would re-incite ethnic clashes, as evidenced by one survey conducted in April and May 2012 that found that the prospect that a recurrence of electoral violence was the greatest cause of anxiety across the country.¹⁰⁶ Violent clashes had already occurred through August and September of 2012, which heightened fears even further. The Jubilee Alliance Party tapped into these anxieties when they argued that the ICC would merely disrupt the reconciliation process and potentially lead to additional violence.

The Jubilee Alliance Party argued that not only was the ICC's judicial intervention unwarranted, but it was actually counter-productive to ensuring the maintenance of peace

¹⁰⁴ Kenyatta, Uhuru. (December 2014). Jamhuri Day Speech.

¹⁰⁵ *ibid.*

¹⁰⁶ Branch, Daniel. (2012). Kenya: Between Hope and Despair, 1963-2012. *Yale University Press*. Page 305.

between ethnic groups. Rather, by 'placing blame' on Kenyatta and Ruto it could destabilize relationships between ethnic groups. To underscore this sentiment, Musalia Mudavadi, a key supporter of Kenyatta, stated that "[w]e must accept responsibility collectively [...] The whole nation is guilty. To prosecute four people for the sins of 40 million is preposterous."¹⁰⁷ As Nic Cheeseman has stated, Kenyatta was arguing that the formation of the Jubilee Alliance Party and its ensuing popularity demonstrated the willingness of both the Kikuyu and Kalenjin communities to collectively 'forgot the past' and move forward from the events in 2007-08.¹⁰⁸ As well, Kenyatta argued that the success of the Jubilee Alliance Party would ultimately bring together Kikuyu and Kalenjin communities and prevent the recurrence of future violence between the groups. Thus, Kenyatta and Ruto employed a broader peace narrative by arguing the election of the Jubilee Alliance Party would bring about peace between the "warring national reconciliation" more so than the ICC trials could ever hope to achieve.¹⁰⁹

Conclusion

This section has demonstrated the numerous reasons why the Jubilee Alliance Party's framing strategies proved so effective over the course of the election campaign. These arguments ultimately proved so persuasive that Odinga changed his stance on the ICC during the campaign in order to capture more votes when he reversed course and promised that prosecutions for the 2007-08 violence would occur in a domestic court. Gabrielle Lynch argues that in the 2013 election the ICC trials were re-framed by the Jubilee Alliance Party as a "performance of injustice", meaning that the case against Kenyatta and Ruto was motivated by purely political reasons. The ICC was choosing to engage in a "legal spectacle" to make itself legitimate as a

¹⁰⁷ Branch, Daniel. (2012). *Kenya: Between Hope and Despair, 1963-2012*. Yale University Press. Page 302.

¹⁰⁸ Cheeseman, Nic. (5 November 2014). Coalition Politics and the ICC in Kenya. *Democracy in Africa*.

¹⁰⁹ Lynch, Gabrielle. (2013). Electing the 'Alliance of the Accused': The Success Of The Jubilee Alliance in Kenya's Rift Valley. *Journal of Eastern African Studies*. 8(1): 93-114. Page 107.

global justice institution at the expense of Kenyatta and Ruto's reputations.¹¹⁰ This fallacious strategy was portrayed by the Jubilee Alliance Party as a threat to the "country's sovereignty, stability, and its potential to achieve national reconciliation and prevent future ethnic clashes". As a result, the Jubilee Alliance Party was successful in creating powerful narratives that framed the ICC as an unwanted and counter-productive intervention. This portrayal resonated very strongly with many Kenyans, and proved to be significantly persuasive despite the fact that the majority of Kenyans supported the ICC process prior to the election.

6.0 - Elite Solidarity and Support from the African Union

Kenyatta managed to produce a significant amount of domestic support during the 2013 election by using four key arguments that underscored narratives of injustice and solidarity and were used to frame the ICC as an unjust organization. Since Kenyatta's ascent to political power it has been clear that his promised commitment of full cooperation with the ICC was not genuine based on his frequent denouncements of the ICC. Additionally, the Kenyan government has done everything in its power to obstruct ICC prosecutors from building a case by blocking access to crucial evidence and witnesses. Then in September 2013, the Kenyan Parliament has passed a resolution calling for the country's withdrawal from the ICC. The Kenyan government has continued to put intense pressure on other African states to follow Kenya's lead in their rejection of the Court. This has not proved to be a difficult task for the Kenyan government to accomplish as resentment against the ICC has been growing amongst many African states.

Therefore, another equally important space to examine the framing strategies used by Kenyatta is on the regional stage. This is an important area to analyze because, as Susanne

¹¹⁰ Lynch, Gabrielle. (2013). Electing the 'Alliance of the Accused': The Success Of The Jubilee Alliance in Kenya's Rift Valley. *Journal of Eastern African Studies*. 8(1): 93-114. Page 107.

Mueller argues, one of the key delaying tactics utilized by Kenyatta to avoid attending his ICC trial was to mobilize international support.¹¹¹ This was mainly achieved by gaining the support of the African Union (AU), one of Kenya's key regional partners. Kenyatta has consistently highlighted during his appearances at the AU the perceived threat that the ICC poses to the sovereignty of all African nations due to the ICC's neo-colonial intent. This argument is consistent with the language used by many AU member states and the AU's common position that former and current heads of state should be immune from prosecution from the ICC.

The Relationship Between the African Union and the International Criminal Court

Presently, a solid majority of AU member states are State Parties to the Rome Statute. In fact, Africa represents the largest continental bloc to have ratified the Rome Statute. Out of the total 122 states that ratified the treaty and became state parties to the ICC, 34 were African states. Opposition to the ICC first emerged following the indictment of Sudanese President Omar al-Bashir and hostility further increased when Kenyatta became the first sitting head of state to appear in front of the ICC.

Since then the AU has released a number of resolutions that have been unsparingly critical of the ICC and its practices and had consistently endorsed a deferral of Kenyatta's case. At numerous extraordinary sessions, many AU members have demonized the ICC for its selectivity bias against African nations. Kenyatta has been a key figure in the AU that has voiced criticisms and has even encouraged other AU member states to withdraw from the Court. However, it is interesting that the relationship between the AU and the ICC has not always been so frayed and antagonistic.

¹¹¹ Mueller, Susanne. (2013). Kenya and the International Criminal Court: Politics, the Election, and the Law. *Journal of Eastern African Studies*. 8(1): 25-42.

In the same year as the ICC's creation, in 2002, the AU was also officially launched to replace the now-defunct Organization of African Unity (OAU). The AU is currently composed of 54 member states (with the only excluded African country being Morocco) and exists to serve as a forum to encourage greater unity between African states. The AU is also intended "promote and defend African common positions on issues of interest to the continent and its peoples."¹¹² Initially, many African countries were keen supporters of the ICC, especially as negotiations first began in the wake of the Rwandan genocide.

Thus, in the late 1990s, there was a great deal of optimism to create a global mechanism to ensure serious crimes could be tried if it seemed that the ability or will to do so domestically did not exist. Those African countries that eventually became parties to the Rome Statute were also very active in the treaty's negotiation and expressed strong and enthusiastic support for the ICC's creation.¹¹³ The current President of the ICC, Sang-Hyun Song, has demonstrated his recognition of the significant contributions made by African countries when he stated that "without Africa's support, the Rome Statute would never have been adopted."¹¹⁴ Furthermore, according to Kurt Mills, by ratifying and becoming legally bound to the Rome Statute these states were publically demonstrating their commitment on an international stage to fighting impunity both within Africa and internationally.¹¹⁵

Many of the ICC's first cases were self-referred by countries such as the Democratic Republic of the Congo, the Central African Republic, Côte d'Ivoire, and Mali. At this time, there

¹¹² Constitutive Act of the African Union (2000).

¹¹³ O'Reilly, Annie & Max du Plessis & Tiyajana Maluwa. (July 2013). 'Africa and the International Criminal Court'. *Chatham House*. 1-13.

¹¹⁴ Ssenyonjo, Manisuli. (2013). 'The Rise of the African Union Opposition to the International Criminal Court's Investigations and Prosecutions of African Leaders', *International Criminal Law Review*, 13(1): 385- 428. Page 386.

¹¹⁵ Mills, Kurt. (2012). "Bashir is Dividing Us: Africa and the International Criminal Court", *Human Rights Quarterly* 34(2): 404-47. Page 422

was little outright denouncements of the Court. However, the first inklings that African support of the ICC was wavering came in 2009 when the Court began investigating atrocities conducted in Sudan's Darfur region and, three years later, issued a warrant for the arrest of Sudan's president Omar al-Bashir, charging him with genocide, among other serious crimes. This represented the ICC's first indictment of a sitting head of state, conducted at the request of the United Nations Security Council. It was this action that the AU has been the most unwilling to accept.

The AU has passed numerous resolutions condemning al-Bashir's indictment and maintained a policy of non-cooperation towards the ICC in relation to his arrest. This resolution allowed President al-Bashir to travel almost freely across the continent without fear of extradition to The Hague. Most notably, President al-Bashir made visits to three ICC state parties not long after his indictment - Kenya, Malawi and Chad - without these visits resulting in his arrest. On January 9th 2012, the AU further reiterated in a press release the organization's commitment to non-cooperation with the ICC following the "failure" by Chad and Malawi to comply with the cooperation requests with respect to the arrest and surrender of President al-Bashir. The press release further stated that the AU "shall oppose any ill-considered, self-serving decisions of the ICC as well as any pretensions or double standards that become evident from the investigations."¹¹⁶

More recently, President Al-Bashir paid a visit to South Africa in June 2015 to attend a AU summit on the invitation of the South African government. Despite a court order to remain in the country by the South African high court, al-Bashir was able to leave the country without being arrested. This served as yet another stark reminder of the tensions between the ICC and

¹¹⁶ African Union. (January 2012). Press Release Number 002.

African states. The South African government argued that it must be able to "to balance its obligations to the ICC with its obligations to the AU and individual states" and added that a review of its membership with the ICC may be forthcoming.¹¹⁷ Thus, although there had been concerns expressed by the AU about the ICC prior to the indictment of President al-Bashir, it was only following his indictment that resistance towards the Court became more forceful and open

With reference to Kenya, the AU has taken an equally hard-line towards the ICC as it has with the al-Bashir case. On July 8th 2013, the AU sent a letter to the President of ICC communicating the AU's decision during its May 2013 summit that the ICC must allow for a national process to deal with the case in Kenya.¹¹⁸ Later that year in October 2013, an Extraordinary Summit at the AU Headquarters commenced to discuss the future of the AU's relationship with the ICC when the United Nations Security Council refused to allow the case against Kenyatta and Ruto to be deferred. In response, the AU issued a declaration that called for the immediate suspension of the ICC's case against Kenyatta and Ruto, demonstrating that the AU was able to effectively speak with one united voice to express its disapproval of the ICC.¹¹⁹

The AU has also reiterated its stance that "no charges shall be commenced or continued before any International Court or Tribunal against any serving AU Head of State or Government."¹²⁰ This declaration boldly contradicts Article 27 of the Rome Statute, which denies immunity to all individuals, even those currently in political office. Essentially, by issuing this declaration the AU has made it clear that it will not abide by the ICC's refusal to allow

¹¹⁷ *Al Jazeera*. (June 2015). Sudan's Bashir Leaves South Africa Despite Court Order. Accessed Online.

¹¹⁸ Dersso, Soloman. (11 October 2013). "Unplanned Obsolescence: The ICC and African Union". *Al Jazeera*.

¹¹⁹ African Union Assembly. (December 2013). 'Decision on Africa's Relationship with the ICC'

Ext/Assembly/AU/Dec.1.

¹²⁰ *ibid.*

sitting African leaders to avoid investigations for serious crimes they may have committed or orchestrated.

The AU's refusal to cooperate with the ICC shows that political considerations can serve as a major obstacle to the ability to carry out global criminal justice. Kenyatta has successfully played into these political considerations and has relied on powerful narratives in order to fuel allegations that the ICC is biased against African states. In contrast to Kenya's domestic population, the AU audience has needed far less convincing of this fact and has generally been supportive of Kenyatta. Nonetheless, there have been two major arguments that are most frequently referenced by Kenyatta and the AU to discredit the ICC. Those arguments of neo-colonialism and sovereignty.

Neo-Colonialism

Kenyatta's framing of the ICC as an unjust institution has gained support from the AU and is indicative of its adversarial position towards the Court. For instance, Kenyatta's description of the ICC as a neo-colonial tool during the 2013 election campaign also aligns with the rhetoric used by many African states that make up the AU. Political elites from influential AU member states such as Rwanda, Uganda, Tanzania, and Ethiopia have publically denounced the AU for its Western "selectivity bias" against the African continent and have accused the ICC of engaging in neo-colonialist practices. For example, Ugandan President Yoweri Museveni has recently called on African countries to review their ICC membership as he views the court as a "biased instrument of post-colonial hegemony."¹²¹ Sudanese President al-Bashir has frequently

¹²¹ Muramira, Gashegu. (10 October 2014). 'Museveni Calls on African Counties to Review their ICC Membership.' *The New Times Rwanda*.

referred to accusations against him as false and exaggerated and he has argued that his indictment is the consequence of a "Western plot" for regime change in Sudan.¹²²

The historical legacy of colonialism and the threat that it may re-emerge figured very heavily in Kenyatta's speech to the AU in October 2013. Kenyatta has asserted that Africans must be vigilant about the presence of colonialism in the present day. Kenyatta delivered a particularly anti-Western and anti-ICC speech in which he argued as follows:

"[t]he founding fathers of African unity were conscious that structural colonialism takes many forms, some blatant and extreme like apartheid, while others are subtler and deceptively innocuous, like some forms of development assistance."

Although the ICC was not overtly named in this passage, it is implied that Kenyatta is referring to the Court. This is because the ICC has been consistently portrayed as one of these more insidious and subtler forms of colonialism by Kenyatta. The neo-colonialist argument appears salient due to frequent accusation against the ICC that it has engaged in the selective persecution of African states. For example, from the African or AU perspective, many raise the issue of why prominent Western figures have failed to make an appearance in the Court. To capitalize from this claim, Kenyatta claimed before the African Heads of State and Government that "Western powers are the key drivers of the ICC".¹²³ Kenyatta also argued that the ICC has used the threat of prosecution in order to force the Kenyan government to adopt policies that were favourable to European nations. Therefore, not only are African nations targeted by the ICC but they also have little input into the ICC process.

¹²² Lassing, Ulf & Khalid Abdelaziz. (22 September 2013). 'Sudan's Bashir Wanted by the ICC'. *Reuters UK*.

¹²³ Kenyatta, Uhuru. (12 October 2013). 'Address to the Extraordinary Session of the Assembly Heads of State and Government of the African Union'. *African Union*.

Some AU member states have implied or outright denounced the court for having a racial bias, again pointing to the ICC's failure to file charges against Western leaders or their allies. Again, Kenyan President Uhuru Kenyatta's October address to the AU Extraordinary Summit heavily used race as a means to criticize the ICC when he stated:

“[African states] would love nothing more than to have an international forum for justice and accountability, but what choice do we have when we get only bias and race-hunting at the ICC?”¹²⁴

AU chairman and Ethiopian Prime Minister Hailemariam Desalegne used similar language when he publically and controversially accused the ICC of having "degenerated into race-hunting."¹²⁵ These accusations of racism are very emotionally-charged and further re-emphasize the perception that Africans are being treated unjustly by the ICC based on past historical injustices.

Why has neo-colonialism and issues of race figured so centrally into the language of the AU as a critique of the ICC? As Victor Peskin observes based on his examination of the similar forms of criticism employed by Khartoum due to the indictment of Omar al-Bashir by the ICC, the intent of evoking the misattributed "colonial nature" of the court has been to knock the ICC off its 'moral pedestal'.¹²⁶ Essentially, Kenyatta and the AU have been able to undercut the ICC's moral authority and therefore force the ICC on the defensive "by disputing [the ICC's] foundational principle of being a legal institution that delivers justice universally."¹²⁷

¹²⁴ Kenyatta, Uhuru. (12 October 2013). 'Address to the Extraordinary Session of the Assembly Heads of State and Government of the African Union'. *African Union*.

¹²⁵ *BBC News*. (27 May 2013). African Union Accuses ICC of 'Hunting' Africans. Accessed Online.

¹²⁶ Peskin, Victor. (2009). Caution and Confrontation in the International Criminal Court's Pursuit of Accountability in Uganda and Sudan. *Human Rights Quarterly*. 31(3): 665-691. Page 677.

¹²⁷ *ibid.*

The AU's endorsement of anti-colonial rhetoric by AU member states to delegitimize the ICC and express agency still keenly demonstrates the degree to which colonial legacies continue to influence contemporary African politics. Virtually all African states (with the exception of Ethiopia) have a shared history of colonialism and this history serves as a point of commonality between AU member states. As a result, the AU has taken on an almost "slavish adherence" to be perceived as protecting state sovereignty on the continent.¹²⁸ The language and argument of a resurgence of neo-colonialism strategically serves to legitimize the AU's position and obstructs the true reason as to why the AU has politicized the ICC's involvement in Kenya, namely the protection of heads of state from prosecution.

Sovereignty

While during the 2013 election Kenyatta portrayed the sovereignty of Kenya as under threat, at the AU regional level the sovereignty of all African nations was more widely proclaimed to be endangered. The freedom of self-determination and absence of foreign intervention have been referred to by AU member states as the most pressing sovereignty-related concerns and these concerns have been used by Kenyatta to portray the ICC as an unjust institution.

The roots of the AU's united position towards the ICC is explained by Laurie Nathan through his examination of the 'African Renaissance'. Nathan argues in his article concerning South Africa's policy on Darfur following al-Bashir's indictment that the core ideas of South Africa's foreign policy have been influenced by the 'African Renaissance', one of which he defined as "solidarity with African governments under pressure from the West and an anti-

¹²⁸ Mills, Kurt. 2012. 'Bashir is Dividing Us: Africa and the International Criminal Court'. *Human Rights Quarterly*. 34(2): 404-47. Page 440.

imperialist paradigm that provided the lens through which the government viewed the global order."¹²⁹

Thus, the belief that 'African solutions for African problems' has gained a high degree of political traction as a means to allow the continent to exercise its agency. For example, former President of Nigeria Goodluck Jonathan, whose country is one of the top financial contributors to the AU, has also expressed his disappointment with the ICC's apparent bias towards Africa and for the court's refusal to grant immunity to sitting heads of state. At the October 2013 Extraordinary Summit, President Jonathan stated that "there is nobody and no institution that can defend people more than the Kenyan people" and that "it is important that [the African Union] maintain our unity and speak with one voice on Kenya."¹³⁰ Thus, there is clear support from Nigeria of the AU's belief that the sovereignty of African states must be protected. Kenyatta complemented this viewpoint during his speech to the AU when he stated that "[n]o external party can claim to uphold the rights of the Kenyan people and to protect their collective humanity more than the Kenyans themselves."¹³¹

Kenyatta has continued to portray the ICC as acting as an 'intervening force' that must be confronted to protect African sovereignty. As Peter Aling'o from the Institute for Security Studies notes, Kenyatta has portrayed the ICC as a "political ogre" that could only be collectively confronted with a "united national and regional voice."¹³² For instance, during the Extraordinary Summit at the AU in 2013, Kenyatta declared that:

¹²⁹ Nathan, Laurie. (2010). "Interests, Ideas and Ideology. South Africa's Policy on Darfur." *African Affairs*. 110(438): 55-74. Page 55.

¹³⁰ Embu, Elizabeth. 12 October 2013. "Nigeria Disappointed with ICC". *Daily Times Nigeria*.

¹³¹ Kenyatta, Uhuru. 12 October 2013. 'Address to the Extraordinary Session of the Assembly Heads of State and Government of the African Union'. *African Union*.

¹³² Aling'o, Peter. (October 2013). President Kenyatta's Trial Over His Impeding ICC Trial. Institute for Security Studies

"Even though we were dominated and controlled by imperialists and colonial interests in years gone by, we are now proud, independent and sovereign nation [...] Yet at the same time, more than ever, it is imperative for us to be vigilant against the persistent machinations of outsiders who desire to control that destiny."¹³³

As well, from this quote it can be seen that the trial was transformed from the trial of a single individual to the trial of an entire ethnic group, the whole nation, at times even the whole African continent, against the ICC. It is interesting to note how Kenyatta strategically changes who or what group he is referring to when he discusses the importance of solidarity against the ICC. Depending on his audience, this can change from referring to his affiliated ethnic community, all Kenyans, or all Africans. The politicization of the trial has thus led to the development of new understandings of identity within Kenya by distinguishing who counts as friends and enemies. Another key quote by Kenyatta explicitly designates the AU to be the bastion of African sovereignty from neo-colonial influences, which is being directly challenged by the ICC for its refusal to allow sitting heads of state immunity from prosecution.

“[w]e have honoured our fathers' legacies by guaranteeing that through the African Union, our countries and our people shall achieve greater unity, and that the sovereignty, territorial integrity and independence of our States shall not be trifled with.”¹³⁴

Yet, at the same time as African states have been able to exercise their own agency and speak with a united voice to challenge the ICC, the Court's seemingly sole focus on the African continent has made political elites increasingly nervous of the court's attention and there also does not simultaneously exist the political will to challenge impunity on the continent. It appears

¹³³ Kenyatta, Uhuru. 12 October 2013. 'Address to the Extraordinary Session of the Assembly Heads of State and Government of the African Union'. *African Union*.

¹³⁴ Kenyatta, Uhuru. 12 October 2013. 'Address to the Extraordinary Session of the Assembly Heads of State and Government of the African Union'. *African Union*.

that some African nations are willing to endorse justice courts, as long as sitting and former leaders will remain unreachable from prosecution. For example, in August of 2014, the AU convened in Nairobi to promote an Africa-wide treaty that would "extend the African Court's jurisdiction to trials for crimes against humanity, while also granting immunity for sitting leaders and other senior officials."¹³⁵ Additionally, it was further proposed that only states would be able to refer cases, which only further reduces the likelihood that sitting leaders or their allies would be tried by this new Court.

As a result, and as argued by James Hall, Kenyatta is supported by the "confidence felt by African leaders that their own transgressions are to be ignored by fellow African heads of state in the name of African leadership solidarity."¹³⁶ It appears that Kenyatta has significant support from a number of African countries that have their own existential fears about the possible involvement of the Court in their internal affairs. Therefore, it can be seen that the AU's current position seems to be clearly placing state sovereignty and political self-interest ahead of human rights and accountability.

7.0 - Conclusion

The failure of Kenyatta's ICC case to proceed to the trial stage is a major blow to both the credibility of the Court and a major disappointment for the victims of the 2007-08 election violence. Furthermore, the dismissal of charges against Kenyatta raises fears concerning the very *raison d'être* of the ICC as the purpose of the court is to hold accountable those who are considered to be the "most responsible" for serious crimes, namely the "planners, sponsors, and

¹³⁵ Wambui, Carolone. (27 August 2014). Don't Be Vague; Let's go to The Hague: Kenya's Tumultuous Relationship With the ICC. The Hague Institute For Global Justice. Online.

¹³⁶ Hall, James (December 2013) African Leaders Versus the International Criminal Court. Africa Conflict Monthly Monitor. Page 3.

the instigators".¹³⁷ Often, those with the means to carefully plan or deliberately incite such violence are those who stand to gain politically but are also most at risk of being held accountable by the ICC. It is no surprise then that powerful leaders and their allies are the most ardent against the greater involvement of the ICC in African internal affairs. The outcome of Kenyatta's trial may have ultimately demonstrated that the idea the ICC could act as a deterrent to violence perpetrated by state leaders or signal the end of impunity is an incredibly ambitious and difficult goal to achieve.

The overall purpose of this paper has been to examine and analyze the framing strategies used by Kenyatta that have managed to resonate so strongly with a Kenyan and AU audience. First, this analysis has demonstrated the framing strategies that were used during the 2013 election by Kenyatta and the Jubilee Alliance Party that appeared credible to a large subset of Kenyans and which consequently aided Kenyatta in his successful bid for the presidency. This paper explored how Kenyatta portrayed the court as an neo-colonial and ethnically-biased process, which infringed upon Kenya's sovereignty and was preventing the possibility of peace and national reconciliation. Kenyatta appropriation of narratives of victimhood and the importance of solidarity in the face of a shared enemy was effective in framing the ICC in a detrimental light. Thus, the ICC cases had an impact on domestic politics within Kenya as it led to the reconfigurations of political identities, alliances, and perspectives of international criminal justice.

Second, these framing strategies have also supported and encouraged the growing regional dissatisfaction towards the ICC, as exemplified by the common position of non-cooperation held by the AU towards the Court. When the AU was first formed it moved from

¹³⁷ Werle, Gerhard. (2014). *Africa and International Criminal Court*. Berlin: *T.M.C Asser Press*.

commitment of non-interference to non-indifference by endorsing democracy and human rights, adopting a progressive charter of peoples' rights, and joining the International Criminal Court in the early 2000's. In recent years, the AU has become a major opponent to the ICC and language of neo-colonialism and foreign interference have been used to discredit the Court and mobilize dissent. The complete shift in opinion concerning the ICC indicates that some African leaders have abandoned its founding principles and have placed more importance on the sanctity of state sovereignty to protect its leaders instead of its people.

So what lessons can be learned from this analysis and the ICC's experience in Kenya? This paper has shown that although the ICC may make idealized promises about international criminal justice, it fails to take into account the messy political realities. Kenyatta and Ruto were able to effectively tap into pre-existing negative domestic and regional sentiment held against the ICC and the West as a means to discredit the legitimacy of the ICC and establish a robust regional base of support in defiance of the Court. References to the ICC also had a direct influence on the fanning of ethnic tensions in the lead-up to the 2013 election. In the future, it is likely that powerful narratives of injustice and solidarity will continue to be utilized in order to protect former and sitting leaders from prosecution and to mobilize support in their defense.

Whether the ICC serves as a deterrent or can meet the high expectations of citizens is hotly debated. In order to be more successful in the future, the ICC must acquire new ways of engaging with local communities and taking local politics into account. One possible solution that has been devised would entail the ICC assisting African states to strengthen domestic legislation and build their own capacity and ability to try human rights abuses.¹³⁸ This would help to reduce the critique regarding the political dimension against the ICC but, at the same, it is

¹³⁸ Cole, Rowland. (2014). Africa's Relationship with the International Criminal Court: More Political Than Legal. *Melbourne Journal of International Law*. 14(2): 1-29. Page 28.

likely that sitting leaders will continue to resist such measures if it could lead to legal repercussions for themselves.

Currently, the ICC's involvement in Kenya is not yet over as William Ruto and former journalist Joshua Sang remain on trial at The Hague, despite protestations by Kenyatta and the Kenyan government. As well, ICC Prosecutor Bensouda's threat of reviving the case against Kenyatta still hangs in the air. It is difficult to predict what the outcome of this trial will be but it is certain that both the Kenyan government and the AU will continue to apply significant pressure on the ICC to have Ruto's case dismissed. The credibility of the ICC has been damaged and there are still unresolved questions concerning how to reconcile legal and political aspects of international criminal law. Despite the ICC's best efforts to provide retributive justice for the victims of the 2007-08 election violence, it seems that impunity still prevails. Should the Court continue its ICC cases against Ruto or Sang despite the protestations of the Kenyan Government and the AU, it would be an important achievement for international criminal justice.

Bibliography

- Africa Confidential*. (7 June 2013). Issue 54(12).
- African Union Assembly. (2013). Decision on Africa's Relationship with the ICC, Ext/Assembly/AU/Dec.1. Accessed Online.
- African Union Press Release Number 002 (January 2012). Accessed Online.
- Al Jazeera*. (15 June 2015). Sudan's Bashir Leaves South Africa Despite Court Order. Accessed Online.
- Aling'o, Peter. (30 October 2013). President Kenyatta's Trial Over His Impeding ICC Trial. *Institute for Security Studies*. Accessed online.
- Allison, Simon. (9 December 2014). How To Beat The International Criminal Court - Lessons from the Kenyatta Case. *Institute for Security Studies*. Accessed online.
- Autesserre, Severine.(2014). Peaceland: Conflict Resolution and the Everyday Politics of International Interventions. *Cambridge University Press*.
- Autesserre, Severine. (2012). Dangerous Tales: Dominant Narratives on The Congo and Their Unintended Consequences. *African Affairs*. 111(143): 202 - 222.
- Barasa, Lucas & Jeff Otiono. (15 October 2012). Kenya: Raila's Ratings Fall But Still Ahead of the Pack. *Daily Nation*. Accessed online.
- BBC News*. (5 November 2009). Ocampo Presses Kenya For Justice. Accessed Online.
- BBC News*. (27 May 2013). African Union Accuses ICC of 'Hunting' Africans. Accessed Online.
- BBC News*. (6 March 2013). Kenya Elections: Kenyatta Accuses UK Over Rejected Votes. Accessed online.
- BBC News*. (11 October 2013). Will Africa Pull Out of the International Criminal Court? Accessed online.
- BBC News*. (2013). Q's & A's: Kenya's 2013 Elections. Accessed Online.
- Bjork, Christine and Juanita Goebertus. (2014). Complementarity in Action: The Role of Civil Society and the ICC in Rule of Law Strengthening in Kenya. *Yale Human Rights and Development Journal*. 1(14): 205 - 230.
- Bowcott, Owen. (5 December 2014). ICC Drops Murder and Rape Charges Against Kenyan President. *The Guardian*. Accessed online.

- Branch, Daniel. (2012). *Kenya: Between Hope and Despair, 1963-2012*. Yale University Press.
- Branch, Daniel and Nic Cheeseman. (2008). Democratization, Sequencing and State Failure in Africa: Lessons From Kenya. *African Affairs*. 180(403): 1-26.
- Branch, Daniel and Nic Cheeseman. (2010) *Our Turn to Eat: Politics in Kenya Since 1950*. Berlin: Lit Verlaig.
- Bratton, Michael & Mwangi S. Kimenyi. (2008). Voting in Kenya: Putting Ethnicity into Perspective. *Journal of Eastern African Studies*. 2(2): 272-289.
- Brownsell, James. (9 March 2013). Kenyan Voters and the ICC Factor. *Al Jazeera*.
- Brown, Stephen and Chandra Sriram. The Big Fish Won't Fry Themselves: Criminal Accountability For Post-Election Violence in Kenya. *African Affairs*. 111(114): 244-260.
- Brown, Stephen and Rosalind Raddatz. (2014). Dire Consequences or Empty Threats? Western Pressure for Peace, Justice and Democracy in Kenya. *Journal of Eastern African Studies*. 8(1): 43-62.
- Cheeseman, Nic. (5 November 2014). Coalition Politics and the ICC in Kenya. *Democracy in Africa*. Accessed online.
- Chong, Dennis and James N. Druckman. (2007). Framing Theory. *Annual Review of Political Science*. 10(1): 103-126.
- Cheeseman, Nic, Gabrielle Lynch & Justin Willis. (2013). Democracy and its Discontents: Understanding Kenya's 2013 Election. *Journal of Eastern African Studies*. 8:(1): 2-24.
- Cole, Rowland. (2014). Africa's Relationship with the International Criminal Court: More Political Than Legal. *Melbourne Journal of International Law*. 14(2): 1-29.
- Dersso, Soloman. (11 October 2013). Unplanned Obsolescence: The ICC and African Union. *Al Jazeera*. Accessed Online.
- Desrosiers, Marie-Eve. (2011). Reframing Frame Analysis: Key Contributions to Conflict Studies. *Ethnopolitics*. 10(1): 1-23.
- Embu, Elizabeth. (12 October 2013). Nigeria Disappointed with ICC. *Daily Times Nigeria*.
- Feree, Karen E., Clark C. Gibson & James D Long. (2014). Voting Behaviour and Electoral Irregularities in Kenya's 2013 Election. *Journal of Eastern African Studies*. 8(1): 153-172.
- Gettleman, Jeffrey. (2007). "Disputed Vote Plunges Kenya Into Bloodshed." *New York Times*.

- Hall, James (2013) African Leaders Versus the International Criminal Court. *Africa Conflict Monthly Monitor*. 1-4. Accessed Online.
- Hornsby, Charles. (2013). Kenya: A History Since Independence. *I.B. Tauris*.
- Horowitz, Jeremy. (2008). Power-sharing in Kenya: Power-sharing Agreements, Negotiations and Peace Processes. Oslo: Centre of Study for Civil War.
- International Center Transitional Justice*. (2013). Prosecuting International and Other Serious Crimes. Pages 1-13.
- International Criminal Court. (5 December 2014). Statement of the Prosecutor of the International Criminal Court, Fatou Bensouda, on the Status of the Government of Kenya's Cooperation with the Prosecution's Investigations in the Kenyatta Case. *Press Release*. Accessed Online.
- International Crisis Group. (2013). Kenya: After The Elections. *Africa Briefing Number 94*. Accessed online
- Ishmael, Najma. (2013). Kenya: Choices Have Consequences – Carson. *The Star*. Accessed Online.
- Kendall, Sara. (2014). UhuRuto" and Other Leviathans: the International Criminal Court and the Kenyan Political Order. *African Journal of Legal Studies*.7(1): 399-427.
- Kenya and the ICC: To Remain or to Withdraw. (10 September 2013). *East African Center for Law and Justice*. Accessed Online.
- Kenyatta, Uhuru. (12 October 2013). Address to the Extraordinary Session of the Assembly of State and Government of the African Union. *African Union*.
- Kenyatta, Uhuru. (December 2014). Jamhuri Day Speech. Accessed via: <http://www.capitalfm.co.ke/eblog/2014/12/12/president-kenyattas-jamhuri-day-speech/>
- Kenyatta, Uhuru. (20 October 2013). Mashujaa Day Speech. Accessed via: <http://www.capitalfm.co.ke/eblog/201/10/20/mashujaa-day-speech-by-uhuru-kenyatta/>
- Kinyanjui, Martin. (12 December 2014). President Uhuru Kenyatta Says ICC A Threat To Kenya's National Stability. *Daily Nation*. Accessed Online.
- Lassing, Ulf & Khalid Abdelaziz. (22 September 2013). Sudan's Bashir Wanted by the ICC. *Reuters UK*.
- Latiff, Eric. (12 October 2013). Africa: ICC A Toy of Declining Imperial Power. *Capital FM*.
- Lemarchand, Rene. (1992). Africa's Troubled Transitions. *Journal of Democracy*. 4(3): 98-109.

- Lunn, Jon. Kenya Since the 2007-08 Crisis. *House of Commons Library: Briefing Note*.
- Lynch, Gabrielle. (2011). I Say To You: Ethnic Politics and the Kalenjin in Kenya. *The University of Chicago Press*.
- Lynch, Gabrielle. (2013). Electing the 'Alliance of the Accused': The Success Of The Jubilee Alliance in Kenya's Rift Valley. *Journal of Eastern African Studies*. 8(1) 93-114.
- Maliti, Tom. (2012). "Are Uhuru Kenyatta and William Ruto Really Sworn Enemies?" *International Justice Monitor*.
- Mathenge, Oliver. (27 October 2012). Consequences of a Ruto and Uhuru Presidency. *Daily Nation*. Accessed Online.
- Menya, Walter. (28 July 2012). "Githongo Says Uhuru and Ruto Should Not Vie". *The Star*. Accessed Online.
- Mills, Kurt. (2012). Bashir is Dividing Us: Africa and the International Criminal Court. *Human Rights Quarterly*. 34(2): 404-47.
- Mueller, Susanne. (2013). Kenya and the International Criminal Court: Politics, the Election, and the Law. *Journal of Eastern African Studies*. 8(1): 25-42.
- Muramira, Gashegu. 10 October 2014. Museveni Calls on African Counties to Review their ICC Membership. *The New Times Rwanda*. Accessed Online.
- Nathan, Laurie. (2010). Interests, Ideas ad Ideology. South Africa's Policy on Darfur. *African Affairs*. 110(438): 55-74.
- Olson, Kristine. (2013). Telling Our Stories: Narratives and Framing in the Movement for Same Sex Marriage. *Journal of Social, Cultural and Political Protest*. 13(2): 248-266.
- O'Reilly, Annie, Max du Plessis and Tiyajana Maluwa. (2013). Africa and the International Criminal Court. *Chatham House*. Accessed Online.
- Peskin, Victor. (2009). Caution and Confrontation in the International Criminal Court's Pursuit of Accountability in Uganda and Sudan. *Human Rights Quarterly*. 31(3): 665-691.
- Reese, Stephen. (2003). Framing Public Life: Perspectives on the Media and Our Understanding of the Social World. *Routledge Communication Series*.
- Republic of Kenya (2008). Report of the Commission of Inquiry into Post-Election Violence Nairobi: Government Printers. Accessed Online.
- Section 5. (2008). *Truth, Justice and Reconciliation Act*.

- Snow, D. A. and Benford, R. D. (1988). Ideology, Frame Resonance, and Participant Mobilization. *International Social Movement Research*. 1: 197–217.
- Sririam, Chandra Lekha. (2012). *Transitional Justice and Peacebuilding on the Ground*. Taylor and Francis Books.
- The Crisis in Kenya. *International Coalition for the Responsibility to Protect*. Accessed from: <http://www.responsibilitytoprotect.org/index.php/crises/crisis-in-kenya>
- The International Criminal Court*. (2011). The Prosecutor v. Uhuru Muigai Kenyatta: Case Information Sheet. Accessed online.
- The Hague Justice Portal*. (09 March 2011). ICC Summons Six Suspects Over Kenyan Violence. Accessed Online.
- Ssenyonjo, Manisuli. (2013). The Rise of the African Union Opposition to the International Criminal Court's Investigations and Prosecutions of African Leaders. *International Criminal Law Review*, 13(1): 385- 428.
- Van Gorp, Baldwin. The Constructionist Approach To Framing: Bring Culture Back In. *Journal of Communication*. 57(1): 60-78.
- Wambui, Carolone. (27 August 2014). Don't Be Vague; Let's Go to The Hague: Kenya's Tumultuous Relationship With the ICC. *The Hague Institute For Global Justice*. Accessed Online.
- Werle, Gerhard. (2014). *Africa and International Criminal Court*. Berlin: T.M.C Asser Press.
- Wolf, Thomas. (2013). International Justice Versus Public Opinion? The ICC and Ethnic Polarization. *Journal of African Elections*. 12(1): 143-177.