

## **The effect of Human Security Law & International Criminal Court (ICC) or Regional Equivalents on Transition to Power**

Effect: positive (attributed to the potential for International criminal tribunals to be manipulated for political gain)

Confidence in study findings: Low (one study, low confidence)

### **Short summary**

International criminal tribunals (ICTs) can inadvertently empower political elites facing indictment. As seen in the case of Lebanon and Kenya, ambiguities in international law, declining asylum options, and the dependence of ICTs on state cooperation allow indicted leaders to consolidate power and evade justice, highlighting the complex interplay between international justice and domestic politics.

### **Long summary**

#### *The intervention*

The involvement of ICTs, such as the International Criminal Court (ICC) or the Special Tribunal for Lebanon (STL), in the domestic political affairs of countries where they are conducting investigations and prosecutions has significant implications. This refers to the multifaceted ways in which ICTs, by their very nature and actions, become enmeshed in the domestic political processes of the countries they are engaged with. Thus influencing political stability, electoral outcomes, coalitional dynamics, public perceptions, and the broader pursuit of justice and accountability

#### *How is the intervention expected to work*

- 1) ICTs, through their investigations and indictments of political figures, become deeply entangled in the domestic political landscape of the countries in question. This involvement itself constitutes a form of intervention, as it directly impacts political dynamics, power struggles, and electoral processes (p.457, 461)
- 2) These can deepen existing political and social cleavages, especially when the tribunals are perceived as targeting only one side of a conflict. This selective focus can fuel resentment, bolster anti-ICT sentiment, and create a “rally-round-the-flag” (p.464) effect that benefits those under investigation
- 3) Given their international nature and UN sponsorship, ICTs can exacerbate divisions within countries that are already politically polarized between global North/West and South/East alignments. The threat of prosecution can push domestic actors to close ranks, particularly when there is a perception of foreign interference or a challenge to national sovereignty (p.464)

#### *The evidence base*

There is one qualitative study assessing the effect of **Human Security Law & International Criminal Court (ICC) or Regional Equivalents on the Transition to Power in Lebanon and Kenya**. This study is by C. Hillebrecht (2020). *International Criminal Accountability and*

*the Domestic Politics of Resistance. Law & Society Review, 54(2), 453-486.* All references are from that study.

### *The evidence*

- 1) ICTs acted as catalysts for political upheaval as evinced in both the regions:
  - Lebanon: The establishment of the STL, was mandated to investigate the assassination of the Prime Minister and triggered the formation of the March 8th Alliance, a coalition spearheaded by Hezbollah. This alliance actively campaigned against the STL, framing it as a tool of Western interference. The STLs indictment of Hezbollah members further intensified political tensions, leading to the collapse of the government and the subsequent election of a Hezbollah-backed Prime Minister. This demonstrates how the STLs actions directly impacted the balance of power and electoral outcomes in Lebanon (p.468-469)
  - Kenya: The ICC's investigation into the 2007-2008 post-election violence, which included indictments against prominent political figures like Uhuru Kenyatta and William Ruto, significantly altered the Kenyan political landscape. The indictments led to the disintegration of existing political alliances and fueled uncertainty about the future of Kenyan politics. The subsequent alliance between Kenyatta and Ruto, two former rivals who united under the banner of opposing the ICC, illustrates how the tribunal's actions became a pivotal factor in shaping political coalitions (p.473-475)
- 2) Both the Lebanese and Kenyan cases provide evidence of political actors strategically utilizing the threat of ICT prosecution to bolster their electoral prospects. They achieved this by framing the tribunals as instruments of neo-colonialism and Western dominance, tapping into existing anti-Western sentiment within their respective populations. For instance, in Kenya, Kenyatta and Ruto, during their 2013 presidential campaign, effectively turned the ICC indictments into a rallying cry, accusing foreign powers of trying to manipulate the election. Their rhetoric resonated with a segment of the Kenyan population, leading to a decline in public support for the ICC and solidifying their electoral victory (p.476). Hezbollah, capitalized on the tribunal's actions to consolidate its political power (p.469). They portrayed the STL as an attack on Lebanon's sovereignty, strengthening their position within the March 8th Alliance and ultimately influencing the selection of a sympathetic Prime Minister (p.472)
- 3) Individuals who attain positions of power after being indicted by ICTs can leverage their influence to obstruct justice and manipulate the tribunal's operations (p.453). This "tribunal capture" (p.480) can undermine the ICCs effectiveness and erode public trust in the pursuit of international criminal justice
  - In Kenya, Kenyatta and Ruto, following their election, employed various tactics to hinder the ICC's investigation, including non-cooperation, witness intimidation, and challenges to the court's jurisdiction.<sup>19</sup> Their actions ultimately contributed to the collapse of the cases against them, showcasing how political power can be utilized to thwart international justice mechanisms (p.477)
  - While the STLs mandate was narrower in Lebanon than the ICCs, Hezbollah's influence over the Lebanese government raised concerns about potential obstruction of justice. The debate surrounding Lebanon's financial contributions to the STL highlights how political considerations can impact the tribunal's functioning and its ability to pursue its mandate effectively (p.472)

*Confidence assessment*

Overall confidence: Low Confidence Qualitative Study (potential sources of bias is not addressed)