

Law, Religion and Reconciliation in Africa



Edited by
M. Christian Green
Jean-Baptiste Sourou
Célestin Gnonzont



2 POLITICAL VIOLENCE, ELECTORAL JUSTICE AND POLITICAL ACCOUNTABILITY IN KENYA AND CÔTE D'IVOIRE

Elias O. Opongo¹

INTRODUCTION

Electoral justice is considered a framework of operation that ensures the entire cycle of the electoral process – before, during and after – and it is carried out under strict adherence to the rule of law, transparency and justice, which seeks fairness for both political candidates and citizens. Given that electoral justice is founded on the rule of law, the legal framework that guides the electoral process ought to be based on the wider participation of both political parties and citizens within constitutional provisions.

Elections, if poorly handled, can lead to violent conflicts that can escalate to protracted and politically unstable situations. Several African countries have experienced election-related violence or political instability. They include Kenya, Uganda, Zimbabwe, Nigeria, Ethiopia, Côte d'Ivoire and Gabon. Often, victims of election-related violence tend to be forgotten in post-conflict reconstruction processes. Civil society and human rights organisations that fight for the rights of election-related conflicts face the difficult task of holding accountable political leaders responsible for the violence. Achieving justice for the victims of electoral violence and promoting reconciliation as a strategy for peace and stability can be challenging, particularly given that the perpetrators may still have political and economic influence.

To a great extent, local mechanisms of justice may not be able to handle highly politicised human rights violations related to electoral violence. The perpetrators of the violence may be the same persons handling government systems of justice. As a result, the next recourse of action where victims can find justice is often an external system of justice, such as the International Criminal Court (ICC). The ICC has been a deterrent to political violence, which includes electoral violence. This has been the case in Kenya and Cote d'Ivoire, where the ICC intervened after disputed election results that led to violence and deaths.

This chapter examines the extent to which systematic patterns of political violence undermine electoral justice and peace stability in Kenya and Côte d'Ivoire. The chapter makes three main arguments on electoral justice. The first is that political violence tends to undermine electoral systems and citizen participation, and

1 Senior Lecturer, Hekima Institute of Peace Studies and International Relations (HIPSIR), Hekima University College; Director, Centre for Research, Training and Publications (CRTP).

the result is securitised politics that become a tool for governance. The second is that while elections seek to increase citizen participation in governance, and subsequently political accountability, elections at the same time render citizens vulnerable to periodic systematic violence that is often politically motivated. The third is that electoral justice is an essential tool for political accountability, but it requires transparent, independent and effective instruments of law.

CONCEPTUALIZING ELECTIONS, ELECTORAL VIOLENCE AND ELECTORAL JUSTICE

The rise of authoritarian populism has eroded democracy in many parts of the world. This chapter introduces the theory of alternative leadership deficiency (ALD) to explain the primary drive for legitimised, “democratised” authoritarianism. The ALD theory affirms that populist authoritarian leaders often advance the ideology of absolutism in leadership aimed at convincing their citizenry that no other person can lead the country better than them. The ALD theory asserts that authoritarian populism is sustained by four pillars of state capture: (1) capture of political institutions through the control of political parties, parliament, congress and senate, as well as electoral institutions; (2) capture of economic structures through control of all business transactions and institution of economic policies that only favour the political elites and their cronies; (3) capture of military infrastructure through control of the military appointments, use of law enforcers to intimidate citizens or silence any government opposition; and (4) capture of the citizenry through manipulative false promises, politicisation and polarisation of social identities, and instigation of communal violence along ethnic, religious, racial, national or political identities. This quadro-capture takes different forms and shapes in each country. The perception behind state capture in ALD theory is that running a government is a business transaction, and all institutions ought to deliver colossal benefits to the political elite in form of economic returns, security assurance, unquestionable loyalty and unthreatened longevity in leadership control.

In Africa, democracy has been characterised by securitisation of democracy, populist authoritarianism and politicisation of ethnic identities. As a result, there have been coups d'état in Africa in the last ten years in countries such as Gabon, Niger, Sudan, Mali, Zimbabwe, Chad, Burkina Faso, Guinea-Conakry and Sudan. These coups have undermined systems of governance and accountability to citizens, further perpetuating violence. The capture of the security system circumvents the other three pillars of ALD, and military leaders became the *nouveau riche* who control the social political agenda of the country. While, at first, the citizens may praise the populist action by the military of removing an oppressive elected leader, soon the military leadership plays the same game of state capture by treating their position in power as a business transaction. Such leadership often generates into populist authoritarianism, as was witnessed in Egypt with President Hosni Mubarak and in Libya with President Mohamed Gadhafi.

The competitive nature of elections in Africa has made them potential arenas for state capture and control of national resources. The core of democracy is rooted in accountable governance as a social contract between the elected leaders and citizens participating in elections. However, trends of electoral violence in Africa have rendered the continent vulnerable to electoral manipulation, marginalisation of populations and capture of governance structures. Elections have become triggers for polarisation and social-ethnic divisions. Hence, several African countries have witnessed violence during elections whether at pre-election, election-day or post-election period.² While democracy and its concomitant electoral process have been advanced as crucial components of peace stability by the international community,³ especially by liberal peace proponents, there are still major hurdles that need to be addressed for democracy to play the role of peace stabilisation. The liberal political of peace is a post-conflict approach to state building grounded in the promotion of human rights, democracy, institutional reforms and economic liberalisation.⁴ Jackie Cilliers, a political researcher and founder of the Institute for Security Studies (ISS), points out that, the process of democratisation, as well as regime type and regime dissonance,⁵ are salient structural causes of conflicts in Africa, not just in the present but also for the foreseeable future.⁶ Electoral violence in Africa therefore requires sustained attention with the aim of unearthing effective solutions that could spur Africa's political and socio-economic development.⁷

The ballot box has become a battleground for conflicts in many parts of the world, posing major challenges for political transitions. A prominent indicator of democracy is the idea of competition, allowing the citizens to make an independent choice of whom they want to represent them. In recent years, electoral violence has been precipitated by unaddressed historical injustices, political marginalisation and the securitisation of electoral process. Hence, there has been a steady decline in trust in electoral institutions, leading to the option for violence or military coup d'état in a desperate move to find alternatives to bad governance.

2 Goldsmith AA. 2015. "Elections and Civil Violence in New Multiparty Regimes: Evidence from Africa", *Journal of Peace Research* 52(5):607-621; Taylor CF, Pevehouse JCW and Straus S. 2017. "Perils of pluralism: Electoral violence and incumbency in sub-Saharan Africa", *Journal of Peace Research* 54(3):397-411; Elekwa NN and Okechukwu IE. 2011. "Post-Election Violence in Africa: A Comparative Case of Kenya and Zimbabwe", *The Indian Journal of Political Science* 72(3):833-844.

3 Sisk TD. 2003. "Democracy and Conflict Management", BeyondIntractability.org, August.

4 Opongo EO. 2013. "The African Union and a liberal peace agenda to conflict", in Murithi T (ed). *Handbook of Africa's International Relations*. New York: Routledge, 62-73.

5 Regime dissonance, according to Jakkie Cilliers, refers to a conflict situation in which states practise democracy with autocracy, which sometimes culminates in anocracy, a system in which one ethnic group or region dominates the running of the state and distribution of national resources. cf. Cilliers J. 2018. "Violence in Africa: Trends, drivers and prospects to 2023", *Africa Reports* 12. Pretoria: Institute for Security Studies, 14-18.

6 Cilliers, "Violence in Africa", 14-18.

7 Chandler D. 2018. *Peacebuilding: The Twenty Years' Crisis, 1997-2017*. London: Palgrave Macmillan.

Generally, electoral violence refers to the use of force to threaten, harm or kill individuals or groups perceived to be opponents or competitors in an electoral process. Sarah Birch, a professor of political science, and David Muchlinski, a researcher in political violence, define electoral violence as, “coercive force, directed towards electoral actors and/or objects that occur in the context of electoral competition”.⁸ They identify temporal and causal peculiarities of electoral violence, while emphasizing that electoral violence temporally occurs before, during and after the election exercise and to a great extent is causally aimed at influencing the election outcome in favour of the perpetrator of violence.⁹ On the other hand Sarah Birch, Ursula Daxecker, a political scientist, and Kristine Hoglund, a professor of peace and conflict studies, describe electoral violence as a strategy that is “typically selected from among available tools to achieve electoral ends, even if the use of force may simultaneously deliver on other goals, as when land is forcibly taken from a political opponent to reward a political ally”.¹⁰ In their view, the goal of electoral violence is political exclusion in favour of particular political groups. Such may be exclusion from political candidacy, electoral participation or even exclusion from power.¹¹ They also distinguish between electoral violence and non-electoral violence, though they acknowledge that they sometimes intersect, for instance in cases where criminal gangs are hired to intimidate voters or political opponents.¹² Finally, they also point out that electoral violence is a “distinct form of electoral manipulation”.¹³ Imposing fear and intimidation can lead to manipulation of the electoral process in favour of the violent actor. Armed groups can also sabotage elections in what Luke Condra and his colleagues researching the politics of violence refer to as insurgent electoral violence.¹⁴ This often happens in countries experiencing armed violence against the state. Armed groups can prevent electoral officials or the public from accessing poll stations.

The variation in electoral violence definition points to the complexity of different factors that contribute to political violence. In an extensive elaboration of the key manifestations of electoral violence in Africa between 1990 and 2008, political scientists Charles Taylor, Jon Pevehouse and Scott Straus stress that in most cases, chances of electoral violence are higher in situations in which a presidential candidate is running for re-election or has strong preference for a particular candidate.¹⁵ This

8 Birch S and Muchlinski D. 2017. “The Dataset of Countries at Risk of Electoral Violence”, *Journal of Terrorism and Political Violence* 32(2):217-236.

9 Birch and Muchlinski, “The Dataset of Countries at Risk of Electoral Violence”.

10 Birch S, Daxecker U and Hoglund K. 2020. “Electoral violence: An introduction”, *Journal of Peace Research* 57(1):3-14.

11 Birch et al, “Electoral violence: An introduction”.

12 Birch et al, “Electoral violence: An introduction”, 6.

13 Birch et al, “Electoral violence: An introduction”, 6.

14 Condra LN, Long JD, Shaver AC and Wright AL. 2018. “The Logic of Insurgent Electoral Violence”, *The American Economic Review* 108(11):3199-3231.

15 Taylor, Pevehouse and Straus. “Perils of pluralism”, 297-411.

phenomenon, they argue, is largely influenced by clientelism propagated by the incumbent leader.

In the early 1990s, many countries in Africa were transitioning from autocratic rule to multiparty democracies. Incumbent presidents and political leaders who were in power for a long time were threatened by this democratic wave, and as a result, violence erupted in some parts of Africa. Using data from the Social Conflict in Africa Dataset (SCAD), political scientists Idean Salehyan and Christopher Linebarger observed that in the 1990s, 7.6% of all conflicts in Africa were electoral conflicts.¹⁶ This was evidenced in elections in South Africa (1994), Sierra Leone (1996), Malawi (1994) and Kenya (1992). There have been other electoral violence situations in Zimbabwe, Nigeria, Uganda, Côte d'Ivoire and the Democratic Republic of Congo (DRC). To a great extent, the state is often the sponsor of electoral violence.¹⁷ In both Kenya and Côte d'Ivoire, elections were used to right historical wrongs, especially concerning land grievances.

Due to the perennial trend of state capture by political elites, winning an election is equivalent to the accumulation of wealth. Hence, political supporters see the victory of their politicians as an opportunity for the accumulation of economic benefits and state capture. This reinforces the ALD theory, which finds that once a person is in leadership, they hold the position for a long time. Claude Ake, a Nigerian political scientist, alludes to this, by stating that in Africa, when citizens go to the polls, it is most often because of the high expectation that a change of government will lead to a change in economic status, and as a result, there is a public demand on the politicians to return the favour. Hence, according to Ake, political democracy is not separate from economic democracy.¹⁸ The capture of state resources, hence, points to economic emancipation and political control over those resources.¹⁹ In line with the ALD theory, the ballot capture becomes the entry door for state capture impunity. For example, in Gabon, a coup took place immediately after the elections, ending the Bongo family's dominance for more than 56 years. Ali Bongo Odimba, who took over from his father, who had ruled the country between 1967 and 2009, was overthrown by a military leader, General Brice Oligui Nguema. The Bongo family had captured the state and controlled all the national resources of the country.²⁰ In the 2015 Burundi elections, then-President Pierre Nkurunziza,

16 Salehyan I and Linebarger C. 2013. "Elections and Social Conflict in Africa", *Climate Change and African Political Stability*, Research Brief No. 6. Austin, TX: Robert S. Strauss Center for International Security and Law, 4.

17 Birch S. 2020. "Carrots and Sticks: Toward a Theory of Electoral Violence", in Birch S (ed). *Electoral Violence, Corruption, and Political Order*. Princeton, NJ: Princeton University Press, 26-51.

18 Ake C. 1993. "The Unique Case of African Democracy", *International Affairs (Royal Institute of International Affairs)* 69(2):239-244.

19 Cilliers, "Violence in Africa", 5.

20 Micah R. 2023. "Gabon's Bongo Family Enriched Itself Over 56 Year, Kleptocratic Rule Spreading Its Wealth Across the World", International Consortium of Investigative Journalists (ICIJ), 5 September.

violated the constitutional two-term limit and ran for the third term, amidst mass protests and police killings.²¹ The country continues to face political instability. Lastly, ethnicisation and politicisation of elections is another major issue of concern that is often used as a political strategy for citizen capture. Ethnic balkanisation through the formation of political party coalitions is common in several African countries. For example, Kenyan political scientist Gilbert Khadiagala observes, "In Kenya, coalitions are momentary vehicles to attain power rather than mechanisms for building enduring institutions of participation, accountability and legitimacy."²²

For peace and stability, a state must put in place mechanisms for addressing electoral violence. Khadiagala argues that one needs to understand the type of electoral violence experienced in a state to know how best to address it.²³ Holding perpetrators of violence accountable for their actions is considered a positive effort towards electoral justice, which can be defined as a mechanism that ensures accountability in the electoral process from registration, voting, counting of ballots, announcement of results and the commensurate conduct of party, government, electoral officials and the public. Hence, the electoral process has to be transparent and accountable, and those responsible for derailing the process or causing violence should be prosecuted. Electoral justice aims to reinforce the democratic principles of "integrity, participation, independence, transparency, timeliness, non-violence and competence",²⁴ hence, preventing electoral disputes that are triggered by undemocratic tendencies and electoral processes that are not credible. One can thus conclude that "electoral justice strives to give credibility and legitimacy to the election process".²⁵

ELECTORAL VIOLENCE IN KENYA AND CÔTE D'IVOIRE

Elections in Africa and many other parts of the world have always exposed countries' levels of social cohesion fragility. Both Kenya and Côte d'Ivoire have gone through the fragility test of elections marked by violence and deaths. Kenya has had a repetitive history of electoral violence in 1992, 1997, 2008 and 2017. The 2022 elections, while peaceful, were later followed by demonstrations led by the

- 21 Bisoka AN and Giraud C. 2020. "An Anatomy of Liberal Peace from the Case of Land Tenure in Burundi: Towards an Intermedial Perspective", *Journal of Peacebuilding & Development* 16(2), 148-161.
- 22 Khadiagala G and Booyesen S. 2021. "Coalition politics in Kenya: Superficial assemblages and momentary vehicles to attain power", in Booyesen S (ed). *Marriages of Inconvenience: The politics of coalitions in South Africa*. Johannesburg: Mapungubwe Institute for Strategic Reflection (MISTRA), 176.
- 23 Electoral Institute of Southern Africa. 2009. Preventing and Managing Election Relation Conflicts in Africa, Conference Proceedings Report, 17-18 November, 5.
- 24 Nkansah LA. 2015. "Dispute Resolution and electoral justice: The way forward", *Africa Development* 41(2):101.
- 25 Opongo EO. 2022. "The International Criminal Court and electoral justice in Kenya and Cote d'Ivoire," in Opongo EO and Murithi T (eds). *Elections, Violence and Transitional Justice in Africa*. London: Routledge, ch 7.

opposition against the government, often turning out to be violent. The worst electoral violence was experienced in 2007 and 2008 during the hotly contested elections between the Party of National Unity (PNU) led by President Mwai Kibaki and the opposition, Orange Democratic Movement (ODM) led by Raila Odinga. The ODM claimed there had been fraud in the electoral process and consequently rejected the election results. More than 1 500 people were killed and close to 700 000 displaced.²⁶ The Commission for Inquiry into Post-Election Violence (CIPEV), also known as the Waki Commission, indicated in its investigative report that over the course of two and a half months of violence, the country had 3 561 injuries and 117 216 instances of property destruction.²⁷

The causes of the electoral violence included issues around historical grievances and unaddressed historical injustices, unresolved conflicts over land, perceptions that the elections had been rigged in favour of the incumbent President Kibaki, politicisation and antagonisation of ethnic identities, economic marginalisation of certain sections of the population and securitisation of the electoral process. These are common strategies in alternative leadership deficiency theory, given that politicians often resort to violence to ascertain their power. Further violence was experienced in the 2017 general elections that pitted the incumbent Jubilee Party of President Uhuru Kenya against the ODM party of Raila Odinga. Kenyatta was declared the winner, but the opposition refused to accept the results and took the case to the Supreme Court. The Supreme Court annulled the presidential election results and called for a repeat election. The opposition boycotted the repeat election, and Uhuru won his second term. The 2017 electoral process was marked by violence, mainly by the police against civilians protesting against the elections.²⁸ Besides these election incidents, Kenya has had regional conflicts among pastoralist communities, who are often in competition for pasture, water and land. These conflicts are often politicised and used for social-political domination between different ethnic groups.

Côte d'Ivoire on the other hand had intermitted conflicts that threatened the stability of the country. The country was once regarded as a beacon of peace and stability in the West African region,²⁹ with considerably a higher GDP compared to other countries. However, between 2010 and 2011, the country experienced post-election violence that almost disintegrated the country into another civil war like the one previously experienced from 2002 to 2004. The civil war split the country between the Muslim north, mostly made up of Ivorians and migrants from the neighbouring countries of Burkina Faso and Mali, and the Christian south made up of indigenous

26 Klaus K and Mitchell M. 2015. "Land grievances and the mobilization of electoral violence: Evidence from Côte d'Ivoire and Kenya", *Journal of Peace Research* 52(5):622-635.

27 International Center of Transitional Justice. 2008. The Kenyan Commission of Inquiry into Post-Election Violence.

28 Human Rights Watch. 2017. "Kenya: Police killed, Beat Post-election Protesters", 16 October.

29 Zounmenou DD and Lamin AR. 2011. "Côte d'Ivoire's post electoral crisis." *Journal of African Elections* 10(2):6-21.

populations. President Laurent Gbagbo was still in power, and elections in Côte d'Ivoire were expected to be held by 2005. However, the elections were postponed at least six times within a period of five years.³⁰ According to foreign policy analysts David Zounmenou and international relations researcher Abdul Lamin, this was due to "disagreements over such issues as voter registration, the credibility of the Independent Electoral Commission (CEI) and the Demilitarisation, Demobilisation and Reintegration (DDR) process".³¹

Eventually, in October 2010, the long-anticipated elections took place, but none of the candidates attained the required 50 plus one majority vote, leading to a runoff, as per the requirements laid down in the 2000 Constitution. The runoff elections were held on 28 November 2010, and CEI announced that Alassane Ouattara was the winner (54.1 per cent), followed by Laurent Gbagbo (45.9 per cent). However, in a swift turn of events, Paul Yao N'Dré, the head of the Constitutional Council, declared the results invalid and shortly after announced Gbagbo as the winner of the elections with 51.45 per cent of the votes compared to Ouattara who had 48.55 per cent.³² Article 94 of the 2000 Constitution of the Republic of Côte d'Ivoire gives the Constitutional Council power over election matters.³³

The action by the Constitutional Council of nullifying the elections led to confusion, with the two candidates declaring themselves winners of the elections and sworn in separately as presidents of the country.³⁴ With the rising tension, the African Union attempted to intervene but failed. Ouattara sought the help of the New Forces of Côte d'Ivoire (FRCI) to oust Gbagbo. The ensuing conflict over the next three months from January 2011 led to the death of over 3 000 people, the displacement of at least 300 000 people within the Ivory Coast and at least 200 000 who fled to neighbouring countries.³⁵ Assisted by the UN and French peacekeepers, Ouattara's forces managed to capture most of Abidjan and on 11 April 2011, Gbagbo was captured alongside his wife, son and other members of his entourage within the palace grounds.³⁶ The conflict and political crisis came to an end on 21 May 2011 with the inauguration of Alassane Ouattara as president of the Ivory Coast, marking the end of the crisis, but leaving the country more divided than before, with thousands of people displaced, lives lost and many cases of gender-based violence.³⁷

30 Zounmenou and Lamin, "Côte d'Ivoire's post electoral crisis".

31 Zounmenou and Lamin, "Côte d'Ivoire's post electoral crisis".

32 Zounmenou and Lamin, "Côte d'Ivoire's post electoral crisis", 10.

33 Zounmenou and Lamin, "Côte d'Ivoire's post electoral crisis", 9.

34 Cook N. 2011. "Cote d'Ivoire's Post-Election Crisis", *Congressional Research Service*, 28 January.

35 United Nations Security Council. 2011. Twenty-eighth report of the Secretary-General on the United Nations Operation in Côte d'Ivoire. UN Doc S/2011/387, 24 June, 9.

36 International Peace Institute. 2018. "The Many Lives of a Peacekeeping Mission: The UN Operation in Côte d'Ivoire". Washington, DC: International Peace Institute.

37 Zounmenou and Lamin, "Côte d'Ivoire's post electoral crisis", 8.

POLITICAL ACCOUNTABILITY IN KENYA AND CÔTE D'IVOIRE

Any post-conflict situation poses a major challenge to the social, political and economic reconstruction of the country. In situations of electoral violence and disputed election results, the social cohesion of the country often becomes fragile, calling for the need for healing and reconciliation amidst the call to justice. Post-conflict situations governments often initiate transitional justice processes to institute political accountability. To a great extent, transitional justice calls for accountability on perpetrators of violence for crimes committed during periods of conflict, reparations and compensation for victims and survivors of violence and institutional reforms that are crucial to prevent a repeat of political violence.

To attain justice, the judiciary is expected to play the leading role, but often in a post-conflict context, the judiciary too becomes vulnerable to political manipulations. Zambian law scholar O'Brien Kaaba, notes that the domestic judicial systems in most African states tend to be complicit in eroding democracy in Africa by favouring those in power and undermining justice for the majoring of the population.³⁸ As a result, survivors of violence tend to rely on external institutions of justice like the International Criminal Court (ICC) to attain justice. This was the case in Kenya and Côte d'Ivoire. The ICC had to intervene to conduct trials against perpetrators of electoral violence.

In Kenya, the government established the Truth, Justice and Reconciliation Commission (TJRC), which was tasked with investigating human rights violations from the time of independence to 2008. Hence, after conducting its preparatory work in the year 2009, the TJRC began public hearings in January 2010. The TJRC went around the country conducting hearings, and listening to victims, alleged perpetrators and interested parties. The hearings revealed that the history of violence in Kenya was mainly attributed to regional socio-economic marginalisation, lack of transparency in the electoral process, unresolved historical injustices, competition over natural resources (land, minerals and oil), a culture of impunity, unemployment, poverty, corruption and politicisation of ethnic identities. The findings of the hearings implicated key actors in the violence, including politicians, armed militia that were mostly funded by politicians and previous governments and community-organised, armed groups.

The recommendations of the commission included further investigation into acts of violence that could not be investigated conclusively and addressing historical injustices and root causes of conflict, such as economic marginalisation of particular regions and communities and systematisation of politically motivated violence. According to journalist Patrick Beja, "the TJRC received 43 000 statements and 1600 memoranda from the public, the largest number of statements received by a truth commission anywhere in the world".³⁹ The report consisted of four volumes with

38 Kaaba O. 2015. "The challenges of adjudicating presidential election disputes in domestic courts in Africa", *African Human Rights Law Journal* 15(2):334-335.

39 Nichols L. 2015. *The International Criminal Court and the End of Impunity in Kenya*. New York: Springer, 193 (quoting journalist Patrick Beja).

a total of 2 210 pages, which documented human rights violations from 1893 to 2008, that is, from the colonial period to the time of the election crisis. The report highlighted those responsible for these crimes and recommended that they should be held accountable for their actions and that victims should be compensated for all the damages. Its findings were presented to then-President Uhuru Kenyatta in May 2013, but no concrete actions were taken to implement the recommendations of the TJRC.

In addition, the government put in place mechanisms for addressing threats to social cohesion and peace stability by establishing several legally instituted committees and commissions: the National Steering Committee (NSC), committed to peacebuilding in the country; the National Cohesion and Integration Commission (NCIC), which ensures that the country works towards national unity and that private individuals, government officials or politicians propagating disunity, ethnic stereotyping or violence are held accountable; and the Ethics and Anti-Corruption Commission (EAAC), charged with addressing corruption. However, these initiatives have faced many challenges, such as lack of funding, politicisation of their respective mandates, corruption, intimidation and lack of political will. The ICC intervened in Kenya after the country failed to prosecute individuals suspected of orchestrating the post-election violence. The chief prosecutor undertook the investigation process of the Kenya situation on his own initiative (*proprio motu*) under Article 15 of the Rome Statute.⁴⁰ As a result, on 30 March 2010, Pre-Trial Chamber II granted the prosecutor permission to open an investigation into the situation in Kenya related to, “crimes against humanity within the jurisdiction of the Court committed between 1 June 2005 and 26 November 2009”.⁴¹ Upon investigations, six suspects were named in relation to the 2007/8 post-election violence: Mohammed Ali, the police commissioner; Francis Muthaura, the head of public service and secretary to the cabinet; Uhuru Kenyatta, the minister of finance, along with Henry Kosgey, the minister of industrialisation and an opposition politician; William Ruto, the minister of higher education, science and technology; and Joshua Sang, a senior journalist at Kass FM. The six suspects were from both sides of the conflict, that is, the Party of National Unity (PNU) and the Orange Democratic Movement (ODM). The hearings of the charges began in September 2011, but by April 2016 all the charges had been dropped for lack of sufficient evidence.

The ICC intervention in Kenya was favoured by the public campaign against politicians who were responsible for the electoral violence. The pressure also came from the international community and civil society organisations. The public had hoped that the ICC intervention would have ended the periodic electoral violence in the country. However, Kenya witnessed more electoral violence situations in

40 Rome Statute of the International Criminal Court, 2187 U.N.T.S. 90, *entered into force* July 1, 2002.

41 International Criminal Court. 2010-2023. Kenya: Situation in the Republic of Kenya, Investigation, ICC-01/09.

2017 and 2023, mostly involving the police against civilians protesting against the manipulation of election results.⁴²

While the ICC cases were going on, Kenyatta and Ruto announced in 2012 their decision to run for the presidency and deputy presidency, respectively, in the 2013 elections. A report by the Kenya for Peace with Truth and Justice stated that “in a strange ironical reversal, Kenyatta and Ruto now presented themselves as victims, the hapless targets of an imperialistic plot against Africans.”⁴³ Following the unsuccessful bid to have their cases deferred through the UN Security Council (UNSC), Kenyatta and Ruto lobbied the African Union (AU) not to recognise the ICC. In fact, many at the AU viewed the ICC as a Western machinery targeting mostly Africans.⁴⁴ The AU called for the decolonisation of the ICC as an instrument of justice.

To initiate the political accountability process in Côte d’Ivoire, the government put in place mechanisms to address past political crimes within the framework of transitional justice. To a great extent, transitional justice calls for accountability of perpetrators of violence for crimes committed during periods of conflict, along with reparations and compensation for victims and survivors of violence. Hence, the transitional justice process in Côte d’Ivoire was aimed at addressing human rights violations committed during the political crisis, promoting reconciliation among the population and establishing a stable democratic government. As a result, the Commission for Dialogue, Truth and Reconciliation (CDVR) was established to identify the underlying causes of the conflict, the nature and extent of the violations committed, and measures to address victims’ rights.⁴⁵ The CDVR process began in 2011 with the establishment of the National Commission of Inquiry into the Crisis, which was tasked with investigating human rights violations committed during the conflict period. In 2012, the government set up the Dialogue, Truth and Reconciliation Commission (CDVR), which was responsible for promoting national reconciliation through dialogue, reparations to victims and strategic recommendations for the prevention of violence in future.⁴⁶ President Ouattara’s government also established a Special Investigative Unit (CSI) in 2011 aimed at investigating and prosecuting crimes committed during the post-election violence.

42 Human Rights Watch. 2023. “Kenya – Events of 2022”, *World Report 2023*. New York, HRW.

43 Kenyan for Peace with Truth and Justice (KPTJ). 2016. “Impunity Restored?: Lessons learned from the Failure of the Kenyan Cases at the International Criminal Court”. Nairobi: African Centre for Open Governance (AfriCOG)/KPTJ.

44 KPTJ, “Impunity Restored?”

45 N’Da SAY and Fokou G. 2021. “Knowledge asymmetry and transitional justice in Côte d’Ivoire”, in Jones B and Lühe U (eds). *Knowledge for Peace*. Cheltenham and Camberley: Edward Elgar Publishing, 75-98.

46 Bisset A. 2015. “The role of truth commissions in adjudicating human rights violations”, in Green JA and Waters CPM (eds). *International Human Rights*. Leiden: Brill Nijhoff, 192-211.

The International Criminal Court (ICC) was also invited to investigate and prosecute any crime committed during the conflict. The ICC issued arrest warrants for three individuals from the former government, including former President Laurent Gbagbo, his wife Simone Gbagbo, and former Minister of Youth Charles Blé Goude. Laurent Gbagbo and Blé Goude were transferred to The Hague for trial, while Côte d'Ivoire refused to transfer Simone Gbagbo, insisting that the local judiciary system could handle her case. In March 2015, she was later found guilty, along with 78 others, for crimes related to endangering state security.⁴⁷ In addition, Simone Gbagbo was charged with being responsible for "the crimes against humanity of murder, rape and other forms of sexual violence, other inhumane acts and persecution allegedly committed in the territory of Côte d'Ivoire during the period between 16 December 2010 and 12 April 2011."⁴⁸

In addition to establishing the special investigative unit and inviting the ICC to prosecute crimes committed during the post-election violence, President Ouattara also promised reparations to victims of human rights violations. However, the government's Special Inquiry and Investigation Unit (CSEI) has faced criticism for being politically motivated and biased, with no action taken against any pro-Ouattara forces. The ICC also faced accusations of bias for not taking action against pro-Ouattara individuals.

To initiate the reconciliation process in Côte d'Ivoire, in 2011 the government established the National Committee for Reconciliation and Victims' Compensation (CONARIV) aimed at facilitating reparation for the victims. The Ministry of Solidarity, Social Cohesion and Victims Compensation (MSCSIV) was also created to oversee the implementation of reparations.⁴⁹ The reparations included both symbolic and material reparations. Symbolic reparations included apologies, public recognition of harm suffered and commemorative events. Material reparations included financial compensation, medical assistance and other forms of support, such as education and housing assistance. The implementation of the reparations process, in Côte d'Ivoire, has been faced with a number of challenges including limited resources and difficulties in identifying and verifying victims.⁵⁰ A small number of victims received material and symbolic reparations. The programme provided a range of assistance to victims, including medical and psychosocial support, as well as material assistance, such as housing and education.⁵¹ While these efforts led to some positive progress in resolving the conflict in Côte d'Ivoire, the country remains fragile, with potential for future political instabilities.

47 Ngome AJ. 2020. *The ICC–Africa Relations: The Protracted Judicial Marriage of Convenience*. Kansas City, MO: Miraclaire Publishing, 2020.

48 International Criminal Court. 2015. "Appeals Chamber confirms admissibility of the ICC's Simone Gbagbo case" (press release) ICC-CPI-20150527-PR1112, 27 May.

49 N'Da and Fokou, "Knowledge asymmetry and transitional justice in Côte d'Ivoire".

50 N'Da and Fokou, "Knowledge asymmetry and transitional justice in Côte d'Ivoire".

51 Allais C. 2011. "Sexual exploitation and abuse by UN peacekeepers: the psychosocial context of behaviour change", *Scientia Militaria: South African Journal of Military Studies* 39(1):1-15.

CONCLUSION

Electoral justice is a fundamental tool for political accountability and peace stability. States that tolerate impunity to perpetuate violence in favour of particular political interests are likely to descend into protracted conflicts. Such institutionalisation of impunity is often motivated by the alternative leadership deficiency (ALD) theory, which drives leaders to believe that they are the only ones that can lead the country and that there are no alternatives leaders. Electoral justice relies on the efficient safeguarding of the rule of law. Unfortunately, to a great extent, most judicial systems tasked with the safeguarding of the rule of law tend to be captured by political leaders. The ALD theory demonstrates that state-capture situations tend to paralyse political accountability and institute authoritarian populist regimes that can only survive based on social fragmentations. Consequently, political leaders seek to securitise the elections, balkanise political support in the legislature and weaken the opposition. Political candidates use militia or government forces to intimidate opponents and manipulate the electoral process. This waters down trust in electoral processes and government institutions. Political accountability, whether internally or externally driven, is crucial to avoiding any recurrence of violent conflicts in the country.

There were high expectations from the victims and survivors of violence, human rights groups and the international community that the ICC would deliver justice to those affected by the violence, and that there would be a high social consciousness of political accountability. However, despite these high hopes for the ICC's capability to deliver justice, there were disappointments in the ICC's failure to hold political actors accountable. Therefore, there is a need for internal mechanisms of political accountability that are less costly and much more accessible to the survivors of violence.