

**THE ICC AND DEMOCRACY IN AFRICA:
THE CASES OF COTE D'IVOIRE AND KENYA**

The crest of the University of Ghana is a shield-shaped emblem. The top section is a blue rectangle containing three golden, stylized, flame-like or leaf-like symbols. Below this is a horizontal gold bar. The bottom section of the shield is a light purple color, featuring a golden, symmetrical, ornate design with four curved, scroll-like elements meeting at a central point, with horizontal lines extending outwards from the center.

BY

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DECLARATION

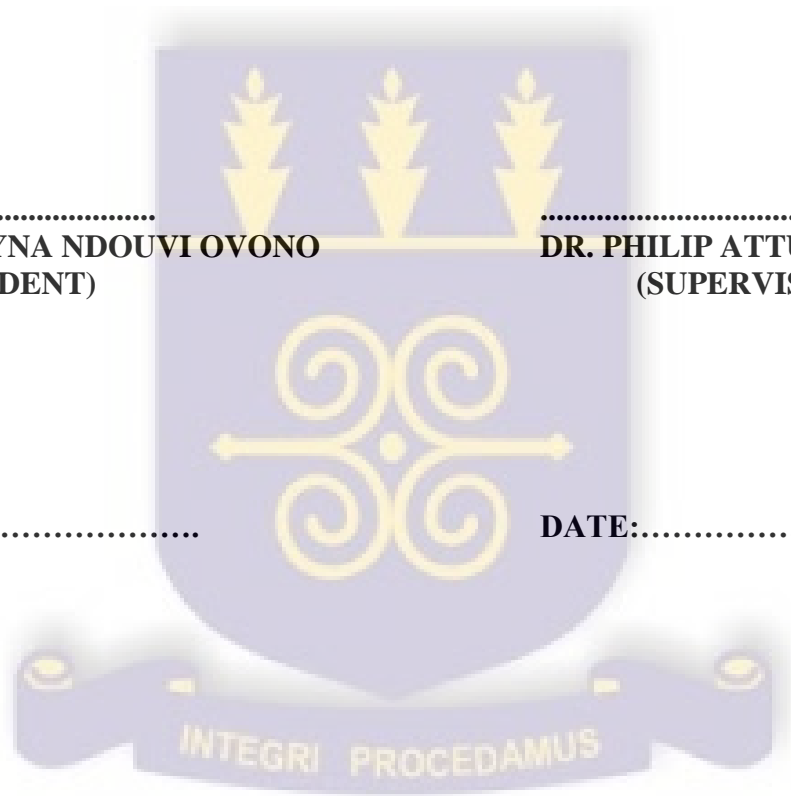
I, Caroline Wyna Ndouvi Ovono, hereby declare that this dissertation is an outcome of an original research conducted by me under the supervision of Dr. Philip Attuquayefio and that no part of it has been submitted anywhere for any other purpose.

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DEDICATION

To my parents, Akouma Flavie, Alene Minko Georgette and others, for their love, support and dedication.

I also dedicate this work to the Most High God, wonderful, counselor, whose strength is made perfect in my weakness. Thank you to all who supported and comforted me during this academic year.



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Notwithstanding the above, I remain solely responsible for any shortcomings that this work may suffer.

LIST OF ABBREVIATIONS AND ACRONYMS

AU	-	African Union
CEI	-	Commission Electoral Ivoirienne (Ivorian Election Commission)
ECOWAS	-	Economic Community of West African States
ERP	-	Economic Recovery Program
ICC	-	International Criminal Court
IFES	-	International Foundation of Electoral System
KANU	-	Kenya African National Union
LECIAD	-	Legon Centre for International Affairs and Diplomacy
NGO's	-	Non-governmental Organizations
ODM	-	Orange Democratic Movement
PNU	-	Party of National Unity
SAP	-	Structural Adjustment Programs
UN	-	United Nations
UNDP	-	United Nations Development Program



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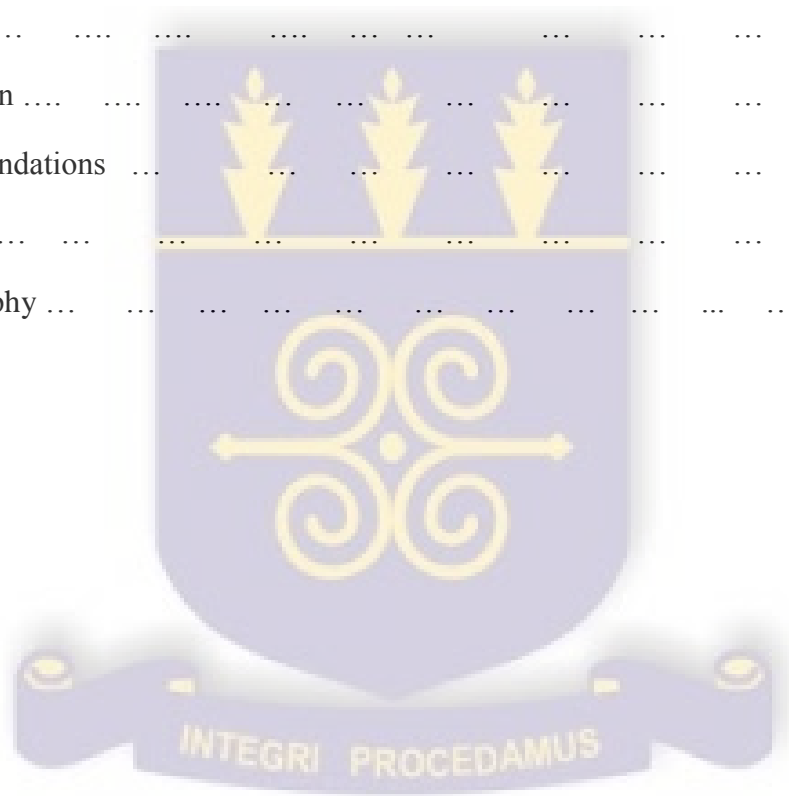
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ABSTRACT

Following post-electoral crisis in Kenya and Cote D'Ivoire, the International Criminal Court (ICC) indicted some political leaders from the two countries. Those indicted included Laurent Gbagbo and Uhuru Kenyatta of Cote D'Ivoire and Kenya respectively. The ICC's action was subsequently criticized as injurious to democracy in Africa, particularly in the case of Kenyatta who had been elected as president of Kenya. This study examined the role of the ICC with regard to democratic consolidation in Africa using Cote D'Ivoire and Kenya as case studies. The study hypothesized that the ICC through its indictment of the two leaders contributed to the stability of the two countries. This can be seen as a major step towards democratic consolidation. It was therefore concluded that the ICC is critical to democratic consolidation in Africa.



CHAPTER ONE

RESEARCH DESIGN

1.1 Background to the Problem Study

The practice and optimism about multi-party democracy in sub-Saharan Africa in recent years, clearly differs from the pessimism that existed prior to the 1960s. The pessimism was based on the idea that multi-party democracy was not feasible in societies with ethnic, religious, lingual, class and regional differences and inequities, and low levels of socio-economic development as exists in most of post-colonial Africa.¹ In truth, the early years of post-independence politics in Africa was mainly characterized by personal, patrimonial and military dictatorships, with serious human rights abuses and poor economic development.² Africa's socio-political and economic development problem became so serious that the 1980s was described as the lost decade of Africa. In the early 1990s many African countries experienced shocking civil wars and serious humanitarian violations that posed threats to neighbouring African countries, as well as put a lot of stress on international peacekeeping regimes. Africa's continuing socio-economic and political problems have since been labeled as governance crisis.³ Contemporarily, it is believed that conflict is unavoidable and ever-political and development crisis. Contemporarily, it is believed that conflict is unavoidable and ever-present in all societies, even identical and developed ones, and that democracy itself works to reduce, manage or resolve conflicts in all forms of societies.⁴ The concept of democratic peace, hitherto an international politics concept, has equally been extended to domestic settings with the view that, democratic governments are able to regulate group differences and demands more effectively through the principles of good governance and peaceful resolution of conflicts.⁵

Africa's adoption of democracy did not come about naturally. The inability of African countries and their regimes to solve the unbearable effects of the economic recessions, abuse of human rights, and exigencies of civil strife resulted in massive pro-democratic demonstrations that swept through the continent in the late 1980s and early 1990s. The internal clamour for political reforms was equally supported by external pressures especially from international civil society organizations and Africa's development partners.⁶ Democratic reforms that ensued were also largely due to the neo-liberal policies and conditionalities such as the Economic Recovery Program (ERP) and Structural Adjustment Programmes (SAP) that were imposed on African states. These were mainly economic but also addressed political reforms.⁷ These focused most African leaders to open up spaces for competitive electoral politics. The result of these reforms included the introduction of multi-party politics, free media, judicial independence, respect for the role of law, and promotion of civil society groups.

Countries in sub-Saharan Africa have since accepted and instituted constitutional multi-party democratic rule. It seems democracy has finally been received by most African countries as the preferable lawful form of governance. All are assumed free to participate without fear or discrimination. The assumption is that, all socio-political group differences and development expectations will be solved through political debates, cooperation and negotiation. Democratic governance, it is assumed, will promote peace, security and development. Many African countries, international, continental, regional, and national organizations have accepted multi-party democracy and banned unconstitutional change of governments. Samuel Huntington describes the prevalence of contemporary democratic governance as the Third Wave of Democratization.⁸

In practice, however, as much as the recourse to constitutional democracy has increased in Africa, it has also witnessed the sudden increase of intra-party, inter-party and inter-communal conflict, mainly along narrow-minded, personal, ideological, ethnic, regional, party and religious lines with adverse effects.⁹ The dynamics of Africa's contemporary multi-party democracy have produced mixed results. It has sharpened social differences, broadened ambitions, reduced corruption and promoted violence, as much as it has facilitated peace, cooperation and progress. Even the democracy success stories such as Ghana, Botswana, South Africa, Benin, Cape Verde, Mauritius, Tanzania, and Namibia have experienced serious challenges. There are major controversies bordering on the efficiency, credibility, and legitimacy of the democratic structures, processes, and their perception as free and fair. Corruption, cheap politicization of issues and polarization along party-lines, abuse of incumbency and ethnocentrism are still common place.

Electoral violence, a form of political violence, is perhaps the most common feature of elections in some African countries. It occurs on different scales, forms and at different times of the electoral process. Its consequences are, however, disastrous. It has resulted in loss of lives, reverse of development, armed violence, civil strife, and humanitarian crisis.¹⁰ Serious post-elections disputes and violence situation have been taken through legal proceedings at the judicial courts and/or were mediated by civil society organizations, statesmen, and regional and international organizations such as ECOWAS, AU, and the UN. In the cases of Kenya (2007 Elections) and Cote d'Ivoire (2010 Elections), where serious human rights abuses and crimes against humanity were judged to have been committed, the alleged perpetrators were indicted before the International Criminal Court (ICC).

1.1.1 The Cases of Kenya and Cote D'Ivoire

In 2007, Kenya experienced internecine electoral violence after the disputed Presidential Elections. The 2007 – 2008 Kenyan Crisis ensued when the Electoral Commission of Kenya Officially declared that the incumbent President Mwai Kibaki was re-elected and supporters of the opposition candidate Raila Odinga accused the government of electoral fraud and rejected the results. A series of protests and demonstrations followed, and fighting, mainly along ethnic lines. The disputed elections resulted in over 1,200 deaths, with about 350,000 people displaced,¹¹ more than half a million were rendered homeless, and social fragmentation deepened among ethnic groups.¹² On February 28, after several weeks of negotiation led by the former United Nations Secretary-General, Kofi Annan, a power-sharing agreement was reached between the feuding parties.¹³ Under the agreement, a coalition government made up of the Party of National Unity (PNU) of the then incumbent President Mwai Kibaki and the main opposition party, the Orange Democratic Movement (ODM), led by Raila Odinga who later became the Prime Minister was formed and inaugurated in April 2008. The Agreement also introduced the positions of Prime Minister and Deputy Prime Ministers and a proportionally representative cabinet mirroring Kenya's ethnic diversity into the new Kenya Constitution.¹⁴ The coalition government was asked to arrest and bring the perpetrators of violence to justice.

A Commission of Enquiry into the Post-Election Violence by Judge Philip Waki recommended that the Kenyan government set up a special tribunal to prosecute those liable for the most horrible crimes. The suggestion was, however, rejected by the National Assembly. After the ICC'S deadline of July 2010 to the Kenyan government to establish a local tribunal passed, the ICC summoned six Kenyans, the then Deputy Minister Uhuru Kenyatta, Henry Kosgey, William

Ruto, Francis Muthaura, Joshua Arap Sang and the established the ICC. The ICC has confined the charges against Kenyatta, Ruto and Sang. The trial of Ruto and Sang began on 10 September 2013, while that of Kenyatta, who has been elected the President of Kenya in 2012 supposed to start on February 5, 2014. This was later postponed to October 2014.

Cote d'Ivoire slid into a circle of violence after the death of its first president, Felix Houphouet Boigny in 1993. The political transition, at a time of sharp economic decline and difficulties, started a vicious power struggle between Henri Konan Bedie and Alassane Ouattara. The power struggle by elites and ethnic tensions that it created around who qualifies as an Ivoirian under the concept of Ivoirite. The struggle resulted in xenophobic politics of exclusion that conferred voting rights on mainly the southerners and denied people of northern and immigrant descent voting rights.¹⁵ After a number of political musical chairs, Laurant Gbagbo was elected President in October 2000. To the disappointment of many, Gbagbo also adopted that controversial and divisionist concept of Ivoirite. In 2002 Cote d'Ivoire was plunged into bouts of violence after an unsuccessful coup d'etat led by rebels of northern descent that effectively divided the country into two: Gbagbo government-controlled south and rebel controlled north. It also reflected a Christian-south versus a muslim-north. After a number of mediations and negotiations held in Lome (2002) Linas Marcoussis, France (2003), Accra (2004), and Pretoria (2005) under the guidance of ECOWAS, African Union, the United Nations and France, the UN Security Council resolution 1633 stipulated that General Elections be organized by an independent electoral commission under the Ouagadougou Agreement.

After several postponements the elections were held in October, 2010. Gbagbo led the Presidential Elections with 38% but failed to gain 50% of the votes as required by the constitution. In November 2010, the Presidential Elections Run-Off was held between Gbagbo and Ouattara, the two front-runners in the October 2010 Elections. The Independent Electoral Commission declared Ouattara the winner; while the defunct National Constitutional Council declared Gbagbo the winner.¹⁶ The electoral dispute plunged Cote d'Ivoire once again into political violence that recorded over three thousand deaths. The UN Security Council passed Resolutions 1962 (2010) and 1957 (2011) calling on ECOWAS, AU and all its members to use all means possible to protect civilians. On April 11, Gbagbo was allegedly seized by pro-Ouattara forces and Ouattara became the president of Cote d'Ivoire. In October 2011, The ICC formally issued an arrest warrant for Gbagbo, charging him with four counts of crimes against humanity allegedly committed between 16 December 2010 and 12 April 2011. His wife, Simone Gbagbo was also indicted by the ICC.

1.2 Statement of the Problem

Democracy in Africa is laudable given the early post-independence atrocities that were committed by various dictatorships. However, democratic rule in Africa is faced with many challenges, and as a concept and practice, it has equally created many controversies. Among the many challenges emerging from democratic rule in Africa is electoral fraud and violence. One of the salient problems that have evolved in the management of electoral fraud and violence, especially with the intervention of regional and international actors, is one of ownership. Who ultimately owns and controls the electoral process of democracy? Is it the state (the people and institutions) or international actors? It equal evokes questions of domestic legitimacy versus

international legitimacy. It also re-echoes old structural problems regarding the equality of states and responsibility to manage their affairs.

The implications of the ICC indictments relating to the post electoral violence in Kenya and Cote d'Ivoire have ignited some controversies. While some see it as positive development with the potential to contribute to consolidating democracy in Africa, others see the ICC's role as neocolonialist, imperialist, and lacking jurisdiction in the two cases. Others argue that although crimes were committed they were not of the nature which qualifies as crimes against humanity within the jurisdiction of the ICC. These controversies have led to some Africans, African governments, and the AU accusing the ICC of institutional bias in targeting Africa and African leaders unfairly. They also accused the ICC investigations and prosecutions of geographical imbalance.¹⁷ Another notable criticism of the ICC's actions with regard to the two countries related to the implications of the indictment on democracy. In this regard, the fact that Gbagbo had been perceived by a section of the Ivorian populace to have won elections, and Kenyatta had also won elections in Kenya has resulted in criticisms that the ICC actions was interfering in the formation of the respective governance teams of the two individuals and by implication democratic consolidation in Africa. On the basis of the above controversies, the extent to which the ICC affects democratic consolidated in Africa is the research problem the study explores.

1.3 Objectives of the Research

The objectives of the Research are:

- To present an overview of democracy in Africa

- To give an overview of the Kenyan (2007) and Cote d'Ivoire (2010) Presidential Elections and events leading to the Electoral Violence and their management.
- Examine the International Criminal Court's relevance to Democratic consolidation in African with reference to its indictment of the leaders of Kenya and Cote D'Ivoire.
- Offer suggestions geared towards strengthening the collaboration between African countries and the ICC towards democratic consolidation.

1.4 Hypothesis

The International Criminal Court is relevant to democratic consolidation in Africa.

1.5 Rationale of the Research

The world and indeed African countries have accepted democracy, and for that matter electoral democracy as the most legitimate system of governance and have resolved to avoid unconstitutional change of governments. However, post –Colonial States in Africa differ in many ways from Western states in many ways. Contemporary democratic dispensation in Africa has faced many challenges. Key among these challenges is the dispute of electoral results. The consequences of such disputes have on occasions has been violent conflicts and attendant abuse of rights and other crimes against humanity. Sub –regional organizations on the continent as well as the African union have had to contend with these challenges. By its objective of discouraging crimes against humanity, the international criminal court offers a platform to juridically deal with such crimes committed during such post electoral disputes. It may therefore be suggested that this potential role could strengthen democracy consolidation by encouraging faction in electoral disputes that the court should be mindful of the effect of its indictments on the stability of

countries whose leaders are indicted. This study offers an opportunity to examine the pro and cons of the ICC's work as far as democratic consolidation is concerned.

1.6 Theoretical Framework

The study is conducted within the framework of Regime Theory. This theory is derived from the liberal tradition and is used as a theory which points out the emergence of new actors in the international system. International organizations are now playing a significant role in international politics. According to Krasner, regimes are “institutions possessing norms, decisions, rules, and procedures which facilitate a convergence of expectations in the given issue-area.”¹⁸ The theory examines the effects international institutions have on the behavior of states and assumes that cooperation is possible in the anarchical system of states.

The liberalist based their approach on the regime theory saying that cooperation is possible in the anarchic system without a hegemon due to the existence of a “convergence of actor expectations.” They argue to all other members that, regimes facilitate cooperation in the sense that they establish standards of behavior which signal that individual states are in fact cooperating. The adoption of Regime theory is due to the main objective of examining how the ICC influences events relating to democratic consolidation in African countries.

1.7 Review of Existing Literature

Power sharing is about consensus building. This study shows that the process of democratization has been troubled with election malpractices and this is the main cause of post-election violence. The study is focused on the possibility of African countries to manage their governance and consider a better experience of the thing called Democracy.

Many authors have expressed the problem of democratization in Africa through articles, journals, books etc. however, we do retain some of them. Larry Diamond in his book “Developing Democracy: Toward Consolidation” asserts that the concept of Democracy requires a separate set of values and orientations not only of government but also of citizens.¹⁹ It passes through many aspects such as moderation, tolerance, civility, efficiency, knowledge and participation. Indeed he argues that the process of democracy has to be assimilated to an imperative consolidation. To attain this objective, Diamond starts measuring “third wave” of global democratization which leaves a growing gap between electoral form and the concept of democracy.

Diamond adds that the concept of democracy consolidation has to be “more deeply democratic, liberal, accountable, and responsive to their citizens. It also shows that through democracy consolidation, there is the essence of freedom, public opinion, and transparency during elections, and respect of the rule of law that is the base of legitimacy”.²⁰ Thus, effectively, Diamond established the fact that democratic consolidation goes beyond the mere holding of elections to include other key factors such as accountability. Diamond’s view further establishes organizations and institutions that advance these factors as critical to the democratic consolidation process. Within the context of this study, therefore, evidence that the indictments of the leaders of Kenya and Cote D’Ivoire has a positive effect on ensuring accountability of the ruling elite or governing class in the two countries can lead to a conclusion of a positive influence of the ICC on democratic consolidation in Africa.

In his volume on “Democracy and Elections in Africa” Staffan Lindberg, draws examples from multiple countries on the continent and reaches the conclusion that elections are critical and indeed form one of the core institutions of liberal democracy in the context of newly democratizing countries.²¹ This notwithstanding, Lindberg is convinced that the prevalence of neo-patrimonial structures may erode the effect of institutions such as elections on the consolidation of democracy in Africa countries. Lindberg’s analysis of the effect to which the manipulation of elections can have on democratic consolidation is useful. Within the context of this study, it highlights the anomalies that can be engendered in African countries through the manipulation of elections and the effect of such on human rights, the rule of law and other components of liberal democracy.

Christian Davenport and David Armstrong in their book “Democracy and the Violation of Human Rights” talk about the negative relationship between Democracy and Human Rights.²² They argue that Democracy affects Human Rights in the sense that the level of this process influences, in a negative manner. The respect of Human Rights. Indeed Democracy is repressive. Freedom is one of the main tools of Democracy, and came with civil liberties, and this leads to the abuse of moral values, human respect and rule of law. Christian Davenport and David Armstrong used some research techniques to show the underside of democracy through the close relationship existing between state repression and democratic peace. With regard to this study, Davenport and Armstrong reiterate the fact that human rights abuses can occur even in democracies. Thus, one of the key elements in ensuring that democracy is consolidated relates to ensuring that anomalies like human rights abuses that could plague even democratic states are addressed. Consequently, institutions like the ICC whose activities can be largely described as

addressing or ensuring the narrowing of the space for abuse of rights and crimes against humanity, can be described as institutions engaged in consolidating democracy.

Finally, in his article on pro-democracy intervention, Jeremy I. Levitt²³ draws from cases in Congo, Sudan, Burundi, Liberia, Sierra Leone and a number of African countries to highlight the depth of human suffering experienced by people on the African continent. Most importantly, Levitt notes that the conflicts that produce the suffering also tend to affect “democratization and human and social development”²⁴ Levitt thus, advocates for a pro-democracy intervention. The relevance of Levitt’s analysis that the ICC interventions by way of indictments are based on law manifested by ICC constitutive act, it may be averred that the ICC indictments of the leaders of Kenya and Cote d’Ivoire were pro-democracy interventions calculated to consolidate rather than undermine democracy in Africa.

1.8 Sources of Data

The research used both primary and secondary resources for the study, Primary data was obtained from unstructured interviews with the Cultural Attaché of the **Ivorian** Embassy in Ghana and the Kenyan High Commissioner to Ghana. It also included interviews with lawyers interested in the working of the ICC and political scientists who have followed the evolution of democratic consolidation in Africa. Secondary data was obtained from publications from the collected from the LECIAD Library and the Balme Library (University of Ghana).

1.9 Organization of Chapters

The research is organized in four chapters

Chapter One is the Research Design.

Chapter Two gives an overview of democracy in Africa as well as the ICC and its structures.

Chapter Three explores the relevance's of the ICC to democratic consolidation in Kenyan and Cote D'Ivoire.

Chapter Four summaries the research findings, states the conclusion and offers some recommendations.

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CHAPTER TWO

OVERVIEW OF DEMOCRACY IN AFRICA AND THE ICC

2.0 Introduction to Democracy in Africa

Democracy basically refers to a system of government that is characterized by rule by the people through their elected representatives. Democracy can manifest in two ways namely, direct democracy; where the people govern the state directly and representative democracy; which refers to the government of people through elected representatives. In classical terms, democracy involved the actual governance by all the people. This was best seen in the cases of early city states of Greece and was made possible by the small sizes of the city –states. The relative larger sizes of states in the post-city-state era have made it quite difficult to practice the kind of democracy that would involve everybody. Consequently, the characteristics of contemporary reflections of democracy places a lot more emphasis on representation and ensures that, the right of people to govern themselves is absolutely translated into an inalienable right to determine who governed them through the act of voting. The main objective is to bring stability and avoid revolution as is the case in other systems like tyranny or monarchy. Shapiro aptly affirms this objective noting that “Democrats are committed to rule by the people. They insist that no aristocrat, monarch, philosopher, bureaucrat, expert, or religious leader has the right, in virtue of such status, to force people to accept a particular conception of their proper common life. People should decide for themselves, via appropriate procedures of collective decision, what their collective business should be.”¹ Democracy is characterized by legal equality, freedom and rule of law.

2.1 Political History of African countries

African countries were previously instituted in several kingdoms. Decision making was basically done by monarchs or chieftains and few people that surrounded such institutions.² Extending to the east, west and towards the center of Africa, African rites and beliefs were their guide and lifestyle. Harmony was present, but some small conflicts existed. Normally, where ideas are not the same, men tend to feel frustrated and the result of this is aggression. Concerning royalties, there existed counselors who reported the various queries of the people and there were several leaders in a community who congregated to take decisions too. Then came the slave trade, a period which caused major problems in Africa. During this era, settlers changed the African system of governance and culture, and later instituted the democratic regime.³ Most of the African countries gained their independence in the 1960s. Political power in Africa was wielded by a handful of people, often under the command of a leader. In the former Zaire, for example, former president Mobutu was considered a dictator. Under the rule of a single party, Mobutu had declared that all Zairian born under his reign automatically become a member of his party. Several examples show that African countries after independence enjoyed their sovereignty, not for society's welfare but for their individual interest. In Senegal, for example, under the administration of the former President Senghor, he limited the number of parties contesting elections to three, that is to say the ruling party and two others. It was a way for him to control his rivals.

The application of the true values of democracy took shape in Africa around 1980. For example, Gabon's Democratic system had been established in an effective manner in the 1990s but it has not been easily accepted by all. Some scholars have considered this system as a factor of conflict

in Africa due to its lack of effectiveness. In Rev. Jose Belo Chipenda's view on Democracy, "it is about a whole complex of right and duties which citizens must exercise if a government is to open, accountable and participatory."⁴

2.2 Factors for Democratic Transition

African countries were once set up to kowtow to their colonizing countries. The one party system of governance reigned after the independence of most African countries. Indeed African countries at that time had not established the system of democracy, that is to say multiparty or pluralism. To overcome this unorthodox single party system of governance that was seen by the international community as a kind of dictatorship, they had established some factors for its introduction. The democratic system is a system that requires good will for all and respect of laws. Thus, this transition has been very poorly adopted by African countries. According To Larry Diamond, Democracy refers to "a popular sovereignty, accountability of rulers, freedom and rule of law"⁵ . Some factors allow a perfect transition of democracy. However this transition requires a radical change of life, and comes with many obstacles. In other words, democracy has gone through several internal and external changes. Internal and external factors have been exploited for maintaining the democratic system in the world.

2.2.1 Internal factors

With regard to internal factors, the maintenance of a better implementation of the system in the country is ensured. There are four internal factors, and they are national conferences, Economic factors, social factors and institutional factors.

National conferences

National conferences are seen as a discussion session or a general assembly composed of representatives of many parties or the population and its objective is to propose an introduction of a multiparty system. According to Kamto M., National conference is “the emergence of civil society and more broadly of the people on the stage of power”. Many African national conferences were instituted in some countries such as Gabon, Congo, Mali, Niger and Benin. Unfortunately, the Beninese national conference was the only one to have had a positive result.

Economic factors

Economic factors are not always prerequisites of democratization; however, there is a link between market economies and political democracies. The extent of economic growth in a country influences its democracy. This means that the wealthy countries are more likely to be more democratic than poorer states.

Social factors

The level of knowledge of people makes the democratic transition easier and attainable. In the sense that people must be educated to understand the concepts and hazards that can be reached, in order to better accommodate the system in the country.

Also, national unity is essential in the implementation of democracy in the state. In fact, the process of democracy itself produces such discord, and people disagree civilly on politics and that cannot help them to be united. National identity is the only common ground which keeps states' stability, and the unity of nationals can reduce the risk of conflict.

Institutional factors

Institutions are also important elements to democracy. For example, the judicial system has to be independent and impartial in its rulings. Respect for the rule of law is crucial in the democratic state. Then during election petitions, the judicial systems have to be fair and give an objective outcome. According to Larry Diamond “rule of law and the effective functioning of a judicial system are essential for the consolidation of liberal democracies”⁶ Also, the role of the police is important during election periods for democracy to thrive, hence in Africa, police and security forces need to be reformed in order to serve the public diligently.⁷.

2.2.2 External factors

External factors have also influenced democratic transitions around Africa. Within this context, the study identified international organizations, international financial institutions, and regional institutions.

International Organizations

International organizations participate in the promotion of democracy throughout the world. An example of such organizations is Amnesty International which is concerned about Human Rights.

Larry Diamond emphasized on how IGOs affect democratic transition. He in this, stated that, “The European Union has proven to be the single most important player in supporting democratic transition as NATO and OSCE which also played an important role.”⁸

Organizations such as the ICC is to punish crimes committed by individuals and participate considerably in the promotion of democracy. Many conflicts occur during elections in Africa and the ICC is responsible for bringing to book, culprits of such conflicts.

International Financial Institutions

Africa is in desperate need of such financial changes. Democracy is improved by the creation of progressive institutional changes, by accountability and by economic flexibility. The International Monetary Fund (IMF) and the World Bank for example, are to stop supporting some corrupt states, because this retards the forces of progressive institutional changes in Africa.⁹

Regional Institutions

The regional and sub-regional organizations show a great interest in the promotion of democracy. They promote the integrity of elections in Africa. The African Union is an example of a regional bloc which also recognizes the importance of democracy for African countries. Their role is to assist their members, particularly through electoral observation for a better democratic transition.¹⁰

2.3 Overview of the ICC

The power to punish has historically been and still is the heart of state sovereignty. Every state has the right to punish any infraction committed on his territory. Justice is one of the key components of state power.

The idea of a permanent court was first proposed by Gustav Moynier, one of the founders of the International Committee of the Red Cross, in response to the crime committed during the Franco-Prussian war around 1872.¹¹ The second call was during the 1919 meeting of Versailles,

after the First World War, where the international community thought to create an ad hoc international court to try to punish the German war criminals.

The Second World War has been the most violent and was the scene of atrocities committed by both the USSR and USA. Unfortunately, no jurisdiction was able to convict the perpetrators of these crimes. In others words, some of the most violent crimes were committed during the twentieth century. Many of these violations of international law, unfortunately, went unpunished. After the Second World War, the Nuremberg and Tokyo tribunals were established by allies to educate the international community on the necessity of international justice. In 1948, upon the adoption of conventions on the prevention and punishment of the crime of genocide, the General Assembly recognized the need to create the permanent international criminal court to avoid similar atrocities being committed again.

The world thought about the Holocaust, “never again”, after the Second World War. It is after this that they saw the need to set up an international institution responsible for punishing individuals for the most heinous crimes throughout the world. Many thought that the establishment of the United Nations after the Second World War would bring the world closer to a permanent international court of justice but Nuremberg and Tokyo were often suspected of being the case of a “victor’s justice”.

Originating from the military tribunals established after the Second World War, the establishment of a system of international criminal court reappeared after the end of the Cold War. Therefore negotiations on the statute of the ICC followed their progress within the United

Nations. The world witnessed heinous crimes on the territory of former Yugoslavia and Rwanda. The United Nations Security Council responded to these atrocities in both cases by the creation of an ad hoc tribunal. These events did not fail to weigh on the decision to convene in Rome during the summer of 1998, the conference which established the ICC.

In 1998, 160 countries participated in the UN diplomatic conference on the establishment of an international criminal court in Rome.

During this conferences (July 1998), governments approved a statute to establish a permanent ICC and on April 11, 2002, the Rome statute of the ICC received more than 60 ratifications required and the treaty entered into force on July 1, 2002¹².

Article 1 Rome Statute of ICC

An International Criminal Court ('the Court') is hereby established. It shall be a permanent institution and shall have the power to exercise its jurisdiction over persons for the most serious crimes of international concern, as referred to in this Statute, and shall be complementary to national criminal jurisdictions. The jurisdiction and functioning of the Court shall be governed by the provisions of this Statute.¹³

The establishment of the ICC was hampered with various obstructions. Though Senegal was the first state to ratify the Rome Statute in 1999, it took the call of the former Secretary General of the United Nations, Kofi Annan, for all members of UN to ratify the Rome Statute as quickly as possible in 2000 as the UN Charter was in accordance with the Rome Statute. Unfortunately, the United States of America under the administration of George W. Bush. in 2002, announced its intentions not to ratify the Rome Statute.¹⁴

In 2002, the 60th ratification necessary for the entry into force was deposited during a special ceremony at UN headquarters as 10 countries; Herzegovina, Bulgaria, Cambodia, Democratic

Republic of Congo, Ireland, Jordan, Mongolia, Niger, Romania and Slovakia had deposited their instrument of ratification.¹⁵

Following the ratification, an Assembly was created by all member countries of the UN that provided administrative and other support to the court. The Assembly of State Parties (ASP) was established to adopt the five years of preparatory commission work and procedures to facilitate the election of the qualified and representative judges to the court in September 2002.

On September 9, 2002, the nomination period for the judges and prosecutor of the court was officially opened and closing date was November 3, 2002. The president of the Assembly of State Parties, Jordanian Ambassador, Prince Zeid Ra'ad Zeid Al-Hussein, announced for the nomination of candidates for the post of 18 judges and Prosecutors to the ICC. The vacancy was opened to only countries that had deposited their instrument of accession or ratification to the Rome Statute. Only such countries were eligible to propose an official or vote during the election of judges.

At the end, only two countries withdrew their candidates, leaving 43 candidates at the election time, with no country applying for the post of prosecutor. The first 18 judges of ICC were elected at U.N headquarters in New York and they were sworn-in during the high-level ceremony at Hague, Netherlands on March, 11th 2003. The first prosecutor was Mr. Louis Moreno-Ocampo.

2.4 Objectives, Functions and Structures of ICC

With their headquarters at Hague in Netherlands, there are about 122 countries which have ratified the ICC statute all over the world. The Rome Statute provides that the Court may sit elsewhere whenever the judges consider it desirable. The Court has also set up offices in areas where investigations are being conducted. At its creation, the ICC has been assigned many objectives.

2.4.1 Objectives

The objectives of ICC are set by the Rome statute of 17 July 1998. It gives a guideline of the mechanism and rules of the ICC. Moreover, it clarifies the crimes falling within its jurisdiction and the feature of its collaboration with countries and other institutions.

The main objectives are based on the promotion of the international law, and it is mandated to judge the perpetrators of genocides, crimes against humanity, war crimes and crimes of aggression.

Article 5 Rome statute:

The jurisdiction of the court shall be limited to the most serious crimes of concern to the international community as a whole. The court has jurisdiction in accordance with this statute with respect to the following crimes: the crime of genocide, crimes against, humanity, war crimes, and the crime of aggression.

Genocide

According to the Rome Statute, article 6 “genocide” means any of the following acts committed with the intent to destroy, in whole or in part, a national, ethnic, racial or religious group such as: killing members of the group; causing serious bodily or mental harm to members of the group; deliberately inflicting on the group conditions of life calculated to bring about its physical

destruction in whole or in part; imposing measures intended to prevent births within the group; forcibly transferring children of the group to another group”¹⁶

Crimes against Humanity

Crimes against humanity “include any of the following acts committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack: murder; extermination; enslavement; deportation or forcible transfer of population; imprisonment; torture; rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity; persecution against an identifiable group on political, racial, national, ethnic, cultural, religious or gender grounds; enforced disappearance of persons; the crime of apartheid; other inhumane acts of a similar character intentionally causing great suffering or serious bodily or mental injury.”¹⁷

War Crimes

War crimes” include grave breaches of the Geneva Conventions and other serious violations of the laws and customs applicable in international armed conflict and in conflicts “not of an international character” listed in the Rome Statute, when they are committed as part of a plan or policy or on a large scale. These prohibited acts include: murder; mutilation, cruel treatment and torture; taking of hostages; intentionally directing attacks against the civilian population; intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historical monuments or hospitals; pillaging; rape, sexual slavery, forced pregnancy or any other form of sexual violence; conscripting or enlisting children under the age of 15 years into armed forces or groups or using them to participate actively in hostilities.¹⁸

Crimes of Aggression

“As adopted by the Assembly of States Parties during the Review Conference of the Rome Statute, held in Kampala (Uganda) between 31 May and 11 June 2010, a “crime of aggression” means the planning, preparation, initiation or execution of an act of using armed force by a State against the sovereignty, territorial integrity or political independence of another State.

The act of aggression includes, among other things, invasion, military occupation, and annexation by the use of force, blockade of the ports or coasts, if it is considered being, by its character, gravity and scale, a manifest violation of the Charter of the United Nations. The perpetrator of the act of aggression is a person who is in a position effectively to exercise control over or to direct the political or military action of a State.”¹⁹

Fundamentally, the ICC focuses on the individual perpetrator whilst the International Court of Justice of the United Nations focuses on countries.

2.4.2 Structures

The ICC is composed of four organs: the Presidency, the Chambers, the Office of the Prosecutor and the Registry. Each of these organs has a specific role and mandate.

The Presidency

It is made up of three judges, the president and two vices elected by the absolute majority of the judges for a maximum of two-three year terms. The Presidency undertakes the administration of the Court, with the exception of the Office of the Prosecutor, to guarantee his sovereignty. It

represents the Court to the outside world and helps with the organization of the work of the judges who are elected once for a 9 year term.

The Chambers

There are made up of three chambers: Pre-Trial Chamber, Trial Chamber and the Appeals Chamber.

The Pre-Trial Chamber supervises investigation processes, decides whether or not a survey should be conducted and the perpetrators arrested. They ensure the integrity of the proceeding. They validate the admissibility of the charges and hand them over to the Trial Chamber.

The Trial Chamber is in charge of ensuring a fair and expeditious trial. After trial, they determine the culpability of the perpetrator(s) and give the sentence of imprisonment or financial penalties.

The Appeal Chamber is in charge of appealed judgment made by the pre-trial or the trial chambers. They have power to amend, reverse or uphold any decisions or sentences previously made. And also it has the power to revise the final judgment of sentence.

The Office of the Prosecutor

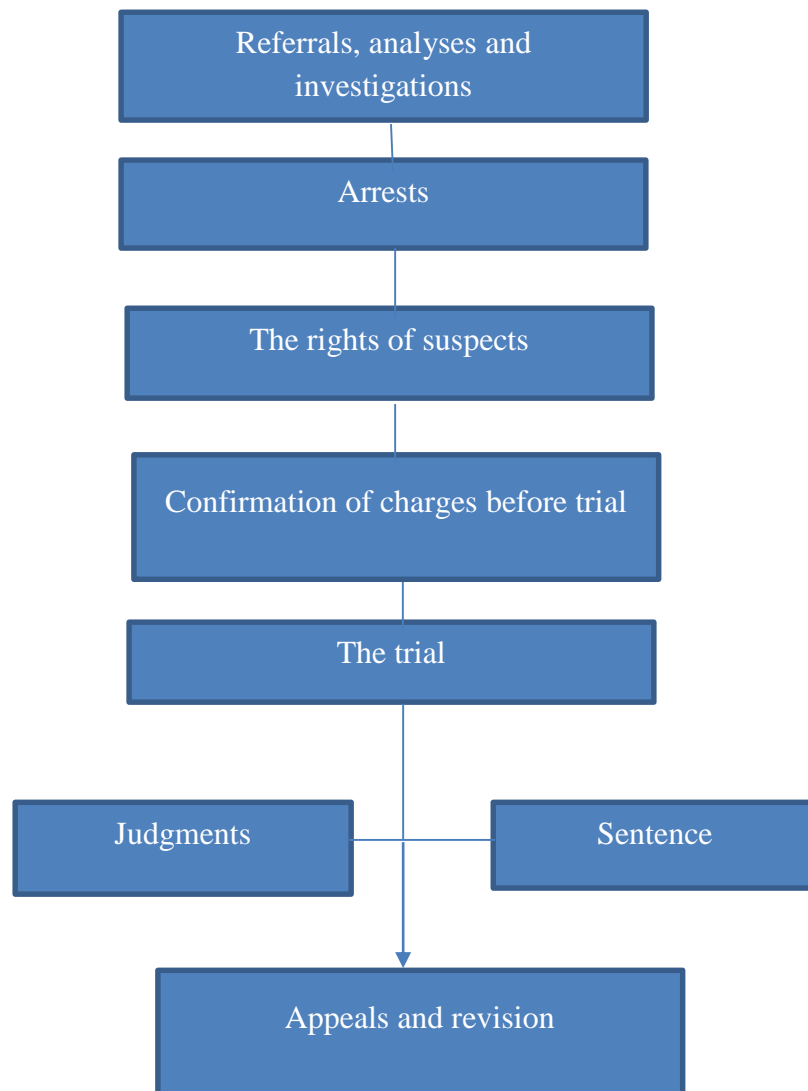
It is an independent organ of the ICC. They receive information, analyse situations and are in charge of conducting investigations to propose the inculcation. They have also the mandate to arrest and bring before the Court the perpetrator(s).

The Registry

The Registry is in charge of administrative and operational affairs. They handle the non-judicial aspect and support the Court in terms of communication, defense, and victim and security matters.²⁰

2.4.3 Functions

The ICC is an autonomous court, it does not replace the criminal jurisdiction of the different countries, but rather it complements them. Its functioning is very complex but to make it simple, we will divide it into 7 stages.



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CHAPTER THREE

THE ICC AND DEMOCRATIC CONSOLIDATION IN COTE D'IVOIRE AND KENYA

3.0 Introduction

The ICC was created by the Rome Statute, which came into force on 1st July 2002. It was inspired by the international community, to prosecute individuals for genocides, crimes against humanity, war crimes and the crime of aggression. The creation of the permanent international criminal court represents a significant advance in international justice. The court may engage investigations and prosecutions for the most serious crimes, which national authorities are unable or unwilling to punish the perpetrators of these crimes for.

Since its creation, the ICC has opened prosecutions against eight (8) states in Africa as Uganda, Cote d'Ivoire, Democratic Republic of Congo, Kenya, Central African Republic, Libya, le Darfur (Sudan). The first trial was the Congolese, Thomas Lubanga, who has been sentenced for war crime.

The right of the ICC to intervene in a conflict depends on three cases. According to the Rome Statute, the court exercises its jurisdiction if a situation is referred to the Prosecutor by a State Party, by the United Nations Security Council and under the prosecutor's own volition with authorization from a Pre-Trial Chamber. ICC by the nature of his objectives helps to fight impunity and also consolidate democracy.

Consolidation refers to the strengthening and enhancing of the robustness of the process to obtain a positive overall result. In the case of democracy, democratic consolidation is the process by which a new democracy matures in a way that is unlikely to revert to authoritarianism without an external shock. It implies an effective application of the process for a better democracy. According to Larry Diamond, democracy consolidation is viewed as “a process of achieving broad and deep legitimization, such that all significant political actors, at both the elite and mass levels, believe that the democracy regime is the most right and appropriate for their society, better than any other realistic alternative they can imagine.”¹

In Africa, some groups fail to share with their government on the administration of their state. This is due, on one hand, to the establishment of monarchial regimes which are characterized by stifling political actors who contest the policy imposed and evict any group of individuals who dare to protest against them, and the other hand, to the individual behavior of leadership in practice of democracy. This kind of behavior gives to some party rivals, a need to use force to oust holders of power and afterwards, cling to it. This is the basis of the birth of several armed conflicts, instability politics, wars and the tearing apart of the continent.

La Cote d’Ivoire and Kenya are highly expressive of the lack of consolidated democracy, as those two countries had to engage forces to be able to implement some kind of democracy. Unfortunately, the use of forces had led to serious violation of numerous international laws, crimes and atrocities.

Though its intervention was needed, The ICC, in the case of Cote d'Ivoire and Kenya has been much controverted in the sense of democratic dispensation in Africa.

3.1 The ICC and Cote D'Ivoire

3.1.1 Background of the Political History of Cote D'Ivoire

Cote d'Ivoire signed the Rome Statute on 30 November 1998, but ratified it only in February 2013. However, in April 2003, Cote d'Ivoire accepted the jurisdiction on the ICC under the provision of article 12(3) of the Rome Statute.

Among these kinds of conflicts, we could identify the conflict in Cote d'Ivoire, a country in West Africa that has known major effects of armed conflict and political instability; these effects caught international community attention before and after the creation of the international criminal court.

The latest conflict undertaken by the ICC is the post-election conflict of 2011 in Cote d'Ivoire, where two players claimed victory over the election. The former president, Laurent Gbagbo, refused to step down when the electoral observers such as the United Nations, the international community, the African Union and ECOWAS recognized his opponent, Alassane Ouattara, as winner, elected on November 28, 2010. However, the Constitutional Council, which according to Article 94 of the Ivorian Constitution proclaims the results of Presidential elections, declared that Gbagbo had won. Gbagbo declared that "I will continue to work with all the countries of the world, but I will never give up our sovereignty."²

It was very alarming to see them (both sides) call on people to fight, to kill each other, cultivating a tribal and ethnic hatred. This conflict did not leave speechless the international criminal court which had indicated a will to intervene and investigate crimes and individuals involved in the conflict.

During this conflict, serious violation of human rights was observed and many people died, about 3 000 persons were killed. Atrocities such as, rape, murders, looting, were committed by the forces of both parties and were held mostly in western and southern region of the country generating deportation or forcible transfer of population. The hottest fight occurred inside the presidency of the republic of Cote d'Ivoire as the supporters of President Ouattara reinforced by militiamen and foreign mercenaries³ engaged in the final attack against the forces of former President Laurent Gbagbo Koudou.

Out of this civil conflict Gbagbo was arrested by backers of Alassane Ouattara, headed by the Prime Minister Guillaume Soro on April 11, 2011, with the support of French Forces of Operation Unicorn.

On 14 December, 2010, President of Cote d'Ivoire Alassane Ouattara sent a letter to the Office of the prosecutor reaffirming the Cote d'Ivoire government's acceptance of the court's jurisdiction. On 3 May, 2011, President Ouattara reiterated his wish to the court to open an investigation.

After his arrest, the former president Laurent Gbagbo remained in custody in Cote d'Ivoire and in November 2011, he was extradited to The Hague, the seat of the International Criminal Court for four counts of crimes against humanity: murder, rape, and other forms of sexual violence, other inhumane acts and persecutions. He has been charged being responsible for these crimes as an indirect co-perpetrator.⁴ However no member of the pro-Ouattara forces has been charged with such crimes.

3.1.2 Analysis of the Crisis

Democracy is a government form which guarantees the freedom and equality of citizens. In fact, the legitimization of democracy remains in the hand of people. This equality and freedom are materialized through election which is the expression of the people's will. Therefore, anytime the result of the election is disputed it brings about conflicts that can end up in atrocities. In both cases, the crises were generated by a dispute over the election results.

An important element of democracy is justice. During the crises in both countries, many exactions were committed. It becomes very necessary, therefore, for the sake of peace, to be able to identify and judge all the culprits. Taking a close look at the events in Cote d'Ivoire, Gbagbo refused to hand over power after he was defeated by his opponent. Because of this misunderstanding, many crimes were committed by the pro-Gbagbo forces which were imputable to Gbagbo. The role played by the ICC was really necessary to bring back stability.

Firstly, we notice that the indictment of Gbagbo by the ICC helps to calm most of his backers down; it has brought hope to the heart of the victims who were claiming justice. Though Gbagbo

partisans are still claiming that he should be set free, his indictment has enabled the recovery of the democratic way of governance, seeing that the use of violence stopped and enemies turned into peaceful political rivals. One major fact is, parliamentary elections were held, which Gbagbo's political party chose to boycott, but this still shows that democracy is coming back to life.

Secondly, Cote d'Ivoire was the theatre of many murders, and for the memories of those who lost their lives, justice has to be restored. Each and everybody have to abide by the law, and the indictment of Gbagbo to the ICC was a strong signal to show there is no room for impunity, which is a threat that a democratic system cannot tolerate. As a former president of the state, his culpability in the atrocities was clearly established, therefore he has to respond before a court for them.

Finally, another key element of a democratic system is equality before the law. This fundamental fact requires that every person who has committed any exactions have to be judged. In the Ivoirian case, we notice though the indictment of Gbagbo shows that there is no room for impunity, it is clear that only one opponent has been prosecuted although both committed atrocities.

ICC strongly helps implement the ideology of democracy through justice, equality before the law and fight Impunity. In its role of justice, it participates in the consolidation of democracy. The respect of law is one of the fundamental principles of democracy. It is important that all political actors take this in account, because there is no place for unlawfulness in a democratic country. The country belongs to all its members. According to Larry Diamond "the embrace of

democratic norms, principles, and practices by all the major elites and organizations of a country, as well as the mass public.”⁵

3.2 The ICC and Kenya

3.2.1 Background of the Political History of Kenya

The Republic of Kenya became member of the ICC on 1st June 2005 in accordance with the Rome Statute. As the ICC has the right to intervene in any conflict on its member’s territory, with their consent or not, it is on this basis that the ICC has opened an investigation on Kenya.

The president Mwai Kibaki who represented the Party of National Unity (PNU) won the presidential election in 2002. He promised to end corruption in the government, but opposition with Raila Odinga, a onetime ally and member of Orange Democratic Movement (ODM), alleged that Kibaki had failed to live up to his campaign promises. These allegations came shortly after Kibaki reneged on selecting Odinga as prime minister. Raila Odinga left Kibaki's party to run for president as a member of the Orange Democratic Movement in 2007.⁶

However the ICC’s investigation concerned the presidential election of 27th December, 2007. The conflict started when the incumbent president Mwai Kibaki was declared winner by the Electoral Commission of Kenya, while supporters of Raila Odinga of ODM, his opponent, accused the government of electoral fraud.⁷

This dispute escalated into violence from some cities to the whole country where supporters of both men killed⁸. More than 1 200 were killed and about 350 000 children and their families were displaced due to the violence that followed this presidential election in Kenya⁹. Riots and fights caused much property damage across the country.

A government spokesman accused Odinga's supporters of "engaging in ethnic cleansing", while Odinga claimed that the President's supporters were "guilty, directly, of genocide"¹⁰. Violence was mainly perpetrated along tribal lines; Mwai Kibaki is part of the Kikuyu tribe, the largest tribe in Kenya, while Odinga is a Luo.¹¹ Violence continued until a peace deal was agreed upon between Kibaki and Odinga under the mediation of former United Nations Secretary-General Kofi Annan, whereby Kibaki would remain as President and Odinga would take over the newly created office of the Prime Minister.¹²

After one year of conflict, the prosecutor's office received information on crimes committed in Kenya in connection with the violence that took place in 2007-2008 in the wake of the elections. On 6th November, 2009 the ICC Presidency assigned the situation in Kenya to Pre-Trial Chamber II and the prosecutor made an application to that chamber for authorization to open a formal investigation on 26 November. After examination, the prosecutor concluded that there was a reasonable basis to proceed with an investigation. By a letter dated on 5 November 2009, the prosecutor informed the President of the court of its intention to seek leave to investigate the situation in Kenya pursuant to Article 15(3) of the Rome Statute.¹³

A Commission of Enquiry into the Post-Election Violence by Judge Philip Waki recommended that the Kenyan government set up a special tribunal to prosecute those liable for the most horrible crimes. The suggestion was, however, rejected by the National Assembly.¹⁴ After this, the ICC summoned six Kenyans, the Deputy Minister Uhuru Kenyatta, Henry Kosgey, William Ruto, Francis Muthaura, Joshua Arap Sang and Mohammed Hussein Ali to the ICC for crimes

against humanity under the Rome Statute. The ICC has confirmed the charges against Kenyatta, Ruto, and Sang. The trial of Ruto and Sang began on 10 September 2013, while that of Kenyatta, who has been elected the President of Kenya in 2012, is supposed to start on February 5, 2014. They have been accused by the ICC for crimes against humanity such as deportation, inhumane acts, murder, persecution and rape.

3.2.2 Analysis of the Crisis

Democracy in Kenya has been for long, sullied with tribalism, as people believe that it is only when an individual from their ethnic group or relative is in power that they will benefit from the power. This fact became more relevant when Kibaki reneged, placing Odinga as prime minister. Democracy is a system which encourages exchange of ideology, convictions and also fair competition based on equality of chances. Therefore any time the power swings towards an ethnic group who benefit more than others, democracy becomes fragile and unity and stability of the country impossible. This threat to democratic consolidation can be a fight with the role of justice played by ICC in the process of reconciliation.

Another aspect of this conflict, which affects the democratic system in Kenya, was the fact that their leaders found it difficult to abide by the law; the president engaging in fraud to be able to win the election and Odinga refusing to accept the verdict of the election. This is not an example of unity which is a threat of consolidation of democracy.

During the conflict deportation, inhuman acts, murder, persecution and rape were exactions committed by both parties in accordance with the ICC report which express the impartiality of

this organ of international justice. The six suspects arrested are from both sides without distinction of ethnic group and political party.

As in the Ivorian conflict, the ICC was able to restore the fundamental principle of democracy through justice, equality before the law and the fight against impunity. But ICC is slowed down in its process by the official functions of some key suspects.

3.3 ICC and Consolidation of Democracy

Larry Diamond argues that democratic consolidation passes by many changes. The lack of legitimacy in Africa is a source of some conflicts, as legitimacy is the basis of democracy regime which means that power has to remain in the hands of people. The consolidation of democracy has faced many challenges in Africa at The civil society level, the judiciary level, parliament level and the need of legal systems are necessary for the maintenance and the sustainability of democracy.

Juan Linz and Alfred Stephan say that “free and lively civil society is necessary for the consolidation of democracy.”¹⁵ Juan Linz and Alfred Stephan pinpoint the need for a well-educated civil society. It shows the role of education in the process of democracy consolidation as we know that most of the victims during crises are civilians, therefore there is the need for them to be informed on their rights. The ICC’s concerns with the victims of serious crimes play an important role in the peace process, by protecting and helping them to restart their lives. In Cote d’Ivoire, for instance, many victims benefit from the aid program.

The judiciary has to maintain the respect of law; it is viewed as the justice of the country, but rarely has the power to contravene the power of executive, the judiciary is a tool for the power.” The inability of government to enforce law and restrain corruption grants impunity”¹⁶ and this is one of the main reasons of the crises. In this case the court intervenes to restore justice. For example, in Kenya, the inability of the judiciary system to handle the crimes committed, had forced the ICC to take action.

In the democratic system the power is legitimate. The executive shares power with the arms of government, in particular the parliament which is the voice of the people and works for their need. The parliament, most of the time in Africa, is not independent and vote only laws according to the president’s will. This brings confusion and discord as those laws are sometime far from the will of the people. Democracy consolidation requires a strong parliament which is in perfect accord with the people.

Finally, the legal system is important for the protection of nations’ citizens and will not allow the repression or the abuse of the rights of people. The court in its Rome Statute gives some rights to persons who have suffered harm as a result of the commission of any crimes within the jurisdiction of the ICC. Victims have the right to have their own legal representative in the Courtroom presenting their concerns and personal interests to the Court.

Those pillars of democracy are not yet mature. Africa has still a long way to go in term of having very efficient and effective institutions. The credibility of the institutions is a major issue which affects democracy in Africa, especially those in charge of the elections. Most conflicts are as a

result of disagreement on the results of the election, because its organization is not fair and free and give room for fraud and manipulation, but some countries have received aid from external actors to help them. In Ghana for instance, the International Foundation of Electoral System (IFES) gave 11 billion Ghana Cedis to the electoral commission of Ghana to help them for the presidential election in 2000. The UN also provides technical support and observers to ensure that the elections are held in the perfect conditions. The UNPD believes that it is important to strengthen departments in charges of electoral process¹⁷

ICC can only act during and after a conflict. During a conflict, as it happened in Kenya, the ICC observes and denounces crimes. During the conflict in Kenya the ICC recorded crimes and started investigating them. It also pressures other international institutions to take considerable measure to end atrocities. Moreover, it is for the perpetrators a sword of Damocles and this fact can make them slow down or even stop them.

After a conflict, by indictment of the perpetrators, ICC contributes to the restoration of stability and peace. In Cote d'Ivoire the transfer of Gbagbo to The Hague has forced the partisans of the former president Gbagbo to calm down; it has brought a kind of peace in the country.

Talking of consolidation also implies reconciliation and unity. ICC which has been mandated to judge the atrocities committed must be focused on this objective. This means that it should, first of all, be working towards reconciliation and unity of people. This shows how the implication of several organizations has aided Africa in the process of democracy, participating to the

consolidation of this. All of these factors work for the dispensation of democracy with the participation of the international criminal court.

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⁸ A program of the United Nations Association of the United States of America

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⁹ Department for International Development (DFID), "Election in Kenya in 2007", p.3, accessed at www.dfid.gov.uk/Documents (29/11/2011)

¹⁰ Africa 'Kenya diplomatic push for peace' BBC News, 29,December 2007

¹¹ ' Disputed vote plunges Kenya into Bloodshed, the New York Time. 31 December 2007

¹² Barkan, J. D.,op. cit.

¹³ Ibid.

¹⁴ [Annan hands ICC list of perpetrators of post-election violence in Kenya](#). The Guardian. Retrieved 27 January 2012

¹⁵ Stepan, Alfred C., and Juan José Linz. "Toward consolidated democracies." *Journal of democracy* 7.2 (1996): 14-33.

¹⁶ UNDP.1997, p.17

¹⁷ Ibid., p. 6.

CHAPTER FOUR

SUMMARY OF FINDINGS, CONCLUSIONS AND RECOMMENDATIONS

4.0 Introduction

This chapter consists of the summary of the major findings of the research to the objectives set at the beginning, the conclusion drawn from the findings and some recommendations. The chapter is therefore in three sub-sections, each section dealing with the above outline.

4.1 Summary of Findings

Electoral disputes continue to haunt Africa's democratic experiences. Moreover, in Africa where party politics tend to run along ethnic lines, the attitude of politicians in treating elections as winner-takes-all contests, coupled with ethnic diversity tends to exacerbate group conflict. The recent power sharing deals in Kenya from electoral violence attributed to contested elections and the failure of an incumbent to step down after losing elections reinforce the argument that power sharing could legitimize fraudulent behaviour by ruling elites and does not help the implementation of democracy.

The reported manipulations by President Mwai Kibaki resulting in power-sharing deals appear to have legitimized him to take the highest seats in government. Consequently, there were fears as well as expectations that the intransigence of President Gbagbo and his refusal to hand over power to Alasane Ouattara in Cote d'Ivoire after the stalled December 2010 elections was heading for power sharing and could have been precipitated by the failure of the international community to insist on transfer of power to the supposed and accepted winner and this does not

help the consolidation of democracy. Indeed the decision of the African Union (AU) to offer Gbagbo a place in a power sharing arrangement on condition of cessation of hostilities could be an offer that would encourage incumbent rulers to hang on to power despite the outcome of democratic election.¹

To both countries, the most common fact is that, main opposition parties in two elections felt unsatisfied with the outcome of the elections. This shows the failure of the national electoral institutions, calls into question the fairness of the outcome and shows the necessity of external actors for control of the process of elections in Africa. The role played by ICC is very important in the sense that it participates in maintaining the stability of the world, as well as the implementation of democracy in Africa.

4.2 Conclusion

The world was the scene of many heinous crimes committed during the era of Second World War, hence the need to create an institution to eradicate these kinds of crimes. The Court is funded by contributions from the State Parties and by voluntary contributions from governments, international organizations, individuals, corporations and other entities that give to him the right to intervene for the stability of the world. The ICC since its creation has already investigated seven countries. Its role is very important in the national and international scene. These different crises in Kenya and Cote d'Ivoire point to one fact that holistic democracy in Africa is still a dream and consolidation which means unity is not yet possible. It is also important to know that, when politics is organized along ethnic or regional lines, it polarizes democracy and makes these countries vulnerable to violence.

The fragile democracy is ever to defend and consolidate. Consolidation refers to unity, to legitimization of choice and means many changes have to be implemented in the country. Some external factors could participate to the process of democracy. For example the help of some NGOs during elections is crucial. In the Ivoirian case the international community creates an independent electoral commission under the Ouagadougou Agreement to cover elections or in Kenya with a power sharing agreement led by the former United Nations Secretary-General, Kofi Annan. All of this show the role of NGOs in democratic consolidation. Indeed the transfer of the former president Gbagbo in The Hague has helped stabilize the country, therefore is it an example of democratic consolidation? That is the question.

Finally, ICC's investigation in eight African countries has led to criticism that the court is targeting African countries; this is a threat to the process of ICC's justice in the world.

4.3 Recommendations

The process of democratization has been bedevilled with electoral malpractices. Consequently, power sharing is increasingly being prescribed as a solution to post-election violence and this is perceived as usurpation of the sovereign will of the people and thus negates the very essence of democracy as means for selecting leadership for governance. This concern over elections is so significant that Le Van intimates that if anything goes wrong with the 17 elections scheduled in Africa in 2011, the international community may again prescribe power sharing rather than pressuring stubborn incumbents to step down.² But elections are meant to “resolve differences in a ‘civilised way’ without violence and if managed well it results in consolidation of democracy; however if mismanaged, could plunge society into violent conflict.”³ Then the need for an

external actor is felt. Therefore, the ICC's role must be not only to punish or judge but also to consolidate which means reconciliation and unity. The court must be focused on this point.

Also the competence of the ICC is very limited to four categories of offenses considered as the most serious, as crimes against humanity, crimes of war, genocide and crimes of aggression - the fact that it cannot exercise its jurisdiction over some personalities, because of their official functions which acquire them some immunity. It must be free to intervene through some functions and judge them.

Also the ICC intervenes only in the territory of its state party, when it is permitted by the UN Security Council for example in Darfur on 2005 or when the prosecutor canvases it. And finally the competence of the court is additional to the national criminal justice system, it does not replace them. This limitation of ICC's role shows the difficulty for the international community to build a true global justice and to consolidate democracy.

Democratic consolidation passes also by people. Democracy is how people uphold it. It is important to know that people believe in democracy, on the power of their vote, and then their leaders must govern with a democratic soul. According to Lauren Gbagbo "democracy is also a humility act. This is to take into account relativity of individual intelligence and doctrines. It is the respect accorded to its citizens. Be democratic people is to recognize that, it has neither a monopoly on truth, nor wisdom, nor monopoly on love of the country."⁴

END NOTES

¹ Mehler, A. & Tull, D., “The Hidden Costs of Power Sharing: Reproducing insurgent violence in Africa”, in *African Affairs*, 104, 416, pp 375 – 398 (2005).

² Carl Le Van , “Power Sharing Agreements and Problematic Elections in Africa” available at <http://carllewan.com/2011/01> (Accessed on 12 July 2011).

³ Japhet Biegon, “Electoral Violence and fragility in Africa: Drawing lessons from Kenya’s experience in the 2007/2008 post election violence” paper for presentation at the poster session of the conference on ‘ Financial Markets, Adverse Shocks and Coping Strategies in Fragile Countries’ Accra, Ghana, 21-23 May 2009, p. 4.

⁴ Cote d’Ivoire, pour une alternative democratique (Harmattan 1983)

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