Dealing with Political Violence in Conflicted Democracies

Transitional Justice in Lebanon and Kenya from a Comparative Perspective

Inaugural dissertation
For attainment of the degree of a Doctor of Philosophy

in the Faculty of Social Sciences and Philosophy

at the Philipps-Universität Marburg and at the Universidade de São Paulo

submitted by

Júlia Battistuzzi Penachioni

from São Paulo, Brazil

2023

Supervisor at Philipps Universität Marburg: Prof. Susanne Buckley-Zistel
Supervisor at Universidade de São Paulo: Dr. Brigitte Weiffen

From the Faculty of Social Sciences and Philosophy

At the Philipps-Universität Marburg (university code # 1180)

Accepted as a dissertation on	05 July 2023
Day of the oral defense / oral examination	27 June 2023

1st assessor	Prof. Susanne Buckley-Zistel
2nd assessor	Dr. Brigitte Weiffen

JÚLIA BATTISTUZZI PENACHIONI

Dealing with Political Violence in Conflicted Democracies

Transitional Justice in Lebanon and Kenya from a Comparative Perspective

Ph.D. Thesis submitted to the *Departamento de Ciência Política* (DCP) of Universidade de São Paulo (Brazil), and *Fachbereich Gesellschaftswissenschaften und Philosophie* of Philipps Universität Marburg (Germany) to obtain the dual degree of *Doutor em Ciências*/Dr. Phil.

Program: Political Science.

Supervisor at Universidade de São Paulo:

Dr. Brigitte Weiffen

Supervisor at Philipps Universität Marburg:

Prof. Dr. Susanne Buckley-Zistel

São Paulo

2023

Ficha Catalográfica

Catalogação na Publicação
Serviço de Biblioteca e Documentação
Faculdade de Filosofia, Letras e Ciências Humanas da Universidade de São Paulo

P397d

Penachioni, Júlia
Dealing with Political Violence in Conflicted Democracies: Transitional Justice in Lebanon and Kenya from a Comparative Perspective / Júlia Penachioni; orientadora Brigitte Weiffen; coorientadora Susanne Buckley-Zistel - São Paulo, 2023.
193 f.

Tese (Doutorado)- Faculdade de Filosofia, Letras e Ciências Humanas da Universidade de São Paulo. Departamento de Ciência Política. Área de concentração: Ciência Política.

1. Justiça de Transição. 2. Violência Política. 3. Democracias Conflituosas. 4. Líbano. 5. Quênia. I. Weiffen, Brigitte, orient. II. Título.

PENACHIONI, Júlia Battistuzzi. **Dealing with Political Violence in Conflicted Democracies:** Transitional Justice in Lebanon and Kenya from a Comparative Perspective. 2023. 193 f. Tese de Doutorado para dupla-titulação – Faculdade de Filosofia, Letras e Ciências Humanas, Universidade de São Paulo e Fachbereich Gesellschaftswissenschaften und Philosophie, Philipps Universität Marburg, São Paulo, 2023.

Aprovado em: 27/06/2023

Banca Examinadora

Prof. Dr. Pedro Feliú Ribeiro Instituição Universidade de São Paulo

Julgamento Aprovada Assinatura

Prof. Dr. Cláudia Alvarenga Marconi Instituição Pontifícia Universidade Católica de São Paulo

Julgamento Aprovada Assinatura

Prof. Dr. Thorsten Bonacker Instituição Philipps-Universität Marburg

Julgamento Aprovada Assinatura

To my parents.

Thank you for your love and support.

Eu amo vocês.

Acknowledgements

Writing this thesis was one of the most challenging things I have ever done, as well as one of the most rewarding things in my life. First, I learned so much about a topic that, in a way, has always been present in my academic research, but it was only in my PhD that I was able to really delve into it in a critical way. Second, I visited places and met amazing people that sharpened my curiosity and somehow made my academic journey better. This thesis took me places I had never imagined, including Marburg, for a *cotutelle de thèse*, and The Hague, to visit the International Criminal Court. To the people who were part of it, my most sincere gratitude.

To my colleagues and professors at the Political Science Department at the University of São Paulo, as well as the secretariat staff, thank you so much for all your help and for being there. Juliana Azevedo, Natália Calfat, Giuliano Braga, João Vitor Gonçalves, Vicente Ferraro, Mariana Morena, Eunjae Kim, Déborah Araújo. You made my days at USP very happy.

To my colleagues at the Center for Conflict Studies at the University of Marburg: being with you was an incredible experience. Irem Aki, Astrid Juckenack, Johanna Kocks, Alina Giesen, Miriam Tekath, Mariel Reiss. Thank you for your kindness.

Brigitte Weiffen, my first advisor, you were with me from the beginning, and I can never thank you enough for all your dedication and patience. Susanne Buckley-Zistel, my second advisor, meeting you was a gift; thank you for having me in Marburg and for your valuable contribution. I could not ask for two more brilliant and generous advisors like you. You did a great job, and it was a pleasure having you by my side along the way.

That said, all errors in this thesis are mine alone.

This study was financed in part by the Conselho Nacional de Desenvolvimento Científico e Tecnológico (CNPq) (141263/2018-0) and by the Coordenação de Aperfeiçoamento de Pessoal de Nível Superior - Brasil (Capes Print).

ABSTRACT

PENACHIONI, Júlia Battistuzzi. **Dealing with Political Violence in Conflicted Democracies:** Transitional Justice in Lebanon and Kenya from a Comparative Perspective. 2023. 193 pages. Double Degree Ph.D. Thesis – Faculdade de Filosofia, Letras e Ciências Humanas, Universidade de São Paulo and Fachbereich Gesellschaftswissenschaften und Philosophie, Philipps Universität Marburg, 2023.

Transitional Justice (TJ) has expanded beyond its original framework from the late 1980s, when it was centred on transitions to democracy, becoming a global norm inserted in varied contexts, especially since the establishment of the International Criminal Court (ICC) – the symbol of its normalisation. The localisation of TJ in a contemporary context comes with an increasingly common scenario of political instability and violence within electoral democracies. Taking case studies as a research strategy, this thesis first explores the exemplary events of political violence in Lebanon (the politically motivated assassination of Rafik Hariri in 2005) and Kenya (the 2007/2008 post-electoral violence), which were followed by TJ in the form of international criminal justice: the Special Tribunal for Lebanon and the International Criminal Court. The two countries, although very different, can be classified as conflicted democracies, which characteristics provide valuable insights concerning TJ in plural societies. Through a comparative perspective, this thesis analyses how TJ shapes political dynamics within conflicted democracies and the effects of those dynamics on the political stability.

Keywords: Transitional Justice. Political Violence. Political Stability. Conflicted Democracies. Lebanon. Kenya.

RESUMO

PENACHIONI, Júlia Battistuzzi. **Dealing with Political Violence in Conflicted Democracies:** Transitional Justice in Lebanon and Kenya from a Comparative Perspective. 2023. 193 f. Tese de Doutorado para dupla-titulação – Faculdade de Filosofia, Letras e Ciências Humanas, Universidade de São Paulo e Fachbereich Gesellschaftswissenschaften und Philosophie, Philipps Universität Marburg, São Paulo, 2023.

A Justiça de Transição (JT) expandiu-se para além de seu arcabouço original a partir do final dos anos 1980, quando estava centrada nas transições para a democracia, tornando-se uma norma global inserida em contextos variados, especialmente a partir da criação do Tribunal Penal Internacional (TPI) – símbolo da sua normalização. A localização da JT no contexto contemporâneo acompanha um cenário cada vez mais comum de instabilidade política e violência dentro das democracias eleitorais. Tomando os estudos de caso como estratégia de pesquisa, esta tese explora primeiro os eventos exemplares de violência política no Líbano (o assassinato politicamente motivado de Rafik Hariri em 2005) e no Quênia (a violência pós-eleitoral de 2007/2008), que foram seguidos por JT na forma de justiça penal internacional: o Tribunal Especial para o Líbano e o Tribunal Penal Internacional. Os dois países, embora muito diferentes, podem ser classificados como democracias conflituosas, cujas características fornecem percepções valiosas sobre a JT em sociedades plurais. Através de uma perspectiva comparada, esta tese analisa como a JT molda as dinâmicas políticas dentro de democracias conflituosas, e os efeitos dessas dinâmicas na estabilidade política.

Palavras-chave: Justiça de Transição. Violência Política. Estabilidade Política. Democracias Conflituosas. Líbano. Quênia.

ZUSAMMENFASSUNG

PENACHIONI, Júlia Battistuzzi. **Dealing with Political Violence in Conflicted Democracies:** Transitional Justice in Lebanon and Kenya from a Comparative Perspective. 2023. 193 pages. Cotutelle de thèse – Faculdade de Filosofia, Letras e Ciências Humanas, Universidade de São Paulo und Fachbereich Gesellschaftswissenschaften und Philosophie, Philipps Universität Marburg, 2023.

Transitional Justice (TJ) hat sich über seinen ursprünglichen Rahmen aus den späten 1980er Jahren hinaus ausgeweitet, als es sich auf den "Transitions to Democracy" konzentrierte. Sie wurde zu einer globalen Norm, die in verschiedenen Kontexten eingefügt wurde, insbesondere seit der Einrichtung des Internationalen Strafgerichtshofs (ICC) – dem Symbol von seiner Normalisierung. Immer häufiger geht die Lokalisierung von TJ in einen zeitgenössischen Kontext mit politischer Instabilität und politische Gewalt innerhalb von Wahldemokratien einher. Unter Verwendung von Fallstudien als Forschungsstrategie untersucht die Arbeit zunächst die beispielhaften Ereignisse politischer Gewalt im Libanon (die politisch motivierte Ermordung von Rafik Hariri im Jahr 2005) und in Kenia (die Gewalt nach den Wahlen 2007/2008), auf die TJ in Form von internationaler Strafgerichtsbarkeit folgte, zum einen durch den Sondergerichtshof für den Libanon und des Weiteren durch den Internationalen Strafgerichtshof. Obwohl die beiden Länder sehr unterschiedlich sind, können sie als "Conflicted Democracies" klassifiziert werden, deren Merkmale wertvolle Einblicke in Bezug auf TJ in pluralen Gesellschaften liefern. Durch eine vergleichende Perspektive analysiert die Dissertation, wie TJ die politische Dynamik innerhalb von "Conflicted Democracies" formt, und welche Auswirkungen diese Dynamik auf die politische Stabilität hat.

Schlüsselwörter: Transitional Justice. Politische Gewalt. Politische Stabilität. Conflicted Democracies. Libanon. Kenia.

List of Tables

List of Figures

List of Abbreviations

AU	African Union
CIPEV	Commission of Inquiry on Post-Election Violence
DFLP	Democratic Front for the Liberation of Palestine
DP	Democratic Party of Kenya
EV	Electoral Violence
FM	Future Movement
FPM	Free Patriotic Movement
ICC	International Criminal Court
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for the Former Yugoslavia
IPT	Interpretive Process Tracing
IREC	Independent Review of the Elections Commission
IV	Intercommunal Violence
KANU	Kenya African National Union
KNDR	Kenya National Dialogue and Reconciliation
KPU	Kenya People's Union
LAF	Lebanese Armed Forces
LIED	Lexical Index of Electoral Democracy
MEPV	Major Episodes of Political Violence
ODM	Orange Democratic Movement
PA	Political Assassination
PEV	Post-Electoral Violence

PLO	Palestinian Liberation Organization
PNU	Party of National Unity
SLA	South Lebanon Army
SPP	Socialist Progressive Party
STL	Special Tribunal for Lebanon
TJ	Transitional Justice
TJDB	Transitional Justice Data Base
TJRC	Truth, Justice and Reconciliation Commission
TJRC	Transitional Justice Research Collaborative
TR	Terrorism
UN	United Nations
UNIFIL	United Nations Interim Force in Lebanon
UNIIIC	International Independent Investigation Commission
UNSC	United Nations Security Council

Table of Contents

1 Introduction

"Power is indeed of the essence of all government, but violence is not. Violence is by nature instrumental; like all means, it always stands in need of guidance and justification through the end it pursues. And what needs justification through something else cannot be the essence of anything."

Hannah Arendt, 'Reflections on Violence', 1969.

Transitional Justice (TJ) can be defined as a concept, a norm, and a set of measures, instruments, and processes created in the late 1980s in the context of societies dealing with a past of human rights abuses following a change of political regime, normally from an authoritarian regime to a democratic one. Such political transition is typical of so-called "paradigmatic transitions," underlining a well-defined "before and after" transitional moment related to regime change. The field of TJ, however, has seen a rapid development, in which defining transition is not an act subject to a breaking point with the past anymore but instead can be related to a process of leaving political violence behind (Berastegi, 2017, p. 544). With the normalisation of TJ in a context of globalisation and political instability, considered a "steady state" in the expansion of TJ (Teitel, 2003), the emergence of the International Criminal Court (ICC) as a permanent Court designed to address gross human rights violations, became its greatest symbol.

The internationalisation of TJ is a reflex of the "justice cascade" (Lutz & Sikkink, 2001) phenomenon, a process that has shifted the legitimacy of individual criminal accountability for human rights violations, as observed in the increase of criminal prosecutions on behalf of TJ as a global norm (Sikkink, 2011). Thus, the field of TJ has expanded, as well as TJ advocacy, in a way that the norm has become "increasingly legalised and directed at broader issues, such as post-conflict peace accords or various kinds of international agreements with post-conflict states" (Subotić, 2012, p. 106). With the proliferation of TJ measures across the globe, TJ cannot be considered simply as a norm anymore; instead, it has become a "paradigm of the rule of law" (Teitel, 2003, p. 71). As a consequence, the expansion and internationalisation of TJ have inserted TJ processes and measures into different situations that illustrate the so-called "non-paradigmatic" transitions, such as transitions in "conflicted democracies" (Aoláin & Campbell, 2005) or "Transitional Justice in non-transitions" (Hansen, 2011), for instance, the

adoption of TJ to address past violence within deeply conflicted societies; the implementation of TJ measures to respond to historical abuses in consolidated democracies; and the application of TJ in a context of ongoing conflict.

Based on that context, this thesis is localised in the "third phase" of TJ (Teitel, 2003) – in which political instability and violence are a common scenario in electoral democracies – focusing on TJ as a means of dealing with political violence within electoral democracies. Aiming to understand the process of TJ and how it shaped political dynamics, I use the case study design as a "research strategy" (Hartley, 2005). For this purpose, I consulted global databases to single out cases from different world regions, narrowing it down to two cases: Lebanon, concerning the exemplary event of the politically motivated assassination of Rafik Hariri in 2005, and Kenya, in relation to the 2007/2008 post-electoral violence.

Despite being very different cases, Lebanon and Kenya are plural societies with sharp internal divisions in the body politic that have led to political violence; they can be classified, therefore, as conflicted democracies. TJ followed the events of political violence in Lebanon and Kenya in the form of international criminal justice: the Special Tribunal for Lebanon, a hybrid Tribunal to investigate the 14 February attack in Beirut, and the International Criminal Court, which opened a *proprio motu* investigation in Kenya; in addition to TJ in the form of truth-seeking: the UN International Independent Investigation Commission for the Lebanese case, and the Truth, Justice and Reconciliation Commission of Kenya. Conflicted democracies, nevertheless, have characteristics that pose serious obstacles to TJ. In light of the idea of *transition* in "Transitional Justice," the challenges for a transition in countries that are already democratic (even though electoral democracies instead of consolidated democracies) in terms of a process of change enabled by TJ measures arise in a web of interconnected events based on political dynamics.

The legalisation of TJ as a global norm and advocacy towards it have a "profound impact on the acceptance of TJ as a norm or standard practice for state behaviour after conflict" (Subotić, 2012, p. 106). However, as the case studies will show, there is a disconnection between norm diffusion and adoption by states and how the international norm was played out domestically. As in the phenomenon described as "hijacked justice" by Subotić (2012), TJ in Lebanon and Kenya was promoted according to the domestic political elites' interests and political agendas. Furthermore, TJ in the form of international criminal tribunals outside the countries where the acute episodes of political violence took place led to unintended

consequences, such as escape for the political elites to deal with a legacy of human rights violations, given that political violence in both countries was systematic.

This thesis scrutinises the process of TJ in Lebanon and Kenya in the aftermath of political violence, arguing that TJ is not incompatible with conflicted democracies; notwithstanding, this thesis demonstrates that there are repercussions from the political dynamics that have been shaped since the threat of TJ, especially regarding international criminal prosecutions, that have side effects. For instance, power-sharing arrangements are implemented in those deeply conflicted societies as a means of promoting stability and democracy or even ending violence. However, as the cases will show, they have also promoted greater control of the TJ tools to the political elites involved in the past abuses. Furthermore, as this thesis analyses, coalitions have demonstrated to be a valuable resource for those involved in the events of political violence, working as a self-preservation mechanism, especially as a means of avoiding criminal accountability. Finally, this thesis demonstrates how those political dynamics shaped by TJ affected the political stability of both countries indirectly through a stabilising effect promoted by the political coalitions in their strategy to avoid international criminal prosecution.

Going back to the "reflections on violence" (Arendt, 1969), violence and power are distinct phenomena that usually appear together; while violence can be justified, power needs no justification; what it does need is to be legitimate – something that violence will never be (Arendt, 1969, p. 19). Although governments pursue policies and political goals through power, to think of power as a structure moves the phenomenon from being the means (to an end) to being "the very condition that enables a group of people to think and act in terms of the means-end category" (Arendt, 1969, p. 19). If power is not the means but rather the condition for a group to think and act towards a means to an end, relying on legitimation, the appropriation of a prestigious international norm as part of the norm diffusion by domestic political elites, the promotion of power through power-sharing arrangements or the formation of political coalitions – institutes that carry a legitimisation status – may be a form of establishing the *conditions* for a group to control TJ measures. Consequently, there will be obstacles for TJ in the sense of deep social transformation.

From this brief presentation, this chapter introduces the research question (1.1), including the research variables and methodological approaches; the process of cases selection arriving at the exemplary events (1.2) in Lebanon and Kenya; and lastly, the structure of this thesis (1.3), which is divided into nine chapters that explore the phenomenon of dealing with

political violence within conflicted democracies through Transitional Justice in the exemplary events from a comparative perspective.

1.1 The Research Question

Transitional Justice norms have evolved over time and space, often due to changes in external circumstances, such as changes in the forms of violence (Buckley-Zistel, 2018, p. 153). In times of globalisation and political instability, contemporary political conditions, such as small wars, wars in times of peace, and political fragmentation, are part of the normalisation of TJ (Teitel, 2003, p. 89). Based on that context and after exploring global databases to single out cases from different world regions, this thesis arrives at the experiences of Lebanon and Kenya, two very different cases that share systematic political violence and the use of TJ to address political violence in the form of international/hybrid tribunals (ICC/STL). Applying case studies as a research strategy (Hartley, 2005), this thesis is interested in how TJ shapes political dynamics after political violence in conflicted democracies and the effects of such dynamics on the political stability of both countries. For this purpose, the "how" is not only in the research question but also works as an *intervening variable* to analyse the effects of political dynamics shaped by TJ on political stability as a *dependent variable,* as illustrated in Table 1 below.

Table 1. Research Variables

Independent variable	*Intervening variable*	*Dependent variable*
Transitional Justice after political violence in electoral democracies	"how" TJ shapes political dynamics	Political stability (+ emerging factors)

Source: prepared by the author.

In light of the research variables, I consider both positivist and interpretivist epistemological approaches in this thesis. To maintain a causal logic but at the same time enrich it with an interpretative element, I conduct the case studies through a version of process tracing that includes "open causality" (Guzzini, 2017) by adding an interpretive perspective to it

(Norman, 2015; Norman, 2021). Such approach, known as interpretive process tracing (IPT), is a way of being open for newly emerging factors and questions – adding possible "emerging factors" to the dependent variable – rather than just conducting tests of pre-defined hypotheses, as well as a means of connecting both "what" and "how", as explained in the chapter Methodology (4.3).

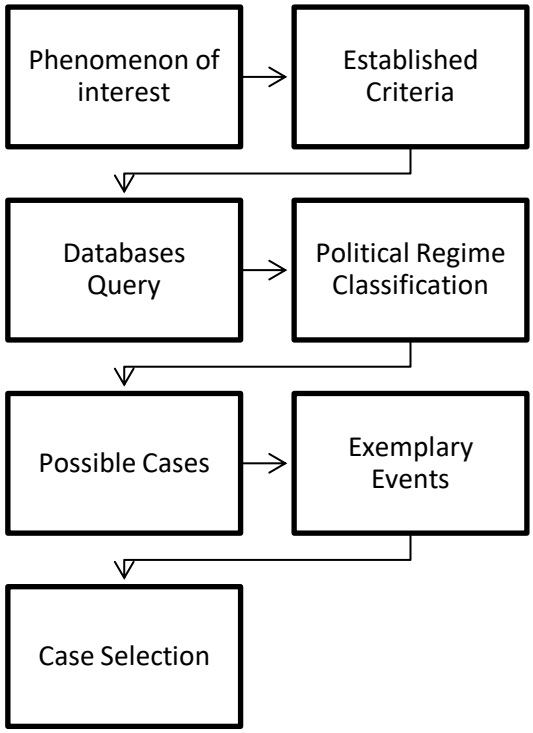
1.2 The Case Selection

The research is based on case studies that followed a selection process starting with observing the *phenomenon of interest*: applying TJ measures after acute episodes of political violence in electoral democracies. This thesis is interested in cases in which an acute destabilising event of political violence happened after the establishment of the ICC, given that this thesis is centred in the contemporary phase of TJ, in which the ICC symbolises the expansion of TJ as a global norm (Teitel, 2003). As TJ has become a "paradigm of the rule of law" (Teitel, 2003, p. 72) and a standard for state behaviour after conflict (Subotić, 2012), this thesis investigates cases with TJ mechanisms in the form of international criminal justice. Therefore, as part of the *established criteria*, the possible cases must contemplate five aspects: (1) political violence, followed by (2) TJ, in the form of international criminal justice (allowing the addition of complementary TJ mechanisms); but it is (3) not a case of regime change. The political violence event (4) takes place in an (electoral) democracy; and in the (5) period between 2002 to 2012, a time frame that follows the establishment of the ICC and the contemporary phase of TJ, but at the same time enables a period for "outcome" observation.

To discover and filter cases that fit the criteria above, I consulted TJ and political instability global databases to single out cases from different world regions. Furthermore, I employed the Lexical Index of Electoral Democracy (LIED) to classify the political regimes of the *universe of possible cases*, which must have the minimal procedural aspects of democracy of free and fair elections. Choosing from *exemplary events*, I selected the two cases that best suit the phenomenon of interest for an in-depth exploration, corresponding to the cases of Lebanon and Kenya, as discussed in detail in the chapter Methodology (4). The exemplary event in Lebanon refers to the terrorist attack that killed Prime Minister Rafik Hariri and others, constituting a politically motivated assassination in 2005, whilst the exemplary event in Kenya refers to the post-electoral violence in 2007/2008. The process of selecting the exemplary cases

is described below in Figure 1.

Figure 1. Selecting the Cases



Source: prepared by the author.

1.3 Structure of the Thesis

In order to develop the thesis argument, this work is divided into nine chapters. Chapter 1, the present chapter, introduces this thesis's main features: the phenomenon of interest, the research goals, a preview of the cases and how the thesis is structured. Chapter 2 reviews the evolution of TJ since its emergence in the late 1980s, following its vertical and horizontal expansion, which symbolises, first, the new players involved in TJ processes and, second, the internationalisation and localisation of Transitional Justice. Chapter 3 establishes the theoretical foundation of this thesis, discussing the alternative effects of human rights normative diffusion when it reaches domestic politics. The chapter also discusses concepts such as TJ in conflicted democracies and the notion of TJ in the context of political instability and acute episodes of political violence. Furthermore, it introduces the concepts of stability and crisis and a typology

of political violence. Chapter 4 describes the path designed to conduct the investigation in order to understand how TJ shapes political dynamics after political violence in electoral democracies and the effects of such dynamics on political stability. As a Methodology chapter, it also displays the case selection process through the exemplary events' strategy, arriving at the acute episodes of political violence in Lebanon and Kenya. Both situations resulted in international criminal prosecutions at the hands of international (and hybrid) tribunals and truth-seeking processes.

Moving to the empirical part of the research, which is based on the case studies, Chapter 5 discusses the localisation of Transitional Justice in the aftermath of political violence, introducing the cases to be subsequently examined in Chapters 6 and 7, which present the exemplary events I have chosen to deepen my insight into: the politically motivated assassination of Rafik Hariri in Lebanon in 2005 and the post-electoral violence in Kenya in 2007/2008. Chapter 8 combines the descriptive processes tracing with the interpretive approach of process tracing from a comparative perspective, encompassing the key aspects that have emerged during the case studies. Chapter 9 was prepared to display the conclusion and final considerations of this thesis.

2 Reviewing the Evolution of Transitional Justice

In order to answer the research question, it is paramount to explore the historical development of the TJ field, with a focus on the expansion of Transitional Justice, from its conception as "justice associated with periods of political change, characterised by legal responses to confront the wrongdoings of repressive predecessor regimes" (Teitel, 2003, p. 69) to justice associated with episodes of political violence in a context of political instability without regime change. For this purpose, the chapter discusses fundamental concepts such as the "justice cascade" (Lutz & Sikkink, 2001) and the vertical and horizontal expansion of TJ (Hansen, 2011; Hansen, 2014) (2.1). After localising the TJ approach of this thesis, the chapter moves to an overview of TJ's measures and a non-exhaustive literature review of the effects of TJ (2.2) previously observed by authors such as Sikkink (2011), Vinjamuri and Snyder (2004), and Olsen, Payne and Reiter (2010), to name a few.

2.1 The Expansion of Transitional Justice

The expansion of TJ sets the foundation for the analysis in this research. Based on such expansion of the concept of TJ, which has been originally associated with democratic transitions and dealing with past atrocities in former autocratic regimes, it is possible to observe an acceleration in the phenomenon of TJ in times of globalisation and increased political instability. This movement transformed the concept of TJ into a norm, which is no longer exceptional and dedicated exclusively to paradigmatic forms of political transition but embraces several types of situations. Contemporary political conditions are characterised by small wars, political fragmentation, and domestic conflicts that have required TJ measures even in cases in which there was no proper political transition. For instance, episodes of political instability followed by an international criminal prosecution, performed by the International Criminal Court, which is the symbol of the normalisation of TJ application and jurisprudence.

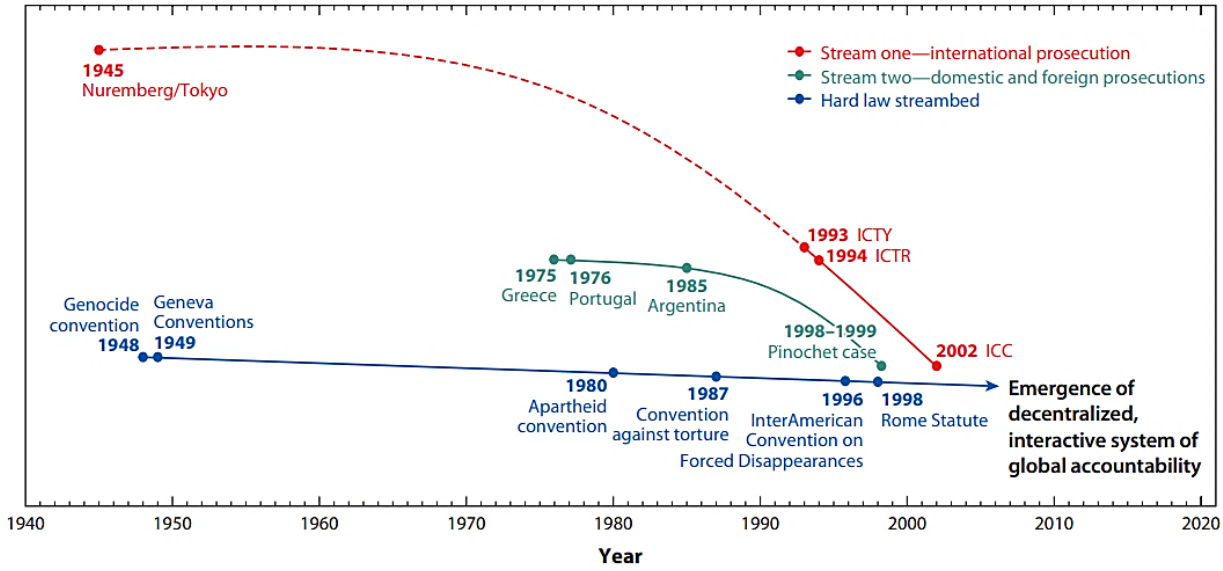
Transitional Justice as a norm and as a set of measures has expanded into contemporary forms of conflicts, generating a change in its relevance. Such expansion has instigated the emergence of different TJ approaches, such as "Transitional Justice pre-transition" (Van Schaack, 2018) and "Justice in Transition" (Gready & Robins, 2017). Measures of TJ are a real

possibility and tool to deal with situations that vary from armed conflict, ongoing conflicts and post-conflict (Hansen, 2019), as well as after situations of political instability and violence. This introductory section presents the expansion of TJ and the possibilities for dealing with human rights abuses and violations in different contexts beyond transitions to democracy. It introduces the basis for an analysis of the application of TJ processes following episodes of political violence, such as political assassination and post-electoral violence. In that context, TJ has not followed a regime change, but it was used as a means of providing stability inside democratic regimes instead, although in relation to deeply conflicted societies.

2.1.1 The Justice Cascade

Although the concept of TJ came to fruition at the end of the 20th century, the idea that serious human rights violations had to be dealt with in the modern way can be observed since World War I. In an internationalised and exceptional way, however, it reached a milestone after the end of World War II, with the Nuremberg Trials (1945-1949) (Teitel, 2003). The Nuremberg and Tokyo trials are the legal underpinning of a trend denominated as "Justice Cascade" (Lutz & Sikkink, 2001). The term, elaborated by Lutz and Sikkink (2001), is an allusion to the "shift in the legitimacy of the norm of individual criminal accountability for human rights violations and an increase in criminal prosecutions on behalf of that norm" (Sikkink, 2011, p. 5). Furthermore, the justice cascade "captures how the idea started as a small stream, but later caught on suddenly, sweeping along many actors in its wake" (Sikkink, 2011, p. 5), as illustrated in illustrated in Figure 2 below.

Figure 2. The Justice Cascade



Source: Sikkink & Kim (2013, p. 275).

According to Sikkink (2011), there are different models of accountability[1] for past human rights violations that states have used: immunity (or impunity), state accountability, and individual criminal accountability. Until the end of World War II, the impunity model reigned, and protection against prosecution for state officials was taken for granted. After the war and given the Holocaust, however, that model started to erode. The Allies in the Nuremberg and Tokyo Trials prosecuted state officials criminally for war crimes and, in the face of the lack of international standards, elaborated the Universal Declaration of Human Rights in 1948. Through the establishment of the United Nations, several human rights treaties were created, but the idea defended by states was to establish an accountability model to hold "states as a whole" (Sikkink, 2011, p. 15) accountable for human rights violations.

The state accountability model became the predominant one and continues to be very present since it is the model used by the United Nations in treaties and in its human rights apparatus. Enforcement mechanisms in this model, however, are very poor: "there were lots of rules, but they didn't have teeth" (Sikkink, 2011, p. 15). Even with new human rights treaties, it appeared that human rights violations were getting worse in the 1980s and 1990s. Human

[1] Accountability here refers to "practices where some actors hold other actors to a set of standards and impose sanctions if these standards are not met" (Sikkink, 2011. p. 13).

rights activists suggested that individual criminal accountability would be a form of supplementing state accountability and compliance, providing a new way of human rights law enforcement. Nevertheless, the three models of accountability continue to exist simultaneously (Sikkink, 2011).

The arrest of former Chilean dictator Augusto Pinochet in 1998; Slobodan Milosevic of Yugoslavia in 1999; Charles Taylor, then President of Liberia, charged for war crimes by the Special Court for Sierra Leone; President Omar al-Bashir, indicted by the ICC for war crimes and crimes against humanity in Darfur. All those cases of criminal accountability against state officials, including sitting heads of state, would have been unimaginable in other times. They are different kinds of prosecution; for instance, Milosevic at the International Criminal Tribunal for the former Yugoslavia (ICTY), and al-Bashir at the ICC, are cases of international prosecutions. Hybrid tribunals, such as the Special Tribunal for Lebanon and the Special Court for Sierra Leone, can also be included in this category (Sikkink, 2011). The Pinochet case, on the other hand, was a *foreign* prosecution based on the Universal Jurisdiction procedure since Courts in the UK and Spain took legal action against the general. The most common case of prosecution is the domestic type, for example, the case of Bordaberry in Uruguay, who was arrested after more than 30 years of his participation in the military coup in 1973 (Sikkink, 2011).

Nevertheless, the justice cascade is part of a movement in favour of accountability for past human rights violations that goes beyond trials. Truth commissions, such as the South African Truth and Reconciliation Commission; "lustration laws" adopted by Eastern European countries after the Soviet rule; memory museums, such as the Genocide Museum in Cambodia, are ways to address past human rights violations. Such efforts become known as "Transitional Justice," mechanisms "mainly adopted after countries have made a transition from authoritarian rule to more democratic movements" (Sikkink, 2011, p. 17). A similar path is covered by Teitel (2003) in the "genealogy of Transitional Justice," in which the author traces the historical pursue of justice and delimitates TJ in three phases, as discussed below.

Teitel's genealogy of Transitional Justice

Teitel (2003, p. 69) defines TJ as "the conception of justice associated with periods of political change, characterised by legal responses to confront the wrongdoings of repressive predecessor regimes." Transitional Justice is not static; the concept has been adapted to diverse

political conditions and limitations of each period. In its first phase, for instance, TJ reflects the post-World War II (1945) period, manifested not only by the Nuremberg Tribunal but also by the insertion of TJ in the International Law regime. This initial phase, characterised by war crimes trials, inter-state cooperation and sanctions, left a legacy for the formation of the International Human Rights Law, criminalising states' wrongdoings as part of a universal rights scheme, but did not last after the onset of the Cold War bipolarity. The second phase, on the other hand, is associated with the end of military governments in South America and the democratisation processes of the 1970s and 1980s, in the "third wave of democratisation" (Huntington, 1991). It was a period when the focus of TJ was on national mechanisms, such as domestic trials and truth commissions (Teitel, 2003, p. 70).

In contrast to the two phases that came before, the third one is characterised by globalisation, increased political instability and violence. This last phase, which began at the end of the 20th century, illustrates an acceleration in the phenomenon of TJ, a movement of TJ processes "from the exception to the norm to become a paradigm of rule of law" (Teitel, 2003, p. 71). The third phase of TJ is recognized as contemporary, in which "transitional jurisprudence normalizes an expanded discourse of humanitarian justice constructing a body of law associated with pervasive conflict, which contributes to laying the foundation for the emerging law of terrorism" (Teitel, 2003, p. 71). The present phase of development represents a *steady-state* Transitional Justice associated with the expansion of TJ, as well as with a normalization of a phenomenon that is no longer exceptional: "war in a time of peace, political fragmentation, weak states, small wars, and steady conflict all characterize contemporary political conditions" (Teitel, 2003, p. 89). It is a phase of *normalization* of Transitional Justice that currently takes the form of the expansion of the law of war, represented above all by the International Criminal Court, in the sense that the Court works as a tool for the international community to hold leaders accountable for human rights violations, also having the power to delegitimate a regime, which could instigate transition (Teitel, 2003, p. 89).

The International Criminal Court

The ICC is an emblematic mechanism in the sense that it symbolises the "entrenchment of the Nuremberg Model" (Teitel, 2003, p. 90). The ICC was created after the international tribunals established by the United Nations Security Council (UNSC) to deal with gross human rights violations in the 1990s, such as the International Criminal Tribunal for the Former

Yugoslavia (ICTY), in 1993, and the International Criminal Tribunal for Rwanda (ICTR), in 1994. They were both *ad hoc* tribunals assigned to address crimes, such as genocide, committed in both countries. Unlike the *ad hoc* tribunals, the ICC is an international permanent Court, shaped to deal not with a specific case but with the most serious human rights violations that take place in all countries and territories that are part of the Rome Statute. The permanent Court was appointed to prosecute "war crimes, genocide, and crimes against humanity as a routine matter under international law" (Teitel, 2003, p. 90), in addition to the crime of aggression, a jurisdiction activated as a fourth crime since 17 July 2018. It was the first time since the post-World War II Nuremberg and Tokyo trials that an international court was equipped with the means and power to "hold leaders individually criminally responsible for waging aggressive war" (Coalition for the International Criminal Court, 2018, p. 1).

Embodying the normalisation of Transitional Justice, the Court was established by the Rome Statute in 1998 and came into force in 2002, acting in accordance with the principle of complementarity, which "entails that the ICC can only investigate and prosecute core international crimes when national jurisdictions are unable or unwilling to do so genuinely" (FICHL, 2009, p. 1). According to article 13 of the Rome Statute of the International Criminal Court (1998), the Court may exercise its jurisdiction with respect to the crimes listed in the Statute in the events of:

(a) A situation in which one or more of such crimes appear to have been committed is referred to the Prosecutor by a State Party in accordance with article 14;

(b) A situation in which one or more of such crimes appear to have been committed is referred to the Prosecutor by the Security Council acting under Chapter VII of the Charter of the United Nations; or

(c) The Prosecutor has initiated an investigation[2] in respect of such a crime in accordance with article 15.

Exceptionally, States may accept the jurisdiction of the Court on an *ad hoc* basis by submitting a declaration pursuant to article 12(3) of the Rome Statute.[3]

[2] A mechanism also known as *proprio motu.*

[3] Cf. Office of the Prosecutor of the ICC. Available at: https://www.icc-cpi.int/about/otp. Last access: 08/12/2022.

2.1.2 Transitional Justice as a Field

Transitional Justice as a field emerged in the late 1980s as a consequence of specific practical conditions that human rights activists, lawyers, policymakers and comparative politics experts were facing back then. It was a period of political shifts, especially from authoritarian regimes to democratic ones, illustrated above all by the end of military regimes in Latin America. Those political shifts led to practical dilemmas when dealing with the shift from "naming and shaming," which has been the main aim of international human rights movements/organisations up to the mid-1980s towards accountability for past abuses committed by former repressive regimes (Arthur, 2009). There was a call for justice in a responsive way, prioritising legal and institutional reforms, that reached the international level. Such move was possible, and the claims were legitimised due to the political changes based on "transitions to democracy" (Arthur, 2009, p. 322). Torture victims in Brazil, human rights violations committed during the military dictatorship in Argentina, as well as the cases of other countries and regions, such as South Africa and Eastern Europe, are examples that led to new discussions about how to deal with the past. Argentina, especially, was at the stage of a vigorous public debate in this regard; however, there was still the issue of possible reactions of the military that could threaten the new regime. The Full Stop Law of 1986 and the Due Obedience Law of 1987 ended new prosecutions, a sign that dealing with the past would raise questions beyond punishment and redress, including the balance between "justice and prudence" (Arthur, 2009, p. 324).

The term "Transitional Justice," though, first appeared only in the 1990s, in a Boston Herald article about a 1992 Salzburg conference entitled "Justice in Times of Transition." At this conference, the term was used repeatedly by participants, including author Ruti Teitel, leading to developments such as the founding of the Project on Justice in Times of Transition (1993). The transmission of the term Transitional Justice, as well as its acceptance, had its apogee with the publication of Neil Kritz's (1995) compendium *Transitional Justice: How Emerging Democracies Reckon with Former Regimes*, whose editor was also present at the Salzburg conference. Signalling the association between TJ and emerging democracies – which implies a change of regime (Arthur, 2009, p. 330) – allowing a connection to Huntington's (1991) "third wave of democratization" approach in the work of authors such as Siegel (1998) and Teitel (2003), whose genealogy of TJ was exposed above. In the words of Siegel (1998, p. 433), "the term Transitional Justice characterises the choices made and quality of justice rendered when new leaders replace authoritarian predecessors presumed responsible for

criminal acts in the wake of the 'third wave of democratization'".

Huntington (1991) elaborates on democracy's third wave, as the name suggests, following two historical moments regarding waves of democracy in the history of the modern world. The first was a long one: it started in the 1820s, simultaneously to the widening of male suffrage in the United States, until 1926, accounting for 29 new democracies. A reverse movement in 1922, however, changed the situation; after Mussolini ascended into power in Italy, that number of democracies fell into 12 democratic states worldwide. The second wave of democratisation started with the victory of the Allies in World War II, reaching a total of 36 democracies in 1962 (the high point), but also entering a reverse movement between 1960 and 1975, which took this number down to a total of 30 countries governed democratically. Nevertheless, a "Third Wave" commenced in 1974, manifested by new transitions to democracy in Portugal and Spain, followed by South America and other regions, summing to at least 30 countries which experienced transitions to democracy until 1990 (Huntington, 1991, p. 12).

Political transitions in the third wave of democratisation thus were understood as transitions to democracy, even though that was not necessarily the only possible scenario, considering that it is impossible to predict where the change in the political regime would lead to. As Arthur (2009, p. 337) argues, the typology "transition to democracy" became the "principal paradigm by which to interpret the opening of authoritarian regimes" for the following reasons: first, democratic reform was a goal for countries undergoing a process of regime change at the beginning of the 1980s, in addition to other complementary goals such as creating a market economy. Secondly, this phenomenon was seen as a *transition* to democracy given that "earlier theories of democratisation associated with modernisation theory had lost their previous legitimacy and were due to be replaced" (Arthur, 2009, p. 337) such as the theory of socioeconomic modernisation, which connects a possible process of political development to a precondition of socioeconomic modernisation.

The relationship between modernisation and democratisation was also explored by other authors in comparative politics, as in the book "Democracy in Developing Countries: Latin America", written by Diamond, Hartlyn, Juan J. Linz, and Seymour Martin Lipset, first published in 1989. In this work, however, the position of Diamond and Linz reframes the old modernisation theory of a linear relationship between socioeconomic development and democracy by defending two different propositions: that economic performance (steady and broadly distributed growth) is more important than a high level of socioeconomic development

to democracy, and that "the process of socioeconomic development generates social changes that can potentially facilitate democratisation" (Espinal, 1991, p. 432), depending on elites response to them (Espinal, 1991).

Analysing other reasons for the "transition to democracy" to become the dominant view in terms of the interpretation of political change back in the 1980s, Arthur (2009) highlights the rehabilitation of the term "transition," which was employed by Marxists as concrete steps to achieve the establishment of a socialist or communist society. What was understood as a "process of social transformation" (Arthur, 2009, p. 338), mostly at the structural level, by the Marxist view, was then recycled into a meaning associated with political reform at the legal and institutional level. Connected to this recycling process is the ideological shift towards human rights and a revaluation of the radical left's tactics when perceiving a transition to socialism. The "global decline of the radical Left" (Arthur, 2009, p. 338) reverberated in human rights movements since international human rights organisations gained increased importance, speaking out against repression committed by some political regimes. There was a move from state violence considered an expression of "class domination" to become a matter of human rights violations (Petras, 1990).

The concept of Transitional Justice, therefore, emerged in a historical context delimited by the confluence of two phenomena: on the one hand, the various political regime transition movements observed at the time, coming from authoritarian systems towards democratic ones, and on the other hand, the institutionalisation of an international system of human rights protection, which spread with the end of the Cold War. Transitional Justice, as observed, was initially assumed to be an actual transitory phase during a change of political regime. In this regard, Weiffen (2018b) points out two issues that need to be reconsidered: the question "how to deal with the past," faced by democratising countries, is not limited to the transition period, but it can last for decades. Additionally, the process of transition cannot be considered linear, from an autocracy to a democracy, because transition processes can lead to different endpoints, which may include varying levels of democratic, hybrid, and oscillating regimes, or even cases in which the regime becomes an autocracy again, such as in adverse regime change.

2.1.3 The Vertical and Horizontal Expansion

With the normalisation of TJ, the international community started to have a greater part in the process. What was first understood as a limited role to help design and implement TJ measures moved to a regularly active position of international bodies, including the UN, regional and non-governmental organisations, as well as norm entrepreneurs. Following these developments, the UN set the "basic principles and guidelines on the right to a remedy and reparation for victims of gross violations of international human rights law and serious violations of international humanitarian law" in 2005, as well as a Special Rapporteur (Pablo de Greiff) on the Promotion of Truth, Justice, Reparation and Guarantees of Non-Recurrence in 2011 (Van Schaack, 2018, p. 6).

New taxonomies emerged with the expansion of TJ, such as the vertical and horizontal expansion theory introduced by Hansen (2011; 2014). This bi-dimensional taxonomy distinguishes forms of expansion, introducing, on the one hand, the notion of vertical expansion, which refers to the new players involved in TJ processes, and on the other hand, the notion of a horizontal expansion, corresponding to the new contexts of application. The vertical expansion movement reflects the internationalisation and localisation of Transitional Justice, altering the original idea that TJ would be solely linked to the State (the Executive) or even the Legislative – since it could install truth commissions – as decision-makers. At first, there was the influence of the transition to democracy literature, which understood the political transition as a decision made by the elites. The discourse defended later by the TJ scholarship, however, understands the state as only one among different actors involved in this process, due mainly to the rise of institutions of the international criminal justice system, such as the International Criminal Court, but also players below the level of the national state, such as local elites, NGOs, etc. Thus, TJ became external to the state and internationalised, allowing the judgment of cases that would not be properly analysed according to the basic principles of accountability (Hansen, 2014).

The horizontal expansion, on the other hand, illustrates a movement beyond liberalising political transitions. As previously mentioned, the formulation of the concept of TJ is deeply connected to the emergence of new democracies in Latin America in the mid- and the late 1980s and how to address gross human rights violations committed by the previous military regimes. Discussion surrounded how to foster justice as much as possible, minding the democratic transition and the idea of justice in favour of the consolidation of a liberal democratic regime. In the same way that liberalising political transitions were extraordinary, the concept of TJ also

carries the idea of a form of justice that is not common but exceptional and distinct from others (Hansen, 2014).

In sum, two definitions delineate TJ in its original perception: the idea of "justice associated with periods of political change" (Teitel, 2003, p. 69) and the delimitation of transition "by the launching of the process of dissolution of an authoritarian regime" (O'Donnell & Schmitter, 1986, p. 6). However, the TJ normative framework from the 1990s, mainly based on justice in democratic transitions, constitutes an approach that is no longer sufficient to understand contemporary processes of TJ. Contemporary cases and debates emerged concerning countries in which no fundamental political transition took place or even cases in which violations of human rights are still taking place. In this sense, expansion has broadened the understanding regarding TJ in two different circumstances: 1. A transition has taken place, that is, a fundamental political transition, and 2. Transitional Justice in the absence of a political transition or in "non-transitions" (Hansen, 2011), as illustrated in Figure 3 below.

Figure 3. Transitional Justice in Different Contexts

Transitional Justice in Transitions	*Transitional Justice in Non-Transitions*
• Liberal Transitions	• Consolidated Democracies
• Non-Liberal Transitions	• Deeply Conflicted Societies

Source: prepared by the author, based on Hansen (2011).

In cases of "TJ in transitions" (Hansen, 2011) a new regime employs TJ measures to address human rights violations perpetrated during the prior regime; however, the nature of the transition may vary. There are cases, for instance, of authoritarian regimes that are replaced by a new regime, which is committed to the rule of law and to the ideals of liberal democracy – a liberal transition – and looks for TJ to pursue justice for crimes committed by the former. Examples include the transitions that took place in southern Europe in the 1970s, events in Latin America in the 1980s, and the South African transition in 1994. On the other hand, there are cases in which authoritarian or non-democratic regimes are replaced by a new regime, yet not a liberal one. In this scenario, TJ was also employed to address crimes committed during

the previous regime, but it constitutes a non-liberal transition, such as what happened in Rwanda, demonstrating how TJ can also be an instrument of non-liberal regimes (Hansen, 2011).

Transitional Justice in "non-transitions" (Hansen, 2011) in opposition, happens in the absence of a fundamental political transition, in the sense of O'Donnell and Schmitter's (1986, p. 6) definition of transition: "the interval between one political regime and another". It does not mean that there is no transition in terms of moving from war to peace or from a large-scale conflict to relative peace. In this regard, Hansen (2011) also defines two different strings: TJ in consolidated democracies, referring to the use of TJ to come to terms with past injustices in colonial times and/or against native populations, as in the cases of Canada and Australia; and TJ in deeply conflicted societies. Transitional Justice in deeply conflicted societies, without a fundamental regime change, is a subject of interest in this research since it has been neglected in much of the general theory. This is due to the fact that when the TJ field emerged, in the late 1980s and early 1990s, the notion of TJ was identified "with a vital debate over whether to punish predecessor regimes, particularly in light of the aims of democracy and state-building associated with the political transitions of that era" (Teitel, 2008, p. 1).

Nevertheless, this scenario has changed, since distinct TJ measures have been employed in conflicted societies in which there was no proper transition or transformation, as in the case of processes of TJ in Kenya after the 2007/2008 post-electoral violence (Hansen, 2011), a case that has also been under investigation by the ICC. However, dilemmas emerge considering the limits of turning to the ICC and the law of war in times of at least relative peace, such as the centralisation of accountability and the preference for international legal regimes (Teitel, 2003, p. 91). Furthermore, the expansion of the concept of TJ "beyond its original realm of punitive understandings of justice" (Buckley-Zistel et al., 2014, p. 3) has consequences; it turned the field into a more complex one, adding new actors and contexts, which brings theoretical challenges. Transitional Justice suffered a transformative turn: "[it] can no longer serve merely as epiphenomenal special-purpose institutions applied on a time-limited basis to mediate the shift between two distinct regimes" (McAuliffe, 2021, p. 4). In 2006, Louise Arbour, UN High Commissioner on Human Rights, already signalled to alternative theories of TJ when affirming that:

> Without losing its raison d'être, I believe that transitional justice is poised to make the gigantic leap that would allow justice, in its full sense, to make the contribution that it should to societies in transition. Transitional justice must have the ambition of

> assisting the transformation of oppressed societies into free ones by addressing the injustices of the past through measures that will procure an equitable future. It must reach to, but also beyond the crimes and abuses committed during the conflict which led to the transition, into the human rights violations that pre-existed the conflict and caused or contributed to it. When making that search, it is likely that one would expose a great number of violations of economic, social and cultural (ESC) rights and discriminatory practices (Arbour, 2006, p. 2).

A common critique of the conventional TJ approach is that it excludes key dimensions of injustice, which are, above all, socioeconomic and structural inequalities (Newman, 2019). Research in the field of TJ has also demonstrated the importance of civil society in TJ processes, a role that includes but goes beyond the work of human rights NGOs. Gready and Robins (2017) defend, for instance, that social movements are active political actors who "have driven democratisation in various parts of the world and can be credited as integral to the creation of the discourse of transitional justice unofficial truth commissions, seeking to disrupt official approaches" (Gready and Robins, 2017, p. 956). The authors have coined the term "new civil society," a framework "used to understand how such actors actively contest mainstream social, political and transitional paradigms, and model alternatives to them" (Gready and Robins, 2017, p. 956). The term is associated with events such as the Arab Spring and the protests that took place in southern Europe motivated by the austerity that took place in the region. In short, "'new' civil society actors rethink how justice and rights are understood in transition, and model alternatives that constitute new forms of transitional politics" (Gready and Robins, 2017, p. 956)

There are two other relevant approaches connected to the expansion of the concept of TJ there are worth mentioning: "Transitional Justice Pre-Transition" (Van Schaack, 2018) and "Justice in Transition" (Gready and Robins, 2017). The first one is a process that has been experienced in the field of TJ, illustrated, for instance, by the attempts of the international community to prepare the ground during the Syrian crisis for a proper TJ process while the conflict is still ongoing. The idea is that the TJ pre-transition would facilitate or hasten a transition, holding the initial goal of enabling "a peaceful democratic transition, establishing future stability, and encouraging social cohesion among the myriad Syrian communities torn asunder by the conflict" (Van Schaack, 2018, p. 2). That form of TJ has been criticised, based on the idea that "the political minimum requirement for a credible approach to accountability and human rights has to be that the government of the day is committed to those principles and is not actively violating them" (Seils, 2013, p.2).

On the other hand, Gready and Robins (2017) focus on the idea of justice in transition,

a theory refinement of the concept of transformative justice. “While justice in transition is a conceptual term or framework, transformative justice is conceived […] as a form of practice or activism – in short, the latter is a means of delivering the former” (Gready & Robins, 2017, p. 957). Therefore, it is a concept that conceives a broader approach in comparison to the traditional *state – individual accountability – institutional mechanisms* one, highlighting that not only the acts of violence that took place before the transition but, most of all, the “continuities of injustice” must be addressed. In sum, it relates to “a broad social project and a condition in society, […] understood as an everyday verb, given meaning and made/remade in the everyday lives of people living in societies emerging from conflict” (Gready & Robins, 2017, p. 957). Once again, the key agency is in the hands of the “new” civil society, which champions “autonomy, independent action and the modelling of alternatives, often choosing not to see the state as a principal reference” (Gready & Robins, 2017, p. 957), while the “old” civil society “privileges advocacy, support and capacity building, with the state and state institutions as the main point of reference” (Gready & Robins, 2017, p. 957). Rethinking the role of civil society, in the author’s argument, is a way of rethinking the entire process of TJ itself since it moves the modes of organisation, action, and understanding of key elements such as “politics, rights and justice as well as transnational approaches” (Newman, 2019, p. 145).

2.2 On Transitional Justice Measures

In 1988, when the Aspen Institute Conference on state crimes took place, the central debate was about the jurisprudential issues concerning the obligation of punishing perpetrators of human rights abuses in previous repressive regimes. Other issues were truth-telling, or the obligation to establish the truth about past violations committed by the state, and how to deal with military authorities who committed human rights violations. There were disagreements around those questions, but they all showed an interest in a specific set of measures that should be considered by transitional regimes: “prosecutions, truth-telling, transformation of an abusive state security apparatus, and rehabilitation or compensation for harms” (Arthur, 2009, p. 355). Such measures fit into two normative approaches: the goal of justice for victims of the repressive regime and the goal of facilitating the move from an authoritarian regime supporting a fragile democracy (Arthur, 2009).

Measures associated with TJ, however, are not a recent invention; they have been around since ancient times, such as trials performed in ancient Greece (Elster, 2004). The emergence

of TJ, in fact, was responsible for inserting a justification for the application of measures through "appeals to universal norms" (Arthur, 2009, p. 334), including human rights norms. Additionally, it has brought a sense of legitimation as far as the judicial and non-judicial measures were associated with a democratic policy or connected to the promotion of democracy (Arthur, 2009). That legitimation is observed in the characterisation of TJ by the United Nations, which considers it to be a "full range of processes and mechanisms associated with a society's attempts to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation" (UN Security Council, 2004, p. 4). The relevance of this statement also lies in the positioning of the international organisation on the matter of TJ processes and its relation to the promotion of democracy and the rule of law, and it opens the possibility of applying different mechanisms, from domestic to international ones, for dealing with past human rights violations. The UN also considers TJ initiatives as a means of supporting accountability, respect for human rights and democratic governance. For that reason, it has been encouraging TJ initiatives in peace agreements and its inclusion in Security Council resolutions.

The International Center for Transitional Justice, for instance, considers TJ measures as a means of responding to systematic or widespread violations of human rights, seeking "recognition for victims and promotion of possibilities for peace, reconciliation, and democracy" (ICTJ, 2009, p. 1). The Center also emphasises that TJ is "not a special form of justice, but justice adapted to societies transforming themselves after a period of pervasive human rights abuse" (ICTJ, 2009, p.1). Although the concept of TJ comprises a range of definitions, they simultaneously involve different legal, political, and cultural instruments and mechanisms that at the same time can "strengthen, weaken, enhance or accelerate processes of regime change and consolidate democratic or autocratic political regimes" (Mihr, 2017, p.1). That is, measures that can be used both to "foster or hamper successful transition or reconciliation processes" (Mihr, 2017, p.1).

In a broad spectrum, TJ measures comprise judicial and non-judicial measures of a both national and international character. Well-known measures are criminal prosecutions, amnesties, truth-seeking mechanisms, reparation programs, and vetting processes (HPCR International, 2008). Table 2 below displays the main mechanisms of each key measure associated with Transitional Justice:

Table 2. Transitional Justice Measures and Mechanisms

Criminal prosecutions	National (or domestic) prosecutions International tribunals Hybrid courts Transnational (or foreign) prosecutions
Amnesties	Self-amnesties Negotiated amnesties Total (blanket) amnesties Conditional amnesties
Truth Seeking	Truth Commissions Truth and Reconciliation Commission (reconciliation as an explicit goal)
Reparations	Restitution Compensation Rehabilitation Guarantees of nonrecurrence Symbolic reparations
Vetting	Vetting and lustration

Source: prepared by the author, based on HPCR International (2008).

Criminal justice, in general, is one of the most emblematic measures of TJ, consisting mainly of the use of tribunals and trials as leading instruments (Weiffen, 2012, p. 93), which have multiple goals, including "truth, deterrence, punishment, reconciliation, and promotion of the rule of law[4]" (Thoms et al., 2010, p. 333). Prosecutions, however, are "not the only or even the most important way that countries grapple with their past human rights violations" (Sikkink, 2011, p. 16), regarding the use of Truth Commissions by several countries (Sikkink, 2011).

[4] Rule of Law is a complex term, that can be understood in this research in line with Winter's brief definition of a an "action-guiding set of non-arbitrary principles, rules and rule-making that is prospective and clear, consistent and stable in terms of its content, and obligatory upon both the state and the citizenry" (Winter, 2014: 63). Furthermore, "violations are subject to adjudication and remedy. New laws must themselves be made according to law and the discretionary powers of officials legally defined and subject to legally enforceable oversight" (Winter, 2014, p. 63).

Truth commissions are non-judicial bodies which focus on victims and survivors instead of perpetrators, as in the case of trials. Therefore, they do not have the authority to criminally prosecute perpetrators, although some are invested with important investigative powers, such as to "subpoena, to search and seize, to settle legal rights and to grant amnesty in exchange for giving testimony" (Weiffen, 2012, p. 93), a practice that was applied, for instance, by the South African Truth and Reconciliation Commission (Weiffen, 2012).

2.2.1 Effects of Transitional Justice

Since the creation of the Rome Statute and the arrest of Augusto Pinochet, the human rights movement has been optimistic. Many policymakers, however, disagreed about the "desirability of the justice cascade" (Sikkink, 2011, p. 129). In light of the different predictions regarding the effects and consequences of human rights prosecutions, politicians would echo the mid-1980s scholars of transitions to democracy conclusions that prosecuting past human rights violations would destabilise new democracies (Sikkink, 2011). Critics of trials are skeptical about the beneficial claims of prosecutions, especially because of factors such as the power and self-interest of the political actors involved in the political transition (Vinjamuri & Snyder, 2004). Especially in the case of domestic justice, in the absence of a well-established infrastructure (which is a rare condition in post-conflict situations), prosecutions could be a counterproductive measure (Thoms et al., 2010) considering that, in many cases, the national criminal justice systems are incapable of or unwilling to deal with gross human rights violations, above all when there is a former leader involved.

On the other hand, trials' advocates believe in the response that trials bring to victim's needs, including the sense of justice, and that as a consequence of establishing criminal accountability, there will be a marginalisation of the elites responsible for the conflict, promoting individual accountability, and separating individual from collective guilt (Thoms et al., 2010). From a conditional point of view, Vinjamuri and Snyder (2004) establish that trials could be advantageous if conducted efficiently, that is, if they "strengthen public understanding of the rule of law, add to the institutional capacities of domestic courts, assist in discrediting rights abusers, help to defuse tensions between powerful groups in society, and produce no backlash from spoilers" (Vinjamuri & Snyder, 2004, p. 15). However, in the case of the absence of the conditions mentioned, "punishment for the abuses of the former regime may be a

dangerous misstep and should be a low priority" (Vinjamuri & Snyder, 2004, p. 15).

In opposition to trials, truth-telling efforts were considered by the participants of the Aspen Institute Conference (1988) as a "minimum requirement of justice" (Arthur, 2009, p. 356). Although the work of truth commissions is recognised as a tool to foster reconciliation, critics observe a dangerous aspect connected to resentment among victims and perpetrators (Thoms et al. 2010). For Vinjamuri and Snyder (2004, p. 20), they can have "perverse effects," including "exacerbating tensions and at other times providing public relations smoke screens for regimes that continue to abuse rights". Truth commissions, from that perspective, would only contribute to democratic consolidation "when a prodemocracy coalition holds power in a fairly well institutionalized state" (Vinjamuri & Snyder, 2004b, p. 20) and "are most likely to be useful when they cover for amnesty, and when they help a strong, reformist coalition to undertake the strengthening of legal institutions as part of a strategy based on the logic of consequence" (Vinjamuri & Snyder, 2004b, p. 20).

Nevertheless, the effects of TJ measures continue to be a reason for investigation in the field. There are several attempts in the literature to determine the effects of TJ measures in different contexts, especially from comparative studies. For example, impacts on democratic stability, conflict and human rights were investigated by Sikkink and Walling (2007) in an empirical study of Latin American cases of transitions to democracy with a past of human rights violations. The authors make optimistic claims regarding the positive impacts of human rights trials, going against the idea that they can have a destabilising effect: "data from Latin America provide no evidence that human rights trials have contributed to undermining democracy in the region" (Sikkink & Walling, 2007, p. 434). Sikkink and Walling (2007) also defend trials as a mechanism that does not extend the conflict and, according to evidence, human rights trials are associated with an improvement in human rights conditions. However, their statistical method was considered rudimentary by some, a matter of "simple descriptive statistics with no controls" (Thoms et al., 2010, p. 338).

Impacts on democracy can certainly be contradictory since democracy is a multidimensional process. In this sense, Arnould and Sriram (2014) analysed pathways of TJ impact and concluded that TJ had an impact on institution-building "through delegitimation, reform promotion and empowerment but often to a lesser degree than has so far been assumed" (Arnould & Sriram, 2014, p. 8). It appears that TJ has limitations regarding the promotion of big structural changes, functioning more as a promoter for a proper normative environment to conduct democratic institution-building. Besides, TJ can also have negative effects on this

matter in two situations: when a dominant party benefits from or drives a selective (instead of inclusive) process or in the case of multiple societal cleavages leading to suspicions around TJ measures. That is, TJ may not be the best option in all transition contexts (Arnould & Sriram, 2014).

From a large sample quantitative study on the impacts of TJ measures on democracy and human rights, Olsen, Payne, and Reiter (2010) elaborated a study based on their Transitional Justice Data Base (TJDB). Using multivariate regression analysis from empirical evidence collected in the database, the finding was that TJ has an overall positive effect on human rights and democracy, that is, "dealing with past violence is better for these political outcomes than ignoring it" (Olsen et al., 2010, p. 996). However, it is important to notice that, for this accomplishment, none of the TJ mechanisms were used on their own – the best results came from two combinations: trials and amnesties, and trials, amnesties, and truth commissions. Olsen et al. (2010, p. 1004) argue that promoting single mechanisms is not the best policy for reaching democracy and human rights: "the assumption that trials, amnesties, or truth commissions by themselves provide a successful pathway to these political objectives simply does not hold up to empirical testing." The authors defend a balance between trials and amnesties: "indeed, delayed justice, or sequencing trials after amnesties, allows for the justice balance that improves human rights and democracy" (Olsen et al., 2010, p. 1005)

On the other hand, the work of Kim and Sikkink (2010) presents optimistic claims regarding the sole employment of trials and improvement in human rights protection: "countries with human rights prosecutions have better human rights practices than countries without prosecutions. […] Contrary to the arguments made by some scholars, human rights prosecutions have not tended to exacerbate human rights violations" (Kim & Sikkink, 2010, p. 953). However, Mihr (2017) makes a reservation on the matter: "TJ measures can also fail. For example, if imposed on a country through winner's justice or by foreign powers, trials have the potential to intimidate domestic claims and thus hamper justice" (Mihr, 2017, p. 9). Trials and truth commissions, all things considered, seek to establish the truth. Truth commissions supply narrative, but trials have the credibility of following stricter rules concerning the admissibility of evidence (Thoms et al., 2010, p. 335).

3 Theoretical Framework

Based on the literature review introduced in Chapter 2, this chapter presents the theoretical foundation of this thesis. Although there is great literature regarding the effects of TJ, much has been related to "transitions to democracy" (Arthur, 2009), a trend connected to the advent of the field itself. This thesis, however, is interested in the expansion of TJ above its original localisation and beyond the so-called "paradigmatic transitions" (Aoláin & Campbell, 2005) by analysing TJ following political violence in electoral democracies, specifically in "conflicted democracies" (Aoláin & Campbell, 2005). Moreover, recognising that "transitional justice is essentially about processes" (Salehi, 2021, p. 39) and that, even so, "research has paid scant attention to how transitional justice interacts with the "transition," the political processes it ought to complement and render more just" (Salehi, 2021, p. 39), this thesis explores the political dynamics shaped by TJ after political violence in conflicted democracies, and the effects of those political dynamics on political stability. To present the theoretical foundation, therefore, this chapter first discusses the paradox between domestic politics and international justice with the diffusion of TJ as a global norm (3.1). This chapter further introduces the concepts of transitions, such as "paradigmatic" and "non-paradigmatic" transitions, and "transitions" in conflicted democracies (3.2), followed by a discussion on political instability and violence (3.3), an emergent context for TJ application. Lastly, section 3.4 provides a summary of the thesis' theoretical framework.

3.1 International Norm Diffusion and Domestic Politics

The literature review presented in Chapter 2 discussed the expansion of TJ and introduced the concept of "justice cascade" (Lutz & Sikkink, 2001), a phenomenon that occurs when the prestige of a domestic transitional justice arrangement, such as a truth commission or a war crimes tribunal, gain international recognition and influence, leading to a "cascade" effect. Nevertheless, other effects of international normative diffusion must be further investigated. For instance, Hafner-Burton and Tsutsui (2005, p. 1373) argue that the institutionalisation of human rights on a global scale created a context where governments frequently sign human rights treaties for symbolic purposes, resulting in a disconnection between policy and action that can worsen negative human rights practices. At the same time, the increasing global recognition of human rights exerts positive effects on states' human rights

practices due to the independent influence of civil society on a global scale – a phenomenon that Hafner-Burton and Tsutsui (2005) called the "paradox of empty promises."

A state's compliance with a global norm, such as an international treaty, does not necessarily mean the state's support for that norm. Instead, "domestic actors may be interested in complying with a new global norm not because they want to advance it but because they want to challenge it" (Subotić, 2009, p. 29). In this regard, Subotić (2009, p. 29) observes that "the process of norm diffusion […] is inextricably linked to domestic politics." For instance, although there is increased compliance of states with TJ models, states present divergent behaviour after the norm adoption. One reason for that is that with the norm diffusion in the domestic political sphere, local authors strategically appropriated and used the norm based on their own motives (Subotić, 2009, p. 28). The norm appropriation can be understood in the context of "socialization by reinforcement" (Schimmelfennig, 2005), a mechanism that assumes "self-interested political preferences and instrumental action" (Schimmelfennig, 2005, p. 830). According to this logic, "actors calculate the consequences of norm conformance rather than reflecting on its appropriateness; they engage in bargaining and rhetorical action rather than consensus-oriented arguing; and they adapt their behavior rather than changing their views, interests, or identities" (Schimmelfennig, 2005, p. 831).

Therefore, the connection between norm diffusion and domestic politics shows that states can use international norms such as TJ and reject or ignore their substance simultaneously, violating the core of the norm itself. That is, the instrumentalisation of the international norms as part of domestic political struggles detaches the norm from its international value, producing disconnected and even contradictory strategies by state actors (Subotić, 2009, p. 29). Therefore, "this domestic use of international norms is […] not an aberration by some states but an inevitable function of norm diffusion" (Subotić, 2009, p. 29). In sum, the phenomenon of "hijacked justice" (Subotić, 2009) illustrates a paradox between domestic politics and international justice. Under that paradox, "domestic elites are able to use quite different international mechanisms of transitional justice in widely varied political environments and for a multitude of different local reasons […] to obtain an international shield of legitimacy for continuing justice impunity at home" (Subotić, 2009, p. 188).

This thesis focuses on the most controversial institution of TJ – international trials – which can be inserted into the diffusion of TJ as a global norm. The case studies explore the relationship between domestic politics and the international tribunals that dealt with political violence in Lebanon (Special Tribunal for Lebanon) and Kenya (International Criminal Court).

The two countries can be classified as "conflicted democracies" (Aoláin & Campbell, 2005), as discussed in the following section.

3.2 Transitions in Conflicted Democracies

Considering that the field of TJ emerged in a very specific historical context as a means of responding to past systematic or widespread human rights violations following regime change from authoritarian regimes towards democratic ones (Arthur, 2009), the field's literature has devoted significant attention to illustrative cases of so-called "paradigmatic transitions," such as the shift from military regimes to civilian rule in Latin American countries like Argentina; the end of the Apartheid in South Africa, or post-communists' transitions in Central and Eastern Europe. They are understood as cases of transitional polities because they either represent a change from a non-democratic regime to a democratic one or a case of conflict/war to peace (Winter, 2014).

Paradigmatic political transitions, furthermore, are composed of an identifiable specific *transitional moment*, such as the fall of the Berlin wall, or at least a singular transitional process, such as the end of the Apartheid regime, regarded as a process of closure. This outstanding feature of paradigmatic transitions relates to the "undemocratic nature of the regimes and to the blocking function played by the regime's control of political authority" (Aoláin & Campbell, 2005, p. 182). That is, "authoritarian regimes, by nature, maintain a monopoly on political expression within the state. Once a meaningful reform process is put in train, it spells the death of the old regime" (Aoláin & Campbell, 2005, p. 182). Typically, there will be political and/or institutional reforms or even reconciliation after a "deal," bringing the transition to an end. The reality of cases of political transitions, nevertheless, can be way more complex than the "finite and contained" paradigmatic transition ideal type (Aoláin & Campbell, 2005). Moving from the times of the "third wave of democratization" (Huntington, 1991), the matter of an endpoint becomes blurred. In a broader scenario, cases can be characterised, for instance, by two main dualities: first, the well-recognized transition between *non-democratic v. democratic* regimes, and second, a transition from *war to peace*, as demonstrated in Table 3 below:

Table 3. Paradigmatic Political Transitions

	Pre-Transition	*Post-Transition*
1. Nondemocratic vs. Democratic	Non-Democratic	Democratic
	Regime illegitimacy	Governmental legitimacy
	Rule of law absent or degraded	Rule of law respected
	Denial of human rights violations	Acknowledgement of human rights violations
	Repressive institutions	Transformed institutions
2. War vs. Peace	War	Peace
	Violent conflict	Political contestation
	Armament	Disarmament/weapons decommissioning

Source: prepared by the author, based on Aoláin & Campbell, 2005, p. 184.

The two movements: from non-democratic to democratic and from war, or violent conflict, to peace in pre- and post-transitions consecutively, are understood by Aoláin and Campbell (2005) as the primary sets regarding transitional situations. Although the first duality has long dominated the debate, giving "the importance of the shift to democracy" (Aoláin & Campbell, 2005, p. 183), the movement away from violent conflict is also present in many cases, such as in the regime transition in the former Yugoslavia, where both transitional forms are identifiable at the same time, for example. They are not, however, the only possible movements since transitional situations can lead to different endpoints and are normally not constituted by a single transition. Given that Transitional Justice has expanded both vertically and horizontally, in terms of players and context (Hansen, 2011), in contrast to the notion of paradigmatic political transitions, there are "non-paradigmatic transitions" that coincide with the expansion of TJ as a globalised norm, that is, situations where there is no regime change,

such as in TJ in consolidated democracies or even in ongoing conflicts (Berastegi, 2017), as well as in deeply conflicted societies (Hansen, 2011).

With the expansion of TJ to situations of non-paradigmatic transitions, or in "non-transitions" as in Hansen's (2011) taxonomy, which can be comprehended in the sense of transitions lacking a fundamental political transition as in the sense of change from one regime to another (O'Donnell & Schmitter, 1986), research has been done regarding the application of TJ measures in liberal democracies. For example, in countries such as Canada and Australia, focusing on historical abuses and past injustices in colonial times (Nagy, 2013) and regarding violence against native populations (Schaffer & Smith, 2004). Besides, there are studies about TJ in liberal democracies in the regions of Northern Ireland and the Basque Country, especially concerning political violence and terrorism (Berastegi, 2017). Studies on liberal or consolidated democracies, however, cannot satisfy the analysis of situations in electoral democracies or deeply conflicted societies, given the fundamental differences between democracy types. For instance, while in electoral democracies, "citizens have the right to participate in meaningful, free and fair, and multi-party elections" (Lührmann et al., 2018, p. 1), in liberal democracies, "citizens have further individual and minority rights, are equal before the law, and the actions of the executive are constrained by the legislative and the courts" (Lührmann et al., 2018, p. 1).

3.2.1 From Paradigmatic Transitions to Transitions in Conflicted Democracies

Transitional Justice in democracies implies – against the general notion – that human rights violations are not an exclusivity of authoritarian states because "all states inevitably commit human rights breaches" (Aoláin & Campbell, 2005, p. 186), even a liberal one. In this sense, there is a paradox regarding systematic human rights violations in democracies; after all, such political regime type possesses their own internal human rights protection system that, once it detects a violation, it should provide a means of correction or of preventing reoccurrence. Thus, "the paradox is compounded by the failure of the state to prevent or remedy systemic violations and by the frequent blindness of the international human rights system in 'seeing' the form of violations taking place" (Aoláin & Campbell, 2005, p. 186).

When such violations do take place in democracies – even though not in an established democracy, but in states that went through communal or structural political violence instead, which nevertheless possess some form of the democratic political structure – they are normally conflicted, hence the term "conflicted democracies" (Aoláin & Campbell, 2005). Table 4 below

exhibits what Aoláin and Campbell (2005, p. 194) consider as "paradigmatic transitions" in comparison to "transitions in conflicted democracies," especially in the following dimensions: *Democratisation; Peace-making and Conflict Transformation; Institutional; Past-focussed; Temporal; Geographical; and International.*

Table 4. Contrasting Paradigmatic Transition with Transition in Conflicted Democracies

Dimensions	**Paradigmatic Transitions**	**Transitions in conflicted democracies**
Democratisation	Movement from authoritarianism to procedural and substantive democracy	Advance from procedural to substantive democracy
Peace-making, Conflict Transformation	May involve a co-terminus move from war to peace (where violence is present) or not (where violence is absent)	Movement from violent conflict to political contestation
Institutional	Generalised acceptance of a paradigm of institutional transformation Little resistance to change	General official preference for a paradigm of institutional reform rather than transformation Significant resistance to change
Past-focussed	Widespread acknowledgement of past failings	Limited acknowledgement of past failings
Temporal	Emphasis on one "transitional moment" Little reform prior to transition Process of closure	Site of multiple sequential transitions Significant reform during conflict Open-ended
Geographical	Relatively uniform change throughout state	Change limited to the conflicted region
International	Significant international consensus on need for major change	Limited international consensus on need for major change

Source: prepared by the author, based on Aoláin & Campbell (2005, p. 194).

As observed in table 4 above, the idea of "transition" in conflicted democracies does not coincide with a formal definition of the *interval* between political regimes (O'Donnell and Schmitter, 1986), as in paradigmatic transitions. Instead, in that particular context found in conflicted democracies, "transition" has a more processual meaning, especially concerning TJ, for in the cases of interest in this thesis, it is precisely the TJ measures' interaction with the political processes that will render a "transition," in terms of the configuration of political dynamics after systematic political violence.

3.3 Political Instability and Acute Episodes of Political Violence

From the "justice cascade" as an "inevitable reaction to the unprecedent violence of the twenty-first century" (Sikkink, 2011, p. 5), TJ became present in a context of heightened political instability and violence, represented by the third phase of TJ in Teitel's (2013) genealogy of Transitional Justice. With the expansion of TJ, the concept became a global norm, which was no longer exceptional, but instead, it would promote a standard for state behaviour after conflict (Subotić, 2012). After discussing the notion of *transitions* in conflicted democracies in the previous section, this section analyses political instability and violence as a context for TJ application, discussing the antagonism between political stability and crisis and the interpretation of crisis as a symptom of political instability. Then, the section introduces the notion of "acute" episodes of political violence, understood as well-delimited political violence events that reverberate on a given state's political stability. Finally, it discusses political violence from a processual approach, centred on the notion of dynamic interactions of violence.

3.3.1 Political Stability and Crisis

Political stability can be defined as "the state in which a political object has the capacity to prevent challenges from forcing a change in one or more of that object's criteria of identity" (Svensson, 1986, p. 134). The concept encompasses different aspects, such as the absence of violence; governmental longevity/duration; the existence of a legitimate constitutional regime; the absence of structural change; and a multifaceted societal attribute (Hurwitz, 1973, p. 449), that can be measured through different techniques, as exposed in the chapter Methodology (4.4). In opposition to political stability, a political crisis is "the combination of challenges

which could lead to the breakdown of a political object or structural changes of a fundamental character" (Svensson, 1986, p. 134). Although stability and crisis are opposites, there is a relationship between both since it is precisely during a crisis that the stability of a political object can be demonstrated (Svensson, 1986). Following that logic, the concept of political crisis can be considered as the *antonym* of political stability.

A political crisis, nevertheless, varies regarding timing since it can be an event that occurs unexpectedly but can also be the culmination of dangerous developments, which could be interpreted as symptoms of political instability (Weiffen, 2014). In that sense, there are two possible classifications: acute crisis and latent crisis. On the one hand, a crisis can be considered *acute* in the sense of "clearly discernible events that unfold over a limited time span and threaten the very existence of the democratic political institutional order" (Weiffen 2018, p. 3), requiring unmistakable action. On the other hand, when a crisis "drags on without a conceptually predicted conclusion" (Merkel, 2014, p. 17), it is considered a *latent* crisis. Both acute and latent crises can be symptoms of political instability.

Suppose political stability is the capacity to prevent challenges from forcing a change (Svensson, 1986). In that case, political instability can be seen as the "propensity to observe government change" (Alesina & Perotti, 1996, p. 1205) in both "constitutional" (within the law) or "unconstitutional" (i.e., coups d'état) ways. Alesina & Perotti (1996) further explain that "the basic idea is that a high propensity to executive changes is associated with policy uncertainty and, in some cases, with threats to property rights" (Alesina & Perotti, 1996, p. 1205). However, the focus on executive changes is not exclusive, allowing for a "sociopolitical instability" approach, which is connected to social unrest and political violence. Socio-political instability, furthermore, can be measured through variables such as politically motivated assassinations, domestic violence, and coups (attempted and successful) (Alesina & Perotti, 1996). This thesis is interested in episodes of political violence that are acute crises in a context and as symptoms of political instability, especially from a social-political perspective. Therefore, I define the events of interest as *acute episodes of political violence* – clearly discernible episodes of political violence that occur over a limited period, threatening the democratic political institutional order.

3.3.2 Political Violence Dynamics

Political violence is a multifaced and varied phenomenon, which makes its definition overly complex. There is a diversity in the use of the term; for instance, one can consider confrontation between protesters and the police, such as the case of Occupy Wall Street, as political violence, while the Holocaust was also an episode of political violence (Kalyvas, 2019, p. 13). In general, acts of political violence can have the goal of changing or maintaining the status quo in the political order, depending on the agents involved in the violent acts: whether they are from or against the state (Schwarzmantel, 2010). Regarding political ends, the agents of political violence may pursue political influence or power through acts that reverberate on the political stability of a given nation. The question is: how can we fuse such discrepant realities under the same concept? To manage that diversity, Kalyvas (2019) elaborated an eleven-type typology of political violence based on the perpetrators and targets of violence, which can be a state and/or a non-state actor, as displayed in Table 5 below.

Table 5. Perpetrators and Targets of Political Violence

	***Target**: State*	***Target**: Non-State*
***Perpetrator**: State*	Interstate war	State repression Genocide Ethnic cleansing [Political assassination]
***Perpetrator**: Non-state*	Mass Protest Military Coup Political assassination Civil War Terrorism Organized crime	Intercommunal violence Political assassination

Source: prepared by the author, based on Kalyvas (2019, p. 14).[5]

Although the typology elaborated by Kalyvas consists of conceptually distinct types of political violence, allowing for the proposed categorisation, they are "dynamically interlinked" (Kalyvas, 2019, p. 24). This means, for example, that even though a civil war is a type of political violence that can be "empirically observed in isolation" (Kalyvas, 2019, p. 24), it can also be the result of other types of political violence, for instance, mass protests, as it happened in Syria in 2011.

> Some types of political violence "thrive" under war, authoritarianism, and poverty, especially in ethnically divided societies. But even if we were able to suddenly get rid of war, autocracy, poverty, and ethnic divisions, we would not be able to guarantee peace, because political violence can be observed in prosperous and peaceful democracies as well; what is more, the transition from poor autocracies to prosperous

[5] I added 'political assassination' in the upper right-hand cell of the table, because Kalyvas mentions new forms of political assassination where the state can be the perpetrator (i.e., a drone attack).

> democracies also appears to open the door to violence, as some types of political violence are replaced by others (Kalyvas, 2019, p. 24-25).

Such interconnection in types of political violence, however, is not random. According to its characteristic, there are logics of interconnection behind the different types of political violence that can be categorised into four distinct logics: *hierarchy*, *instrumentality*, *escalation*, and *substitution*. A hierarchical logic, for example, refers to types of political violence that create conditions for the emergence of others which would not have emerged otherwise – interstate war/global war are clear examples since they are very transformative in a way that a global war is the "the mother of all political violence" (Kalyvas, 2019, p. 25). World War II is an example of the hierarchical logic, as it also shows a connection amongst other types of political violence, in this case, genocide (the Holocaust), ethnic cleansing, and global war. Another possibility is "intercommunal violence [that] can emerge during mass protest" (Kalyvas, 2019, p. 25), as happened in Cairo in 2012.

The instrumental logic refers to the instrumental deployment of a specific type of political violence as a tool to achieve another, as in the case of fomenting intercommunal violence as a means of implementing genocide. On the other hand, the escalation logic resembles the hierarchical logic the other way around since it starts with a narrow type of political violence, such as mass protests, escalating to a broader type, like revolution. This was the case with Iran (1978-1979) and Syria (2011). A failed military coup, for instance, may also lead to a civil war, as it happened in Spain under Franco (1936). The Cold War illustrates the last logic – the substitution logic – which implies a "strategic choice whereby one type of political violence substitutes for another one which is deemed either impossible or ineffective." For instance, "proxy wars" worked as substitutes for a destructive clash between the United States and the former URSS (Kalyvas, 2019, p. 27).

The idea of interconnection among types of political violence (Kalyvas, 2019) is part of the "processual turn" in the research on the field of political violence, which understands that "violence emerges from strategic interactions between contenders and the state, rather than being a mere behavioural response to socio-structural strain or deprivation" (Malthaner, 2017, p. 2). The processual perspective on political violence, therefore, is centred on the notion that processes have autonomous causal efficacy, with dynamic interactions (Bosi et al., 2014). In this sense, there are two key aspects: causality and forms of violence. Firstly, *causality*, from a processual perspective, follows as a "property of a dynamic pattern of development"

(Malthaner, 2017, p. 3), which means that violence is "emergent to the process, arising in a gradual manner, often displaying continuities with non-violent forms of action" (Malthaner, 2017, p. 3). Secondly, *violence* is not given as a product of a non-violent process, but it is rather a part of it, that also "retroacts on processual dynamics as well as environmental conditions, which can give processes of violent escalation a circular character as feedback loops or self-reinforcing dynamics" (Malthaner, 2017, p. 3).

The case studies explore the dynamics of political violence in Lebanon and Kenya, demonstrating that even though this thesis analyses exemplary events that illustrate how TJ shapes political dynamics inside those electoral democracies, the characteristics of conflicted democracies add factors that contribute to systematic political violence. Moreover, the case studies expose a development pattern that includes not only environmental conditions but also violence as part of a process which has feedback loops through the two countries' history. Finally, the cases demonstrate the possible logics of interconnection among the types of political violence. For instance, the 2007 post-electoral violence in Kenya escalated to intercommunal violence, resulting in more than 1,200 Kenyans killed, thousands injured, and more than 300,000 people displaced, in addition to around 42,000 houses and many businesses looted or destroyed.[6] In Lebanon, on the other hand, political violence followed an instrumental logic, where a terrorist attack was used as an instrument for the politically motivated assassination of Rafik Hariri in 2005.

3.4 Summary

The expansion of TJ as a global norm reached situations beyond a transitional moment from authoritarianism to democracy. It is ever more present in a scenario of political instability and contemporary forms of violent conflict. Based on that scenario, this thesis investigates how TJ shapes political dynamics after political violence in electoral democracies through case studies. Considering that the countries that represent the exemplary events of political violence, Lebanon and Kenya, can be characterised as plural societies with sharp internal divisions in the body politic that threaten/result in political violence beyond electoral democracies, both

[6] Numbers of the UNHR, Office of The High Commissioner for Human Rights, 18 March 2008. Available at: https://www.ohchr.org/en/press-releases/2009/10/un-human-rights-team-issues-report-post-election-violence-kenya. Access: 10/03/2022.

countries can also be characterised as conflicted democracies (a characterisation discussed in detail in the introduction of the cases, in chapter 5).

This chapter presented the theoretical framework of this thesis, analysing first the challenges of norm diffusion and support of the international norm in states' domestic political sphere; and second, the notion of transitions in the context of the expansion of TJ, where it can be related to a process of change inside (electoral) democracies. The chapter discussed the concept of conflicted democracies to illustrate the characteristics of the two countries, which will pose serious obstacles to TJ. Lastly, this chapter demonstrated that political violence is not an isolated phenomenon but part of a dynamic process that can escalate to other types of political violence. Based on the presented theoretical framework, the case studies (Chapters 6 and 7) explore the processes of political violence and how TJ has shaped the political dynamics following the exemplary events of political violence inside conflicted democracies.

4 Methodology

This chapter offers an overview of the methods and procedures employed in this thesis, aimed at constructing an analysis regarding the application of TJ after political violence in electoral democracies. The methodology was built around the research question of "how" and "what": how TJ shapes political dynamics after political violence in electoral democracies and the effects of such dynamics on the political stability of both countries. To clarify the research path, this chapter is divided into four sections. The first one (4.1) demonstrates the data sources and case selection for the qualitative analysis, including a display of the databases consulted, with their pros and cons. The case studies design section (4.2) introduces the research strategy and the process of selecting the cases. Considering that the case studies as conducted through process tracing, or more specifically, an interpretative version of process tracing, the following section (4.3) explains the method and the objectives behind the methodological choice. Section 4.4 presents the tools for measuring the dependent variable, that is, political stability and the absence of violence. Finally, section 4.5 is a summary of the combination of methods in this thesis.

4.1 Data Sources and Case Selection

This thesis is based on the case studies design, which works not as a method but rather as a research strategy "to provide an analysis of the context and processes which illuminate the theoretical issues being studied" (Hartley, 2005, p. 323). To select the appropriate cases for the case studies, this research has first explored the universe of possible cases that fit into the criteria. To that end, I explored different global databases from the field of TJ, political violence databases and indexes regarding democracy and political stability as described in detail in table 6 below, with the aim of singling out cases from different world regions.

The first database I consulted was the Transitional Justice Database (Olsen et al., 2010), published in the *Transitional justice in the world, 1970-2007: Insights from a new dataset* by scholars from the TJ field, such as Tricia D. Olsen, Leigh A. Payne, and Andrew G. Reiter. The TJDB provides an expanded sample in terms of timeframe (1970-2010), location (global), and variety of political contexts, including both democratic transitions and civil wars, with all data downloadable at once. The pitfall is that it has not been updated since 2010.

The Transitional Justice Research Collaborative (Dancy et al., 2014) was elaborated afterwards as a collaborative project whose principal researchers are from the University of Oxford, University of Minnesota and Harvard University, such as Leigh Payne, also part of the TJDB and Kathryn Sikkink, whose work on the "Justice Cascade" (Sikkink, 2011) is also present in this thesis. Although the TJRC has a broader timeframe (1970-2012), it is not downloadable at once. Therefore, it is difficult to visualise cases departing from a research question. On the other hand, it is a valuable tool when the researcher already has the event in mind, allowing for a consultation of TJ measures related to different episodes worldwide.

The database Major Episodes of Political Violence (MEPV) from the Center for Systemic Peace was selected to assess and select episodes of political violence, which were later consulted at the TJRC, to observe whether there was a measure of TJ after the episode of political violence. The choice to use different databases relies on the fact that each one has strengths and limitations, therefore it is a way to avoid gaps to which Stewart and Wiebelhaus-Brahm (2017) called attention. For instance, some cases are illustrated in one database but not in the other. The TJRC, for example, was built based on research of various researchers: "TJRC researchers make various datasets to answer particular questions, and then we release those for replication and reuse" (Dancy et al., 2014), which means that if the case is not amongst those datasets from collaborative researchers, it does not appear at TJRC dataset.

Additionally, I used the Lexical Index of Electoral Democracy (LIED) to determine whether a country can be classified as an electoral democracy. The index evaluates electoral democracy in independent countries from 1800 to 2013, operationalising electoral democracy as a series of necessary and sufficient conditions arrayed in an ordinal scale instead of binary indices, which can be overly reductionist (Skaaning, 2021, p. 1). The LIED uses seven levels (0-7) to assess whether countries choose their legislature and executive through competitive elections, distinguishing between non-electoral autocracies (0), one-party autocracies (1), multi-party autocracies without elected executive (2), multi-party autocracies (3), exclusive democracies (4), male democracies (5), electoral democracies (6), and polyarchies (7) (Skaaning et al., 2015). Level 4 is the minimum score for a country to qualify as a democracy; that is, "it must have minimally competitive multiparty elections for its legislature and executive" (The Global State of Democracy Indices, 2020, p. 6).

For the case selection, the interest is on electoral democracies; therefore, the country selected must be characterised as electoral democracy in accordance with the Lexical Index

of Electoral Democracy (LIED). Following the pre-selection of the episodes of political violence, the strategy was to filter the data from the mentioned databases, following the requirements of (1) systematic political violence, followed by (2) a criminal tribunal as a form of TJ; but it is (3) not a case of regime change. It (4) takes place in an (electoral) democracy; and in the (5) period between 2002 to 2012, considering that the thesis focuses on the "third phase" of TJ (Teitel, 2003), where TJ has become a global norm, symbolised by the establishment of the ICC (2002). The time frame also allows a period for "outcome" observations. After gathering and reviewing data from databases/datasets displayed in Table 6 and filtering the cases, the result is the two cases illustrated in Table 7, presented on the next section (4.2).

Table 6. Databases

Database/Dataset Name	**Reference**	**Codebook**
Major Episodes of Political Violence (1946-2019)	Center for Systemic Peace (CSP). *Major Episodes of Political Violence*. Available at: http://www.systemicpeace.org/inscrdata.html	http://www.systemicpeace.org/inscr/MEPVcodebook2018.pdf
The Transitional Justice Data Base (1970-2010)	Olsen, Tricia D., Leigh A. Payne, and Andrew G. Reiter. 2010. *Transitional Justice in Balance: Comparing Processes, Weighing Efficacy*. Washington, D.C.: United States Institute of Peace. Available at: https://andyreiter.com/datasets/	https://andyreiter.com/wp-content/uploads/2020/09/Transitional-Justice-Data-Base-Codebook.pdf
Transitional Justice Research Collaborative (1970-2012)	Dancy, Geoff, Francesca Lessa, Bridget Marchesi, Leigh A. Payne, Gabriel Pereira, and Kathryn Sikkink. 2014. *The Transitional Justice Research Collaborative Dataset*. Available at www.transitionaljusticedata.com.	https://www.transitionaljusticedata.com/download
Lexical Index of Electoral Democracy (LIED) (1789-2020)	Skaaning, Svend-Erik, 2021, *Lexical Index of Electoral Democracy (LIED) dataset v6.0*. Available at: https://dataverse.harvard.edu/file.xhtml?fileId=4571029&version=2.0	https://dataverse.harvard.edu/dataset.xhtml?persistentId=doi:10.7910/DVN/29106

Source: prepared by the author.

4.2 Case Studies Design

I arrived at the experiences of Lebanon and Kenya as "exemplary events" (Wedeen, 2003) for an in-depth exploration of the phenomenon of interest. Lisa Wedeen (2003), for example, uses exemplary events as a means of dramatising her phenomenon of interest, for instance, the "relationship between state power and the experience of citizenship in the aftermath of national unification in 1990" (Wedeen, 2003, p. 1). In this thesis, the selected cases are exemplary events of political violence in electoral democracies that have experienced TJ. The exemplary event in Lebanon refers to the politically motivated assassination of former Prime Minister Rafik Hariri in 2005, whilst Kenya refers to the post-electoral violence in 2007/2008. The aim of the case study design and the selection of exemplary events in this thesis is to understand how TJ shapes political dynamics after political violence in electoral democracies and the effects of such dynamics on political stability and other emergent factors.

The two countries constitute so-called least-similar cases (George & Bennett, 2005; Gerring, 2007), considering that they are from distinct regions and are culturally discrepant. Although the *least-similar* method consists of comparing cases or countries that are very different, except for one independent variable and a particular outcome to be explained by the researcher, "it is impossible to either find cases that truly only share one independent variable, or in relation to the most similar method, share all but a single independent variable, and neither can cope with dependent variables that have multiple causes" (Lamont, 2021, p. 220). It is therefore advised that the least-similar method be taken as a general case selection criterion, commonly observed in comparisons between countries from different regions and with different cultures (Lamont, 2021, p. 220), as in the selected cases. Although Lebanon and Kenya are very different cases, they share similarities in key variables: they are electoral democracies that experienced instability and systematic political violence, and both implemented TJ measures, more specifically international criminal justice, in the form of international/hybrid tribunals, and forms of truth seeking. Therefore, adding a comparative perspective is a means of strengthening this thesis' argument.

Table 7 below describes the cases and information regarding the countries, type of political violence, duration, TJ measures and the LIED score used to confirm whether the cases gathered took place in a democracy. Democracy and autocracy hold core qualities that are "defining opposite ends of a governance scale" (Marshall & Gurr, 2005, p. 18). While those two forms of political regimes are extremes regarding forms of governance, they share the

capacity of maintaining a central authority, which is not the case in anocracies. Anocracies can be loosely defined as a form of semi-democracy, a "middling category rather than a distinct form of governance. They are countries whose governments are neither fully democratic nor fully autocratic" (Marshall & Gurr, 2005, p. 18). Other authors, such as Lührmann et al. (2018) prefer to employ the terms "electoral autocracy" and "electoral democracy" instead of open and closed anocracies, and others apply categories that range from non-electoral autocracies to polyarchies, as in the case of the LIED, applied in the research. The Lexical Index focuses on the "electoral model of democracy, sometimes referred to as a competitive, elite, minimalist, procedural, realist, "thin," or Schumpeterian conception of democracy" (Skaaning et al., 2015, p.1). It is not interested in other aspects of democracy, such as "civil liberties, the rule of law, constraints on executive power, deliberation, or nonelectoral mechanisms of participation. Electoral refers to elections, tout court" (Skaaning et al., 2015, p.1).

Table 7. Selected Cases

Beginning	End	Political Violence Type	States Directly Involved	Brief Description	Mechanism	LIED Score
2005	*	PA + TR	Lebanon	The UN Security Council establishes the Special Tribunal for Lebanon to prosecute those responsible for the attack of February 14, 2005, resulting in the assassination of the prime minister. In August 2011, the United Nations released the indictments (dated June 10, 2011) of members of Hezbollah for the assassination of Prime Minister Rafik Hariri along with the death of twenty people. **TJDB**	*Truth Commission* (UN's International Independent Investigation Commission to investigate the assassination of Lebanese Prime Minister Rafik Hariri and 19 others). **TJDB**: Mtype = 2; Mlevel = 3; Target = 2 *International Criminal Prosecution* (Special Tribunal for Lebanon) **TJDB**: Mtype = 1; Mlevel = 3; Target = 2	6
2007	2008	IV + EV	Kenya	Communal violence following the disputed presidential election. **MEPV:** ethviol (2007) = 1 ethviol (2008) = 4	*International Criminal Prosecution* (ICC) *Truth Commission* (Truth, Justice and Reconciliation Commission of Kenya) (**TJRC**)	6

Source: prepared by the author. Data source: Transitional Justice Database (Olsen et al., 2010); Major Episodes of Political Violence (Center for Systemic Peace); Transitional Justice Research Collaborative (Dancy et al., 2014); Lexical Index of Electoral Democracy (Skaaning, 2021).

As exposed in Table 7 above, there are two exemplary events I have chosen to deepen my insight into. First, the terrorist attack that was responsible for the politically motivated assassination of Rafik Hariri in Lebanon (2005) is listed in the Transitional Justice Data Base (TJDB) (Olsen et al., 2010). The types of Transitional Justice mechanisms according to TJDB in the case are Truth Commission (*Mtype=2*), described as the UN's International Independent Investigation Commission to investigate the assassination of Lebanese Prime Minister Rafik Hariri and 19 others, and Trial (*Mtype=1*), described as the Special Tribunal for Lebanon. Both mechanisms are of international level (*Mlevel=3*), where the target was non-state agents (*Target =2*). The political violence type, according to my classification based on Kalyvas (2019), is a terrorist attack (TR) as a means of promoting political assassination (PA). The LIED score in Lebanon in 2005 was 6, which means the country is classified as an electoral democracy.

The second case is related to the 2007/2008 post-electoral violence in Kenya. In this case, the TJDB could not be used because data has not been updated since 2010, and the ICC started the *proprio motu* investigation in Kenya in 2011, leaving the case out of the database. Therefore, I consulted the Major Episode of Political Violence (Center for Systemic Peace) for cases after 2010. The case of Kenya is listed at MEPV as ethnic violence, with a "Magnitude score of episode(s) of ethnic violence involving that state in that year" – which ranges from 1 (lowest) to 10 (highest) for each MEPV – of 1 in 2007 (*ethviol=1*) and 4 in 2008 (*ethviol=4*). I contextualised the classification as intercommunal violence (IV) based on Kalyvas's (2019) classification of types of political violence, adding electoral (EV) to the case. Considering that to explore the Transitional Justice Research Collaborative (TJRC) database, the user needs to know the country and type of TJ mechanism to use the "browse data" tool, it was necessary to consult the MEPV first, which lists the major episodes, and then connect the information with TJRC (Dancy et al., 2014) to find the TJ mechanism. The LIED score in Kenya in 2007 was also 6 (electoral democracy).

Lebanon and Kenya were the stages of systematic political violence, and the events to be observed can be considered *acute* episodes of political violence, which are "clearly discernible events that unfold over a limited time span and threaten the very existence of the democratic political, institutional order" (Weiffen 2018, p. 3), as it was discussed on chapter 3.3. In Lebanon, the attack took place in 2005, and in Kenya, the post-electoral violence took place in 2007/2008. Furthermore, in both cases, there is international criminal justice as a TJ mechanism, the STL hybrid tribunal for Lebanon, and the ICC investigation in Kenya, in

addition to truth-seeking mechanisms, although in the case of Lebanon, the UN Commission was created to explore the past facts, without the Justice and Reconciliation aspects as in the Kenyan Commission.

Case studies will be based on the data gathered through databases as discussed in section 4.1; qualitative data in the form of public statements, UN Resolutions, government documentation, reports by NGOs and related material; and interviews. During the research, I conducted semi-structured and unstructured interviews with a variety of participants ranging from civil society to international organisations, as described in Appendix 1 (Interviews). Initially, I opted for unstructured interviews with academic experts to gain insights from the cases. Subsequently, I conducted semi-structured interviews with policymakers involved in the processes of TJ and with members of civil society. On the organisational level, I visited the International Criminal Court in The Hague (Netherlands) and interviewed the accredited ICC Representative in the Ministries of Foreign Affairs of Kenya and Uganda, I contacted former employees of the Special Tribunal for Lebanon from the Outreach and Register sectors, and I conducted interviews with members of NGOs from Lebanon and Kenya. To preserve the anonymity of the persons I interviewed for this thesis, the names are not disclosed.

4.3 Process Tracing through an Interpretive Perspective

Considering that qualitative research itself encompasses the positivist and the interpretivist traditions (Lin, 1998) and the notion that positivist and interpretivist approaches are not only compatible but can also "inform one another in ways that further the goals of each" (Roth & Mehta, 2002), I consider both epistemological approaches in this thesis. To materialise the conjunction of the "what" and the "how," I conduct case studies through process tracing for causal explanation (O'Mahoney, 2015) but enrich it with an interpretive perspective. Such approach is known as interpretivist (Guzzini, 2012)/interpretive (Norman, 2015; Norman, 2021) process-tracing (IPT), which combines descriptive and interpretive approaches. The descriptive part in the case studies is characteristic of historical process tracing, since I follow a timeline of events in order to analyse the phenomenon of interest.

There are several reasons why process tracing can be enriched by incorporating *interpretive* elements:

> Process tracing is highly consonant with the interpretivist tradition of providing inductive and contextually thick accounts of meaning making, as well as attending to the dynamics of social institutions. Interpretive process tracing (IPT) combines the study of intersubjective meanings with causal explanations of particular outcomes. It is thus able to identify a broader range of causal mechanisms than those commonly studied in political science. By being attentive to mechanisms that capture non-intentional, habitual action, and the importance of social identities for such actions, IPT can generate more nuanced and more accurate explanations (Norman, 2015, p. 4).

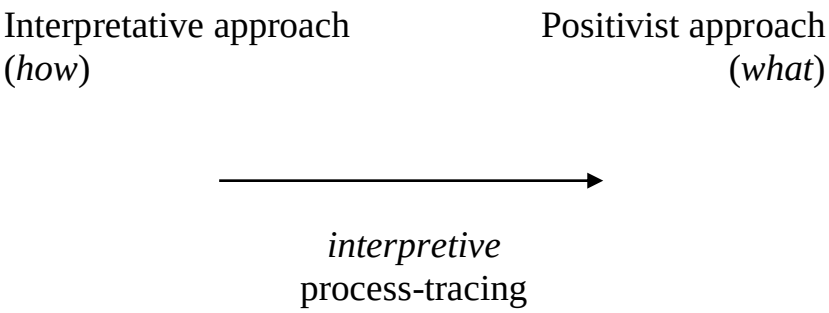
Acknowledging the limitations of looking specifically at the effects of TJ in two very different and complex cases, where many intervening variables play a role, and the outcome may have happened regardless of the TJ measures, this thesis is not interested in a strict positivist approach. Rather, it brings an interpretive approach to the analysis by employing the interpretive version of process tracing. Interpretative process-tracing is a means of understanding how the process, or the phenomenon of TJ in a context of political instability in conflicted democracies, can shape "how dynamic social processes play out" (Lamont, 2021, p. 108). In other words, it works as an alternative model of process-tracing's causal explanations since it adds an interpretive perspective to it, representing the "interpretive turn toward causal analysis […], a great promise in terms of exploiting the full potential of interpretive perspectives on central issues in IR" (Norman, 2021, p. 937).

Furthermore, the interpretive approach of process tracing is considered to be a method different from interpretive ethnographic work since it is "less open-ended in the sense that it seeks to identify and account for the interconnected steps in a relatively well-delineated sequence of events" (Norman, 2015, p. 5), implying that it does not share a deep immersion as rigorous as interpretive ethnography. Instead, the IPT approach aims to reconstruct processes, relying on complementary evidence that includes "interviews, textual material such as policy documents, archival material, and selected secondary sources to pinpoint the relevant steps in a particular process" (Norman, 2015, p. 5), as listed on the section Data sources and Case selection (4.1).

As there is no agreement on what constitutes an interpretive form of process-tracing (Checkel, 2021, p. 13), I take Guzzini's "open causality" (Guzzini, 2017) by being open during the process-tracing sequence of events for newly emerging factors and questions, and I follow Norman's idea of adding an interpretive and inductive approach to process-tracing (Norman, 2015). That approach is interesting because it brings the two parts of the research question together: first, by employing the interpretivist version of process tracing, the method is a tool

to explore how TJ shapes political dynamics after political violence in electoral democracies (the *intervening* variable). Second, it allows for the observation of the process and effects of such dynamics on the political stability of both countries, besides emergent factors (the *dependent* variable), as previously illustrated in Table 1 in the chapter Introduction (1.1). As part of such combination, Figure 4 below illustrates the understanding of positivist and interpretivist analysis as complementary processes (Roth & Mehta, 2002) that I conducted through an interpretive process-tracing (IPT) approach.

Figure 4. Methodological Approaches



Source: prepared by the author.

Finally, with the observations that emerge from the case studies, I draw on a comparative perspective to identify similarities and differences between the two cases. Looking at the cases – with similarities in key variables but located in very different geographical and cultural contexts – from a comparative perspective is a way of strengthening the thesis argument. The following section (4.4) displays the tools for analysing the changes in political stability and the absence of violence employed in conjunction with the case studies as part of the qualitative analysis.

4.4 Measuring Political Stability and Absence of Violence

Whether TJ has any impact on political stability and the absence of violence are the "pre-determined" dependent variables, as previously discussed. In political science, in particular, the concept of political stability is normally approached from a behavioural point of view; that is, it "can be defined and measured through reproducible and verifiable techniques" (Hurwitz, 1973, p. 449). In general, the main factors to be observed regarding political stability are (a) the absence of violence; (b) governmental longevity/duration; (c) the existence of a legitimate constitutional regime; (d) the absence of structural change; and (e) a multifaceted societal attribute. Political stability as the absence of violence is the most common view and the approach of interest in this research, equating political stability with the "absence of domestic civil conflict and violent behaviour" (Hurwitz, 1973, p. 449). From this point of view, "a stable polity is seen as a peaceful, law-abiding society where decision-making and politico-societal change are the result of institutionalized […] procedures and not the outcome of anomic processes which resolve issues through conflict and aggression" (Hurwitz, 1973, p. 449).

To observe variation in political stability and possible change in connection to the political dynamics following TJ in the cases, the research applies the index "Political Stability and Absence of Violence/Terrorism," utilised by the World Bank, that measures "perceptions of the likelihood that the government will be destabilised or overthrown by unconstitutional or violent means, including politically motivated violence and terrorism" (The World Bank, 2022). Its composition is based on different sources, including the Economist Intelligence Unit, the World Economic Forum, and the Political Risk Services, among others. In addition, the political instability index reflects the "likelihood of a disorderly transfer of government power, armed conflict, violent demonstrations, social unrest, international tensions, terrorism, as well as ethnic, religious or regional conflicts" (The World Bank, 2022).

Furthermore, as discussed in the "theoretical framework" of this thesis, transitions in conflicted democracies do not follow previous models of "paradigmatic transitions," as in a change from an authoritarian regime to a democratic one. I understand the notion of "transition" in conflicted democracies as a process of change, in this case, deep social transformation through TJ after political violence. To analyse variations in relation to political stability and how the political dynamics shaped by TJ affect stability, I combine data from the "Political Stability and Absence of Violence/Terrorism" index with qualitative data from the case studies.

4.5 Summary

This chapter presented an overview of the methodology employed in the thesis. The research process started with the research questions: how does TJ shape political dynamics after political violence in electoral democracies, and what are the effects of such political dynamics on political stability? To address such questions, I consulted global databases in the field of TJ and political violence to identify events that are related to the specific conditions of political violence in electoral democracies and TJ, at least in the form of international criminal justice, given that the interest of the research in on the third phase of the expansion of TJ, embodied by the establishment of the ICC (2002). After all, international criminal tribunals are the ultimate symbol of TJ as a global norm or a "standard practice for state behaviour after conflict" (Subotić, 2012, p. 107).

The case selection arrived at two very different cases: Lebanon and Kenya, which can be inserted in the least-similar case design. The proposal of adding a comparative perspective to this thesis has the objective of providing a stronger argument since the very different cases share the thesis' key variables. In order to dive into the cases, the case studies design was employed as a research strategy, conducted through a combination of process tracing with an interpretive element known as IPT and comparative case study approach of least similar cases. With this combination of methods, it is possible to aggregate both aspects of this thesis: the "how" and the "what".

5 Transitional Justice in the aftermath of Political Violence

The cases of Lebanon and Kenya, which are decidedly different, have in common the fact that both have been at the stage of systematic political violence. Based on the exemplary events of this thesis, those particular episodes of political violence led to TJ measures in the form of international criminal justice – the STL in Lebanon and the ICC in Kenya – and truth-seeking, for instance, the UN independent investigation in Lebanon, and the Truth, Justice and Reconciliation Commission in Kenya, according to the databases displayed previously on the chapter Methodology (4). The International Criminal Court is part of the "justice cascade" (Lutz & Sikkink, 2001) phenomenon, which represents the emergence of a decentralised, interactive system of global accountability (Sikkink & Kim, 2013, p. 275) with the legalisation of the norm of individual criminal accountability. As such, the ICC is a symbol of Transitional Justice as a global norm, a permanent Court that applies the international type of prosecution, a category that also encompasses so-called "hybrid" criminal tribunals, which combines international and legal processes (Sikkink, 2011). That is the case with the Special Tribunal for Lebanon (STL), the "first international tribunal to try crimes under national law," that is, under the Lebanese criminal code in relation to the crime of terrorism and other offences (Special Tribunal for Lebanon, 2022, p. 1).

Both the STL and the ICC are International Tribunals dealing with events of political violence inside electoral democracies. Previous research in (liberal) democracies has shown that "the concept of transitional justice […] can be applied to any society dealing with political violence. However, the application of a Transitional Justice framework is always a political choice, and the use of the term will vary depending on local politics" (Berastegi, 2017, p. 556). Considering those findings, Transitional Justice and political violence are not incompatible. Based on that scenario, this chapter examines the types of political violence related to the exemplary events (5.1), and the concept of plural societies with sharp internal divisions in the body politic (5.2), related to systematic political violence in Lebanon and Kenya, demonstrating that those countries can be classified as conflicted democracies. This chapter introduces the cases before the in-depth investigations conducted in Chapters 6 and 7.

5.1 Events of Political Violence

As illustrated in Table 7 in the Methodology section (4.2), the selected events refer to four different types of political violence: political assassination (PA) and terrorism (TR) in Lebanon, and intercommunal violence (IV) and electoral violence (EV) in Kenya. Although Kalyvas (2019) does not explicitly list *Electoral Violence* in his typology of political violence, authors such as Höglund (2009) consider EV to be a sub-category of political violence. Unlike electoral protests, it explicitly carries the violent aspect. EV is a type of violence carried out during the election period, which nonetheless can take place before the election, a phenomenon known as *pre-election violence*. Electoral violence also takes place *during election* day and even after the election – the so-called *post-electoral violence*. Actors involved in electoral violence can vary, including state actors, political parties, rebel groups, and paramilitary. Targets include electoral stakeholders (along with civilians); electoral information; electoral facilities; and electoral events. Either way, this type of political violence can be used as a mechanism for achieving a political goal, with the employment of activities such as intimidation, destruction of property and assassination (Höglund, 2009, p. 417).

Electoral violence carries a strategic perspective in the sense that its incentives "make violence an attractive tactic for political leaders" (Birch et al., 2020, p. 5). It works as a tool to achieve electoral ends, where the goals of violence include political exclusion in the forms of exclusion from candidacy, campaigning, from the provision of electoral information, from electoral participation and free electoral choice, from electoral victory, or from power. This last form of exclusion is executed via post-electoral protests as a form of contesting the election results. Furthermore, electoral violence can "unfold in the context of violent communal conflict" (Birch et al., 2020, p. 6); given that such type of conflict is organised according to communal identities, such as ethnic or religious, political leaders can use issues such as land and resources scarcity for electoral benefits. The manipulation by the political elites for electoral ends can trigger communal violence and result in "long-lasting effects on intercommunal relations and the potential for renewed violence outside of the electoral arena" (Birch et al., 2020, p. 6).

Intercommunal Violence or communal violence is also referred to as riots and pogroms. It is a type of political violence where both target and perpetrator are non-State actors, characterised by "lethal attacks by civilian members of one ethnic group on civilian members of another ethnic group" (Kalyvas, 2019, p. 15). It also embraces non-state violence between

rebel groups, supporters of different political parties, and identity groups (Kalyvas, 2019). Intercommunal violence typically involves fighting over local issues, such as land or control of the local government, as in the Kenyan case. The country suffered from intercommunal violence, especially following the 2007 general elections, when "Kenya was wracked by two months of fratricidal violence. Supporters of rival candidates clashed with each other, divided mostly along ethno-regional lines, leaving over 1,300 dead and hundreds of thousands displaced" (Brown & Sriram, 2012, p. 244). Moreover, this type of political violence can vary in scale in a way that communal violence, when it kills more than 1,000 per year, can be considered a *communal war*, as in the case of Nigeria. The conflict in the north of the country between herdsmen and farmers has cost the lives of 1,300 people only in the first six months of 2018 (Krause, 2019, p. 479).

The concept of *Terrorism*, in the context of a typification of political violence, can be understood as distinct from political assassination and from the violence that takes place in the context of civil war. It is a phenomenon characterised by "non-state violence exercised primarily during times of peace." Regarding targets, a terrorist group can have its own state as a target, as well as a foreign state, with members that can be domestic or transnational rebels (Kalyvas, 2019, p. 14). An illustrative case of terrorism relates to the Al Qaeda attacks on New York/Washington (USA) in September 2001, in addition to the terrorist attack against Rafik Hariri (Lebanon) in 2005, which is also a case of politically motivated assassination.

Political Assassination, notwithstanding, is a type of political violence that exists simultaneously in both cells, as demonstrated in Table 5 (chapter 3.3). It is typically an action committed by non-state actors against a state target, but it can also be the other way around, for instance, in the case of drone operations by the US in Pakistan and elsewhere (Kalyvas, 2019, p. 14). It is a "high profile" act of political violence, that can have serious repercussions in the political stability of a state, and which significantly increases the possibility of (violent) manifestations, coups, revolutions, and civil wars (Iqbal & Zorn, 2008, p. 396). Kalyvas (2019, p. 23) calls attention to the fact that this type of political violence should not be arranged under the category of terrorism "because its objective is not merely to terrorize the population at large but to produce a direct political effect." The same applies to authoritarian regimes targeting leaders of the opposition, an act best classified under state repression.

*Mass Protests***,** although not illustrated in Table 7, also emerged during the case studies as part of the events of interest, especially in Lebanon with the Cedar Revolution (2005) following the political assassination of Rafik Hariri. A Mass Protest is "a peaceful activity

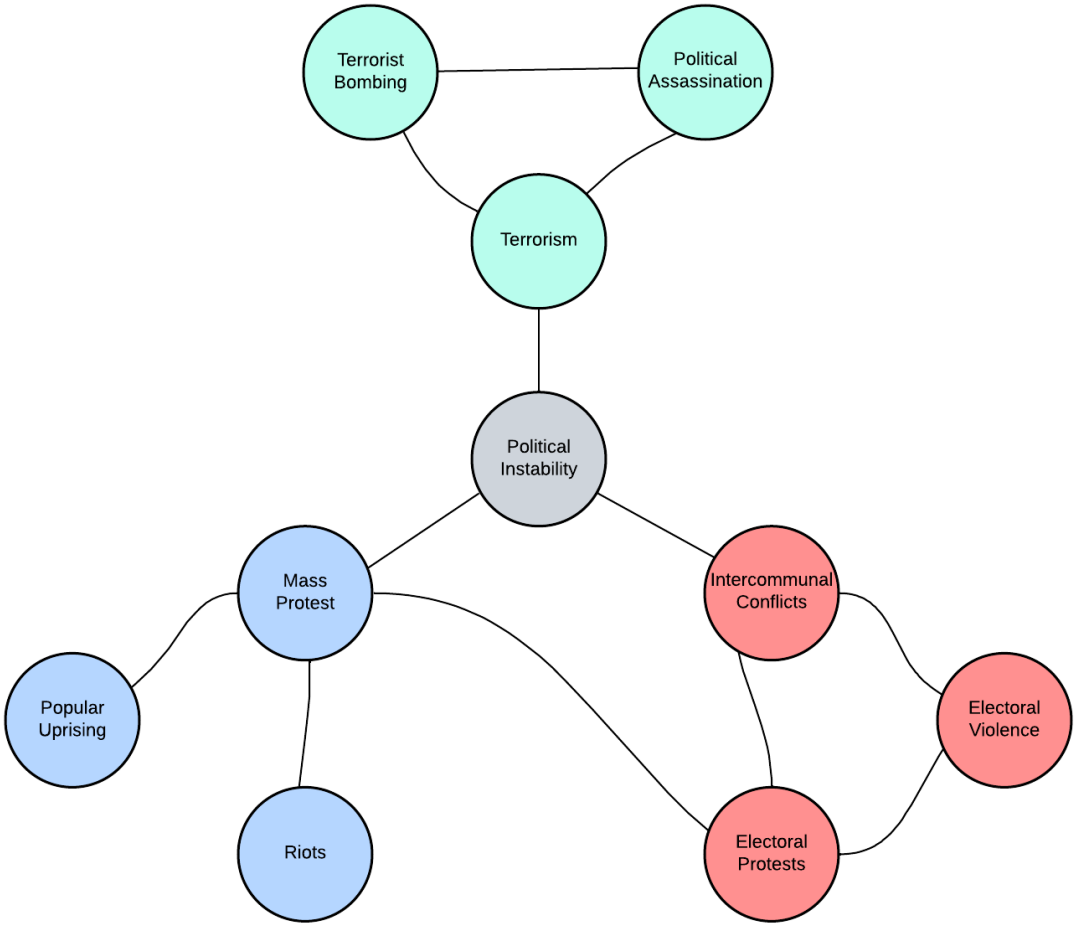
associated with the expression of group claims and the activity of social movements in democratic settings" (Kalyvas, 2019, p. 22). Low-level violence, especially directed to material objects, sometimes takes place and although rarely, violence can escalate turning into an uprising or rebellion, even into a revolution. In democracies, mass protests can exceptionally receive an overacted response from the police, causing causalities and fatalities. The situation is divergent in authoritarian regimes, where mass protests can be violently repressed. When repression fails, it can lead to authoritarian breakdown and even to a democratisation process. Revolutions can also be contagious, in the sense of crossing borders, such as happened during the "Colour Revolutions" (the 2000s) and the "Arab Spring" (2011) (Kalyvas, 2019, p. 22). Beaulieu (2014, p. 26) relates mass protests and elections in democracies in the "developing world", to *Electoral Protests*, occurring when "political elites controlling the state and elites representing the legal opposition cannot come to an agreement that allows the opposition to participate in the election and accept the results" (Beaulieu, 2014, p. 26). Electoral protest, as mass protest, carries the idea of a peaceful activity, a protest, but towards the dissatisfaction with election results or the election process. Mass protests, however, can escalate, taking the form of intercommunal violence (Kalyvas, 2019, p. 23).

5.1.1 Interconnections of Political Violence

As discussed in the "theoretical framework" chapter (3.3), different types of political violence can be interconnected following hierarchical and instrumental logics, as well as logics of escalation and substitution. From analysis of the case studies, there are two political violence interconnections I would like to highlight: intercommunal violence and electoral violence in Kenya and terrorism and political assassination in Lebanon. Electoral violence, as a subtype of political violence and understood as an attractive strategy for political leaders to achieve/maintain power (Birch et al., 2020), interconnects with intercommunal violence. Observing the context of the 2007 elections in Kenya, the post-electoral violence, or the initial (violent) contestation of the election results, led to violent acts that have escalated into intercommunal violence, a process that suits the "Escalation Logic." In the case of the 2005 terrorist attack in Lebanon, on the other hand, the terrorist attack was employed as an instrument to achieve another type of political violence: political assassination. In this case, the political assassination of former Prime Minister Rafik Hariri. Accordingly, terrorism is a type of political violence interconnected to political assassination in an "Instrumental Logic."

The case studies are illustrative of the diverse types of political violence that can take place in conflicted democracies, indicating that they are also symptoms of political instability. Acts of political violence are hardly an isolated phenomenon, and even though the case studies call attention to the above-mentioned acts of violence given their connection to the TJ measures applied in each case, political violence in Lebanon and Kenya was systematic. Kenya, for instance, has also experienced episodes of political assassination, as was the case in Lebanon, which in addition, has been the stage of mass protests, such as riots and mass rallies. Considering that the case studies are focused on civil types of political violence, Figure 5 below illustrates how political instability is connected to the occurrence of different types of political violence, which in turn also interconnect. The figure is delimitated to the types of political violence contained in the case studies.

Figure 5. Political Instability and Interconnections of Political Violence



Source: prepared by the author.

The case studies in this thesis are in-depth investigations of events of political violence that took place in those two countries. In the case of Lebanon, a terrorist attack was used as a tool for the politically motivated assassination of former Prime Minister Rafik Hariri. In Kenya, contested elections led to post-electoral violence and subsequently to intercommunal violence. Before immersing in the cases, the next section introduces key facts about the two countries as a means of preparing the ground for the case studies that are rich in detail. Bearing in mind that political violence in Lebanon and Kenya was systematic, the selected exemplary events of political violence are relevant for this thesis, given their connection to TJ. Furthermore, they are countries with plural societies and sharp internal divisions in the body politic, features that can also be observed in connection with systematic political violence, which are characteristics of conflicted democracies, as discussed next.

5.2 The Cases: Lebanon and Kenya as Plural Societies

As previously discussed in the theoretical chapter (3.2), the notion of "transition" in conflicted democracies does not coincide with a formal definition of the *interval* between political regimes (O'Donnell & Schmitter, 1986), as in paradigmatic transitions. Rather, situating "transition" in a context of political instability in conflicted democracies encompasses a more processual meaning, especially in relation to TJ, since it is the interaction between TJ and the political processes that will identify a transition in terms of (re)configuration of political dynamics after political violence. The term "conflicted democracies" (Aoláin & Campbell, 2005), furthermore, embraces democracy in a wide aspect, covering any country that meets minimal requirements of procedural democracies (Aoláin & Campbell, 2005, p. 176), such as free and fair elections. Since Lebanon and Kenya are countries classified as electoral democracies according to LIED, at least in the period when the acute episodes of political violence started, they are susceptible to being classified as conflicted democracies, also considering the countries' characteristics. To identify whether a country is a conflicted democracy, nevertheless, Aoláin & Campbell (2005) propose a two-step test:

1. *Sharp internal division*: "there must be a deep-seated and sharp division in the body politic, whether on ethnic, racial, religious, class or ideological grounds" (Aoláin & Campbell, 2005, p. 176)

2. *Political violence as a result of the sharp internal division*: "this division must be so acute, and the political circumstances such as to have resulted in or threaten significant political violence" (Aoláin & Campbell, 2005, p. 176).

To approach steps 1 and 2, the thesis introduces in the following sub-sections the Lebanese case (5.2.1) and the Kenyan case (5.2.2), with a focus on their characteristics of plural societies and the relationship between their sharp internal division and political violence. I apply the above-mentioned test to both countries representing the exemplary events to demonstrate that the categorisation of those countries as conflicted democracies applies. First and foremost, there is a fundamental difference between "pluralistic" and "plural" societies. The former is characterised by "socially significant cultural divisions, but individuals' commitments to cultural (that is, ethnic or religious) groups are not politically salient" (Rabushka & Shepsle, 2009, p. iv), while in a plural society "cultural cleavages have *overwhelming* political salience" (Rabushka & Shepsle, 2009, p. iv, emphasis added).

Both Lebanon and Kenya can be considered plural societies, where historical and cultural divisions have a considerable impact on politics. Rabushka and Shepsle (2009) made this observation already in the 70s: "Christians and Muslims in Lebanon constantly evince mutual distrust and communal self-centeredness" (Rabushka & Shepsle, 2009, p. 4). Furthermore, "Lebanese authorities have been unable to conduct a census since 1932 out of fear that public knowledge of a shift in the religious composition of the population would provoke militant demands for a change in the allocation of government positions" (Rabushka & Shepsle, 2009, p. 4). Lebanon is therefore classified as a "fragmented" plural society, characterised by multiple ethnic communities, without a dominant one able to provide political stability (Rabushka & Shepsle, 2009).

Ethnic rivalries in Kenya are also mentioned as part of what Rabushka and Shepsle (2009) classified as plural societies, where the prognosis for democracy is "nothing good" (Rabushka & Shepsle, 2009, p. iv). A process driven by intense conflict between communal groups would develop as follows: during colonial times, communal groups can form coalitions based on common interests since they desire to have the benefits of controlling the country. That may continue immediately after independence when the coalition's leader can adopt ambiguous policies to give a message to different communal groups that they have a chance to get the best outcome. However, the coalition is soon undermined because "communal politicians" start to make promises that are closer to their own constituents' ethnic preferences.

The result is polarisation and undermining of democratic institutions, as "a group that gains control of the state tries to cement its hold on power" (Rabushka & Shepsle, 2009, p. iv).

5.2.1 Introducing the Lebanese Case

Situated in the Middle East and maybe one of the only democracies in the region (Calfat, 2018), Lebanon is a parliamentary republic that has been the stage of systematic political violence. It is a plural society, multi-ethnic and plural-religious, with 11 officially recognised sects: "Shia, Maronite, Druze, Sunni, Greek Orthodox, Greek Catholic, Alawite, Armenian Orthodox, Armenian Catholic, Evangelical Protestant, and Jew" (Calfat, 2018, p. 269). All the recognised sects are represented in the government and possess judicial autonomy in the form of power-sharing. "Power sharing" refers to "the participation of representatives of all significant communal groups in political decision making, especially at the executive level" (Lijphart, 2004, p. 97), in addition to group autonomy, which means that "these groups have authority to run their own internal affairs, especially in the areas of education and culture" (Lijphart, 2004, p. 97). Power sharing and group autonomy, accordingly, are the primary attributes of the so-called power-sharing democracy or "consociational democracy" (Lijphart, 1969).

Considering the challenges involved for democracy in plural societies, where political instability is frequent, power-sharing is often used as a tool for dealing with internal divisions (Lijphart, 1969). In deeply divided societies, internal differences can be obstacles to a stable democratic system; therefore, achieving governmental stability and avoiding violence and conflict are leading goals of consociationalism, as well as democracy's own survival (Abboud, 2019), since "consociational democracy means government by elite cartel designed to turn a democracy with a fragmented political culture into a stable democracy" (Lijphart, 1969, p. 216). According to Lijphart (2004), establishing and maintaining a democratic government in divided countries can be more difficult than in homogenous ones, in addition to the notion that "the problem of ethnic and other deep divisions is greater in countries that are not yet democratic or fully democratic than in well-established democracies, and that such divisions present a major obstacle to democratisation in the twenty-first century" (Lijphart, 2004, p. 97). In such societies, "the interests and demands of communal groups can be accommodated only by the

establishment of power-sharing" (Lijphart, 2004, p. 97), besides group autonomy, which is another key element for establishing a successful democratic government in divided societies.

Figure 6. Consociational Democracy Characteristics

A. Executive power-sharing, forming a "grand coalition" (multi-party cabinet).

B. Mutual veto.

C. Proportional representation: enables groups to be part of the state's decision-making and occupy positions in different segments of society (according to their weight).

D. Segmental autonomy: possibility of self-rule for minority groups within the state.

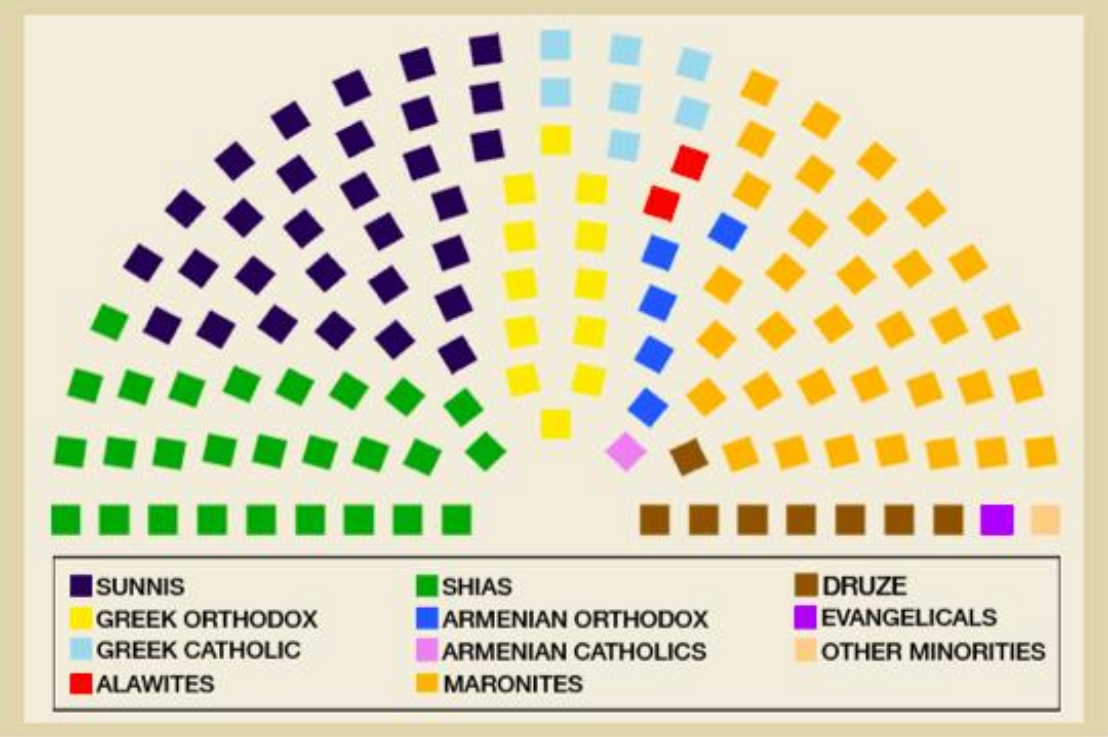
Source: prepared by the author, based on Abboud (2019, p. 1).

When plurality is combined with guaranteed representation for specific minorities, it necessarily entails determining which groups have guaranteed representation. On the other hand, proportional representation produces not only proportionality and minority representation but it treats all groups – racial, ethnic, religious or noncommunal – equally (Lijphart, 2004, p. 100), at least in theory. In Lebanon, power-sharing took the form of confessionalism (Abboud, 2019), which has followed the religious divisions of the country. The power-sharing arrangement follows confessional lines, distributing the political power proportionally among the different religious communities mentioned (Calfat, 2018, p. 270).

The President, a Maronite Christian, is elected by a two-thirds majority of the National Assembly. Although he is the head of the state, the cabinet, formed by a Sunni Muslim, holds more executive power than the president. The speaker, moreover, must be a Shia Muslim who is consulted by the president before inviting the Prime Minister. Lastly, the cabinet requires a "vote of confidence" from the National Assembly to remain in power, which is "rarely exercised in practice" (Barnett et al. 2023, p. 1), considering that "a cabinet usually falls because of internal dissension, societal strife, or pressure exerted by foreign states" (Barnett et al. 2023, p. 1). Figure 6 below illustrates the confessional system in Lebanon after the Taif Agreement (1989), ensuring that parliamentary seats are equally distributed between Christians (Maronite, Greek Orthodox, Greek Catholic, Armenian Orthodox, Armenian Catholic, Evangelical,

Minority Christian) and Muslims (Sunni, Shia, Druze, Alawite). Before the Taif Agreement, however, the distribution would maintain a 6:5 majority for Christians (Verdeil, 2019).

Figure 7. The Confessional System



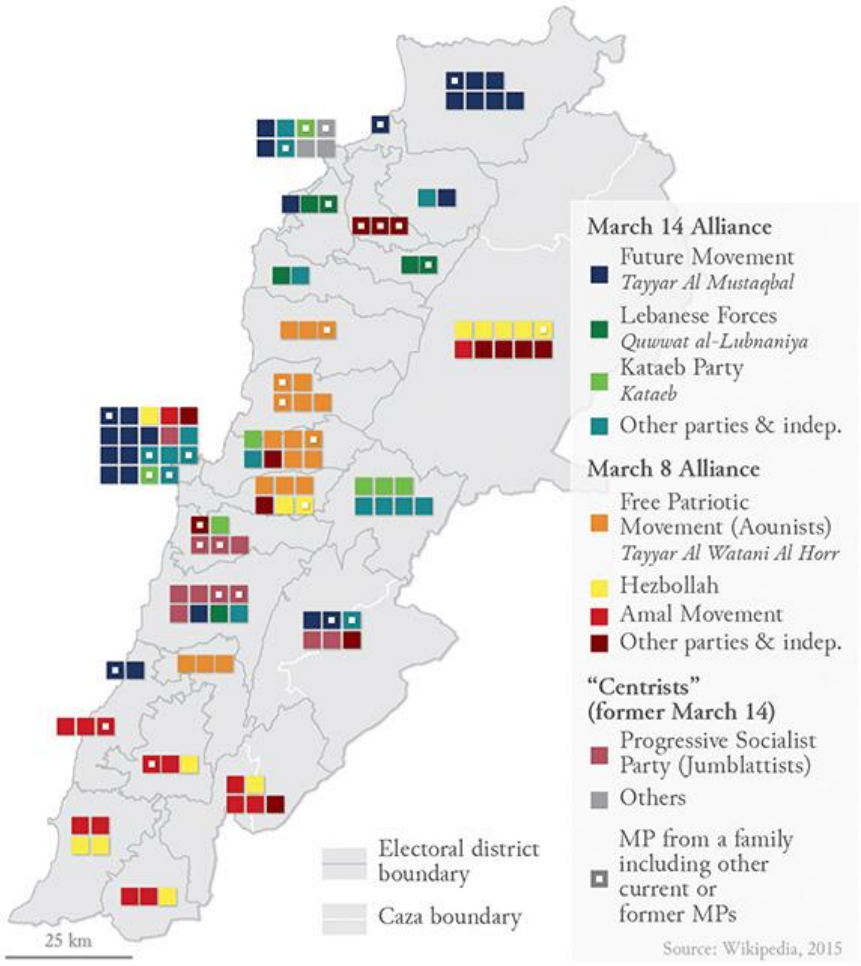
Source: Petallides (2011, p. 1).

In the Lebanese case study, there are key moments such as the Civil War (1975-1990); the Taif Agreement (1989); the withdrawal of Israeli troops from southern Lebanon (2000); the assassination of Rafik Hariri (2005) in Beirut; the arrest of four pro-Syrian generals charged over the assassination of Rafik Hariri by the Lebanese authorities (2005); the Cedar Revolution (2005); the UN Security Council decision of establishing the STL to try suspects in the assassination of the former Prime Minister (2007); and the opening of the STL in The Hague (2009), whose first decision was to liberate the four generals arrested since 2005.

After the assassination of Hariri, two alliances emerged in Lebanon: the “8 March” Alliance and the “14 March” Alliance. The first was formed by Hezbollah and the Free Patriotic Movement (FPM), together with other smaller parties. Hezbollah and the regime of Bashar al-Assad were blamed by many in Lebanon for Hariri’s death, which resulted in protests and the end of the Syrian occupation (1976-2005); therefore, the formation of the alliance was a form

of strengthening its position. In opposition, the 14 March Alliance was an anti-Syrian coalition led by Saad Hariri (Rafik Hariri's son) from the Future Movement (FM) (Khatib, 2021), which won control of parliament in the June 2005 elections. Figure 8 below illustrates the political coalitions in 2009, as well as the MP seats.

Figure 8. MP Seats and Political Coalitions in 2009



Source: Verdeil (2019, p. 32).

The 8 March and 14 March coalitions are key actors in the political dynamics that took place after the politically motivated assassination of Hariri. Their interaction following the establishment of the STL is going to illustrate how TJ shapes those political dynamics after events of political violence. Furthermore, those political dynamics are also going to have effects on the political stability of the country.

Lebanon as conflicted democracy

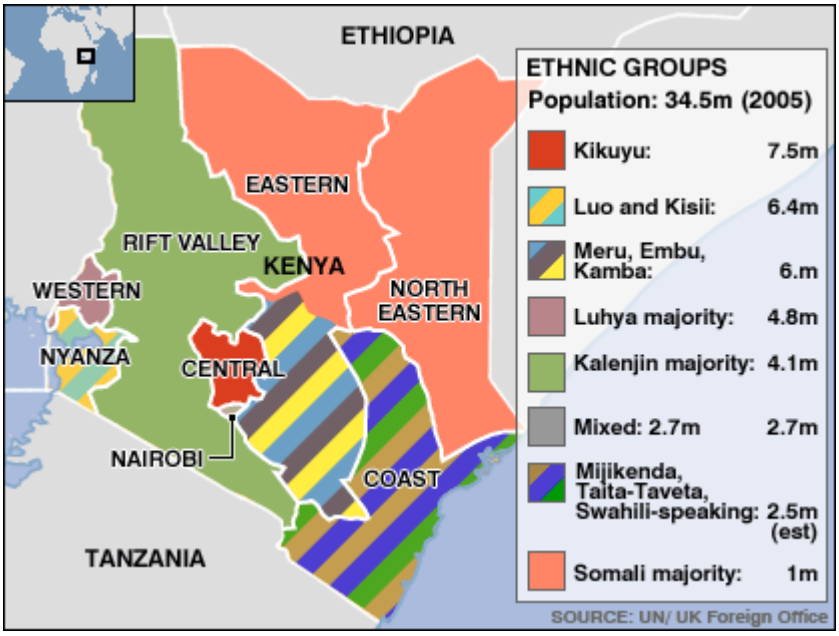
Applying the conflicted democracy "test" (Aoláin & Campbell, 2005) to the case of Lebanon, it is noteworthy that the Lebanese body politic is deeply divided in accordance with a sectarian power-sharing structure that was created after Lebanon's independence from France in 1943. In this system, all 18 religious' sects, as declared in the country's Constitution, must be represented in government, the military and civil service. The most important positions in government follow this division in a way that the President must be a Maronite Christian, the Prime Minister a Sunni Muslim, and the speaker a Shia Muslim (Barnett et al., 2023). Such division can be considered as a way of distributing power to ensure equality among the different sects; however, corruption and patronage are characteristics of the system.

As for the second step in the test, there is evidence that the political and religious differences – also illustrated by a two-camp (coalitions) division: the 8 March and 14 March alliances – led to and threatened political violence in Lebanon, such as mass riots (Khatib & Wallace, 2022), a civil war as a result of "unresolved sectarian differences" (Global Conflict Tracker, 2022, p. 1), and politically motivated assassinations and terrorism, such as the 14 February 2005 terrorist attack that killed the former Prime Minister of Lebanon, Rafik Hariri, and others.

5.2.2 Introducing the Kenyan Case

Situated in East Africa, Kenya, which became a Republic in 1964 after independence from British colonisers in 1963, was also the stage of systematic political violence. Kenya's ethnic diversity is composed of over 70 distinct ethnic groups, each with its unique culture and traditions. Central, Rift Valley, Western, Eastern, Nairobi, and Nyanza regions, are the areas with the largest populations and are home to the five largest ethnic groups: Kikuyu, Luo, Luhya, Kamba and Kalenjin. Those groups account for around 70% of the population in Kenya, and considering the demographic density of the mentioned areas, those areas have been the focus of national leaders during general elections (Okilwa, 2015, p. 9). Figure 8 below illustrates the ethnic groups in Kenya and their distribution around the different areas in the Kenyan territory, including the regions of North-eastern, with Somali majority; and the Coastal region, composed by the Mijikenda and other smaller groups.

Figure 9. Ethnic Groups in Kenya



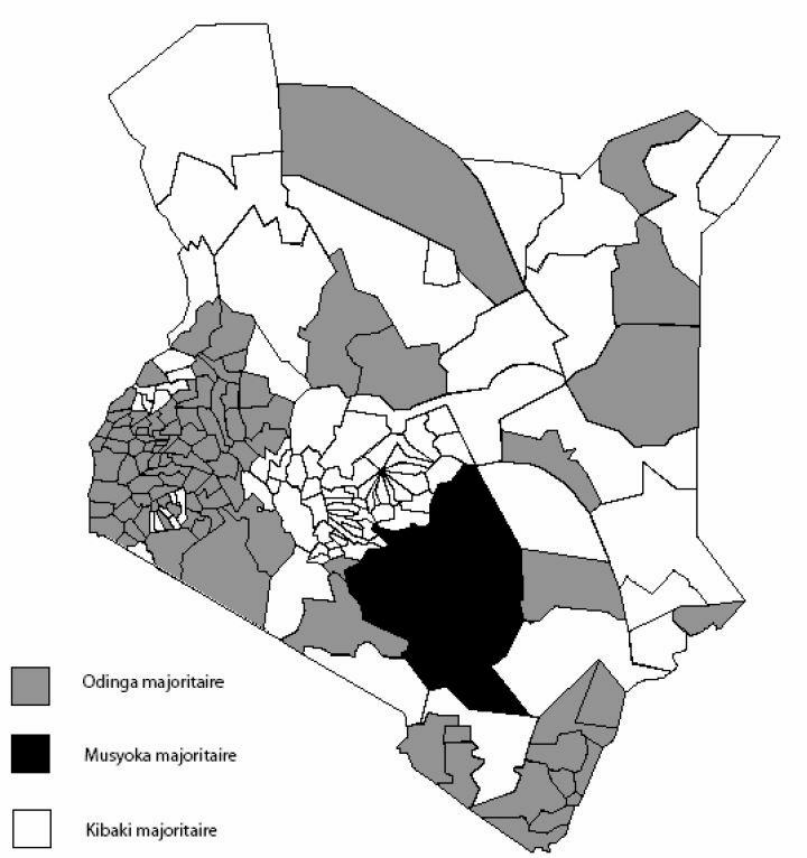
Source: Doyle (2005, p. 1). Data Source: UN/UK Foreign Office.

When Kenya became independent, the new constitution placed the Prime Minister as head of the cabinet, chosen by a bicameral National Assembly. However, in a series of amendments in the 1960s, the National Assembly became a unicameral body, proclaiming the Kenya African National Union (KANU) as the only legal political party, and replaced the Prime Minister position with an executive President. The President's power reached as far as the capability to dismiss the attorney general and judges, becoming the main political power in the country. There was, therefore, a centralisation of power in the figure of the president. After constitutional reforms, Kenya returned to multiparty politics in 1991, granting greater freedom to political parties in the following elections (Ominde et al. 2023, p. 1).

In the 2007 general elections, there were two main alliances, which were based on ethnic groups. The Party of National Unity (PNU), on one side, was composed of Kikuyu, Embu, and Meru ethnic groups, and it was led by Kibaki, a Kikuyu himself. On the other side, there was the Orange Democratic Movement (ODM) alliance, formed by Luo, Luhya, and Kalenjin, in addition to several other small communities, which was led by Odinga from the Luo ethnicity. The political leaders, therefore, were personally representing their own ethnic group in a way that the general elections confirmed the "congruency of ethnic identity and political party in Kenya" (Jacobs, 2011, p. 5) since the electorate has voted following their own ethnic lines (Jacobs, 2011), as illustrated in Figure 10 below, that shows the leading candidates in the 2007

presidential elections in each area. The light grey colour on the map refers to the regions where the majority voted for Odinga; white for Kibaki; and black for Musyoka, who, although not the favourite in the dispute, was also running for the presidential elections.

Figure 10. Map of Leading Candidates in the 2007 Presidential Elections



Source: Calas (2008, p. 9).

Increased tensions in the context of the election results turned into violent contestation among the different ethnic groups. However, the 2007/2008 post-electoral violence was not the only case of political violence in Kenya, considering that electoral violence was already present in 1992, when the country returned to multi-party elections, and in the 1997 general elections. As concluded by the Truth, Justice and Reconciliation Commission (2013, p. 26): "ethnicity was used as a political tool for accessing power and state resources and for fuelling violence."

The political system would change in the aftermath of the 2007/2008 post-electoral violence. Through new legislation, the Kenyan Constitution was amended in 2008 to alter the

executive branch, recreating the post of Prime Minister with the creation of a coalition government. In addition to the PM post, the legislation added two deputy minister posts (Ominde et al., 2023). The Constitution's amendment was a way of accommodating both Kibaki, declared the winner of the 2007 elections, and Odinga, who challenged the election results. Already in 2010, however, a new constitution eliminated the Prime Minister position again (for the next elections). On the other hand, the 2010 Constitution brought a reduction in the power of the President by re-establishing a bicameral parliament, adding provisions for a decentralised government based on counties. Lastly, the new constitution established a bill of rights for Kenyans (Ominde et al. 2023, p. 1).

Kenya as conflicted democracy

In Kenya's history, ethnical divisions are very present, as discussed above, and were intensified during the British colonial rule (1920 to 1963), which used tribalism as a "rule method of governing" (Nyambura, 2017, p. 1). One community was played against the other, especially the Kikuyus and Luos, which do not coincidently refer to Kibaki and Odinga ethnic groups, respectively. After independence, politics in the country have accompanied ethnic tensions, for instance, during the Moi's regime, characterised by politics of "divide and rule" and marked by tribal resentment, leading to an outbreak of clashes in 1992. Those factors illustrate the "sharp internal divisions" (Aoláin & Campbell, 2005) in the country.

In relation to the second part of the conflicted democracy "test" (Aoláin & Campbell, 2005), ethnical divisions in the Kenyan government and disputes over political power resulted in political violence, especially after the 2007 general elections. Mwai Kibaki, from the Kikuyu, was declared the winner of the presidential election; however, under accusations of election rigging and manipulation, it led to clashes among the larger ethnic tribes: Kikuyus, Luos and Kalenjins. The "demons of tribalism really flared up after the hotly disputed national elections, which left more than 1,000 people dead and thousands of others internally displaced" (Nyambura, 2017, p. 1).

5.3 Summary

Considering the exposed above, it is reasonable to infer that the countries from the case studies passed the *conflicted democracy test*: Lebanon, regarding its sectarian political system (religious divide), and Kenya, with its ethnical division, both experiencing political violence and threats of political violence in connection with the sharp internal divisions in the body politic. Measures of Transitional Justice took place in Lebanon, as well as in Kenya, after the acute episodes of political violence that took place in the two countries. In the end, there is a common goal for TJ in both "paradigmatic transitions" (Berastegi, 2017) and in "non-transitions" (Hansen, 2011), such as "transitions" in conflicted democracies: "the achievement of a stable and peaceful democracy" (Aoláin & Campbell, 2005, p. 174). Paradoxically, Transitional Justice in conflicted democracies should not be necessary since the democratic system itself should have prevented it from becoming necessary (Aoláin & Campbell, 2005, p. 174).

The cases of Lebanon and Kenya, even though they are very distinct in several aspects, including culturally and geographically, are similar in relevant aspects for this research: both countries experienced TJ judicial mechanisms following an acute episode of political violence. In the first case, an international hybrid Court (the STL), and in the second, an investigation by an international permanent Court (the ICC), in addition to measures of truth-seeking. Another particularity is that both countries can be considered conflicted democracies with a history of pluralism, which have applied power-sharing arrangements as a political tool in the search for political stability. Therefore, the two cases are illustrative of a larger phenomenon: conflicted democracies dealing with political violence through TJ measures in the context of political instability.

6 Political Violence in Lebanon and the STL

The first case study analyses how TJ has shaped social and political dynamics after the episode of political violence in Lebanon. Through a process-tracing, this chapter explores the circumstances of the event of interest: the politically motivated assassination of former Prime Minister Rafik Hariri and the application of TJ measures in the context of political instability. Thus, the chapter is divided into the following events/periods: the first part deals with the civil war and external interventions, including the Syrian occupation (6.1); the second part deals with developments after the Taif agreement, which brought the civil war to an end (6.2). The third part deals with the assassination of Rafik Hariri, the Cedar Revolution, and the establishment of the Special Tribunal for Lebanon (6.3). Section 6.4 is dedicated to the criminal prosecution embodied by the STL, the political context of that time and the cases before the STL. Lastly, section 6.5 is a summary of the Lebanese case, paying special attention to the TJ measures following the acute event of political violence.

The background of the Lebanese case is a civil war that started in 1975 and "was not formally ended by a peace agreement, but rather by the regionally brokered Taif agreement of 1989, which ostensibly set out to address national reconciliation and promote some administrative reforms" (Sriram et al., 2011, p. 340). With the end of the civil war, Israeli forces eventually depart from the south; however, considering the remaining occupation of Lebanon by Syrian forces until 2005, many of the Taif agreement's provisions, especially those "designed to remove the influence of sectarianism on politics, remained un-implemented. Patterns of corruption and clientelism have remained embedded in political and institutional culture, hampering most efforts at either reform or accountability" (Sriram et al., 2011, p. 340).

As for Transitional Justice measures, the end of the civil war also brought the 1991 general Amnesty Law (law No. 94/91), a limiting TJ tool for broader accountability. In the absence of significant accountability for abuses of human rights – except for selective prosecutions of a few, mainly based on political reasons – domestic justice was selective. "Corruption and clientelism have remained embedded in political and institutional culture, hampering most efforts at either reform or accountability" (Sriram et al., 2011, p. 340). Contrary to that scenario, however, was the criminal accountability promoted in response to the assassination of former Prime Minister Rafiq Hariri in 2005, which led to the application of TJ in the form of a hybrid criminal tribunal, combining international and domestic law.

The Special Tribunal for Lebanon, although created to contribute to the peace and the rule of law, was not designed to deal with events related to the civil war, which were left to another TJ mechanism: the amnesty law (Sriram et al., 2011, p. 341). Afterwards, truth commissions directed to the civil war were established: the Official Commission of Investigation into the Fate of the Abducted and Disappeared Persons (2000); and the alternative Commission of Investigation into the Fate of the Abducted and Disappeared Persons (2001). A joint Lebanese Syrian Commission (2005) was installed to investigate the disappearances in the hands of security forces in Syria. After the 14 February 2005 bombing attack that killed Rafik Hariri and others, a UN International Independent Investigation Commission was established under Security Council Resolution No. 1595 to investigate the terrorist attack (Transitional Justice Research Collaborative Data Base, 2022).

6.1 Civil War and External Intervention in Lebanon

After independence from France, members of the Lebanese elite devised the National Pact of 1943. Bishara al-Khuri became President of the Republic and Riyad al-Sulh Prime Minister (Chaitani, 2007). A verbal agreement stipulated that both Muslims and Christians of Lebanon would aim at a national identity, incorporating confessionalism in the political system and the civil service. The Lebanese presidency would be for a Maronite Christian, the Prime Minister a Sunni Muslim, and the speaker of the Chamber of Deputies a Shi'ite Muslim. Representation in Parliament would follow the 1932 census on a 6:5 ratio (Christians to Muslims), and the civil service appointments and decisions regarding public funding decisions would be based on sectarianism (Seaver, 2000). The National Pact was a form of consociational democracy. Nevertheless, for a consociational democracy system to be successful, there are specific requirements, according to Lijphardt (1969), as described in Table 8 below.

Table 8. Consociational Democracy Requirements

A	Elites have the ability to accommodate the divergent interests and demands of the subcultures.
B	This requires that they have the ability to transcend cleavages and join in a common effort with the elites of rival subcultures.
C	This, in turn, depends on their commitment to the maintenance of the system and to the improvement of its cohesion and stability.
D	Finally, all of the above requirements are based on the assumption that the elites understand the perils of political fragmentation.

Source: prepared by the author, based on Lijphardt (1969, p. 216)

Even under the consociational system, Lebanese consociationalism had a characteristic that deviates from Lijphart's model: "the National Pact was exclusive in nature" (Geukjian, 2017, p. 24). There were confessional ratios for parliamentary representation, political offices, and control of the armed forces (Burgis-Kasthala, 2013), however, although the demographic dynamic has changed over the years, the formula based on the 1932 census remained unchanged. By 1975 the "corporate confessionalism"[7] system, which required sectarian segregation, led to deep resentment, for instance, the "socio-economic spatial stratification between the primarily affluent Maronite eastern suburbs of Beirut and the adjacent poorer Shia southern suburbs" (Salamey, 2009, p. 88). It is no coincidence that when the civil war started in 1975, the Green Line between the two neighbourhoods in Beirut – Shayah (Shia) and Ayn Al-Rummanah (Christian) – was the first war front, shifting to East and West Beirut later in the 1980s (Salamey, 2009). Lebanon became polarised amid rising tensions between two movements: in one side, the conservative Lebanese Front, led by Maronite elites; and on the other side, the "progressive" Lebanese National Movement (LNM), which demanded the *de-confessionalization* of the political system, a movement led by Kamal Jumblatt (Seaver, 2000).

In the first phase of the civil war (1975-76), which was fought by militias, most killings were retributive, including vengeance massacres such as the Samedi Noir ("Black Saturday")

[7] Althoguh Lijphart defended consociationalism as the best option for plural societies, Lebanon's consociational democracy had a corporate form of power sharing. That means it "predetermines power positions among ethnic and sectarian national groups," for example, the Presidency belongs to a Maronite and the First Minister is a Sunni Muslim (Salamey, 2009, p. 85).

in Beirut, the Karantina Massacre (a Palestinian-Muslim district overrun by Phalangists militias) and the Damour Massacre, a retaliation for the Karantina in the Maronite Christian town of Damour. Those massacres at the beginning of the Lebanese civil war were followed by the 1982 Sabra and Shatila massacre, when the "Israeli-backed Phalange militia killed between 2,000 and 3,500 Palestinian refugees and Lebanese civilians in two days" (Al Jazeera, 2022, p. 1). During the war, "warlord rivalry peaked with numerous assassinations and assassinations attempts, but most remain unrecorded, and only the most high-profile attacks are properly documented" (Knudsen, 2010, p. 8). For instance, the assassination of Kamal Jumblatt in 1977, and the President-Elected Bashir Gemayel in 1982 (Knudsen, 2010, p. 8). In the early 1970s there was also an intensification of confrontations between the Lebanese Armed Forces (LAF) and the Palestinian Liberation Organization (PLO), a polarization that lasted until 1975 when fighting became widespread after the attack of members from the Democratic Front for the Liberation of Palestine (DFLP) against Phalange members (ICTJ, 2014, p. 3).

Israel invaded southern Lebanon in March 1978, leaving the UNSC "gravely concerned at the deterioration of the situation in the Middle East" (UN Security Council, 1978, p. 1), calling Israel to cease its military actions in the region and to withdraw from the Lebanese territory. The UNSC Resolution No. 425 also created the United Nations Interim Force in Lebanon (UNIFIL), under the own request of the Lebanese government, to confirm the Israeli withdrawal from the southern region and to assist the government in "ensuring the return of its effective authority in the area" (UN Security Council, 1978, p. 1), a request that Israel refused. The invasion contributed to the destabilisation of Lebanon, and clashes continued even under UNIFIL. In the end, Lebanon was occupied by both Israel and Syria as unilateral interventions, and that would only change in 1983 when Israel started to withdraw its troops from Mont Lebanon. The Tripartite Agreement of December 1985 amongst the three "most powerful militias" – Walid Jumblatt, Berri, and Hubeika – meant a new power-sharing arrangement replacing the proportionality system. Still, it collapsed in 1986 due to the lack of internal consensus and support. However, in May 1989, the Tripartite Committee, composed of Saudi Arabia, Morocco, and Algeria, assembled in Casablanca for the Arab Summit to draft a settlement for the conflict. The report was rejected by Syria, leading the Committee to draft a second document in September 1989, the "National Unity Charter," to discuss a new power-sharing agreement, followed by successful negotiations (Geukjian, 2017, p. 35).

UNIFIL deployed a peace-keeping force, with the collaboration of foreign supporters including "France, Iran, Iraq, Libya, Saudi Arabia, and the United States" (ICTJ, 2014, p. 1).

Instability persisted due to domestic and external factors, in addition to regional confrontations and sectarianism. The Lebanese civil war was internationalised, with different stages as alliances and relations among different actors unfolded. Foreign intervention played a significant role from Palestinian factions, Israel, and Syria. Lebanon was a playing field for regional powers, struggling in the middle of other countries' interests and conflicts, such as the Arab-Israeli conflict and the Palestinian armed presence in the country (ICTJ, 2014). The 15-year-lasting war was "extremely bloody, with atrocities and massacres committed by all sides to the conflict" (Knudsen, 2010, p. 7). It resulted in more than 150,000 deaths and 800,000 displaced people and a long list of human rights violations (Knudsen, 2010).

> The impact of the war on the Lebanese people has been significant. It is estimated that some 2.7 percent of the population was killed as a result of violence, 4 percent wounded (the overwhelming majority being civilians), 30 percent displaced, and about 33 percent have emigrated. Further, 0.36 percent of the population was permanently disabled, and 0.75 percent forcibly disappeared. *Serious human rights violations have included systematic and mass displacement, wide scale killing, rape, torture, arbitrary detention, and enforced disappearance* (ICTJ, 2014, p. 1, emphasis added).

The agreement that finally ended the war – the Taif Agreement or Document of National Accord – was signed on 22 October 1989 in the Saudi town of Taif, establishing a power-sharing arrangement among the different parties. According to the document, until the Chamber of Deputies passes an election law "free of sectarian restriction," the parliament seats will be divided: "a) equally between Christians and Muslims; b) proportionately between the denominations of each sect; c) proportionately between the districts" (Taif Agreement, 1989, p. 1). The Agreement's formula was set to equally share seats among the Christian and Muslim sects, readjusting the National Pact of 1943 that used to favour Christians according to the 6:5 ratio. Despite the ratio change, it kept the "unwritten convention" that confessionalism would determine the division in the political system: in the power-sharing agreement, the President would be a Christian Maronite, the Prime Minister a Sunni Muslim, and the speaker a Shia Muslim (Calfat, 2018, p. 277).

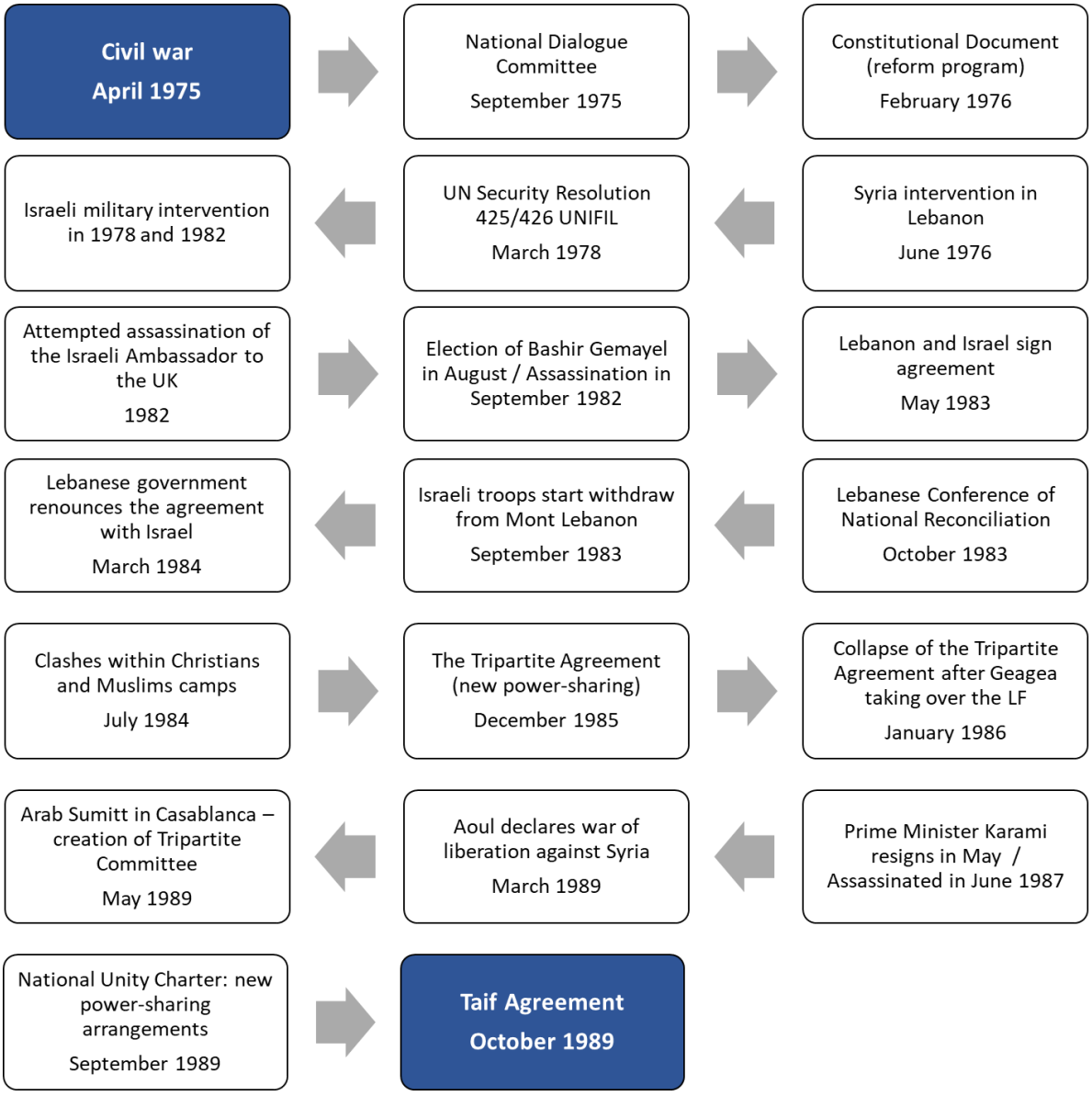
The Taif Agreement, however, did not deal with the war's legacy of violence; instead, "a flawed transitional process emanated from a consensus reached at Taif among the conflict's protagonists" (ICTJ, 2014, p. 1), including a general amnesty through the General Amnesty Law passed by the Parliament on 26 August 1991, which granted amnesty for crimes committed by the armed groups and militias (Knudsen, 2010). "No truth-seeking, mismanaged reparations, and incomplete institutional reform, all of which undermined prospects for justice and national

reconciliation" (ICTJ, 2014, p. 2), were part of a deal to leave the unpleasant truth for warlords behind. In the end, the Agreement targeted the terms for the post-war period but only concerned victims of the war regarding the return of displaced persons and the amnesty (ICTJ, 2014).

The Parliament passed the General Amnesty Law in 1991, pardoning all crimes committed before March 1991. From President Elias Heawi's statement, amnesty to factional leaders and fighters was necessary to achieve peace. An amnesty law, however, undermined accountability for the past violations committed during the civil war, protecting the perpetrators. The "culture of impunity" was present in Lebanon, even after Syria's withdrawal from Lebanon in 2005. For instance, Lebanese Forces leader Samir Geagea – convicted of four assassinations, including that of Rachid Karameh, a former Prime Minister – was granted a special pardon in 2005. Furthermore, "to maintain a sectarian balance, as Geagea was a Maronite Christian, members of Parliament accepted and signed another amnesty for the Sunni Dinnieh and Majdal Anjar Group"[8] (ICTJ, 2014, p. 10). On the other hand, amnesty was not granted to the South Lebanon Army (SLA) members, who had secured the area related to Israel's invasion of Lebanon in 1978, which established a "security zone." Israel withdrew from Lebanon on May 2000, and the SLA members were tried for their collaboration with Israel (ICTJ, 2014, p. 10).

[8] "This Islamic militant group had clashed with Lebanese Armed Forces from December 1999 to January 2000, leaving 14 soldiers and 24 militants dead. These two amnesties represent the persistence of the culture of impunity in Lebanon" (ICTJ, 2014: 10).

Figure 11. From the Civil War to the Taif Agreement



Source: prepared by the author.

6.2 The post-Taif Period

The post-Taif period was followed by further political instability, including acts of political violence such as the politically motivated assassination of René Moawad on 22 November 1989, the recently elected president of Lebanon shortly after the Taif agreement, demonstrating that politically motivated assassinations in Lebanon started way before the assassination of Rafik Hariri. President Hrawi was elected next, a pro-Syria politician, promoting a new cooperation agreement with Syria: The Treaty of Brotherhood, Cooperation

and Coordination (1991). “The treaty provides the formation of joint Lebanese-Syrian committees to coordinate foreign affairs, defence and security, as well as economic and social matters” (Hijazi, 1991, p. 1). It was the inauguration of the Syrian tutelage in Lebanon, marked by the signing of the Pact of Defence and Security by Lebanon and Syria, which provided cooperation in matters such as military, security, intelligence services and foreign policies. If, on the one hand, Syria was maintaining security and stability in Lebanon, on the other hand, it was impeding a democratic system and imposing its own candidates in the general elections. A new electoral law was created to benefit pro-Syria Muslim and Christian politicians: “although the post-Taif regime tolerated pluralism and the participation of various politicians, the new law favoured government incumbents and aimed to weaken and often defeat opposition figures” (Geukjian, 2017, p. 53). A confessional and clientelist system got consolidated, reinforcing sectarian cleavages (Geukjian, 2017).

The Lebanese currency collapsed in 1992, and general strikes and anti-Syrian demonstrations took place, leading to the resignation of Prime Minister Karami. In August and September of the same year, there would be the first post-war elections, and Rafik al-Hariri was appointed Prime Minister. Hariri was a billionaire with important Saudi and Western links and started a recovery program in Lebanon, establishing “Solidere: The Company for the Development and Reconstruction of Beirut’s Central District.” There was little opposition to Hariri’s economic and social policies, including from Syria, that considered Hariri’s reconstruction an excellent opportunity for its labour force. However, Lebanon would be destabilised again. After another Israeli operation (Operation Grapes of Wrath) against Hezbollah, the UN Observation Post of Qana was attacked, leaving a hundred people killed. With the end of the (already extended) term of President Hrawi, Emile Lahoud, upon orders of Syria, was elected the new President in 1998. Hariri refused to form a new cabinet, opposing the new president and losing the Parliamentary Election. Despite Hariri’s former austerity measures, Lebanon already suffered from the recession, and many economic problems developed. Lahoud made some changes in the security, which became an extension of the Syrian military intelligence; an “authoritarian system that contrasted with Lebanon’s tradition of consociationalism” (Geukjian, 2017, p. 61).

In addition to the General Amnesty Law of 1991, the Commission of Investigation into the Fate of the Abducted and Disappeared Persons was established through Resolution No. 60/2000 and signed by Salim al-Hoss, then Prime Minister, on 21 January 2000. The “official” commission was created to investigate the disappearance of 17,000 people during the Lebanese

civil war. It was chaired by an army General and four other members from: “army, general security, state security and internal security officers” (TJRC, 2022, p. 1). The commission received 2,046 applications from the victim’s families, and the final report was produced in July 2000. The government, however, released only a small summary of the report to the public.

> The public report stated that the bodies of the forced disappearances were discarded in different sites in Beirut, Mount Lebanon, the North, Bekaa and the South. Some of the bodies were buried in mass graves and other bodies were dumped in the sea. The summary of the report also claimed that besides the 17 survivors detained in Israel, any person missing for more than 4 years should be considered dead. Therefore, the commission recommends that the families of these victims register their deaths. However, the commission lost major credibility on December 12, 2000, when 54 people who were considered missing and dead were released from a Syrian prison. On October 23, 2009, the Beirut judge of the summary procedures demanded that the Council of Ministers’ secretariat give the court with the complete unpublished report, results of the commission’s investigations, and the information and sites of two mass graves (TJRC, 2022, p. 1).

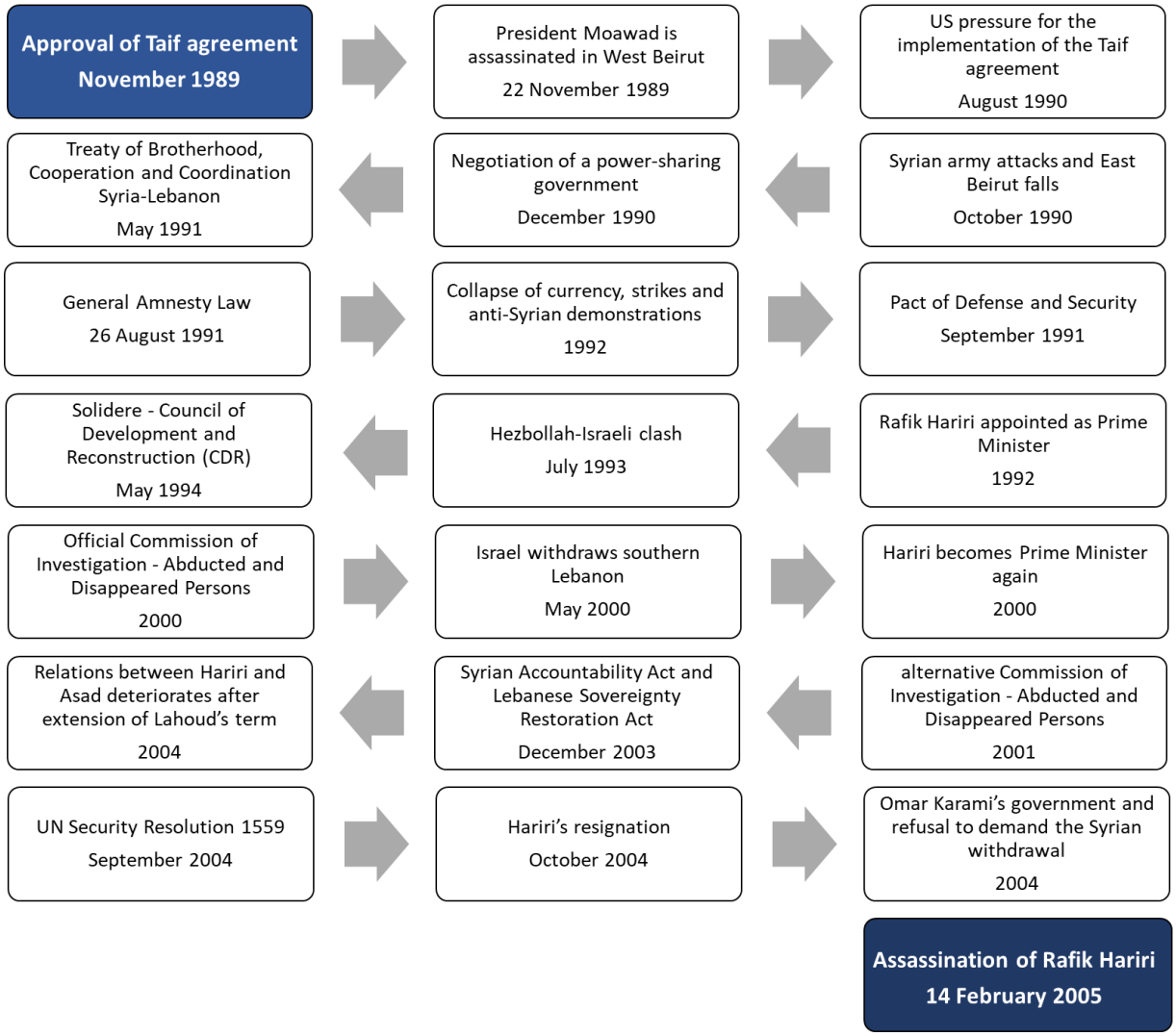
The official Commission of Investigation never publicly released the full report; therefore, an alternative Commission of Investigation into the Fate of the Abducted and Disappeared Persons was created through Decree No. 1 of 2001 and was signed by Prime Minister Rafik Hariri in 2001 in response. The alternative commission was allowed to “review the conclusions reached by the previous commission” (TJRC, 2022, p. 1), and Fouad Saad, the Minister of State for Administration Reform in Lebanon, headed it. It only received 780 requests from families of victims, and “though the commission claimed that there was evidence that 97 of the missing persons were in Syria, the government of Lebanon did not do anything to inquiry into the fate of these missing individuals” (TJRC, 2022, p. 1). In the end, as it happened to the first commission, it “never made public the investigative results” (TJRC, 2022, p. 1). The repeated creation of commissions to address the issue of missing and forcibly disappeared individuals during the civil war is also a reflection of the internal divisions in Lebanon. Political polarisation, lack of consensus and cooperation among relevant parties did not contribute to a satisfactory investigation and resolution of the cases.

Lebanon would continue to suffer from regional developments, including the collapse of Israel-Syria peace talks in 2000, the terrorist attacks in the US and the war on terror in 2001, and the subsequent invasion of Iraq, events that collaborated for instability in Lebanon. In the face of this scenario, US President Bush signed the implementing order of the Syria Accountability and Lebanese Sovereignty Restoration Act on 11 May 2004. “The litany of Syrian misdeeds underpinning Public Law 108-175 is well known and includes, *inter alia*, support for terrorism, undermining stability in Iraq, continued meddling in Lebanon, and

ongoing development of WMD and ballistic missile programs" (Schenker, 2006, p. 1). Despite sanctions and external pressure, "Syria's behaviour has not changed" (Schenker, 2006, p. 1). In the subsequent elections, Hariri and the Druze leader Jumblatt represented a challenge to the Syrian intervention in Lebanon, opposing Lahoud and his security team, which was supported by the Syrian President Bashar al-Assad. The Hariri-Jumblatt alliance won the elections, although Syria still had a substantial victory in the Parliament bloc and with speaker Berri (Geukjian, 2017).

In August 2004, Syria attempted to extend the term of President Lahoud, a close ally, by pressing the Lebanese Parliament to pass a constitutional amendment that would allow it. The move worked, and Lahoud could stay three more years in power; however, Syria faced stiff opposition this time, both in Lebanon and the international sphere (Kurtulus, 2009, p. 195). The relations between Rafik Hariri and Bashar al-Assad deteriorated, leading the UNSC to issue Resolution No. 1559 on 2 September 2004, calling upon "all remaining foreign forces to withdraw from Lebanon"; "the disbanding and disarmament of all Lebanese and non-Lebanese militias"; and supporting "the extension of the control of the Government of Lebanon over all Lebanese territory" (UN Security Council, 2004a, p. 1). A sequence of events followed the UN resolution: the security regime "responded with a campaign of terror" (Geukjian, 2017, p. 74); Marwan Hamade, then Minister of Economy and Trade, resigned from office in protest against the expansion of Lahoud's term and was severely injured by a roadside bomb; and Rafik Hariri resigned as Prime Minister on 20 October 2004. Hariri reportedly participated in the draft of Resolution No. 1559 with France's President Chirac and continued to work with the opposition from behind the scenes; however, he was resolute about redefining Lebanese-Syrian relations shortly before he was assassinated in Beirut on 14 February 2005 (Geukjian, 2017, p. 74). Figure 12 below illustrates the main events since the approval of the Taif Agreement (1989) until the assassination of Rafik Hariri in 2005.

Figure 12. The post-Taif Period



Source: prepared by the author.

6.3 Rafik Hariri's Assassination and the Establishment of the STL

On February 14, 2005, at 12:56 p.m., a massive explosion in downtown Beirut killed former Prime Minister Rafik Hariri, who had resigned from office only a few months before. The explosion performed by a suicide bomber from inside a Mitsubishi van close to the convoy transporting Hariri from the Parliament to his residence also killed 22 others. It injured 231 people, mostly civilians, causing damage to public and private properties in a 500-meter radius (Nashabe, 2012, p. 5).

> The explosion took place on a busy public street and was enormous and terrifying. Forensic examination has established the quantity of explosives was approximately 2500 kilogrammes of TNT (trinitrotoluene) equivalent. In addition to HARIRI, 8 members of his convoy and 13 members of the public were killed. Not including the suicide bomber, the explosion killed a total of 22 persons. Due to the size of the explosion, the attack attempted to kill a further 231 persons who were injured, and also caused partial destruction of the St. Georges Hotel and nearby buildings (Bellemare, 2011, p. 20).

Among the targets, there was another prominent figure in Lebanon, the former Minister of Economy, Bassel Fleihan, who, although was seated next to Hariri in the car, survived the attack. However, Fleihan had severe burns on around 95% of his body and died in the hospital 64 days later (Nashabe, 2012). On the following day of the explosion, the Presidency of the UN Security Council made a statement condemning the "terrorist bombing in Beirut"; calling "the Lebanese Government to bring to justice the perpetrators, organizers and sponsors of this heinous terrorist act"; and requesting "the Secretary-General to follow closely the situation in Lebanon and to report urgently on the circumstances, causes and consequences of this terrorist act" (UN Security Council, 2005, p. 1). Already on the 18 February, the Secretary General issued a statement announcing that it would send a team to Beirut within the next few days pursuant to the request of the Security Council led by Mr. Peter Fitzgerald, a Deputy Police Commissioner of the Garda Síochána (Irish national police force), adding that "the team will make contact with Lebanese officials and others to gather such information as necessary for the Secretary-General to report to the Council in a timely manner" (UN Secretary-General, 2005, p. 1). The UN Mission arrived in Beirut on 25 February 2005, concluding its inquiry on 16 March, and presented its fact-finding report on 25 March. The report concluded that "the Lebanese security services and the Syrian Military Intelligence bear the primary responsibility for the lack of security, protection, and law and order in Lebanon" (UN Security Council, 2005a, p. 3), adding that:

> The Government of the Syrian Arab Republic bears primary responsibility for the political tension that preceded the assassination of the former Prime Minister, Mr. Hariri. The Government of the Syrian Arab Republic clearly exerted influence that went beyond the reasonable exercise of cooperative or neighbourly relations. It interfered with the details of governance in Lebanon in a heavy-handed and inflexible manner that was the primary reason for the political polarization that ensued. Without prejudice to the results of the investigation, it is obvious that this atmosphere provided the backdrop for the assassination of Mr. Hariri (UN Security Council, 2005a, p. 3).

Besides blaming Syria for the "tension" preceding the assassination, the fact-finding mission also concluded that "an independent international investigation is needed" (UN Security Council, 2005a, p. 1). Kofi Annan endorsed Fitzgerald's recommendation of

establishing an investigation to discover who was responsible for Hariri's assassination. Therefore, the UN Security Council passed Resolution No. 1595 of 7 April 2005, welcoming a letter from the Chargé d'affaires of Lebanon to the United Nations to the Secretary-General (General Assembly Security Council, 2005),[9] stating that Lebanon accepted an International Independent Investigation Commission (UNIIIC), and establishing the mentioned Commission. According to Resolution No. 1595,[10] the UNIIIC should have completed its investigation within three months, with a possible 3-month extension under the Secretary-General's authorisation (Nasser, 2012). Meanwhile, anti-Syrian groups called for an uprising, known as the "Cedar Revolution," in Lebanon. For them, it was clear that Syria and its supporters were behind the 14 February attack.

Bashar al-Assad, under pressure, announced on 2 March the withdrawal of all Syrian troops from Lebanon by the end of April 2005 (Sutton, 2014). Only a few days later, on 8 March, pro-Syrian groups led by Hezbollah, who consider Syria responsible for ending the civil war and promoting stability in Lebanon, organised a demonstration which attracted half a million supporters (Tavaana Group, 2022). The Cedar Revolution brought thousands onto the street, marching from Beirut's Martyrs' Square, calling for the Syrian withdrawal and for the resignation of Omar Karami, who left office on 28 February 2005 but was later reappointed by President Lahoud to form a unity government. It was the beginning of the 8 March Alliance. On the other hand, the 14 March Alliance refers to the Cedar Revolution one month after Rafik Hariri's death. For the 14 March coalition, the most outstanding achievement of the public demonstrations is withdrawing the Syrian forces from Lebanon after 29 years of occupation (The Reut Institute, 2006).

There was national dissension below the image of national unity: "adherents of the anti-Syrian opposition movement [were] on Martyrs Square and the pro-Syrian loyalists in Riyad al-Solh square" (Kurtulus, 2009, p. 201). Polarisation between the two groups is perceived despite all participants waving Lebanese flags during the demonstrations. Most importantly, "the most significant variable which determined to which square the Lebanese would be heading was nothing other than their confessional identity" (Kurtulus, 2009, p. 201). With the ongoing protests and the failure to form a unity government, Karami resigned again before the

[9] UN Doc. S/2005/208 (2005).

[10] UNSC Resolution No. 1595. UN Doc. S/RES/1595 (2005).

29 May elections (Sutton, 2014). It was the end of the Syrian occupation in Lebanon after 29 years (1976-2005).

> The irony was that after the Cedar Revolution and Syrian withdrawal, though the Lebanese regained an element of state sovereignty, Lebanon was not only in a less stable region, but was itself made more unstable by intransigent internal political elites who were divided over how to establish a power-sharing government to keep order and peace. The country's sovereignty continued to be violated because the civilian-military apparatus that was created to maintain control remained largely in place, with Lahoud still as president and Saudi, Iranian, and US political interventions alongside Syrian machinations (Geukjian, 2014, p. 526).

Following the investigations of the 14 February attack and Rafik Hariri's death, Lebanese authorities arrested four top security commanders: Messrs Jamil Mohamad Amin El Sayed (General Security Directorate), Ali Salah El Dine El Hajj (director of the Internal Security Forces), Raymond Fouad Azar (LAF's head of intelligence) and Mostafa Fehmi Hamdan (presidential guard) in August 2005. Subsequently, the UNIIIC was granted Chapter VII powers,[11] following Resolution No. 1636,[12] which indicated a likelihood of Syrian and Lebanese officials' involvement in the attack, and Resolution No. 1644,[13] which further extended the Commission's mandate until June 2016 and called for the establishment of a Tribunal of an international character (Nasser, 2012). Security Council Resolution No. 1664[14] would request the Secretary-General to negotiate the terms of the agreement concerning the Tribunal with the Lebanese government.

The UN further extended the UNIIIC's mandate through Security Council Resolutions No. 1686[15] – which also expanded the technical assistance about other fourteen attacks under Lebanese investigation – 1748,[16] and 1852,[17] totalising an extension until 28 February 2009 (Nasser, 2012). Considering the ongoing situation in the Middle East, the UN Security Council, through Resolution No. 1701,[18] called for the "full cessation of hostilities, the deployment of Lebanese forces to Southern Lebanon," the "withdrawal of Israeli forces behind the Blue Line,

---

[11] United Nations Charter, Chapter VII: Action with Respect to Threats to the Peace, Breaches of the Peace, and Acts of Aggression.

[12] UNSC Resolution No. 1636, 31 October 2005. UN Doc. S/RES/1636.

[13] UNSC Resolution No. 1644, 15 December 2005. UN Doc. S/RES/1644.

[14] UNSC Resolution No. 1664, 29 March 2006. UN Doc. S/RES/1664.

[15] UNSC Resolution No. 1686, 15 June 2006. UN Doc. S/RES/1686.

[16] UNSC Resolution No. 1748, 27 March 2007. UN Doc. S/RES/1748.

[17] UNSC Resolution No. 1852, 17 December 2008. UN Doc. S/RES/1852.

[18] UNSC Resolution No. 1701, 11 August 2006. UN Doc. S/RES/1701.

strengthening the UN force (UNIFIL) to facilitate the entry of Lebanese Forces in the region and the establishment of a demilitarized zone between the Blue Line and the Litani River." Furthermore, it also called for the "UN Secretary-General to develop proposals to implement the relevant provisions of the Taif Accords as well as Security Council Resolutions No. 1559 (2004) and 1680 (2006)" (UN Peace Maker, 2006, p. 1), imposing an arms embargo on Lebanon (UN Peace Maker, 2006). Resolutions No.1559 and 1701 dominated the debate in Lebanon until Doha Agreement's conclusion in 2008.

In the context of the conflict between Hezbollah and Israel, the National Dialogue was compromised among the many contested issues, failing to establish a national unity government. Although the STL was established after a request made by the government of Lebanon to the United Nations, the agreement between Lebanon and the UN was never ratified, and the UN brought its provisions into force through UN Security Council Resolution No. 1757 (Special Tribunal for Lebanon, 2022, p. 1). Therefore, its establishment was one of the main issues, in addition to the "international campaign to force Hezbollah's disarmament" (Geukjian, 2014, p. 532), leading to the resignation of five Shiite ministers from the Siniora government. Those ministers believed that the STL would be used by Western powers to target Hezbollah arms, also arguing that they did not have enough time to study the Draft Resolution that would establish the Tribunal (Geukjian, 2014, p. 532). That is because, before the proper establishment of the Special Tribunal for Lebanon, the UN Secretary-General elaborated a proposal of agreement between the UN and the government of Lebanon, attaching a draft of the Tribunal's future statute to the UN Security Council.[19] The resignation of the Ministers was understood by the 14 March Alliance as a political act to attempt to block the establishment of the tribunal that would investigate the assassination of Hariri (Geukjian, 2017, p. 107).

Lebanon and the UN signed the STL agreement on 23 January and 6 February 2007, respectively; however, on 14 May 2007, Lebanon's Prime Minister informed the UN of domestic obstacles regarding ratification since the Speaker of the Lebanese Parliament refused to put it into vote in a reunion. Ultimately, the Prime Minister asked the UN to take a binding decision (Nasser, 2012), resulting in UNSC Resolution No. 1757[20] that, among other statements, commented that the "establishment of the Tribunal through the Constitutional process is facing serious obstacles, but also noting that all parties concerned reaffirmed their

[19] The proposal is detailed in the UN Secretary General Report. UN Doc. S/2006/893 (15 November 2006), and it was approved by the UNSC on 24 November 2006. Cf. UN Doc. S/2006/911.

[20] UNSC Resolution No. 1757. UN Doc. S/RES/1757 (30/05/2007).

agreement in principle to the establishment of the Tribunal" (UN Security Council, 2007, p. 2), decided to act under Chapter VII of the Charter of the United Nations, declaring that the agreement and statute of the STL "shall enter into force on 10 June 2007, unless the Government of Lebanon has provided notification under Article 19 (1)[21] of the annexed document[22] before that date" (UN Security Council, 2007, p. 2).

After the lack of notification from the Lebanese government, the agreement entered into force as planned, and the Tribunal would start functioning on 1 March 2009, as it did. The 8 March camp organised a mass rally in protest since many considered that the political decisions were not inclusive; after all, such a large camp had been excluded from the central decision-making. According to Geukjian (2014, p. 532), the Minister's resignation could be interpreted in the "context of failing to secure veto rights on policy in the government," as in Lijphart's theory of consociationalism in plural societies, where it is necessary to add a minority veto to the grand coalition principle, since "only such a veto can give each segment a complete guarantee of political protection" (Lijphart, 1977, p. 36-37).

Nevertheless, Hezbollah was granted veto power in any cabinet decision in the following year with the Doha Agreement (2008). The new power-sharing agreement consisted of "16 cabinet seats for the governing majority, 11 for the opposition and 3 to be nominated by the new president," in a way that the opposition can use veto power on cabinet decisions, "a demand the governing coalition refused to accept until now" (Worth & Bakri, 2008, p.1). The goal of the deal was to end 18 months of political deadlock and form a new government, also calling for the election of Gen. Michel Suleiman, the army chief, as President, after months of a vacant position. For Walid Jumblatt, such major provisions, including the power to Hezbollah, were a way of avoiding a civil war. Other matters, such as Hezbollah's weapons and cooperation with the Special Tribunal, were left unresolved.

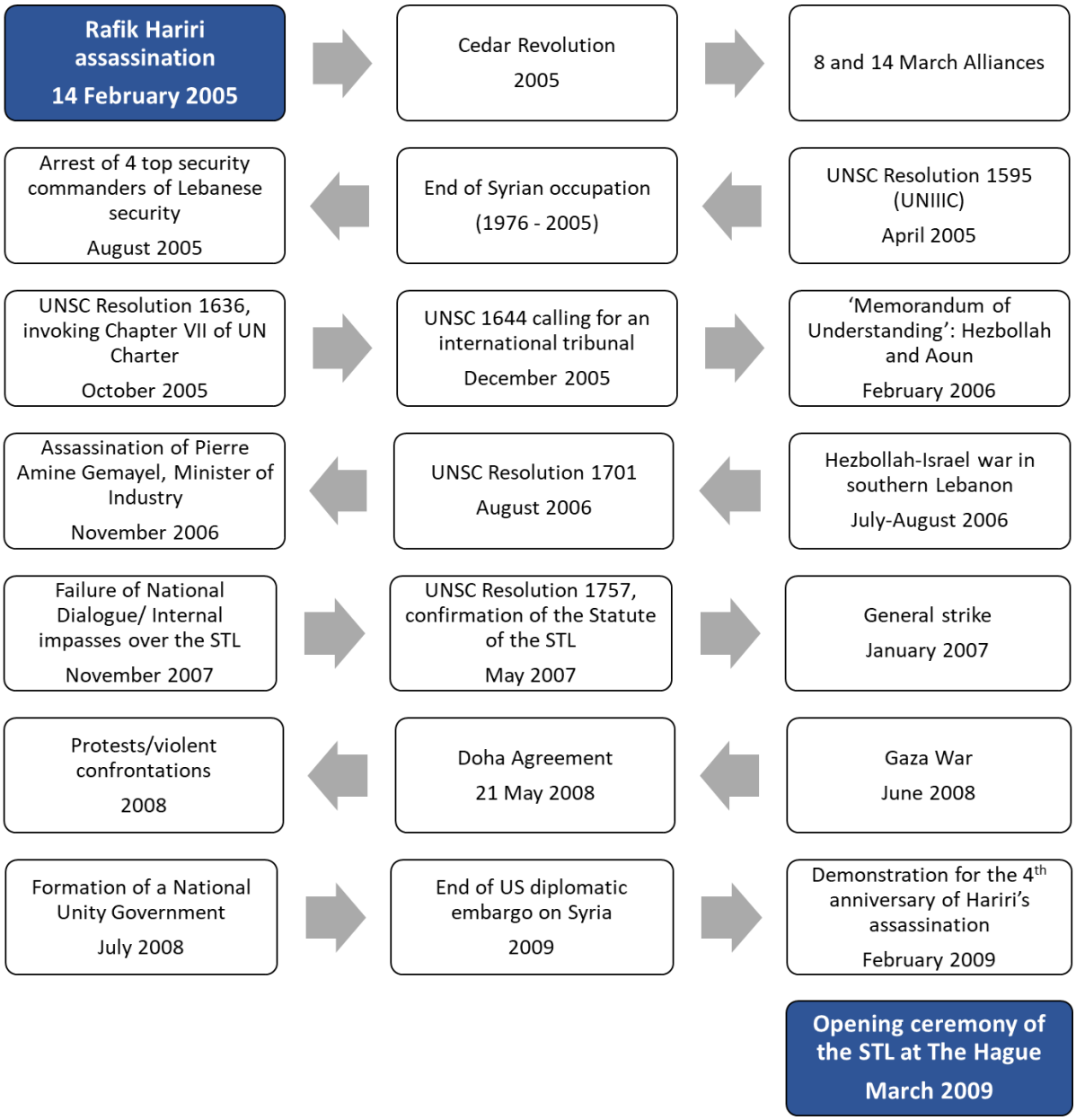
Once again, regional and international political dynamics influenced Lebanese domestic politics. In general, the political factions in favour of establishing the STL supported the Hariri family and the 14 March alliance, which understood the STL as an essential tool to deal with

[21] According to Article 19 (1) (Entry into force and commencement of the functioning of the Special Tribunal), "This Agreement shall enter into force on the day after the Government has notified the United Nations in writing that the legal requirements for entry into force have been complied with." UN Doc. S/RES/1757, p. 4 (2007).

[22] The annexed document mentioned refers to the "Agreement between the United Nations and the Lebanese Republic on the establishment of a Special Tribunal for Lebanon", and the attachment its statute. UN Doc. S/RES/1757 (2007).

the act of political violence and bring justice to the victims' families. In opposition, political factions such as Hezbollah and the 8 March alliance were against the Tribunal since, in their view, establishing the STL itself was a politically motivated act; a foreign-imposed court to undermine the resistance movement, going against the Lebanese sovereignty.

Figure 13. Hariri's Assassination and Following Events



Source: prepared by the author.

The 14 February 2005 bombing attack can be considered a terrorist act and, therefore, a type of political violence. At the same time, considering its motivation, the targeting of the former PM Rafik Hariri, the assassination of Hariri is characterised as an acute episode of politically motivated assassination, a type of violence, nonetheless "not new to Lebanon" (Nashabe, 2012, p. 6). There is a long list containing politicians, journalists, and religious leaders who were targets:

> Riad El-Solh, the first post-independence prime minister, was assassinated in 1951. […] Members of parliament Naim Moghabghab (1960), Maarouf Saad (1975), Tony Frangieh, his wife and daughter and 30 others (1978), Kamal Joumblatt (1977), Nazem El-Kadri (1989), Elie Hobeika (2002) and Dany Chamoun, his wife and their two children (1990). Mufti Sheikh Hassan Khalid (1989), Sheikh Sobhi Saleh (1986), Sheikh Ahmad Assaf (1987), Imam Hassan Al-Shirazi (1980), Sheikh Halim Taqieddine (1987) and Sheikh Nizar Halabi (1995) were also assassinated. In 1978, Imam Mousa Sadr, disappeared with two companions, journalist Abbas Badreddine and Sheikh Mohamad Yakoub, while they were in Libya. President-elect, Bashir Gemayel was assassinated in 1982 and President Rene Muawad was assassinated on Independence Day (November 22) 1989, while an attempt was made on the life of former president Camille Chamoun in 1980. Prime Minister Rashid Karameh was assassinated in 1987, and an attempt was made on the life of another Prime Minister, Salim al-Hoss in 1984. Foreign diplomats including an American ambassador, French, Iraqi and Jordanian diplomats, as well as the president of the American University of Beirut were also murdered (Nashabe, 2012, p. 6).

Targeted assassinations intensified between 1989 and 1991, even though the Taif Agreement ended the civil war in 1989. Lebanon did not escape new outbreaks of violence after the war, experiencing many cases of political assassinations and assassination attempts, reaching a peak after the assassination of former Prime Minister Rafik Hariri in 2005 (Knudsen, 2010, p. 1). Besides Hariri's assassination, the politically motivated assassinations and the crimes committed during the civil war remained "unresolved, unpunished, or were whitewashed by amnesty laws and international silence" (Nashabe, 2012, p. 6). Although this fact does not mean that Hariri's case did not deserve the proper reaction, it does imply politics of selective justice. After all, the STL was established to deal solely with the attack against Rafik Hariri and related events (Nashabe, 2016).

6.4 The Special Tribunal for Lebanon

The Special Tribunal for Lebanon was established upon Lebanon's request to deal with the 14 February 2005 attack in Beirut that killed twenty-two people, including the former Prime Minister Rafik Hariri (Special Tribunal for Lebanon, 2022). The Tribunal "arrived as an

expression of international law based on universality, objectivity, and autonomy. However, its force as international law was limited from the beginning because of its domestic jurisdiction" (Humphrey, 2011, p. 10). According to the Statute of the STL, the Special Tribunal's jurisdiction relates solely to the attack of 14 February 2005, as stated in Article 1:

> The Special Tribunal shall have jurisdiction over persons responsible for the attack of 14 February 2005, resulting in the death of former Lebanese Prime Minister Rafiq Hariri and in the death or injury of other persons. If the Tribunal finds that other attacks that occurred in Lebanon between 1 October 2004 and 12 December 2005, or any later date decided by the Parties and with the consent of the Security Council, are connected in accordance with the principles of criminal justice and are of a nature and gravity similar to the attack of 14 February 2005, it shall also have jurisdiction over persons responsible for such attacks. This connection includes but is not limited to a combination of the following elements: criminal intent (motive), the purpose behind the attacks, the nature of the victims targeted, the pattern of the episodes (modus operandi) and the perpetrators (Statute of The Special Tribunal for Lebanon, 2007, p. 12).

In other words, although Lebanon had been through a civil war until 1990, the STL, unlike different hybrid courts and tribunals that dealt with war crimes and crimes against humanity after conflict, would investigate a crime committed fifteen years after the end of the civil war (Humphrey, 2011) and concerning a particular attack, a reason why the STL is also known as the Rafik Hariri Tribunal.[23] The STL's applicable criminal law is turned to the prosecution of "acts of terrorism, crimes and offences against life and personal integrity, illicit associations and failure to report crimes and offences, including the rules regarding the material elements of a crime, criminal participation and conspiracy," according to Article 2 (a) of the STL. It also follows Articles 6 and 7 of the Lebanese law of 11 January 1958 on "increasing the penalties for sedition, civil war and interfaith struggle" (Article 2, b). The STL is, therefore, considered "the first of its kind to deal with terrorism as a distinct crime which is described by the United Nations Security Council as a threat to international peace and security," in addition to defining terrorism as an international crime. The Special Tribunal is the "first international tribunal to try crimes under national law" (Special Tribunal for Lebanon, 2022: 1), that is, under the Lebanese criminal code in relation to the crime of terrorism and "offences against life and personal integrity, illicit associations and failure to report crimes and offences" (Special Tribunal for Lebanon, 2022, p. 1).

One of the unique features of the STL is the trials *in absentia*, something that is not observed in other contemporary international courts. At the STL a trial *in absentia* is possible

[23] Cf. BBC News. Rafik Hariri tribunal: Guilty verdict over assassination of Lebanon ex-PM. 18.08.2020. Available at: https://www.bbc.com/news/world-middle-east-53601710. Access: 05/09/2022.

under specific conditions: "if the accused has waived the right to be present, […] has fled or cannot be found" (Special Tribunal for Lebanon, 2022, p. 1) or "if the state concerned has not handed the accused over to the Tribunal"[24] (Special Tribunal for Lebanon, 2022, p. 1). The Special Tribunal also claims to be the first international court to establish an independent Defence Office with a similar status of the Office of the Prosecutor, with a mandate to "protect the rights of the accused/suspect at all stages to ensure they get a fair trial" (Special Tribunal for Lebanon, 2022, p. 1). Lastly, it has an autonomous Pre-Trial Judge, which is also a unique feature in international criminal justice (Special Tribunal for Lebanon, 2022, p. 1). In relation to funding, the structure of the STL is a combination of both assessed and voluntary contributions based on the STL Agreement,[25] where it is stated, according to Article 5, that 49% of the Tribunal's annual budget is the responsibility of the Lebanese government, while 51% will come from the contribution of interested states. Only in its first year, the budget was $51.4 million (Wierda & Triolo, 2012).

Initially, the Tribunal would follow what is deemed a crime of terrorism according to Lebanese Law, as stated in the Statute of the STL; however, the Appeals Chamber authorised later an opening in the understanding, with the assistance of international treaties and customary law (Scharf, 2011). According to Scharf (2011, p. 509), there was a semiotic approach: "semiotics begins with the assumption that terms such as "terrorism" are not historic artefacts whose meaning remains static over time. Rather, the meaning of such term changes along with the interpretative community or communities." It is an interpretative approach that "recognizes the reality that society alters over time and interpretation of a law may evolve to keep pace" (Scharf, 2011, p. 509).

The four generals arrested since 30 August 2005 by the Lebanese authorities were released by the STL, in one of the Tribunal's first acts: "on 29 April 2009, the Pre-Trial Judge determined that there was no cause to hold the four generals and ordered their immediate release. Lebanese authorities complied the same day" (Special Tribunal for Lebanon, 2022, p. 1). The Tribunal's decision was based on the argument of insufficient evidence, although "the four generals were working in the Lebanese-Syrian security apparatus in the time of Hariri's

[24] Note: "an absent accused must be represented by Defence counsel before the Tribunal. If the accused does not appoint counsel, counsel will be assigned by the Defence Office". The absent accused has the "right to appear in court once the Trial has started", and to ask for a "retrial once the case is over" (Special Tribunal for Lebanon, 2022, p. 1). Available at: https://www.stl-tsl.org/en/about-the-stl/unique-features. Accessed on 09/08/2022.

[25] Security Council Resolution No. 1757. DOC S/RES/1757 (2007).

assassination, and they had been arrested on the recommendation of former UN investigator Detlev Mehlis" (Geukjian, 2017, p. 150). In an interview after the episode, Saad Hariri reiterated his support for the STL: "since the first moment of its establishment we have announced that we would accept any decision" (Lebanese Forces News, 2009b, p. 1). According to Hariri "the STL is a reality now, and the decisions it has took are a reality as well, so the Lebanese from all the political movements should adapt to this fact" (Lebanese Forces News, 2009b, p. 1).

Following the STL's first decision, the German magazine *Der Spiegel* published a surprising report stating that the Tribunal already knew who was involved in Hariri's assassination: "Intensive investigations in Lebanon are all pointing to a new conclusion: that it was not the Syrians, but instead special forces of the Lebanese Shiite organisation Hezbollah ("Party of God") that planned and executed the diabolical attack" (Der Spiegel International, 2009, p. 1). According to the report, that information came from an investigation made by a secret Special Unit of the Lebanese Security Forces headed by intelligence expert Captain Wissam Eid, who was later killed in a terrorist attack in the Beirut suburb on 25 January 2008 (Der Spiegel International, 2009). The STL and the Office of the Prosecutor Bellemare, in special, commented that "only reliable information on the investigation is information provided by the Prosecutor himself or through his official spokesperson" (Special Tribunal For Lebanon, 2009, p. 1) and that the Office "operates according to the highest ethical standards and that the process it follows is evidence-driven, objective, neutral and impartial and leaves no room for a prejudged outcome" (Special Tribunal For Lebanon, 2009, p. 1). Der Spiegel's report could have triggered sectarian strife ahead of the June elections, which ended up with a parliamentary majority for the 14 March coalition. Hezbollah accepted the results since the 14 March coalition did not increase its majority but condemned US interference in Lebanon's internal affairs, the same accusation made by Syria (Geukjian, 2017).

6.4.1 Domestic and International Political Context

Officially, the Special Tribunal for Lebanon was launched on 1 March 2009, almost two years after its establishment by UN Security Council Resolution No. 1757 and four years after the attack that killed Rafik Hariri, a context of turbulence. The Tribunal continued to be a source of discussion between 8 and 14 March coalitions, especially the power of the STL to track individual suspects of involvement in the 14 February 2005 attack. There was a preoccupation

in the fifth National Dialogue in March 2009 of keeping civil peace during the 2009 general elections, which was also a concern for the UN, especially Lebanon's stability in general. UNSC Resolution No. 1701 was again on the UN's agenda since; in addition to the STL and the general elections, rockets were fired from southern Lebanon toward Israel at the beginning of the year in the context of the Gaza War. With the Doha Agreement, the US new administration under President Obama ended its diplomatic embargo on Syria in 2009. One of Washington's requirements for resuming diplomatic relations with Syria was respect for Lebanon's sovereignty. Although the US had ended its diplomatic embargo on Syria, there was still no decision about returning an ambassador to Damascus, arguably because Washington still considered Hezbollah as a terrorist organisation and insisted on its disarmament, something that later would unleash a crisis in Lebanon's power-sharing system (Geukjian, 2017).

Lebanon opened its first embassy in Syria in 2009, which coincided with the announcement of the 14 March coalition's electoral platform for the upcoming elections, calling for an end to the conflict with Syria, an evident change in the previous "anti-Syrian" discourse since Hariri's assassination. A rapprochement between Syria and Saudi Arabia generated reasonable expectations for improving Lebanon's internal divisions. However, the STL continued to be a problematic issue between both countries. If for the Saudis it was unavoidable, for the Syrians, the STL was politically motivated, considering that the Syrians participated in the UN investigation of the attack (Geukjian, 2017). Before a visit to Syria, Senator John Kerry, then Chairman of the US Foreign Relations Committee, had meetings with Saad Hariri (Rafik Hariri's son and leader of the Future Movement (FM) party) and President Suleiman in February 2009. Kerry's job was to reassure Beirut and lower the expectations in Damascus, emphasising the US support for Lebanon and stressing that the STL was "independent from any issues of discussion between the U.S. and Syria" (Schenker, 2009, p. 2). As part of the reassurance of the US in supporting the Lebanese sovereignty (or the March 14 coalition) and the STL, an additional amount of $6 million in funding for the tribunal was pledged before opening (Schenker, 2009).

During the Arab League Summit in Doha, President Suleiman defended an inter-Arab reconciliation in the face of the "Israel threat" to promote stability in Lebanon. The summit, however, was marked by the presence of the then Sudanese President Omar Hassan al-Bashir, whom the International Criminal Court placed a warrant on for war crimes during the Darfur genocide. Omar al-Bashir was welcomed into the Arab League, defying the ICC warrant. Former ICC prosecutor Moreno Ocampo declared that al-Bashir should be arrested after leaving

the Sudanese airspace; however, it was unclear if any military force was monitoring his flight. In fact, in the region, only Jordan and two other Arab League members, Comoros and Djibouti, were parties to the ICC Charter back then (Murphy, 2009).

After the diplomatic overture between US and Syria and upon improving relations between Syria and Saudi Arabia, Jumblatt left the 14 March coalition to turn to a centrist camp close to Syria and to the West simultaneously. Nonetheless, he declared that he would stand alongside the STL. In a way, the creation of the Special Tribunal promoted the 8 March Alliance, which campaigned during the 2009 elections based on an anti-STL and anti-western discourse. The 8 March camp lost the election but gained force in Lebanese politics, including the support of the Socialist Progressive Party (SPP), from the Druze leader Jumblatt and with the splitting of the Christian voters after Michel Aoun's FPM, who used to be part of the 14 March Alliance, moved to the 8 March camp. Aoun's switch was also related to the STL (Hillebrecht, 2020, p. 469). At first, the FPM leader supported the Tribunal's establishment but considered it "politicised" afterwards (Lebanese Forces News, 2009).

A power-sharing agreement was reached in Lebanon in November 2009 based on the 15-10-5 power-sharing formula. Once again, the Prime Minister position was for a Sunni Muslim, the President for a Maronite Christian, and the post of the Speaker of Parliament was reserved for a Shia Muslim. The government and cabinet positions were divided according to the ratio of 15 (Sunni), 10 (Shia) and 5 (Maronite Christian), where the majority of the government was backed by the US and Saudi Arabia, while the opposition was backed by Syria and Iran. Suleiman's five seats would give him the tipping vote and prevent the majority and opposition from veto power. With Hezbollah's weapons, however, the new government could not agree on a joint program. They were the only party in Lebanon that did not disarm after the civil war (Geukjian, 2017, p. 157). Saad Hariri was designated Prime Minister and managed to form a unity government on 9 November 2009. One month later, he visited Damascus after years of animosity and accusation of Syrian involvement in his father's assassination. Both Hariri and Bashar al-Assad agreed that the matter was in the hands of the Special Tribunal of Lebanon (Makdessi, 2009).

After revisiting Damascus in 2010, Saad Hariri met US President Obama in Washington to discuss his regional concerns, for instance, a possible Israeli attack after accusations of missile supplies granted by Syria to Hezbollah. It was Lebanon's term in the presidency of the UN Security Council, and both Hariri and Obama reaffirmed a commitment "to strengthening Lebanon's sovereignty and independence and to continuing a wide-ranging and long-term

partnership between the United States and Lebanon," [26] as stated in the press conference. Furthermore, the US President expressed his determination to continue US efforts to support the "Lebanese Armed Forces and the Internal Security Forces, and to contribute to the economic growth and development of Lebanon,"[27] reiterating that the US involvement in the region would not come to Lebanon's expense, and reaffirmed "the United States' continued strong support for the Special Tribunal for Lebanon."[28] The support for the STL, however, did not reach Hezbollah. The group started to escalate a campaign to undermine the Tribunal after speculations about prosecutor Daniel Bellemare's intentions of issuing indictments against group members (Tabler, 2010).

Sunni-Shia sectarian tensions were rising on the matter of the Tribunal, and there was a fear of violence between the two communities. Nasrallah, leader of Hezbollah, insisted that there were Israeli spies in the Lebanese cabinet and called the work of the STL into doubt since the STL had investigated the telecommunication records. Nasrallah made it clear that indictments of Hezbollah members would not be accepted. Although there was a threat that the STL would indict Hezbollah members, they continued to work with Hariri in the cabinet. Still, the party clarified that they wanted the government to finish its support and cooperation with the Special Tribunal (Geukjian, 2017, p. 168). The matter of the false witnesses, which led to the investigation into the attack against Hariri to arrest the four pro-Syria generals for four years, played a role in the campaign against the STL promoted by Hezbollah (Berti, 2011a). Saad Hariri stressed that it was a mistake to accuse Syria of the assassination of his father and that it was a political accusation, implicating false witnesses, adding that the Tribunal would look "only at the evidence" (Black, 2010, p. 1). In the lens of Hezbollah, the Tribunal had no legitimacy on the matter, and they claimed to have compelling evidence that Israel was responsible for the attack (Black, 2010). Saad Hariri was in a dead-lock, trying to balance justice (for his father's assassination) and stability. Meanwhile, "Syria's judiciary issued arrest warrants against 33 Lebanese officials and foreigners for allegedly misleading the investigation, among them figures close to Saad Hariri and the first UN chief investigator, Detlev Mehlis"

[26] Barack Obama, Press Release - Readout of President Obama's Meeting with Prime Minister of Lebanon Saad Hariri Online by Gerhard Peters and John T. Woolley, The American Presidency Project https://www.presidency.ucsb.edu/node/290359. Access: 03.02.2022.

[27] Idem.

[28] Idem.

(France 24, 2010, p. 1) in a campaign to undermine the tribunal, a move called by the US as a "flagrant disregard for Lebanon's sovereignty" (France 24, 2010, p. 1).

Saad Hariri's government was crippled by the opponents of the STL and those who opposed Hezbollah's possible indictments (Deutsche Welle, 2011). The government would collapse in 2011 after Hezbollah's move against the UN investigation on the 14 February 2005 attack and the establishment of the STL. The group demanded that Saad Hariri hold a cabinet meeting for the Shiite alliance to vote against the Tribunal. However, Hariri was in Washington, and eleven Ministers from the 8 March coalition resigned, claiming their demands had not been met. The false-witnesses scandal was never resolved for the 8 March coalition, and Saad Hariri left power in the same year after only two years.

In perspective, three critical moments after the 14 February 2005 attack have consolidated an anti-STL coalition: the scandal of the false witness, the moment when the indictments against Hezbollah members were handed down, and the failed talks between Saudi Arabia and Syria. Those pivotal moments set the stage for the "democratic takeover of the premiership" (Hillebrecht, 2020, p. 470) in early 2011, when Najib Mikati became President of Lebanon after the collapse of the government, presenting a moderate position regarding the STL. According to Hillebrecht (2020, p. 468), "anti-STL groups drove the cabinet to collapse in order to push through a vote that their candidate for prime minister was likely to win. The chorus that accompanied this process was one of anti-imperialism."

6.4.2 The STL Cases

On 30 June 2011, following a long and delayed investigation, the STL started to issue indictments (see Annex 1). The four suspects accused of involvement in the plotting and execution of the 14 February attack against Rafik Hariri and others were members of Hezbollah, confirming the rumours in Lebanon since the year before. As expected, releasing the indictments came with a strong reaction from Hezbollah supporters, who had been against the Tribunal since its creation (Berti, 2011). "The long-awaited move was hailed as a "historic moment" by Hariri's son, opposition leader Saad al-Hariri, but poses an immediate challenge to the new government of Najib Mikati, whose cabinet is dominated by Hezbollah allies" (France 24, 2011, p. 1). Mikati was facing "irreconcilable demands from Hariri's domestic and international allies – who want Lebanon to comply with the court – and the majority of his

cabinet who reject any cooperation with it" (France 24, 2011, p. 1). As discussed, the STL was the leading issue behind the 8 March coalition's resignation from Saad Hariri cabinet, which led to the collapse of Hariri's government and the entry of Najib Mikati. Hezbollah's response to the STL was to question the credibility of the witnesses, supported by the "false witnesses" past scandal, and to reiterate that Israel was the one involved in the attack (Berti, 2011).

The main cases in the STL are Ayyash et al. (Annex 1) and the Ayyash Case. According to the Tribunal (Special Tribunal for Lebanon, 2022, p. 1), the Ayyash et al. case (STL-11-01) "relates to the 14 February 2005 attack that led to the killing of former Prime Minister Hariri and 21 others and injured 226 more." Unlike the Ayyash Case (STL-18-10), which is related to the three attacks against other Lebanese politicians: 1. "On 1 October 2004, a car explosion targeted the motorcade of Mr Marwan Hamade (a Lebanese politician and journalist) in Beirut. Mr Hamadeh and his driver were injured, and his bodyguard was killed;" 2. "On 21 June 2005, a bomb exploded under the passenger seat of the vehicle of Mr George Hawi (a Lebanese politician) in Beirut. Mr Hawi was killed, and his driver gravely injured;" and 3. "On 12 July 2005, an explosive device targeted the convoy of Mr Elias El-Murr (a Lebanese politician) in Antelias. One person was killed, and Mr El-Murr and 11 others were injured" (Special Tribunal for Lebanon, 2022, p. 1).

The investigation into the assassination of those other politicians was possible due to Article 1 of the STL Statute, which states that "the Tribunal has jurisdiction over persons responsible for attacks that took place in Lebanon between 1 October 2004 and 12 December 2005 if the Tribunal finds that these attacks are connected to the attack of 14 February 2005" (Special Tribunal for Lebanon, 2022, p. 1). The STL determined that those three events were terrorist attacks legally connected to the 14 February 2005 attack that killed the former PM, Rafik Hariri. Therefore, the STL's Prosecutor took jurisdiction over the other attacks on 5 August 2011. Although Salim Jamil Ayyash is accused in both cases, they are particular cases at different stages of the proceedings (Special Tribunal for Lebanon, 2022, p. 1). Trial Chamber II ordered the cancelling of the commencement of trial for the Ayyash case in June 2021[29], "in response to the Registrar's filing of 1 June 2021 which notified the Chamber of the severe financial situation currently faced by the STL impacting its ability to finance the continuation of judicial proceedings and completion of its mandate" (Special Tribunal for Lebanon, 2022, p. 1).

[29] Special Tribunal for Lebanon: 'Ayyash Case' (STL-18-10).

In addition to the two cases, the STL has dealt with "Contempt Cases."[30] After the confirmation of the *Ayyash et al*. indictment on 28 June 2011 (Annex 1), the material related to the investigation should have been kept confidential for reasons that include witness protection and safeguarding the ongoing investigation, as it was ordered by the Pre-Trial Judge. However, "on 31 January 2014, two individuals and two media were charged with contempt and obstruction of justice before the STL in relation to media reports containing information about alleged confidential STL witnesses" (Special Tribunal for Lebanon, 2022: 1). First, in August 2012 the Al Jadeed TV broadcasted five reports entitled: "The Witnesses of the International Tribunal," in which journalists approached individuals who were alleged confidential witnesses in the Ayyash et al. case. Consequently, Ms Karma Mohamed Tahsin Al Khayat and Al Jadeed S.A.L./New TV S.A.L. were each charged with two counts of contempt for knowingly and wilfully interfering with the administration of justice (Special Tribunal for Lebanon, 2022, p. 1).

The second episode took place in January 2013, when Akhbar Beirut published articles on its Arabic and English websites and newspaper which contained information about alleged confidential witnesses also in the Ayyash et al. case: "STL Leaks: The Prosecution's Surprise Witnesses," published on 15 January in Al Akhbar newspaper, and "The STL Witness List: Why We Published," posted on 19 January. "Mr. Ibrahim Mohamed Ali Al Amin and Akhbar Beirut S.A.L. were each charged with one count of knowingly and wilfully interfering with the administration of justice (STL-14-06). Both were found guilty on 15 July 2016" (Special Tribunal for Lebanon, 2022, p. 1). The charges brought in the contempt cases were based on the Rules of Procedure and Evidence (Rule 60 *bis* (A)), which states that: "The Tribunal, in the exercise of its inherent power, may hold in contempt those who knowingly and wilfully interfere with its administration of justice, upon assertion of the Tribunal's jurisdiction according to the Statute."[31] In the first situation, the conviction was acquitted and reversed on appeal; in the second, both Mr Al Amin and Akhbar Beirut were found guilty (Special Tribunal for Lebanon, 2022, p. 1).

[30] Special Tribunal for Lebanon: 'Contempt Cases' (STL-14-05).

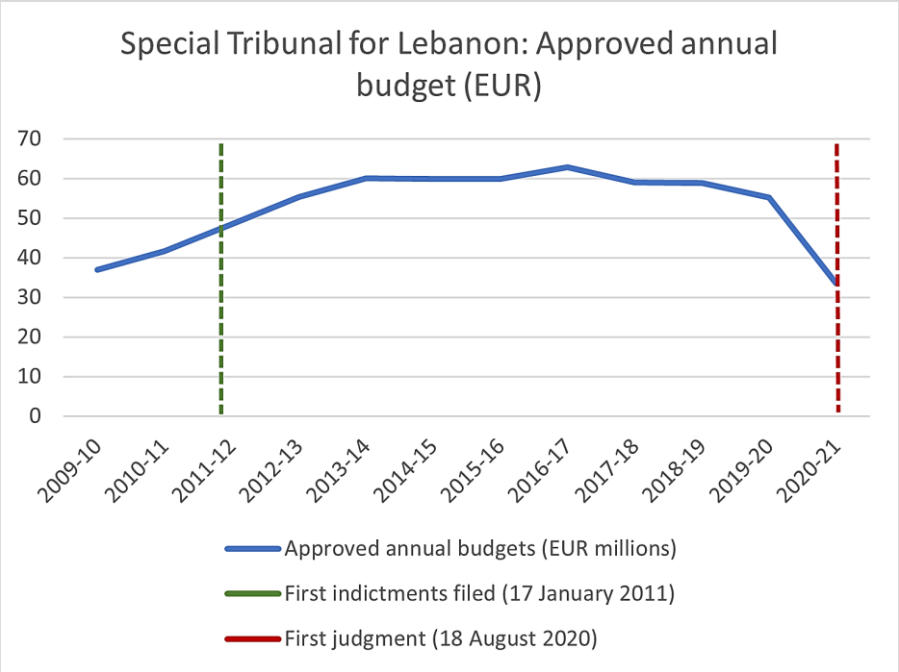
[31] Special Tribunal for Lebanon. 'Rules of Procedure and Evidence.' Available at: https://www.stl-tsl.org/en/documents/legal-documents/rules-of-procedure-and-evidence. Accessed on 08/08/2022.

Further developments

While the Special Tribunal was working on the cases, Najib Mikati, the new Prime Minister, faced a polarised government. Mikati insisted on resolving the STL dispute over dialogue, affirming that he would not terminate Lebanon's cooperation with the Tribunal. Meanwhile, the US spent almost $700 mi promoting a western agenda in Lebanon. At this point, the Arab Spring was starting in Tunisia (December 2010) and Egypt (January 2011). It was the first time Washington had seen the 14 March camp losing control of cabinet and parliament. The Arab Spring arrived in Syria in March 2011 in an uprising against Assad's regime. Lebanon experienced fear of a conflict of sectarian nature in the country since there were pro and anti-Assad protests. For Hezbollah, the STL was threatening domestic stability in Lebanon. However, there were other threats to the Lebanese stability that Mikati's government was facing, including dealing with Syrian refugees, border violations, economic ramifications from the conflict in Syria, a call for the implementation of Resolution No. 1701, and funding the STL (Geukjian, 2017).

Lebanon must contribute to 49% of the STL's budget. Still, considering the political developments mentioned, including the "takeover of the Lebanese government by the pro-March 8 coalition in January 2011" (Wierda & Triolo, 2012, p. 134), there were doubts about whether the county would comply with the obligation. The STL's budget is prepared by the Court's Registrar annually and presented to the Management Committee for approval (Wierda & Triolo, 2012, p. 134). Figure 14 below demonstrates the budget allocation for the Tribunal, with the voluntary contribution of 25 states:

Figure 14. STL Approved Annual Budget



Source: Blick (2021, p. 3). Data source: STL Annual Reports 2009-2021.[32]

Prime Minister Mikati publicly stated that he would support Lebanon's international obligations and urged especially Hezbollah (that had called for a discontinuation in the Lebanese funding), Berri, and Aoun to approve the contribution to the STL, threatening to resign otherwise. The situation reached a cabinet gridlock, leading Mikati to ask for funds from the Central Bank, from the budget of the Higher Relief Committee, with support from the PM's Office (Geukjian, 2017, p. 191). The government reached an internal deal on 30 November 2011, when the Prime Minister announced that Lebanon would pay its share of the 2011 budget (Wierda & Triolo, 2012). In Mikati's view, delivering the Lebanese contribution would preserve Lebanon, re-establishing the international community's confidence in the country. However, Lebanon's commitment to the STL was incomplete, mainly because it still had to

[32] In 2012, the official currency of the tribunal changed from dollars to euros. Dollar conversion to euro for 2009-2011 was calculated from an exchange rate of average USD-EUR closing price per annum, exchange rate data sourced from https://www.macrotrends.net/2548/euro-dollar-exchange-rate-historical-chart. 2021 approved budget figure estimated at approx. €33.6 million, calculated on a 39% reduction in budget from 2019-2020 (Blick, 2021:3). On 19 June 2021, however, the Registrar of the STL, Mr. David Tolbert, issue an updated notice to the Tribunal's financial situation, declaring "the imminent exhaustion of the Tribunal's currently available funds, which would impact the Tribunal's ability to finance the continuation of judicial proceedings beyond 31 July 2021, and ultimately its ability to complete its mandate" (STL-11-01/ES/PRES). Available at: https://www.stl-tsl.org/crs/assets/Uploads/20210619-F3865-PUBLIC-COR-Reg-Updated-Notice-Purs-48C-Shortfall-Funding-EN-Web.pdf. Access: 07/01/2023.

handle the four Hezbollah suspects in the Tribunal. Nonetheless, by providing funds, at least the country recognised the STL's legitimacy (Geukjian, 2017, p. 191).

However, the indictment of the four Hezbollah members did not provoke a political cataclysm against the group as some expected. Time passed, and the deadline to apprehend the suspects was over without significant repercussions, so Hezbollah maintained its position in the Lebanese political system (Berti, 2011). After being unable to locate the suspects, the STL started *in absentia* proceedings in 2012 (the STL-11-01 case developments are described in table 5 (*Ayyash et al.* case) above). Amongst STL's main findings,[33] the most relevant are:

1. *Mr Hariri and his convoy had been under surveillance for some months before his assassination. Those engaged in the surveillance were communicating in the field using three sets of mobile telephone networks*.

2. *The aim of this surveillance was to obtain information about Mr Hariri's movements, his security detail, his level of protection and eventually to determine a suitable method to murder him, including finding an appropriate location for the intended attack*.

3. *The successful attack on Mr Hariri was carefully planned and implemented. The six core Red network mobile users were responsible for Mr Hariri's murder on 14 February 2005.*

4. *The false claim of responsibility video was aimed at diverting attention away from the true perpetrators, namely, Mr Salim Jamil Ayyash and his co-conspirators.*

5. [Concerning the accused], *all five, the Prosecutor alleged, are supporters of Hezbollah, a Lebanese political and military organisation*.

The STL concluded that, based on the evidence, Ayyash not only "conspired with unidentified people to commit a terrorist act by means of an explosive device in order to murder Mr Hariri", but also "led the assassination team" to the attack. According to the Prosecution, it was "proved that he was using Yellow, Blue, Red and Green network mobiles and that the first three were engaged in surveillance of Mr Hariri between October 2004 and 14 February 2005" (Special Tribunal for Lebanon, 2020, p. 5). During its mandate, the STL convicted Ayyash, Merhi and Oneissi *in absentia* for their roles in the 14 February 2005 attack and sentenced them to five concurrent sentences of life imprisonment (STL-11-01 case). According to the Special Tribunal, "this was the heaviest sentence possible under the Tribunal's Statute and Rules,

[33] The Trial Chamber, Summary of Judgment. Document: STL-11-01/T/TC. 18 August 2020.

reflecting the nature of the crimes committed, its impact on the victims, and on Lebanese society as a whole" (Special Tribunal for Lebanon, 2022, p. 1). Since 1 July 2022, the STL has entered a residual phase.

Ultimately, by issuing indictments against Hezbollah members, the Special Tribunal for Lebanon has strengthened an existing coalition interested in overthrowing the indictments and undermining the tribunal's work. The suspects were not the elite themselves but party operatives. Yet, the coalition managed to get united around the STL to protect both the party and the individuals charged by the Tribunal. "The coalition also capitalised on the uncertainty that defines Lebanese democracy, and the value coalition partners see in extracting concessions from vulnerable coalition leaders" (Hillebrecht, 2020, p. 473). Aoun and Hezbollah's coalition combined an anti-STL and anti-imperialist narrative, consolidating the coalition and seizing control of power (Hillebrecht, 2020).

6.5 Summary

> *"With a succession of interrelated wars, two parallel occupations, and a string of high-profile assassinations, Lebanon carries a heavy legacy of human rights and humanitarian law violations."*
>
> *International Center for Transitional Justice (2022, p. 1).*

During the interviews conducted with scholars and Lebanese nationals as part of the data collection for this case study, it is noteworthy that there are very different perspectives and positioning concerning the situation in Lebanon, a phenomenon that can be connected to the plurality of Lebanese society. Nonetheless, all that differences in terms of point of view converge on one point: one cannot ponder Transitional Justice in Lebanon without considering the entire process since the civil war/post-war period. The terrorist attack and politically motivated assassination of Rafik Hariri is not an isolated phenomenon. Although unrelated to the civil war, the case can be connected to the culture of impunity fostered by the Amnesty Law of 1991. The death of Hariri, however, is only one among multiple political assassinations, including one of the most important political figures in Lebanon, Prime Minister Rashid

Karami, who was assassinated in 1987. Therefore, political violence is a prominent form of violence that occurs continually in the country, even after 2005.[34]

During the Lebanese civil war that lasted from 1975 to 1990, it is estimated that 17,000 people were considered to be disappeared, and over 100,000 civilians were killed. The Taif Agreement (1989), although bringing the war to an end, was responsible for institutionalising a historical internal division from a sectarian nature, promoting a power-sharing system based on the 1943 National Pact (ICTJ, 2022). After the end of the war, Lebanon started to create an "environment conducive to the restoration of the rule of law and respect for human rights" (Amnesty International, 1997, p. 1); however, with the "security-zone" occupied by Israel and the South Lebanon Army, in addition to the occupation of Syrian forces under the Treaty of Brotherhood and Cooperation, human rights abuses continued (Amnesty International, 1997).

The Amnesty Law, passed in August 1991 by the Lebanese government, "aimed at turning a new page in the political history of Lebanon" (Amnesty International, 1997, p. 7), conceding full amnesty to political crimes, including abuses committed by armed groups and militias during the civil war. Nonetheless, some crimes were excluded, such as crimes against external state security and crimes of assassination/attempted assassination of religious figures, political leaders, and foreign diplomats. There was a concern by the Human Rights Committee back in the 1990s that "such a sweeping amnesty may prevent the appropriate investigation and punishment of the perpetrators of past human rights violations, undermine efforts to establish respect for human rights, and constitute an impediment to efforts undertaken to consolidate democracy" (Amnesty International, 1997, p. 7). That concern proved to be correct, and the Amnesty Law is widely considered responsible for the lack of serious measures to address past human rights violations committed during the civil war (ICTJ, 2022).

In the face of pressure from the Committee of the Families of the Kidnapped and Disappeared, ten years after the Taif Agreement was signed, the Commission of Investigation into the Fate of the Abducted and Disappeared Persons was created through Resolution No. 60/2000 and signed by the Prime Minister of Lebanon, Salim al-Hoss on 21 January 2000. Two other commissions followed; first, the Alternative Commission of Investigation into the Fate of the Abducted and Disappeared Persons created in 2001 through Decree No. 1/2001 and signed

[34] Personal interview with a Lebanese scholar. Online, 18/04/2022.

by the then Prime Minister Rafik Hariri, would investigate the disappeared people that were believed to be still alive (ICTJ, 2022). Second, a joint Lebanese Syrian Commission was "created to investigate the fate of Lebanese who disappeared at the hands of security forces in Syria" (TJRC, 2022, p. 1). There was no public material related to findings and a lack of information. Ultimately, "the work of these commissions yielded no meaningful results and has been severely criticized" (ICTJ, 2022, p. 1).

After the politically motivated assassination of former Prime Minister Rafik Hariri on 14 February 2005, a UN fact-finding mission considered the domestic investigations around the attack inadequate. The "domestic roadblocks prevented the creation of a more substantive domestic mechanism" (Hillebrecht, 2020, p. 468), and then-PM Siniora asked the UNSC for a more formal body to investigate the case (Hillebrecht, 2020), leading to the creation of a UN Independent Investigation Commission, formed by the UNSC Resolution No. 1595 of 7 April 2005 (TJRC, 2022). Later, UNSC Resolution No. 1757 of 30 May 2007 established the Special Tribunal for Lebanon under Chapter VII, but without the approval of the Lebanese Parliament.

First, it needs to be stressed that the STL is a unique international criminal tribunal in its features: a hybrid court that combines Lebanese and international law, staff, and funding, designed to deal with a specific terrorist attack (Hillebrecht, 2020). Although unique, the hybrid court suffered much criticism, including its limited mandate, centred on the figure of Hariri. "Despite the STL's value in seeking accountability for high-profile assassinations, its limited mandate translates to a lack of justice for the tens of thousands of civilians who have also lost their life due to political violence in Lebanon" (ICTJ, 2022:1). Second, the interviews have shown that the tribunal was considered by many as politicised: "the tribunal was created and institutionalised as a political instrument."[35] Although Lebanon's government signed the agreement with the UN, the Lebanese Parliament never ratified it. Consequently, the constitutional process to establish the Tribunal was facing domestic obstacles, and it could only enter into force due to a binding decision of the UNSC Resolution No. 1757. This means there was no internal agreement or cohesion on the matter inside the Lebanese government and society, which is very divided. Ultimately, it was a matter of foreign powers' decision – not an inclusive process.[36] Criticism regarding the STL also involves factors such as no one ever

[35] Personal interview with a scholar specialized in Lebanon. Online, 08/03/2022.

[36] Personal interview with a scholar specialized in Lebanon. Online, 08/03/2022.

appeared before the Court, the evidence presented to the STL was circumstantial, the trial was slow – it took many years – and it spent much money.

From the Courts' perspective, on another side, the criticism is partly incorrect in the sense that the Tribunal is criticised for factors that are beyond its powers:

> The fact that no one appeared as an accused is not the Tribunal to be blamed for, but States, in particular Lebanon. It was Lebanon's job to arrest and transfer those accused persons to the tribunal. Still, the political setting in Lebanon didn't allow for that, which is also why the STL's Statute did allow for proceedings through trial *in absentia* – without the accused being present – which is a unique feature in international tribunals. Before the trials, there was a recognition that no one would ever appear before the STL, depending on which direction the accused came from. The politically motivated assassination of Rafik Hariri was not a random attack: it was aimed at him. He had enemies, those enemies were from a particular part of the country, and they had very strong political reasons for assassinating him. The tribunal would never have been able to have those trials done with the accused being present. So, to blame the tribunal for that, it's a bit unfair.[37]

After the STL was established and the investigations were not near completion, it also meant that many people were frustrated. People were waiting for an indictment to come out and to be confirmed before the trial could even get started because it was anticipated that the STL could do it at an earlier stage.[38] Two other factors were considered beyond the control of the STL. First, the conflict that started in Syria moved the political and public attention away from Lebanon. When contrasting the assassination of one political leader in Lebanon in 2005 to what happened to millions of Syrians in the war, Rafik Hariri was not a political topic anymore. "It was a matter of political developments, something that normally happens to international tribunals."[39] The second consideration was the comparison between the pace of the judicial process and the political developments, which would also explain why trials took as long as they did:

> The pace of political developments and attention in the Security Council and the UN is way faster than a judicial agenda can move. It is an entirely different pace, and the standard is much higher. Prosecutors must do an investigation, they need credible evidence to present to judges, and judges must find, beyond a reasonable doubt, as the standard goes, to convict someone. Getting proof to identify who was involved in the assassination was incredibly difficult, and then I think it is a problem with all tribunals. [Furthermore], the tribunal does not have its own power of enforcement in a way that the effectiveness and the results of tribunals are not in the hands of the

[37] Personal interview with a former STL staff member. Online, 03/06/2022.

[38] Personal interview with a former STL staff member. Online, 03/06/2022.

[39] Personal interview with a former STL staff member. Online, 03/06/2022.

> tribunals themselves but in the hands of governments. They determine the effectiveness of an organisation.[40]

Lebanon would still experience other instability episodes after the politically motivated assassination of Rafik Hariri and during the work of the STL, including a war in 2006 between Israel and Hezbollah that devastated the country and almost caused an internal conflict – an event which is known today as the 2008 crisis – and the spillover from the Syrian civil war. Concerning TJ measures beyond the STL and the 14 February 2005 attack, human rights organisations, as well as victims' groups, demanded the matter of the people disappeared during the civil war be a national priority in 2008. Nonetheless, it was only in 2014 that the State Shura Council (a judiciary institution in Lebanon) issued a decision "acknowledging for the first time in Lebanese law the families' right to know the fate of their loved ones. It ruled that the government should disclose the file of the 2000 commission that investigated cases of disappearances" (ICTJ, 2022, p. 1). Finally, the families received a copy of the government's investigation file (ICTJ, 2022). In Law No. 105 of 2018 on the Missing and Forcible Disappeared Persons was passed, considered to be a "significant victory for the families and an acknowledgement of the rights of victims by the Lebanese state" (ICTJ, 2022, p. 1). The members of the National Commission for the Missing and Forcibly Disappeared (a key feature on Law 105) were appointed in June 2020 by the Lebanese state.

[40] Personal interview with a former STL staff member. Online, 03/06/2022.

7 Political Violence in Kenya and the ICC

The second case study investigates the episode of political violence in Kenya and the subsequent application of TJ in the context of political instability. It focuses on the 2007/2008 post-electoral violence and the application of TJ measures as domestic and international responses to the conflict. The case study is developed through process tracing, allowing for a detailed case description and an exploration of the political dynamics shaped by TJ in the country. Therefore, this chapter provides a background of Kenya's history to disclose the historical injustices that date back from the colonial period and the Land Question, reflecting contemporary political violence in the country (7.1). During colonial times, the British settlers took a great share of the most fertile lands in the country, consolidating their control and causing the displacement of different communities. Local resistance against the settlers was not an option – "repression was characterised by torture, detention, and killings" (Wambua, 2019, p. 57). By the time of independence, structural injustice had already been institutionalised, permeating the political system. The post-independence period also suffered gross human rights violations, such as the Shifta War, and experienced successive governments that promoted the centralisation of power, the weakening of institutions, and political violence. Returning to a multi-party election system in 1991, after a period of one-party politics, cyclic episodes of electoral violence persisted in Kenya (Wambua, 2019).

Therefore, deep political tensions were in place long before the December 2007 presidential and parliamentary elections, culminating in intense post-electoral violence, as discussed further in this chapter (7.2). Allegations of "electoral manipulation intersected with ethnic tension and boiled over into fighting, riots, sexual violations, and bloodshed" (ICTJ, 2022, p. 1), resulting in over a thousand deaths, destruction, and displacement, in addition to other gross human rights violations (ICTJ, 2022). Following the political violence episode, a power-sharing agreement was reached between the incumbent President Mwai Kibaki (Party of National Unity) and his opponent, Raila Odinga (Orange Democratic Movement), after intense negotiations under the Kenya National Dialogue and Reconciliation (KNDR). The power-sharing agreement led to a peace pact: the National Accord (ICTJ, 2022).

Measures of TJ were part of the new government agenda: the Truth, Justice and Reconciliation Commission (7.3), the Commission of Inquiry on Post-Election Violence (CIPEV or Waki Commission) (7.4.); and the Independent Review of the Elections

Commission (IREC), in addition to a comprehensive constitutional review. Impasse surrounding a proper national prosecution into the 2007/2008 post-electoral violence and the creation of a Special Tribunal for Kenya, however, resulted in the ICC announcing in March 2010 a *proprio motu* investigation into alleged crimes against humanity committed in Kenya during that period, as analysed in section 7.5. Finally, section 7.6 provides a summary of the TJ measures in Kenya following the acute episode of post-electoral violence and the obstacles faced by the ICC.

7.1 Historical Injustices and Government System

"There is a close link between land injustices and ethnic violence in Kenya."

Truth, Justice and Reconciliation Commission Report (2013, p. 7).

Besides its different communities and ethnicities, one particularly relevant aspect of Kenya's history is its relationship with the land. From independence in 1963 and the institutionalisation of structural inequalities, Kenya has followed a history of political violence. Back in 1954, when Kenya was still part of the British Empire, the Swynnerton Plan was established as a reaction to the Mau Mau Rebellion (1952-1960) (Kemboi & Murumba, 2017). The Mau Mau movement, originating in the 1950s with the militant nationalists among the Kikuyu people, advocated against British domination and was part of the Kenyan independence movement (Britannica, 2020). In 1952, Kikuyu fighters were raiding white settler farms, as well as attacking political opponents. The Mau Mau group took oaths to the cause, and the British declared a state of emergency that would last until 1960. It is estimated that over 11,000 rebels were killed and 160,000 detained; an episode considered one of the most important steps in Kenya's independence (BBC News, 2011).

Roger Swynnerton, a former official in the department of agriculture, was responsible for a plan to intensify African agriculture, creating family holdings large enough for the families to be self-sufficient in food and develop cash incomes through agriculture and farming. According to the Swynnerton Plan (1954), 600,000 African families would have ten acres of farming units in order to raise the average farming productivity (Ogot, 1995). The plan was meant to introduce property rights in two steps: first by "consolidating individual holdings" and second by "registering them as freeholders" (Kanyinga, 2000, p. 44). When implemented in

Central Kenya, an area dominated by Kikuyu farmers and the heartland of Mau Mau, it had unexpected consequences: "the reform generated disputes rather them solved them, and it decreased people's security in land" (Kanyinga, 2000, p. 44). That is, the reform did not solve the Land Question, since it did not address the issue of land alienation, redistribution, or the inequalities in ownership, both between settlers and Africans and withing African communities. A second plan, the "re-Africanization" in the yearly 1960s in the so-called White Highlands, aimed at altering the racial structure of land ownership in the region to address "ethnic and political dimensions to the Land Question complex" (Kanyinga, 2000, p. 44):

> Both the reform of land tenure and the "re-Africanisation" programme had a profound effect on the nation-building project, particularly because they allowed the Land Question to remain at the centre stage of some of the main political events in the country. Both considerably shaped the politics of transition and have continued to shape local and wider national-level politics ever since (Kanyinga, 2000, p. 44-45).

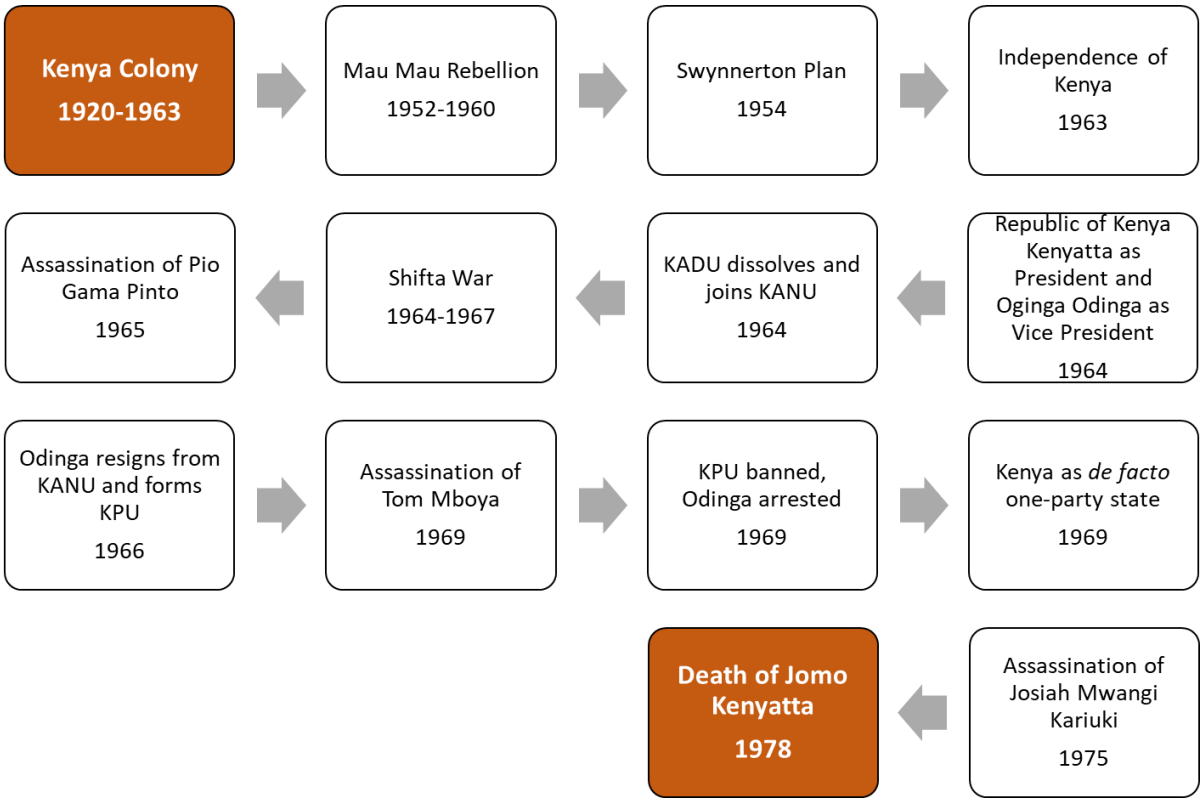
The unaddressed land issue and the colonial past have long been reflected in electoral violence in Kenya (Kemboi & Murumba, 2017). Land grievances, for instance, can impact the mobilisation of electoral violence in multi-ethnic and democratising societies in the context of societies with politicised property rights (Klaus, 2015). That was the case with Kenya, where even during the period of transition to independence, the Land Question influenced the debate regarding constitutional and economic arrangements and the discussion on the form of government to be adopted. Contestation over the different themes followed between two emerging groups based on ethnicity: the Kikuyu and Luo ethnic groups from one side and the Kalenjin, Maasai, and smaller communities from the other side, who came together "in fear of domination" from the bigger group (Kanyinga, 2000, p. 46). Again, a social-political division based on the interest in land from both groups and the different point-of-view regarding the Land Question led to the formation of two political parties: the Kenyan African National Union (KANU) and the Kenya African Democratic Union (KADU). "Divisions around the land issue […] became the foundation for different projects of "national independence" (Kanyinga, 2000, p. 46).

The KADU party advocated for a federal system of government, given its fear of dominance by the other group. On the other hand, KANU was interested in a unitary form of government to protect the Kikuyu territorial gains. The party itself was divided over the Land Question, with a radical wing opposed to "accumulation from above" that included Oginga Odinga – who later became Vice-President – and a liberal wing led by Kenyatta with a cautious

approach regarding a reform. When Kenyan independence arrived in 1963, the Land Question was not resolved, and national disputes would continue (Kanyinga, 2000, p. 49). Jomo Kenyatta's regime (1963-1978) succeeded in the country's independence; however, it was responsible for centralising power (Wambua, 2019). After independence, KADU decided to dissolve itself into KANU. Still, the party's radical wing resigned in 1966 and formed an opposition party, the Kenya People's Union (KPU), connected to Odinga. Back then, elections already had an ethnic tone, and the dispute between Kenyatta and Odinga was clear. The KPU was banned in 1969, and several leaders were detained, leading the way to a one-party State (Kanyinga, 2000).

Regarding the transition period to independence in Kenya, some outcomes are noteworthy: a constitutional arrangement favouring property rights and the adoption of the legal framework related to the colonial land tenure reform. Such outcomes encouraged the "unlimited accumulation of land" by the liberals, fearing the radicals' threats to confiscate lands in the settler sector. The consolidation of property rights became imperative for the liberals, who were central in a centralised government, an effect that is also related to the KADU's party dissolution. Consequently, most of the political powers were centralised by the President, including access to land (Kanyinga, 2000). KANU's land resettlement program aimed at creating a free market in land, what soon became a patronage source for the political elites, favouring the Kikuyus, a process that would fuel an "enduring political narrative that frames Kikuyus as "migrants" who have "invaded" the ancestral land of less powerful groups" (Klaus, 2020, p. 34). That narrative became a dangerous one in the hands of leaders, who employed it as a tool to organise violence (Klaus, 2020).

Figure 15. Colonial Times, Independence, and Kenyatta's Regime



Source: prepared by the author.

Human Rights violations and government systems

Following the State of Kenya's independence, the country would still experience a period of gross human rights violations during the Shifta War, a conflict between Kenya and the Somali Separatist Movement that lasted from 1964 to 1967, during which "the Military force committed mass killings, torture, sexual violence, and rape against civilians. The police force, especially the General Service Unit, also committed violations of human rights" (TJRC, 2013). The Truth, Justice and Reconciliation Commission estimates that around 2,000 to 7,000 people were killed during the Shifta War. With the power centralisation promoted by Kenyatta's regime, institutions, including the media, weakened. Distinguished figures in Kenya were assassinated, for instance, Pio Gama Pinto (journalist and politician) in 1965, Tom Mboya (Minister of Justice) in 1969, and Josiah Mwangi Kariuki (politician) in 1975 (Wambua, 2019).

President Daniel Arap Moi's administration (1978-2002) replaced Kenyatta's regime after his death. Moi was Kenyatta's Vice President until the death of the founding President of Kenya after 14 years in power. During that period, the government was dominated by

Kenyatta's inner circle, composed of a Kikuyu elite that did not include the Vice President himself. Although Daniel Moi was loyal to Kenyatta, the people saw him as a leader who could accommodate a human rights era, that is, a leader who would not promote ethnic dominance (Adar & Munyae, 2001, p. 1). Political assassinations and human rights violations, though, continued and intensified during President Daniel Arap Moi's administration. He was responsible for turning Kenya into a *de jure* one-party state after a failed coup d'état in 1982 (Wambua, 2019), in opposition to the *de facto* one-party state in the previous government.[41] The military coup attempt accelerated the state control process, leading to an authoritarian regime that Moi would still solidify with parliament Act No. 14 and Act No.4, which limited the independence of the judiciary. As a result, "there were no checks and balances on Moi's personal authority" (Adar & Munyae, 2001, p. 4).

Moi's regime is also considered to have "institutionalized human rights violations in the country" (Wambua, 2019, p. 58), as exposed in the Wagalla Massacre of 1984, which started as a government effort to disarm the Degodia community and became later a systematic targeting of a civilian population (Wambua, 2019). "Eyewitnesses claim that thousands of people were delivered to the airstrip, kept hungry, ordered to strip naked and lie on the ground for days" (Dahir, 2014, p. 1). According to the TJRC (2013), between 1980 and 1984 – more than a decade after the end of the Shifta War – at least three violent security operations resulted in massacres in the Northeastern Province alone: in Bulla Karatasi, Malka Mari, and Wagalla. Moreover, the period between 1989-1991, which preceded Kenya's return to multipartyism, was one of the worst regarding human rights violations. Assassinations, including the assassination of the Foreign Affairs Minister, Dr Robert Ouko (1990), detentions without trial, and repression against multiparty politics marked the period (Adar & Munyae, 2001).

Events such as the Saba Saba protests (7 July 1990) and the foundation of the Forum for the Restoration of Democracy (FORD) were part of the pro-democracy and human rights advocates' fight, movements that were also repressed. As a foreign reaction to human rights violations, the US Congress passed Kenya's Foreign Operations, Export Financing, and Related Programs Appropriations Act of 1991 (Adar & Munyae, 2001). According to the act, Economic Support Fund and Foreign Military Financing Program could be available to Kenya if the

[41] While 'de facto' means a situation that is true in fact, but that is not officially sanctioned, 'de jure' means a s a state of affairs that is in accordance with the law, for instance, that is officially sanctioned (Washington University Law, 2022). That means that although Kenyatta's regime already promoted a centralization in power, it was only during Moi's administration that the state was 'one party' by law.

government accepted some conditions, including: "(1) charge and try or release all prisoners, including any persons detained for political reasons; (2) cease any physical abuse or mistreatment of prisoners; (3) restore the independence of the judiciary; and (4) restore freedoms of expression" (Public Law 101-513, 1990, p. 82).

The involvement of the US Congress culminated in a fact-finding mission and the release of political figures from prison, such as Kenneth Matiba and Raila Odinga. The KANU government backed down, removing Section 2A of the Kenyan Constitution about the *de jure* one-state party. The constitutional change made possible the formation of the political parties, amongst them the Forum for the Restoration of Democracy, led by Oginga Odinga and the Democratic Party of Kenya (DP), guided by Mwai Kibaki (Adar & Munyae, 2001, p. 8). Returning to multiparty politics in 1991, however, did not end human right's violations and political violence in the country, for Kenya has since experienced cyclic episodes of electoral violence. In 1992, "general elections were characterized by ethnic killings and forcible removal of people from some parts of the country" (Wambua, 2019, p. 58). Electoral violence was also present in the 1997 general elections, demonstrating that "ethnicity was used as a political tool for accessing power and state resources and for fuelling violence" (TJRC, 2013, p. 26).

Mwai Kibaki's Regime

The transition election of 2002 marked the end of Moi's authoritarian regime when Mwai Kibaki won against Uhuru Kenyatta. Kibaki had shown goodwill, promising to eliminate human rights violations and rectify historical injustices; however, the government returned to old practices of corruption and chauvinism. On the one hand, the economy had improved; on the other hand, Kibaki's government was unable to reduce corruption and human rights abuses (TJRC, 2013, p. 28). Insecurity remained high, making clashes among communities on issues such as access to water and cattle more common, worsening in 2005, in the context of a Constitutional Referendum about the powers of the president and devolution. The Referendum was defeated, and the Kibaki administration became increasingly intolerant regarding opposition, destroying newspaper offices with a group of armed men and consolidating power with trusted allies. The "rampant extra-judicial killings targeting Mungiki youths in Central Kenya and parts of Nairobi" were more disturbing during Kibaki's regime (TJRC, 2013, p. 29).

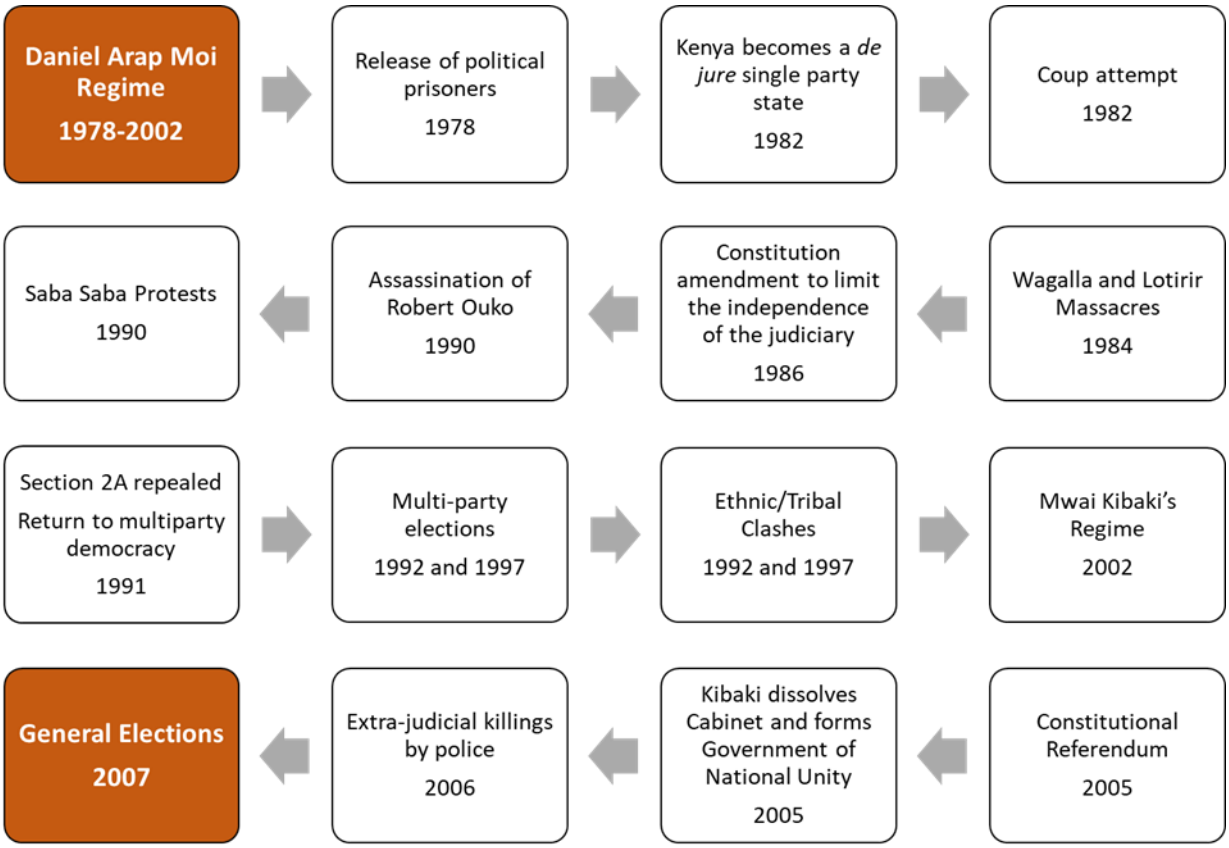
Historical injustices were not solved as promised (Wambua, 2019). The new government was also responsible for "numerous gross violations of human rights, including

unlawful detentions" (KTJN, 2013, p. 11). The scenario before the 2007 general elections, therefore, was of a "volatile environment in which violence had been normalised and ethnic relations had become poisoned" (KTJN, 2013, p. 29). Kenya's history reveals a strong connection between land injustices and ethnic violence through time. Starting with the Arab and then British colonisation, land injustices were installed and never really solved. Governments that succeeded after independence also failed in addressing the land issue; consequently, landlessness "caused individuals and communities to turn to violence" (KTJN, 2013, p. 17).

> Land related injustices took many forms such as illegal takeover of individual and community land by public and private institutions; illegally hiving off public land and trust lands; preferring members of a specific ethnic group to benefit from settlement schemes, at the expense of others who were more deserving; forcefully settling a community outside its homeland; forceful eviction; and land grabbing by government officials (KTJN, 2013, p. 17).

As this background section has described, post-electoral violence in 2007/2008 was the culmination of a succession of events that started long ago, before Kenya became an independent country. The land issue is a prominent aspect with roots in the colonial period, as well as historical injustices that have emphasised identity-based ethnic differences. Colonialism, although responsible for installing retrograde systems and for several human rights violations, it is not the only one to blame. To the Kenyan Truth Commission's report, Jomo Kenyatta, Daniel Moi, and Mwai Kibaki regimes are responsible for "maintaining the status quo" (KTJN, 2013, p. 6).

Figure 16. Daniel Arap Moi and Mwai Kibaki's Regimes



Source: prepared by the author.

7.2 The 2007 National Elections

On 27 December 2007, general elections took place in Kenya. According to opinion polls, Raila Odinga from the Orange Democratic Movement (ODM) was the favourite to win the presidency over Mwai Kibaki, from the Party of National Unity (PNU), then president of Kenya (KTJN, 2013). The main parties competing in the 2007 elections were alliances based on ethnicity, as in previous elections. For instance, the PNU was an alliance of Kikuyu, Embu, and Meru ethnic groups led by Kibaki, a Kikuyu himself. The opposition alliance, ODM, was formed by Luo, Luhya, and Kalenjin, in addition to several other small communities; Odinga was their candidate from the Luo ethnicity. Key political leaders were personally representing their ethnic groups. When election day arrived, it confirmed an "underlying congruency of ethnic identity and political party in Kenya" (Jacobs, 2011, p. 5), considering that the electorate has voted following their own ethnic lines (Jacobs, 2011).

Voting went relatively peacefully, but the situation changed when the counting started. First, there was a delay in announcing the presidential results, generating suspicions among citizens, especially those from areas that supported the ODM (KTJN, 2013, p. 29). Protests had started even before the announcement of the election's results since irregularities and delays in the counting led to rumours of rigging (Waki Commission, 2008). Mass rallies called by the ODM began on 29 December 2007, evolving to large-scale violence a few days later, following a "hastily organised, secretive inauguration" of President Mwai Kibaki (Jacobs, 2011, p. 6). When the final results arrived, Kibaki was declared the winner of the presidential election, causing an immediate violent response in the ODM's areas of support (KTJN, 2013).

> The eruption of violence was triggered by a culmination of factors, not least among them the constantly changing tally figures being reported, highly dubious official results, and repressive measures such as a government-decreed ban on live media reports and a reinforcement of state security forces. Together with local factors, they entrenched the opposition's perception that the PNU regime had rigged the elections (Jacobs, 2011, p. 6).

The perception that elections were not fair caused ethnic reprisal attacks that started against the PNU regime and its aligned communities by ODM supporters. Ethnic militias were formed, along with mobs and gangs, escalating violence to inter-group clashes that spread across the country. Rift Valley was the hardest-hit region in Kenya, but inter-ethnic attacks and "political acts of violence during mass rallies erupted all over the country" (Jacobs, 2011, p. 6), including confrontations between demonstrators and the police forces. Major roads were under siege, and transport was interrupted (Jacobs, 2011). It was a period of organised and spontaneous violence, resulting in the death of 1,100 people and 660,000 displaced persons, besides thousands of injured from "beatings, machete attacks, rapes, police shootings and other acts that may amount to crimes against humanity" (Amnesty International, 2014, p. 7).

Acts of the government and the police were not helpful, as public gatherings were banned, and the police used excessive force against protesters. Taking advantage of the chaotic scenario and the lack of law and order, some people committed looting, rape, and riots. Many victims were targeted due to their ethnicity, a characteristic presumed to indicate a political preference. Attacks were not only committed by armed groups and by the Mungiki criminal gang but also allegedly by the police, who were involved in the violence as well, according to the Waki Commission (2008) report. Political violence took the form of pogroms[42] with widespread sexual violence, against both men and women, in the Rift Valley province and in

[42] See the typification of political violence in chapter 2.4.2.

Nairobi. The main perpetrators were the Kalenjin armed youth, associated with the opposition, and the Kikuyu gangs, aligned with the government. Moreover, in the "defensive logic of violence" (Klaus, 2020, p. 30), which is associated with the violence displayed in Kenya, both in cities and rural areas, elections can be seen as a threat. Political trust is also low, turning elections into high-stakes events, which can explain why citizens are "willing to take on the costs of participation in violence" (Klaus, 2020, p. 30) as a way to "ensure their preferred political outcome, or to defend themselves against anticipated attacks" (Klaus, 2020, p. 30).

7.2.1 Dealing with Post-Electoral Violence

In the context of intensified violence following the 2007 election, national and international responses were formulated to deal with the PEV, above all, attempts to convince Kibaki and Odinga to negotiate. It soon became clear that a national solution was out of reach, and different authorities, both regional and international, got involved, including Desmond Tutu from South Africa. There was an impasse: besides both leaders refusing to engage in dialogue, Kibaki defended that he was the one democratically elected, and Odinga was certain that elections were rigged. The Chairman of the African Union (AU), Ghanaian President John Kufuor, approached Kofi Annan to chair the Panel of Eminent African Personalities with the goal of facilitating the crisis in Kenya. The AU Panel inaugurated the Kenyan National Dialogue and Reconciliation (KNDR), the "engineers of the mediation process" (Hansen, 2013, p. 307) on 29 January 2008, supported by the European Union, the United States, and other major international players, as well as by UN agencies.

National Accord and Reconciliation Act

The KNDR's strategy was to establish a power-sharing agreement instead of a re-run over the fear of more violence (Hansen, 2013). The National Accord and Reconciliation Act was signed on 28 February 2008, after weeks of negotiations, with the final goal of achieving "sustainable peace, stability and justice in Kenya through the rule of law and respect for human rights" (KNDR, 2008, p. 1). The Accord followed a power-sharing agreement mediated by Kofi Annan and signed by both leaders, in which they agreed that Mwai Kibaki would remain President, and Raila Odinga would become Prime Minister. One possible explanation for both

parties' acceptance of the agreement was the continued violence in the country. There was a stalemate with no other plausible way-outs (Hansen, 2013). With the Accord, the Prime Minister's post had to be created for Odinga from an Amendment Bill on Kenya's Constitution, also adding two deputies to the cabinet (Al Jazeera, 2008).

The Agreement on the Principles of Partnership of the Coalition Government (2008) stated that the 2007 presidential election triggered a crisis with deep roots in the historical divisions within the Kenyan society, adding that "giving the current situation, neither side can realistically govern the country without the other," in a way that "there must be a real power-sharing to move the country forward and begin the healing and reconciliation process." Key points in the Agreement are the existence of a Prime Minister of Kenya "with authority to coordinate and supervise the execution of the functions and affairs of the Government of Kenya"; the nomination of Deputy Prime Ministers from the National Assembly by each member of the coalition; and the composition of the cabinet, consisting of the President, Vice-president, Prime Minister, two Deputy Prime Ministers and the other Ministers. It also mentions that there must be a balance in the composition of the coalition government, reflecting their relative parliamentary strength. Lastly, "the National Accord and Reconciliation Act shall be entrenched in the Constitution" (National Accord and Reconciliation Act, 2008, p. 8).

The Kenyan National Dialogue and Reconciliation has not only brought violence to an end but also promoted a framework for Transitional Justice in the country (Hansen, 2013). Amongst the framework, there were agreements, such as the National Accord and Reconciliation, and different mechanisms to address a history of political violence in the country. For instance, in the Statement of Principles on Long-term Issues and Solutions, the agenda is committed to reforms, such as (A) constitutional, legal and institutional reform; and (B) land reform; to address (C) poverty, inequity, and regional imbalances; and (D) unemployment, particularly among the youth. The coalition government would also be committed to the (E) consolidation of national cohesion and unity, with (F) transparency, accountability, and combating impunity (KNDR, 2008, p.1-3).

Under the mediation of the KNDR, a series of agreements were reached in March 2008, presenting the different tools to address long-time issues in the country, as well as solutions, such as agencies to implement constitutional reform (Hansen, 2013). Notably, the Truth, Justice and Reconciliation Act, which established the Truth, Justice and Reconciliation Commission; the Independent Review Committee, with a mandate to review the electoral system and make recommendations on the constitutional and legal framework (IREC, 2008); and the

Commission of Inquiry into Post-Election Violence, formed to investigate the political violence after the 2007 national elections, as discussed in the following sections.

7.3 Truth, Justice and Reconciliation Commission

The Truth, Justice and Reconciliation Act (2008, p. 10) established powers and functions for a Truth, Justice and Reconciliation Commission, with the objectives of promoting "peace, justice, national unity, healing, and reconciliation among the people of Kenya" (The Truth, Justice and Reconciliation Act, 2008, p. 14). The Commission was set to investigate and build a record of gross human rights violations that took place in Kenya, not only related to the 2007/2008 post-electoral violence but also related to historical injustices, encompassing the period between December 1963 and 28 February 2008. In addition, the Commission was in charge of making recommendations regarding best policies, prosecution of persons involved in abuses, etc. (The Truth, Justice and Reconciliation Act, 2008, p. 14). The Act also stipulates that the Truth Commission enjoys financial autonomy, creating the Truth, Justice and Reconciliation Fund as a means of minimising chances of political influence. Without a real commitment from the political leadership to establish a "credible truth-seeking process," the TJRC became compromised (Hansen, 2013, p. 314).

The TJRC finished its investigation in 2013, presenting a final report that has "neither secured reparations for victims nor prosecutions for perpetrators of historical abuses in the country" (Wambua, 2019, p. 59). Unfortunately, truth-seeking, reforms and victim's redress were restricted, because political elites who were the key actors in the TJ processes were not really interested in making them work (Hansen, 2013). Initially, the Chair of the Commission was Ambassador Kiplagat, a former civil servant in Daniel Arap Moi's dictatorial regime. Kiplagat was accused of having been involved in the planning of the 1984 Wagalla Massacre; therefore, his appointment as Chairman would go against the TJRC Act (art. 10 (6) b), which stipulates that a commissioner could not be involved or connected to any kind of human rights violations in Kenya. By violating the Act, "the challenge of compliance in enforcing domestic legislations in the pursuit of transitional justice" (Wambua, 2019, p. 60) was exposed. President Kibaki appointed the commissioners after consultation with Prime Minister Odinga – the two who shared a great responsibility for the 2007/2008 post-electoral violence in Kenya – disregarding civil society groups' vetting (Wambua, 2019). Kiplagat's appointment

additionally led to the resignation of valuable members of the Truth Commission, who refused to work under his leadership (Hansen, 2013).

The whole adversities since the establishment of the TJRC brought a crisis of credibility to the process and expected outcomes (Wambua, 2019, p. 60). In sum, there were four main challenges for the TJRC: "the controversy surrounding the credibility and suitability of the Chairperson; financial and other resource constraints; legal challenges; and the lack of sufficient state and political will to support the work and implementation of the objectives, for which the TJRC was established" (KTJN, 2013, p. 3). Consequently, the truth-seeking process became contested and with limited value even for the Kenyan people (Hansen, 2013).

7.4 Commission of Inquiry into Post-Election Violence

The Waki Commission, or Commission of Inquiry into Post-Election Violence (CIPEV), was established by the government of Kenya, with the support of the African Union and the KNDR, to investigate the facts and circumstances surrounding the post-electoral violence in the country, including the "conduct of state security agencies in their handling of it" (Waki Commission, 2008, p. vii), and to make recommendations on the matter (Waki Commission, 2008). It was "the outcome of the Kenya National Dialogue and Reconciliation Accord of 28 February 2008, negotiated by Kofi Annan and the Panel of Eminent African Personalities" (ICTJ, 2008, p. 1). The Waki Commission acknowledged that violence has been present in electoral processes in Kenya since the return to multi-party politics in 1991, however, the 2007/2008 post-electoral violence was unprecedented:

> It was by far the deadliest and the most destructive violence ever experienced in Kenya. Also, unlike previous cycles of election related violence, much of it followed, rather than preceded elections. The 2007-2008 post-election violence was also more widespread than in the past. It affected all but two provinces and was felt in both urban and rural parts of the country. Previously violence around election periods concentrated in a smaller number of districts mainly in Rift Valley, Western, and Coast Provinces (Waki Commission, 2008, p. vii).

According to the CIPEV's report, there was a failure in state security agencies to deal with the situation. They failed not only as an institution in anticipating and containing the violence, but more than that, they failed in their involvement in the conflict as active perpetrators: "often individual members of the state security agencies were also guilty of acts of violence and gross violations of the human rights of the citizens" also "systematic attacks on

Kenyans based on their ethnicity and their political leanings" (Waki Commission, 2008, p. viii). Furthermore, the report concluded that the post-electoral violence was not just a matter of opportunistic assaults among citizens but also "systematic attacks on Kenyans based on their ethnicity and their political leanings" (Waki Commission, 2008, p. viii).

> Attackers organized along ethnic lines, assembled considerable logistical means, and traveled long distances to burn houses, maim, kill and sexually assault their occupants because these were of particular ethnic groups and political persuasion. Guilty by association was the guiding force behind deadly "revenge" attacks, with victims being identified not for what they did but for their ethnic association to other perpetrators. This free-for-all was made possible by the lawlessness stemming from an apparent collapse of state institutions and security forces (Waki Commission, 2008, p. viii).

As exposed, conflict-related sexual violence was part of the post-electoral violence in Kenya. In this regard, the CIPEV was the "first investigation of electoral violence to focus on sexual violence," documenting reports of conflict-related sexual violence in the post-election context, including cases of rape and gang rape, sexual mutilation, loss of body parts, hideous deaths, and various forms of genital violence. The report also mentions victims contracting HIV/AIDS after being sexually assaulted "because the breakdown of law and order and the deteriorating security situation kept them from accessing medical care soon enough to prevent it". Moreover, "the Commission also heard that some individuals who had lost family members and property, and who had been chased away from the only homes they had ever known, also had experienced multiple forms of violence that included sexual violence" (TJRC, 2013, p. 237).

The Waki Commission investigated facts and circumstances surrounding the 2007/2008 post-electoral violence in Kenya and played a crucial role in criminal accountability. As discussed in the next part, the Commission recommended the establishment of a Special Tribunal for Kenya because it concluded that the domestic judiciary was unable to deal with the situation. Anticipating possible obstacles to its implementation, the CIPEV added a self-enforcement mechanism, which foresees that failure to establish the Special Tribunal or measures to subvert it would lead to the delivery of a list containing names and relevant information regarding suspects bearing the greatest responsibility for crimes within the Rome Statute, to the Prosecutor of the International Criminal Court.

7.5 Criminal Accountability

During the National Accord and Reconciliation process, there was a discussion regarding criminal accountability for the 2007/2008 post-electoral violence. As mentioned, a special commission was appointed to investigate the past violence and to make recommendations to the Kenyan government, known as CIPEV (or Waki Commission). The Kenyan Cabinet theoretically approved its final report and recommendations on 27 November 2008. Later, the Kenyan Parliament adopted the International Crimes Act (2008), "defining crimes against humanity and other crimes under international law as crimes in national law" (Amnesty International, 2014, p. 24). The Act, however, applies to acts of violence committed after 1 January 2009, which means that the International Crimes Act did not cover the crimes committed in the post-electoral period (Amnesty International, 2014).

When the Waki Report was released in October 2008, the Commission made recommendations to the Kenyan government, including establishing a hybrid Special Tribunal to address the crimes committed in the post-electoral period and to bring the responsible to justice. The plan was to allocate a prosecutor, two (out of three) judges from Commonwealth countries, and a judge from Kenya. Selection would be made following a list of qualified officials provided by the AU's Panel of Eminent African Personalities, which brokered the National Accord after consultation with the Prime Minister (Brown & Sriram, 2012, p. 250). There was a very well-thought move by the Waki Commission to prevent the government from neglecting the report's recommendations, a self-enforcement mechanism, threatening to refer the case to the ICC:

> If either an agreement for the establishment of the Special Tribunal is not signed, or the Statute for the Special Tribunal fails to be enacted, or the Special Tribunal fails to commence functioning as contemplated above, or having commenced operating its purposes are subverted, a list containing names of and relevant information on those suspected to bear the greatest responsibility for crimes falling within the jurisdiction of the proposed Special Tribunal shall be forwarded to the Special Prosecutor of the International Criminal Court. The Special Prosecutor shall be requested to analyze the seriousness of the information received with a view to proceeding with an investigation and prosecuting such suspected persons (Waki Commission, 2008, p. 473).

The Waki Commission concluded that the domestic judiciary was incapable of dealing with the situation and unable to genuinely prosecute the responsible persons for the political violence, leading to the proposal of a hybrid tribunal to mitigate limitations in the domestic judiciary system. The ICC Prosecutor understood the creation of a hybrid court as indispensable, allowing the ICC to focus on high-level individuals. However, the plan for a

Special Tribunal was never implemented, even though the President, the Prime Minister, and the Cabinet endorsed the Waki Report's recommendations. With the original deadline of 30 January 2009 for Kofi Annan to deliver the "envelope to The Hague," the Justice Minister presented the legislation to establish the Special Tribunal to the Kenyan Parliament (Brown & Sriram, 2012).

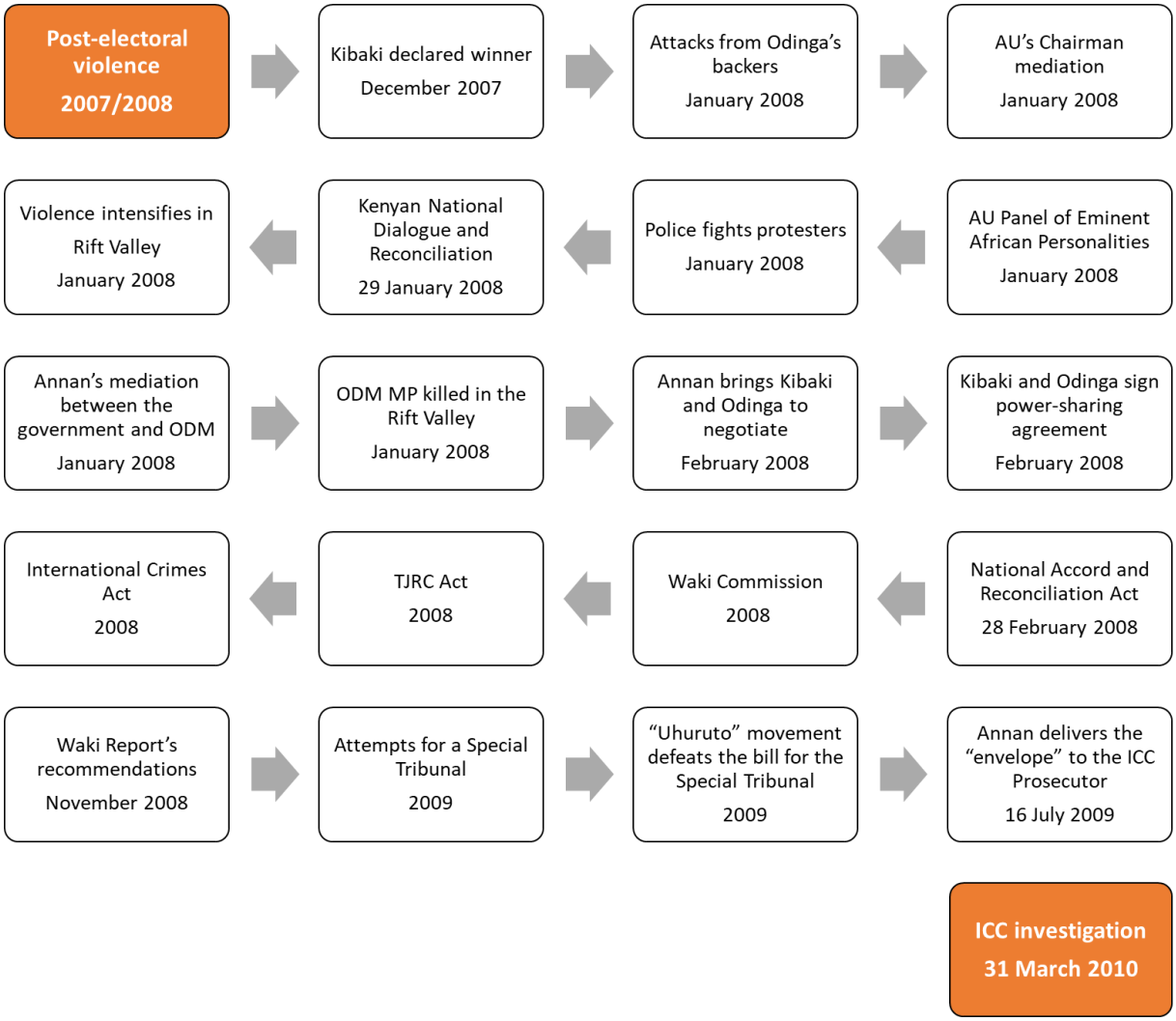
Don't be vague, let's go to The Hague!

Considering the crisis of credibility from the TJRC, the local population in Kenya believed that an investigation by the ICC would be more trustworthy than the truth-commission (Wambua, 2019) and domestic justice. Therefore, expectations about the ICC were high: "for many Kenyans, the ICC was the best-placed institution to deal with such a crucial case involving some of the nation's most powerful" (Mwakideu, 2016, p. 1). "Don't be vague, let's go to The Hague" became a catchphrase, and the bill to establish a Special Tribunal in the Parliament was defeated. The movement against a special tribunal was led by what would later become "Uhuruto", the alliance between Uhuru Kenyatta and William Ruto, key members of Kibaki's and Odinga's respective camps (Mwakideu, 2016, p. 1). Even though the Parliament had expressed support for a Special Tribunal previously, including the support of President Kibaki and Prime Minister Odinga, the bill failed to get the majority (2/3) of votes. "MPs voted against the bill either because they were worried that the tribunal provisions would be ineffective […] or because they feared it actually would be effective and they themselves or their close allies ran a high risk of being prosecuted and convicted" (Brown & Sriram, 2012, p. 252). Apparently, for those politicians involved in the past violence which changed their position concerning the establishment of a special tribunal, the involvement of the ICC was a remote possibility:

> Though the government introduced the bill to comply with international pressure and avoid the ICC's involvement, The Hague must have seemed like a rather distant possibility to those parliamentarians whose names might have appeared on the Waki list. Moreover, whereas the Special Tribunal could prosecute hundreds of suspects, the ICC could only pursue a half-dozen perpetrators at the highest level. This meant that MPs who were implicated but who were not among the 'big fish' had little to fear from the ICC. In fact, for some of the politicians, the ICC might prove useful in removing political rivals from either the other side or within their own party. They joined those who were truly skeptical of any Kenya-based tribunal under the slogan, 'Don't be vague, let's go to The Hague' (Brown & Sriram, 2012, p. 253).

The result was the later involvement of the ICC, with a list of alleged perpetrators handed to the ICC Prosecutor, Luis Moreno Ocampo. Six boxes containing documents and supporting materials compiled by the CIPEV, as well as an envelope with a list of persons who could be implicated in the violence, arrived in The Hague on 16 July 2009 (International Criminal Court, 2009, p. 1). The sealed Waki enveloped delivered by Annan to the ICC contained the list with the "infamous Ocampo six": "Kenya's then suspended Education Minister William Ruto, Finance Minister Uhuru Kenyatta, Industrialization Minister Henry Kosgey, secretary to the cabinet Francis Kirimi Muthaura, former police chief Mohammed Hussein Ali and radio executive Joshua Arap Sang" (Mwakideu, 2016, p. 1) – important politicians from both PNU and ODM. After that movement and the ICC getting close to intervening, Kenyan cabinet ministers decided to come up with a new strategy: President Kibaki announced that the government would reform the judiciary and the police subsequently in a way that the suspects could be later tried in regular national courts. Kibaki has even suggested expanding the TJRC's role to include prosecutions, but the Commission itself opposed it. Kibaki's efforts did not change the opening of an ICC investigation later on (Brown & Sriram, 2012).

Figure 17. Post-Electoral Violence and TJ Measures



Source: prepared by the author.

7.5.1 The ICC Cases

Considering that Kenya has been a part of the Rome Statute since its ratification on 15 March 2005, the International Criminal Court has jurisdiction to investigate crimes listed in the Statute (genocide, war crimes, crimes against humanity, and aggression) committed in the Kenyan territory or by its nationals from 1 June 2005 onwards. The ICC investigation started on 31 March 2010, after the Pre-Trial Chamber II granted the Prosecutor's *proprio motu* request in the situation of Kenya to investigate crimes against humanity committed between 1 June 2005 and 26 November 2009, focusing on alleged crimes that took place in the context of post-election violence in Kenya in 2007/2008, in eight Kenyan Provinces: Nairobi, North Rift

Valley, Central Rift Valley, South Rift Valley, Nyanza Province and Western Province (ICC, 2022).

It was the first time a *proprio motu* investigation was opened in the ICC; that is, the Prosecutor opened an investigation instead of receiving a referral. According to the ICC, this decision was made because the Pre-Trial Chamber noticed the gravity and scale of violence of the situation following the 2007 election, when "1,000 people were killed, there were over 900 acts of documented rape and sexual violence, approximately 350,000 people were displaced, and over 3,500 were seriously injured" (ICC, 2022, p. 1). Elements of brutality, such as "burning victims alive, attacking places sheltering IDPs, beheadings, and using pangas and machetes to hack people to death", and the instalment of "checkpoints where they [perpetrators] would select their victims based on ethnicity, and hack them to death, commonly committed gang rape, genital mutilation and forced circumcision, and often forced family members to watch" (ICC, 2022, p. 1) are among the Prosecutor's list for requesting the opening of the investigation. Two main cases resulted from the ICC's investigation: *The Prosecutor v. William Samoei Ruto and Joshua Arap Sang* and *The Prosecutor v. Uhuru Muigai Kenyatta*, with six original suspects. Charges involved the crimes of "murder, deportation or forcible transfer of population, persecution, rape, and other inhumane acts" considered to be crimes against humanity (ICC, 2022, p. 1).

Following the ICC Prosecutor summonses of the "infamous Ocampo six" considered to be the most responsible for the post-electoral violence, including William Ruto and Uhuru Kenyatta – who later ran for presidential elections in 2013 – and Francis Muthaura, Kibaki's right hand", the political leadership entered a series of actions to try to eliminate the ICC investigation. In December 2020, for instance, the Kenyan Parliament required the government to take action to withdraw from the Rome Statute, which did not happen since they concluded that the withdrawal from the Statute would not impact the ongoing investigation. Due to that conclusion, the Kenyan government launched diplomatic efforts to convince other countries and the African Union that the UNSC should defer the cases based on Article 16 of the Rome Statute.[43] Even with the support of the African Union, the request was not granted because permanent members of the UNSC (US, UK, and France) dismissed the claim that the ICC

[43] According to Article 16 (Deferral of investigation or prosecution) of the Rome Statute, "no investigation or prosecution may be commenced or proceeded with under this Statute for a period of 12 months after the Security Council, in a resolution adopted under Chapter VII of the Charter of the United Nations, has requested the Court to that effect; that request may be renewed by the Council under the same conditions." Available at: https://www.icc-cpi.int/sites/default/files/RS-Eng.pdf. Access: 06/11/2022.

process poses a threat to the government and its management of peace and security in Kenya (Hansen, 2013, p. 317).

Kenya's government's opposition to the ICC tried another move to deter the case in March 2011, when the government challenged the admissibility of the cases (Article 19 of the Rome Statute), referring to Article 17 of the Statute (Issues of admissibility). According to the admissibility challenge claims, Kenya had been through judicial reform, and the country could try the post-electoral violence cases, including those in the ICC. However, the Pre-Trial Chamber II of the ICC rejected the admissibility challenge, arguing that there was no "credible information" demonstrating that Kenya was investigating the ICC suspects. On the one hand, those moves against the ICC show elite opposition that tried to avoid the criminal prosecution of the main responsible for the PEV. On the other hand, the Kenyan population firmly supported the ICC investigation, although popular support decreased as a possible result of the elite's manipulation of the process (Hansen, 2013, p. 317).

The two main cases, however, were closed. Charges were withdrawn in the Kenyatta case (5 December 2014), and procedures were terminated on 13 March 2015 (see Annex 2). The Ruto and Sang case was terminated on 5 April 2016 (see Annex 3) (ICC, 2022). Ruto and Kenyatta returned to Kenya in April 2011 after the initial hearings at the ICC and were given a public heroes' welcome. Even after being accused of crimes against humanity, "they have cast themselves as political victims of national and international plots against them and retain a significant public support in their own ethno-regional communities" (Brown & Sriram, 2012, p. 257). Moreover, Uhuru Kenyatta and William Ruto – who distanced himself from Odinga after not getting support against the ICC – went from being on opposite sides to running together in the 2013 elections, in an "alliance for unity and peace" – or "the alliance of the accused" (Hillebrecht, 2020, p. 475). The candidates promoted the idea of an anti-Western bias by the ICC, claiming that foreign forces were trying to undermine democracy in Kenya and that Odinga was the favoured candidate. The anti-ICC rhetoric also impacted public support for the ICC in Kenya, leading Kenyatta and Ruto to victory (Hillebrecht, 2020).

7.6 Summary

National elections in Kenya have historically been a stage of violence, for instance, in 1992 (fighting between Kalenjin and Kikuyu) and 1997 (Kikuyu and Luo), two election periods that account for over 3,000 deaths. A continuous threat in electoral periods in Kenya has caused voluntary displacement since many people have left areas where they lived before to join a region where their ethnicity is a majority. The post-electoral violence in Kenya in 2007/2008 was multifaceted: violence spread after the winner's announcement in Nairobi and the Rift Valley. It continued until the power-sharing agreement between Kibaki and Odinga. Violence was not only tolerated but also instigated by the Kenyan government and opposition elites: "human rights reporting and ICC documents alleged that the planned and systematic nature of the attacks, and their financing, implicated Kikuyu and Kalenjin politicians" (Krause, 2020, p. 195). "One of the primary tactics of violence was arson, and attackers sought to displace local residents of ethnic groups associated with their political opponents" (Krause, 2020, p. 191).

The National Accord and Reconciliation Act, signed in February 2008, was responsible for a series of domestic and international responses to the post-electoral and intercommunal violence that took place in Kenya. The Accord created the position of Prime Minister for Odinga from an Amendment Bill to Kenya's Constitution and other measures such as the creation of the Truth Justice and Reconciliation Commission to investigate not only the post-electoral violence but also historical abuses and human rights violations; the Waki Commission; and the Independent Review of the Elections Commission, as well as a comprehensive constitutional review, were set by the new government.

When the work of the Waki Commission and the IREC was finished in September and October 2008, respectively, recommendations were for the creation of a Special Tribunal to prosecute those responsible for the post-electoral violence and a police reform that would also merge the Administration Police and the Kenya Police Service, including vetting officers as a measure of Transitional Justice. The Commission's recommendations, however, were partially implemented. Notably, a new Constitution was adopted in 2010, but the Parliament defeated the proposal of a Special Tribunal in February 2009 (ICTJ, 2022). In response to the impasse surrounding the Kenyan government to properly investigate the past violence, in March 2010, the International Criminal Court announced a *proprio motu* investigation into alleged crimes against humanity committed in the context of the 2007/2008 post-electoral violence.

The Transitional Justice process that followed the National Accord has been called "transitional justice without a transition" (Brown & Sriram, 2012, p. 257) due to its developments. Although Kenya was brought closer to a proper TJ after the Waki Commission's report, as well as with the proposition of a hybrid Court and the latter case in the ICC, "the interests of an important segment of Kenyan political elites, though the latter are divided by ethno-regional identity and party rivalries, have converged around the continuation of the total impunity that has characterised Kenya for decades" (Brown & Sriram, 2012, p. 257).

Kenyans feel that there was no TJ after all, especially when comparing Kenya to other countries in the region, such as South Africa. The interviews indicated disappointment from the Kenyan society and a loss of hope in the international community, including the ICC, and in the TJ process. Kenyans have trusted that the international Court would manage to deliver the justice they seek for the past violence and human rights abuses, which they could not get from their own government. Citizens felt stuck inside historical injustices and compromised national institutions. The lack of a proper Transitional Justice process is considered one factor that contributed to leaving "unresolved issues."[44] Due to internal divisions, the election period has become a very sensitive issue.

> People felt that the ICC was compromised as well, and this is where people started pointing fingers at the international community. They felt like the international community also ended up letting Kenyans down, that they were not even interested in justice for the people who died and people who lost their properties. People felt like the international community was more interested in having a status quo to protect their business interests. It's more about their business. It's more about their partnership. It's more about them getting what they think is right. It's more about them controlling Kenya, so the aspect of whether Kenya has a proper transitional justice or whether Kenya has a peaceful and credible election, we have this feeling that the international community are not interested in that. We thought it would bring stability, but later we realised it was not what we thought it would bring. [45]

From the International Criminal Court's perspective, however, the case of Kenya was a challenge. The involvement of the political elites in the TJ process, particularly regarding criminal accountability, turned the case into a turbulent one for the Court. Since Kenya was the first *proprio motu* investigation in the ICC, some factors are noteworthy to understanding the Prosecutor's decision to open the investigation himself. Besides the compelling evidence regarding human rights abuses and overall violence following the 2007 National Elections, the

[44] Personal interview with a Kenyan leader from a Kenya NGO. Online, 22/03/2022.

[45] Personal interview with a Kenyan leader from a Kenya NGO. Online, 22/03/2022.

political context of that time and ethnical divisions cannot be excluded from the ICC's decision to intervene[46]. "Tribalism in Kenya is responsible for underdevelopment, corruption, the rigging of elections and violence" (Masakhalia, 2011, p. 1). It is a product of colonialism and its "divide and rule," also implicit in the Land Question background, as previously discussed. The main opposing groups, for example, Luo and Kikuyu, had little contact before the arrival of British settlers. In addition, tribalism is connected to urbanisation and a political culture that emerged after Kenya's independence (Masakhalia, 2011). Consequently, politics in Kenya have carried the seeds of ethnical divisions, as observed in the political violence events that took place in the country, especially since its return to a multiparty system in 1991.

The political context of the 2007/2008 post-electoral violence was delicate; polarisation was an obstacle because if Kenya as a State had referred the case to the ICC, it would seem like one side of the government was referring the case against the other side of the government. Politically, Ocampo's decision to refer the case himself would prevent more confrontations between the opponents, signalling the Court's impartiality.[47] Lastly, a factor that turned the ICC into a strong solution was the difficulties surrounding the domestic judiciary and the failure to establish a Special Tribunal. Although the ICC initiated the *proprio motu* investigation and the suspects were referred to The Hague, the prosecution could not move forward in Kenya because the witnesses were withdrawing the statements and later declined to give statements to the ICC. There are allegations throughout the entire process of witness interferences in the ICC investigation, including businesses that have been threatened or bribed.[48] The ICC has protection measures, but eventually, it was not a matter of protection but rather a matter of bribery; there are allegations that many witnesses have received money to change their statements. It is noteworthy that the ICC has a Witness and Victims Unit to deal with witness protection, which determines the level of threats toward the witnesses. Based on the Unit's assessment, they decided to move the witnesses, change their identity, or relocate them to another village.[49]

The Ruto and Sang case was terminated "on the basis that the evidence presented by the prosecution was weak" (ICC-01/09-01/11). Charges were withdrawn in the Kenyatta case due to insufficient evidence. The Court proceeded to three other cases: *The Prosecutor v. Walter*

[46] Personal interview with an ICC staff. The Hague, 23/03/2022.

[47] Personal interview with an ICC staff. The Hague, 23/03/2022.

[48] Personal interview with an ICC staff. The Hague, 23/03/2022.

[49] Personal interview with an ICC staff. The Hague, 23/03/2022.

Osapiri Barasa, The Prosecutor v. Paul Gicheru, and *The Prosecutor v. Philip Kipkoech Bett* case. The three suspects were accused of offences against the administration of justice, which consists of corrupting or attempting to corruptly influence ICC witnesses (ICC-01/09). Among the three suspects, Barasa and Bett, to whom a warrant of arrest was issued, are at large. Gicheru surrendered to the Netherlands' police on 2 November 2020 and was under ICC custody. He returned to Kenya and was waiting for a verdict in the trial, but he passed away in September 2022.

For many Kenyans, after grand expectations, the outcome of the ICC investigation was frustrating, especially considering that Kenya's current president, William Ruto, was accused of crimes against humanity back then. He used to be part of the ODM but then supported the opposition leader, Uhuru Kenyatta – who was also an accused – as Deputy President in the 2013 elections. The fact that indicted suspects get elected to office, however, is not a new trend: five out of thirty-two indicted at the ICC were political candidates for high office in their counties after the indictment. All five got elected, representing a 100% electoral success rate (see Table 9 below) and out of five, two of them ran in a country considered to be a democracy: Kenya (Hillebrecht, 2020).

Table 9. International Criminal Court Indicted Suspects Elected to Office

Name	**Country of Situation**	**Investigation Opened**	**Position**	**Date of Election**
William Samoei Ruto	Kenya	March 2010	Deputy President President	4 March 2013 13 September 2022
Uhuru Muigai Kenyatta	Kenya	March 2010	President	4 March 2013
Omar Al Bashir	Sudan (Darfur)	June 2005	President	April 2010; April 2015
Jean-Pierre Bemba Gombo [1]	Central African Republic	May 2007	Senator	January 2007
Fidele Babala Wandu	Central African Republic	May 2007	Member of Parliament	Not reported

[1] Elected in the Democratic Republic of the Congo. Source: based on Hillebrecht (2020, p. 462).

In the case of Kenya, the overlap between the ICC and electoral politics in the country contributed to highly divisive domestic politics. Kenyatta and Ruto went from opponents involved in the post-electoral violence in 2007/2008 to running mates and elected President and Deputy President in the subsequent elections. Following the ICC's dual-side indictments, not only the PNU and ODM began to crumble, but also the new coalitional government. The ICC indictment was used in favour of the Kenyatta and Ruto's alliance, which advanced the idea of foreign powers wanting to undermine Kenyan democracy. After winning the 2013 elections, their position of power also impacted the ICC case, ensuring their immunity, at least for the short term. Another aspect was that the government interference, such as with victims' testimonials, casted doubt on the ICC's legitimacy and competence. In the end, forming a new coalition was a survival mechanism in a context where the threat of prosecution approached both sides of the political spectrum. Electoral victory means protection; therefore, coalitional politics and anti-Western rhetoric are tools to that end (Hillebrecht, 2020).

Much has been promised in Kenya regarding the TJ process, both from the national and international sides; however, the process was not satisfying due to many factors, as previously discussed. The power-sharing agreement, for instance, has offered a "window of opportunity for dealing with past abuses" (Hansen, 2013, p. 307) but was problematic by its own nature, proving also to constitute an obstacle for effectively delivering the promises of TJ. When the political elites were allowed to control the justice tools, "the power-sharing deal has enabled a continuation, perhaps even a consolidation, of this political culture" (Hansen, 2013, p. 307). Recommendations from the Truth, Justice and Reconciliation Commission were not implemented. The lack of political goodwill in Kenya and the lack of support from the international community to hold the government accountable all contributed to a TJ process seen by most as unsatisfactory.[50]

> We trusted the Commission and knew it would be a big step in not taking Kenya back to violence. Surprisingly, after collecting all this information, it was put in a nice book. It was handed over to the President. But the President has never opened that book for implementation. Nobody knows the recommendations made in that book. Nobody knows what was written in that book, and nobody knows where that book is. It has never been implemented. Kenyans have never realised what transition transitional justice means because nobody knows what is inside whatever they brought into that book.[51]

[50] Personal interview with a Kenyan leader from a Kenya NGO. Online, 22/03/2022.

[51] Personal interview with a Kenyan leader from a Kenya NGO. Online, 22/03/2022.

8 Lebanon and Kenya from a Comparative Perspective

Chapters 6 and 7 were case studies conducted through process tracing of the background and main developments of the exemplary events, namely the 14 February 2005 terrorist attack in Lebanon, which worked as a tool for the politically motivated assassination of former PM Rafik Hariri in Beirut; and the post-electoral violence following the contested 2007 national elections in Kenya, which escalated into intercommunal violence. The cases of Lebanon and Kenya are clearly different, but they exemplify how Transitional Justice shapes political dynamics after political violence in electoral democracies, more specifically, in conflicted democracies. As a complement to the case studies, this chapter develops an analysis of the cases from a comparative perspective. To that end, it first discusses the obstacles to Transitional Justice in those conflicted democracies, especially regarding the paradox of international norm diffusion and domestic politics observed in the two cases (8.1).

Second, this chapter examines factors that emerged during the analysis due to "open causality" (Guzzini, 2017) combined with the interpretive and inductive approach (Norman, 2015) of the IPT. Regarding the "how" in the research question, for instance, how TJ shapes political dynamics in electoral democracies, the key aspects that emerged during the case studies were the role that the power-sharing systems – employed as a tool for dealing with internal divisions and managing government stability in plural societies – and political coalitions have played as part of the political dynamics shaped by the threat and application of TJ in Lebanon and Kenya (8.2). In the sequence, the chapter examines the connection of such political dynamics with changes in political stability and the absence of violence after TJ measures in Lebanon and Kenya (8.3) as part of the "what" in the research question. Lastly, section 8.4 provides a summary and the preliminary conclusions of this thesis.

8.1 Obstacles for Transitional Justice in Conflicted Democracies

Transitional Justice in both Lebanon and Kenya has faced serious obstacles that can be traced back to the diffusion of TJ as an internationalised norm. When the norm diffusion reaches the domestic sphere, there is a process of appropriation by states, which instrumentalise the norm according to their own interests and motives (Subotić, 2009). For instance, in Lebanon, TJ was supported by the 14 March coalition, which desired the establishment of the STL and

the investigation of the 14 February 2005 attack against Rafik Hariri. In opposition, the anti-STL coalition accused the hybrid Tribunal of being biased and politicised, promoting a campaign against the STL and protecting their own political coalition against the Court's indictments by denying cooperation with the STL. As an adverse effect, the political struggles in the domestic sphere detached TJ from its original value as an international norm.

In Kenya, there was also a paradox between the promotion of TJ and its use and manipulation by the political elites. After setting up several obstacles to establishing a Special Court, the ICC became supported as the most reliable solution for dealing with past political violence. However, TJ in Kenya became "hijacked" by the political elites when the international court started to indict the suspects of the human rights abuses, who were members of both sides of the Kenyan government. The result was the formation of a new coalition of the accused which used an anti-ICC discourse to win the following elections.

Furthermore, TJ in the form of international criminal tribunals (the STL and the ICC) in a foreign country (the Netherlands), outside the countries where the acute episodes of political violence occurred, led to unintended consequences. With the conduction of the cases outside Lebanon and Kenya, the ruling elites delegated the issue to The Hague, resulting in the escape of the political elites to deal with a legacy of human rights violations, given that political violence in both countries was systematic. Therefore, the phenomenon observed in the two cases was of "hijacked justice" (Subotić, 2009), a disconnection between the value and provision of TJ as an established international norm and the appropriation and promotion of the norm domestically, according to the political elite's preferences and personal motives. Such disconnection moved the effects originally intended by TJ as an international norm to secondary effects that satisfied neither of the societies. Consequently, Transitional Justice in Lebanon and Kenya became highly criticised and did not reach its essence in the sense of promoting deep social transformation in the Lebanese and Kenyan societies.

8.2 Emergent Factors: Power Sharing and Political Coalitions

As previously discussed, in plural and deeply divided societies, power-sharing is often used as a tool for dealing with internal divisions (Lijphart, 1969). Sharp internal divisions, such as ethnic and religious, pose a greater obstacle in countries that are not fully democratic in comparison to well-established democracies (Lijphart, 2004, p. 97) as Lebanon and Kenya, deeply divided societies whose political regimes are identified as electoral democracies (LIED)

instead of consolidated democracies. Power-sharing arrangements, therefore, have a central position in the context of deeply divided societies. They work as tools for dialogue and the promotion of stability, as well as tools in the hands of negotiators to end violence, but not without consequences. They can bring the downsides of the allocation of political power, including the allocation of specific roles in government or of a percentage of seats, providing access to power to political players and coalitions involved in the abuses (Vandeginste & Sriram, 2011), thus becoming an obstacle for Transitional Justice (Hansen, 2013). Accordingly, Transitional Justice faces serious obstacles in such context.

Furthermore, given their characteristics, the two countries can be classified as conflicted democracies, where a particular scenario can be observed when international criminal tribunals and electoral politics overlap: domestic politics tend to be highly fractured and divisive (Hillebrecht, 2020). Consequently, political coalitions play an outstanding role. Holding on to power becomes a survival mechanism for politicians involved in atrocity crimes, not only because of the privileges that come with being in power, including protection, but also due to the principle of the head of State immunity (Hillebrecht, 2020). Depending on the conditions surrounding the judicial indictment, political actors use coalitions either by "closing ranks," through the "consolidation of existing coalitions around the indicted suspects and their allies" (Hillebrecht, 2020, p. 453), as in the case of Lebanon; or by forming a new coalition that stretches existing cleavages, as happened in Kenya. In addition to anti-Western rhetoric, suspects "translate an indictment from an international criminal tribunal into an electoral victory" (Hillebrecht, 2020, p. 453). In the following sections, I analyse the role of power-sharing and coalitions in both countries and their relation to the obstacles faced by Transitional Justice in the two countries.

8.2.1 Power-Sharing Implications for Transitional Justice

The core of power-sharing arrangements "invariably include some degree of political power sharing," such as the "allocation of specific posts in government […], allocation of a percentage of seats in an elected legislature; or specified political powers in specific locales" (Vandeginste & Sriram, 2011, p. 494). However, when a pact is used as a form of guaranteeing political inclusion, it can have adverse effects on government performance and democratisation: "political inclusion in these cases undermines vertical relationships of accountability, increases

budgetary spending, and creates conditions for policy gridlock" (Le Van, 2011, p. 31). Besides, the threat of an international prosecution can foster the consolidation of an electoral coalition when a group member or members from different groups are suspects (Hillebrecht, 2020).

Power-sharing agreements were used as a tool to end violence in Kenya and maintain a National Unity Government in Lebanon. For example, Hezbollah was granted veto power in any cabinet decision under the Doha Agreement in Lebanon. In Kenya, a power-sharing agreement sponsored by the international community, with the goal of promoting stability, was established between the two main opponents, Kibaki (PNU) and Odinga (ODM), creating a new political position of Prime Minister to accommodate both leaders. With the Kenya National Dialogue and Reconciliation Agreement, the cessation of violence was promoted from the start. However, the power-sharing agreements have changed over time and circumstance, working as a tool for dialogue and peace negotiators. At the same time, power-sharing agreements were a means for the elites, who have been disputing power and wealth, to be in a comfortable position and control the justice tools in their own favour (Hansen, 2013).

In the Kenyan case, for instance, the power-sharing arrangement was a channel to deal with post-electoral violence and subsequent intercommunal violence, among a series of agreements reached under the mediation of the KNDR. One of them, the Commission of Inquiry into Post-Election Violence, proposed the creation of a Special Tribunal to deal with the post-electoral violence. At the same time, the Commission anticipated obstacles inside the Kenyan government, adding a clause that the case (information file) could be sent to the ICC in case of failure in the establishment of the Special Tribunal, as it happened. Following the opening of the ICC investigation, there was a formation of a new alliance between the accused from opposing sides in the political sphere, as discussed in the next section.

In Lebanon, the Taif Agreement of 1989, although not connected to the episode of political assassination years later, was responsible for ending the civil war through a power-sharing agreement, leading to TJ in the form of Amnesty (1991). Even the signing of the STL agreement with the UN was possible because of a power-sharing arrangement that sustains Lebanese politics, as the Siniora government from the 14 March coalition, which was interested in the STL, had the power as Prime Minister to ask the UN for a binding decision on the establishment of the tribunal.

When Hansen (2013, p. 307) mentions that the power-sharing arrangement in Kenya "offered a window of opportunity for dealing with past abuses," he acknowledges the relationship between power-sharing and the possibilities of TJ. However, as Vandeginste &

Sriram (2011, p. 489) have noted, "power-sharing arrangements are likely to clash with attempts to meaningfully deal with truth, accountability, and reparation for past abuses." In this regard, there are some aspects to highlight: the nature of the power-sharing agreements, the involvement of the elites with the justice tools, and their impacts on Transitional Justice. As mentioned, the power-sharing arrangements in Lebanon and Kenya have changed over time and circumstances; therefore, the guarantees they have brought are also temporary. A constant, nonetheless, was delivering power to political elites, who ended up controlling the Transitional Justice tools.

8.2.2 The Role of Coalitions

After political violence has taken place and the threat of prosecution at the hands of international criminal tribunals becomes real, political coalitions become a valuable resource. Analysing the exemplary event in Lebanon, violence was not generalised. As described in the case study, the terrorist attack in Beirut that promoted the politically motivated assassination of Rafik Hariri in 2005 was a one-sided act of political violence, resulting in a one-sided international prosecution. Following the STL's indictment of Hezbollah party members, the group's reaction was one of self-protection. On the one hand, the interest of the 8 March coalition was to protect the alliance against the hybrid tribunal's prosecution; on the other hand, the 14 March coalition favoured the STL, deepening political tensions. As a result, there was the resignation of the Shiite ministers, and the cabinet collapsed. With the strengthening of the 8 March coalition, Najib Mikati became President of Lebanon, consolidating the coalition's power.

The case of Lebanon, therefore, illustrates a strategy of keeping the coalition together as a means of self-preservation. With the threat of international prosecution against one side, the parties in the coalition will "close ranks around the indicted in order to preserve their own position in power—and any concessions that they have been able to extract from the leading party" (Hillebrecht, 2020, p. 463). The dynamic of "closing ranks" goes deeper when, besides the one-sided violence factor, the political landscape is divided. When international criminal tribunals investigate one-sided violence with the involvement of one group (more specifically, against one cell inside the coalition), it "exacerbates and exaggerates preexisting divides" (Hillebrecht, 2020, p. 464).

In the case of Kenya, the accused used the ICC investigations in their favour, casting themselves as victims of both national and international plots, retaining support from their ethno-regional communities (Brown & Sriram, 2012, p. 257), and impacting the ICC's public support. In this case, the threat of international criminal prosecution has reached both sides of the political dispute, providing an "impetus for partisans from opposing coalitions to cross the aisle to form a new coalition" (Hillebrecht, 2020, p. 464). The ICC confirmed charges against suspects from opposing sides, Ruto and Kenyatta, which have formed a new alliance. That is, the perpetrators formed a new coalition to protect themselves by sharing similar interests (to avoid international criminal prosecution).

Although the ICC opened two main cases (*The Prosecutor v. William Samoei Ruto and Joshua Arap Sang; and The Prosecutor v. Uhuru Muigai Kenyatta*), the prosecutor was not able to move them forward, especially due to alleged witness interference: witnesses started to withdraw their statements or decline to give statements. For instance, the case against Paul Gicheru (*The Prosecutor v. Paul Gicheru*) was directly connected to the allegations of witnesses' interference in the cases. Gicheru was accused of bribery and witness intimidation in the case against Willian Ruto and Joshua Sang. Eventually, the ICC terminated the cases either because the evidence was weak or due to insufficient evidence. Still, meanwhile, the new alliance between Ruto and Kenyatta managed to win the following elections by sustaining common rhetoric.

8.2.3 Summary

Transitional Justice faces serious obstacles inside conflicted democracies. One of them is the adverse effects of the nature of the power-sharing arrangements observed, including access to power for political actors and coalitions involved in the abuses that TJ was designed to deal with in the first place and the concession of a comfortable position for the elites to control the justice tools in their favour. Secondly, the obstacles posed by the political coalitions in "self-preservation mode" were an adverse effect of the political dynamics surrounding TJ. It is possible to observe how TJ shaped political dynamics in two stages: the TJ as a threat and TJ as a reality.

In the case of Kenya, TJ shaped political dynamics in the first stage, when TJ was a threat (the unsuccessful effort to establish a Special Tribunal), and in the second stage, when

the threat became real (the opening of the ICC investigation). The first stage brought "Uhuruto" (Uhuru Kenyatta and William Ruto) together in a movement in the Kenyan parliament against creating a Special Tribunal, going against the Waki Report recommendation. In the second stage, with the ICC's involvement, the rapprochement turned into a real alliance between the former adversaries. With the new alliance and anti-ICC rhetoric, they managed not only to get around the trials but also to win the following elections.

In Lebanon, while the STL was a threat and not a reality, TJ shaped the political dynamics in the sense that the 8 March coalition was against establishing the STL, compromising the National Dialogue. Five Shiite ministers resigned in the face of the international campaign to disarm Hezbollah and the matter of the STL. In their view, the Tribunal would be used by Western powers to target Hezbollah. Although Lebanon and the UN signed the agreement to establish the STL, it was not ratified by the Lebanese government because the Speaker of the Lebanese Parliament refused to put it to a vote. As a result, the Prime Minister asked the UN to take a binding decision (Nasser, 2012) leading to UNSC Resolution No. 1757 (2007). In protest, the 8 March camp organised a mass rally, arguing that they were excluded from the decision-making inside the consociational government. In the second stage, when TJ became a reality, the Doha Agreement (2008) conceded veto powers in any cabinet decision to Hezbollah, strengthening the 8 March coalition.

From the case studies it is possible to observe a two-sided phenomenon: on the one hand, politics based on coalitions can hinder international accountability. On the other hand, the threat of accountability at the hands of an international criminal tribunal, such as the STL or the ICC, can strengthen existing coalitions or build new ones, depending on the accused (if they are from the same side or opposing coalitions) (Hillebrecht, 2020). Furthermore, the cases suggest that political actors and coalitions involved in the international criminal trials' investigations demonstrated a tendency to hang on to power to avoid prosecution, especially due to the uncertainty around immunity for Heads of State.

With the "justice cascade," however, immunity is no longer guaranteed, as observed in previous prosecutions of officials and heads of state, also at the hands of the ICC. Rather than a matter of immunity, TJ was manipulated by the already established coalitions, as in the case of Lebanon, and the new ones, as in the case of Kenya, in their own favour. Such manipulation was possible due to the nature of the power-sharing agreements, which provided access to power for those involved in those acute episodes of political violence. Through their position

of power to manipulate justice tools and an anti-STL or anti-ICC rhetoric, the political actors in both cases managed to arrive at the same destination: avoiding persecution (by not handing over the accused, in the case of Lebanon, or interfering with the witnesses, in the case of Kenya), and achieving a greater position of power in the government.

8.3 Political Stability and Absence of Violence

As the research has established, Lebanon and Kenya can be considered "conflicted democracies," characterised as plural societies with a sharp internal division in the body politic that resulted in political violence. Political instability is frequent in those deeply divided societies, and internal differences can hinder a stable democratic system. As discussed in the theoretical framework chapter (3.3), political stability is the opposite of political crisis. Still, they share a connection since it is precisely during a crisis that the stability of a political object can be observed (Svensson, 1986). In the cases of Lebanon and Kenya, the political crisis was not an isolated event but occurred in the context of systematic political violence. Therefore, the selected exemplary events of political violence represent a culmination of dangerous developments that, in turn, can be interpreted as symptoms of political instability.

Although political violence in Lebanon and Kenya was systematic, the exemplary events symbolise acute episodes since they are "clearly discernible events that unfold over a limited time span and threaten the very existence of the democratic political institutional order" (Weiffen 2018, p. 3), requiring unmistakable action. Considering that scenario, political instability is a symptom, or the perfect stage, for political violence. On the other hand, this section is interested in the promotion of political stability by TJ in the face of destabilising events following the acute episodes of political violence. As part of the "what" in the research question, this section examines the possible effects of TJ regarding political stability, utilising the "Political Stability and Absence of Violence/Terrorism Index" from the World Bank, which measures "perceptions of the likelihood that the government will be destabilised or overthrown by unconstitutional or violent means, including politically motivated violence and terrorism."[52] For this purpose, I combine the "political stability index" with the case studies to establish interpretive accounts of causality as part of the interpretive approach in the process-tracing

[52] "The index is an average of several other indexes from the Economist Intelligence Unit, the World Economic Forum, and the Political Risk Services, among others." The Global Economy, available at: https://www.theglobaleconomy.com/compare-countries/. Access: 16/09/2022.

method (IPT). The measurement data covers the period of ten years, starting from one year before the political violence event, to compare how the situation was before and after the TJ.

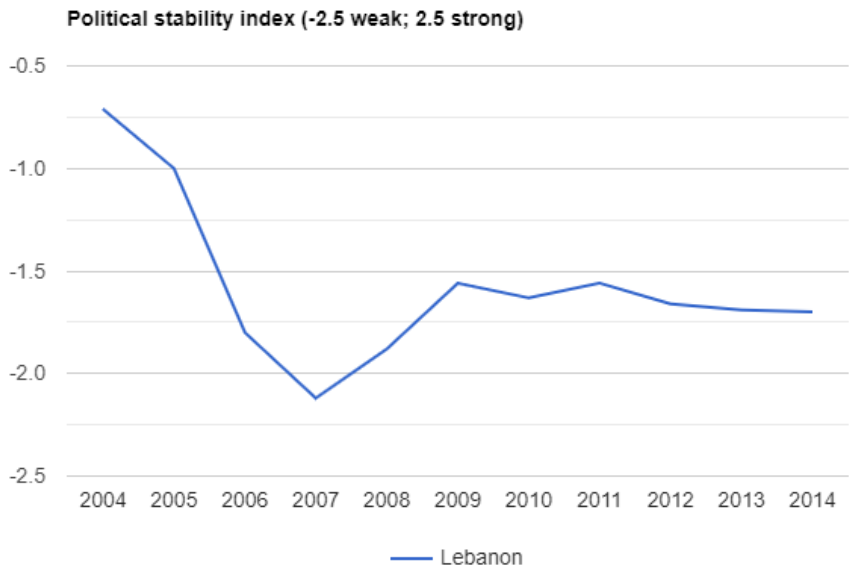
8.3.1 TJ and Political Stability in Lebanon

When the politically motivated assassination of Rafik Hariri occurred, during the 14 February 2005 terrorist attack, Lebanon had already been immersed in a scenario of political instability for a long time. External powers' intervention, regional conflicts, and armed militant groups all have contributed to a context of political instability in the country. The political stability chart (Figure 18) demonstrates a very significant downfall in the political stability that already started one year before the acute episode of political violence, between 2004 and 2005, reaching -1 point in 2005, the year of the assassination of Rafik Hariri, the "Cedar Revolution" and the withdrawal from the Syrian forces from Lebanon. Pro-Syrian groups, led by Hezbollah, considered Syria a key contributor in promoting stability in Lebanon. When the Syrian forces left Lebanon, they organised a demonstration on 8 March 2005, which is by no coincidence the corresponding anti-STL coalition.

The following years have maintained the instability trend according to the World Bank index. For instance, in February 2006, Hezbollah and the Free Patriotic Movement established an accord to unite forces opposing the 14 March camp, turning the "Memorandum of Understanding" into a solid political alliance. The establishment of the Special Tribunal grew into a sensitive issue for the Lebanese government. Although divided by its own nature, with the "Hariri's Tribunal", the division between the political camps became even more evident. Consequently, the internal impasses in the Lebanese government over the tribunal and the campaign to force Hezbollah's disarmament led to the resignation of five Shiite ministers from the Siniora government, signalling the failure of the National Dialogue. For the 14 March camp, on the one hand, the resignation was an attempt to block the endorsement of a UN tribunal. For Hezbollah, on the other hand, a UN tribunal would be used by the West to target the group and its weapons. "The resignations could also be interpreted in the context of Hezbollah's failure to secure a veto on government policy" (Geukjian, 2017, p. 107), since without veto power, the minority group's interests were not protected, endangering "inter-segmental elite cooperation" (Lijphart, 1980, p. 36).

In 2007, the year of the worst political instability according to the index below, was marked by a general strike and a campaign of civil disobedience called by the 8 March coalition to pressure the Siniora government, which was backed by the US. They organised a mass rally in protest since many considered that the political decisions were not inclusive; after all, such a large camp had been excluded from the central decision-making. It was the year when, even though the Lebanese government had signed the agreement with the UN to establish the STL, Prime Minister Siniora informed the UN that he was facing obstacles to ratifying the agreement because Speaker Berri refused to put the theme into a vote. Siniora asked the UN to take a binding decision on the STL, leading the UNSC to enact Resolution No. 1757 (2007), which confirmed the Statute of the STL.

Figure 18. Political Stability in Lebanon (2004 – 2014)



Measure: points. Data source: The World Bank. Prepared by the author.

Political stability started to increase from 2008 onwards, the year of the Doha Agreement, which was crucial to ending the government's 18 months of political deadlock. The agreement established a new power-sharing where Hezbollah was granted veto power in any cabinet decision, in a twist of events, considering that the resignation of the Shiite Ministers in the previous year was interpreted in the context of the failure to secure veto rights in the Lebanese government. As in Lijphart's (1980) theory of consociationalism in plural societies,

adding a minority veto power in the grand coalition is the way to guarantee political protection for minorities. Therefore, the Doha Agreement made it possible to form a National Unity government. Political Stability would reach the highest level in 2009 and 2011, the year of the inauguration of the Special Tribunal for Lebanon and the year that the STL started to issue indictments consecutively.

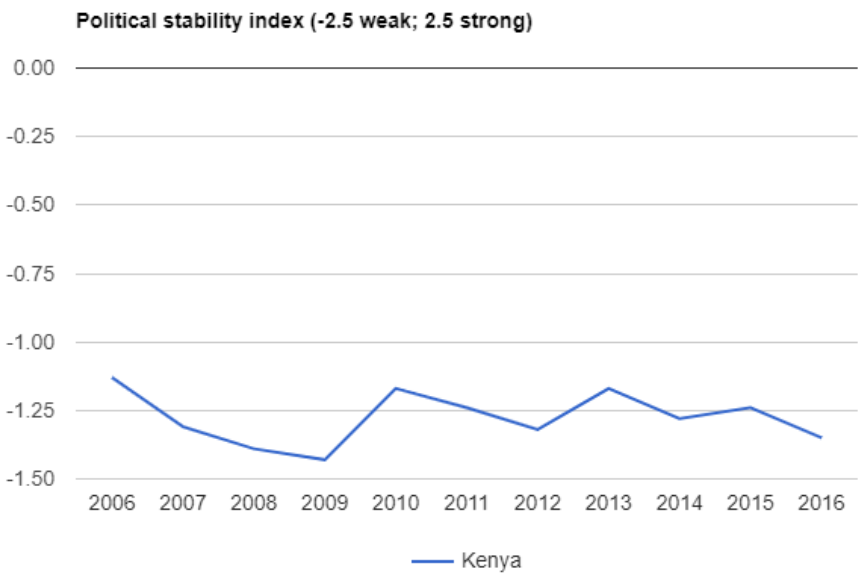
The year 2009 is also relevant because the first decision of the STL was to release the four generals from the Syrian Lebanese Security apparatus, who were arrested in 2005 under the recommendation of Detlev Mehlis, the first chief investigator from the UN Investigation Commission. The release of the generals is part of the so-called "false witnesses' scandal," in reference to the witnesses who served as the basis for the arrest and later modified or withdrew their testimonies. In this context, Lebanon opened its first embassy in Syria, from a change in the 14 March coalition's discourse, which was now calling for an end to the conflict with Syria. Furthermore, there was a rapprochement in the relations between Syria and Saudi Arabia, key foreign actors involved in Lebanon's stability; however, the matter of the STL was still problematic: if the Tribunal was unavoidable for the Saudis, for the Syrians it was politically motivated. With the release of a report by the German magazine *Der Spiegel*, affirming that the STL knew that special forces of Hezbollah participated in the assassination of Rafik Hariri, there was a special scenario for political instability in the country.

In 2011, the STL indeed released the indictments against Hezbollah party operatives, as foreseen by the magazine. Members from the opposition demanded a cabinet meeting to vote against the STL, but as Saad Hariri was in Washington, their demand was not met. In protest, eleven Ministers from the 8 March camp resigned, driving the cabinet into collapse. It was a favourable move for the anti-STL coalition since Saad Hariri left power soon afterwards, and the coalition could elect their own candidate for the Prime Minister position, securing power. Contrary to the expected, the indictment of Hezbollah members did not provoke a political cataclysm; rather, the time has passed, the suspects were never handed to the STL, and Hezbollah maintained its position inside the Lebanese political system.

8.3.2 TJ and Political Stability in Kenya

Since the return to multi-party elections in 1991, Kenya has experienced cyclic episodes of electoral violence. However, the acute episode of political violence that took place in the context of the 2007 general election was higher in magnitude. As in the previous case, the Kenyan case presents a downfall in political stability prior to the exemplary event of political violence, decreasing from -1.13 to -1.3 between 2006 and 2007, the election year, with the lowest level in 2009, when the new coalition government announced that it would not establish a Special Tribunal as promised. Still, it would rather "reform" the national judicial system (Human Rights Watch, 2009). The highest stability level was in 2010, when the International Criminal Court started an investigation in the country, and 2013, as illustrated in Figure 19 below.

Figure 19. Political Stability in Kenya (2006 – 2016)



Measure: points. Data source: The World Bank. Prepared by the author.

To bring violence to an end, the Kenyan National Dialogue and Reconciliation promoted a framework for Transitional Justice in the country, which included agreements such as the National Accord and Reconciliation and mechanisms to address past political violence in the country. The Waki Commission was responsible for investigating the facts and

circumstances surrounding the post-electoral violence in the country and concluded that the domestic judiciary was unable to deal with the situation. The solution proposed was the establishment of a Special Tribunal, a hybrid Court, as a way to mitigate the limitations in the domestic judiciary system. Even though the new cabinet endorsed the CIPEV's recommendations, the plan of a Special Tribunal was never concretised. Uhuru Kenyatta and William Ruto, key members of Kibaki's and Odinga's respective camps, aligned against the tribunal, and the bill failed to get the majority (2/3) of votes in parliament in 2009. That possibility had been considered by the Waki Commission and Kofi Annan, who later that year delivered "the envelope" containing the suspects' names according to the Commission's investigations. The ICC's prosecutor opened a *proprio motu* investigation in 2010, and amongst the accused there was Uhuru Kenyatta and William Ruto from the two opposed coalitions.

In 2013, the second highest level of political stability in the period, Ruto left Odinga because he did not get support from the political leader against the ICC and allied with Kenyatta for the 2013 elections. Ruto and Kenyatta had been released from the ICC and returned to Kenya since the main cases were closed. The witness' interference contributed to the closure because the charges were not confirmed. The leaders used a narrative of being political victims of national and international plots and managed to get support from their ethno-regional communities (Brown & Sriram, 2012). With anti-ICC rhetoric, the new alliance got elected and was able to secure power. Forming a new coalition, as previously discussed, was a survival mechanism for the two political actors, considering that electoral victory means protection (Hillebrecht, 2020). Although the level of political stability and absence of violence raised in 2010, oscillation continued in the following years. The new 2010 Constitution abolished the Prime Minister position created with the power-sharing agreement for the elections after 2013.

8.3.3 Summary

From a comparative perspective, it is notable that Lebanon and Kenya presented a decrease in the level of political stability prior to the acute episodes of political violence. Such a decrease in stability is not only consistent with the notion that political violence events are symptoms of political instability but also that they can be consequences of it. Another point of congruence between the cases is the overall improvement in the political stability measurement in the years of the establishment of the international criminal tribunals: the Special Tribunal for

Lebanon in 2009, and the opening of the International Criminal Court investigation of the Kenyan case in 2010. Recognising the research limitations, it is impossible to certify an objective causal relation between the TJ measures and the increased political stability in both countries in those periods.

However, there are noteworthy aspects to the matter that this research is interested in, such as the involvement of political coalitions and power-sharing arrangements and their impact on the promotion of TJ in conflicted democracies. Analysing the facts that emerged during the research as a result of the "open causality" (Guzzini, 2017) combined with the interpretive and inductive approach (Norman, 2015) of the IPT, it is possible to infer a connection between political stability and TJ in those conflicted democracies, although indirectly. The higher degrees in stability combine overall with moments where the political coalitions (old or new, depending on the circumstances surrounding the indictments) had to prioritise the government stability in order to maintain/gain political power – also as a self-preservation mechanism – once the international criminal prosecutions were ongoing. By prioritising stability, they generated a stabilising effect that, nonetheless, was not constant.

8.4 Preliminary Conclusions

In this section, I summarise the main topics that emerged during the process-tracing through an interpretivist approach (Norman, 2015), maintaining "open causality" (Guzzini, 2017) as a way of being open to new factors and questions rather than just conducting tests of pre-defined hypotheses, and present the thesis' preliminary conclusions. Therefore, I maintained a causal logic but sought to enrich it with an interpretative element as a means of connecting both "what" and "how". That is, how TJ shapes political dynamics after political violence in electoral democracies and the effects of such political dynamics, especially concerning political stability in Lebanon and Kenya.

Conflicted Democracies

The first factor that emerged when analysing the cases of Lebanon and Kenya was the characterisation of both societies as "plural", with deep internal divisions. Those divisions presented a threat of political violence that was consolidated in both cases, demonstrating that beyond their classification as electoral democracies (according to LIED), they were also

"conflicted democracies" (Aoláin & Campbell, 2005). That observation inserted the thesis in a very particular context for Transitional Justice since conflicted democracies represent an "in-between" position. Their characteristics as deeply divided societies, susceptible to political violence, are an attractive scenario for Transitional Justice. Meanwhile, as democracies, they are, by their very nature, resistant to change. Consequently, the existence of TJ in democracies is already problematic because, theoretically, democratic regimes should be able to protect human rights and political stability through their own institutions. Furthermore, with a discourse of a "democratic regime," conflicted democracies also find it difficult to recognise their institutional failures and, consequently, the relevance of TJ measures, posing challenging obstacles to TJ.

Second, I examined how Transitional Justice in conflicted democracies becomes more complex when, in addition to the resistance of the democratic regime itself, TJ measures are applied in a context where the subjects involved in political violence occupy positions of power within the political system. In that sense, one of the obstacles to TJ that emerged during the case studies was the consequences of power-sharing arrangements in those conflicted democracies since they have brought the downside of the allocation of political power, such as the access to power for the actors and coalitions involved in the political violence and the control of the justice tools by those political elites involved in the abuses. During the case studies, control by the political elites appeared in close connection to the power-sharing agreements, whose contribution was twofold.

Power Sharing in Deeply Divided Societies

At first, power-sharing agreements played a role as tools to promote dialogue and peace. For instance, in Lebanon, even before the political assassination of Rafik Hariri, the Taif Agreement brought an end to the civil war through TJ in the form of amnesty. Based on a confessional political system, the Lebanese government structure has relied on power sharing with the goal of promoting stability and democracy in a society sharply divided through diverse sects. Power sharing in Lebanon, therefore, has been a valuable tool for constituting National Unity Governments through time. In the same way, the National Accord and Reconciliation Act in Kenya was a power-sharing agreement responsible for ending the 2007/2008 post-electoral violence in the country. Additionally, the Kenyan National Dialogue and Reconciliation (KNDR) promoted a framework for Transitional Justice in the country,

including the Waki Commission, or CIPEV. The latter was a fundamental piece to bringing the case to the ICC through an anticipatory move, fearing that the formation of the proposed Special Tribunal would not advance in the government.

However, as the power-sharing agreements were responsible for conceding or improving political positions for subjects involved in the episodes of political violence, TJ was damaged because by controlling the justice tools, the political elites were able to shield themselves against prosecutions. Consequently, although the power-sharing arrangements opened the possibility of TJ, the TJ processes became corrupted. The position of power of the political elites was strictly connected to the role of political coalitions in deeply conflicted societies, where domestic politics tend to be highly divisive. After the exemplary events of political violence, perpetrated from one side in the case of Lebanon and from both sides in the case of Kenya, and the threat of international prosecution, coalitions became a powerful resource for those involved in human rights abuses and political violence.

Coalitions as a valuable tool

Since international criminal tribunals do not possess the power of enforcement, they rely on the collaboration of states to handle the suspects before the Courts. When the suspects are part of political alliances, therefore, there are great obstacles to delivering them to the international tribunal and securing the collaboration of the domestic governments. In the face of international prosecution, existing political alliances can be strengthened, or new alliances can be forged as a self-protection mechanism to avoid prosecution. Either way, it is not in the interests of political actors or members of the political parties involved in the past political violence to make TJ work properly.

In Kenya, the political coalitions involved in the 2007/2008 post-electoral violence initially promoted the ICC, especially as a means of preventing the establishment of a Special Tribunal, as advocated by the CIPEV. When the Special Tribunal failed to get approved by the Kenyan Parliament, and the ICC initiated a *proprio motu* investigation using the information from "Kofi Annan's envelope," the situation changed. Since members from both sides were involved, it was no longer in their interest to promote the ICC. More than that, they would start a campaign to delegitimise the tribunal for their own interests. The Kenyan society suffered the consequences; they deposited their faith in the ICC process and were disappointed when the

cases were closed due to a lack of confirming evidence. In Lebanon, as a matter of violence from one side, only one coalition was interested in the STL: the 14 March coalition, which ended up losing power when the government collapsed in the face of the anti-STL opposition. Those political dynamics shaped by TJ can also be observed concerning political stability in the two countries.

Political dynamics and political stability

Although the highest moments of political stability in the period of analysis after the acute episodes of political violence intersect with the years of the establishment of the international criminal tribunals – the Special Tribunal for Lebanon in 2009 and the opening of the International Criminal Court investigation of the Kenyan case in 2010 – it is impossible to certify an objective causal relation connecting the TJ measures and the increase in political stability, due to several intervening variables. The decrease in political stability prior to the acute episodes of political violence, nevertheless, is not only consistent with the notion that events of political violence are symptoms of political instability but also indicates that they can be consequences of it in a context of societies with profound internal divisions disputing political power. Available data suggest that the political dynamics shaped by TJ promoted political stability indirectly through the threats of criminal prosecution and the release of indictments, factors that led to strengthening the political elites and, hence, contributed to stability.

In Lebanon, the false witnesses scandal, and the report from Der Spiegel magazine, for example, contributed to the strengthening of the anti-STL coalition, as well as the release of indictments against Hezbollah. In Kenya, the alliance between two ICC suspects from opposing coalitions during the investigations was a self-protection mechanism that also led the suspected politicians to power. In both cases, the coalitions prioritised the stability of the democratic regime for their own protection, causing a (temporary) stabilising effect.

The role of external interventions

Based on previous notions of international criminal prosecutions, there is a general belief that, from a position as State official or Head of State, prominent politicians have

guaranteed state immunity, avoiding international criminal prosecution. However, as many cases have demonstrated, including at the ICC, the manipulation from the political coalitions can hinder international prosecution, but not as a matter of immunity. Rather, escaping prosecution was the result of several aspects, including external interference, a trend observed in both case studies. In Lebanon, external interventions are part of the country's history with its neighbours, Syria and Israel, which have played a major role in domestic politics. For instance, the "Memorandum of Understanding" between Hezbollah and the Free Patriotic Movement strengthened the anti-STL 8 March coalition, united by the pro-Syrian stance. It became the ruling coalition in 2011 with Najib Mikati as Prime Minister. Furthermore, since the STL's indictments, Hezbollah has defended itself from the accusations by blaming Israel for its involvement in the February 14 attack against Rafik Hariri, refusing to hand over the suspects to the STL making the claim that the International Tribunal was politicised. In other words, a regional conflict became a subject of domestic politics, and the STL had to manage trials *in absentia*, recognising the impossibility of having the suspects brought before the Court.

On another aspect, the political dynamics exposed during the cases evince how international tribunals rely on the cooperation of national governments to function properly. In Kenya, the nature of the power-sharing agreement, sponsored by the international community – including the UN and the European Union – turned out to be a channel of power for political elites involved in episodes of political violence. From that position of power, it was possible for the elites to manipulate Transitional Justice according to their own interests, as happened with the ICC case. At first, it was in the interest of Kenya to have the ICC; as soon as it became known that both sides would be prosecuted, the scenario and rhetoric changed. Even though the suspects appeared before the Court – proving that it was not a matter of state immunity – in the course of the process, witnesses' interference from both sides led to the dismissals of the cases.

Preliminary conclusions on political dynamics shaped by Transitional Justice

In the review of the evolution of Transitional Justice, this thesis discussed the phenomenon of the expansion of TJ and concepts such as the "justice cascade" (Lutz & Sikkink, 2001) and the "phases" of TJ development through time, mentioning the genealogy of TJ (Teitel, 2003). In the theoretical framework, nevertheless, the chapter presented the notion of norm diffusion trapped in a paradox between domestic politics and international justice as part of TJ as a global norm. If, on the one hand, TJ became popular internationally as a way for

states to address past human rights abuses, at the same time, the domestic politics of states have used the international norm in their own favour, in a proper "hijacked justice" (Subotić, 2009, p.6). Such a phenomenon was observed in Lebanon and Kenya, where the political elites used TJ according to their own interests. Additionally, as (conflicted) democracies, the states possess not only the international legitimacy that comes with international norm conformance but also the status of electoral democracy.

In addition, the dependence of international criminal courts on national cooperation is one of the possible explanations for why, in cases of "paradigmatic transitions," TJ is employed more straightforwardly. While in paradigmatic transitions, the targets and objectives of the new regime are clear, when dealing with political violence in conflicted democracies, it is harder for the regime itself to acknowledge institutional issues. Considering that the political actors in conflicted democracies are theoretically under a democratic regime, even in a regime where democracy is not consolidated, they benefit from the narrative of "leaders democratically elected," hindering contestation. Furthermore, the recurring establishment of power-sharing agreements in those deeply conflicted societies, although carrying the purpose of fostering political stability, promoted a shielding effect due to their own nature, gratifying power to political elites involved in political violence, thus undermining proper TJ processes.

In the end, there was a failure in the expectation that the "justice cascade," by advancing individual criminal prosecution of persons responsible for gross human rights violations as a global norm, would implicate the functioning (in the sense of promoting the outcomes expected from individual criminal accountability, such as removing leaders involved in atrocity crimes from power) of the norm in conflicted democracies. Transitional Justice has thus shaped political dynamics in those two conflicted democracies in a process where the political actors involved in political violence played the democratic system in their favour in order to escape criminal prosecution.

9 Conclusion

The field of Transitional Justice has expanded since its origins in the late 1980s, when it emerged in the context of societies dealing with past human rights abuses, commonly in transitions from authoritarian states to more democratic ones. Transitional justice became an internationalised norm, considered an appropriate framework for states to address past violence. It has thus been inserted in varied situations, including in the contemporary context of political instability and violence in electoral democracies. Based on the localisation of TJ as a global norm, this thesis reached the cases of Lebanon and Kenya, cases that, beyond electoral democracies, are plural societies with deep internal divisions that resonate on the domestic political body, threatening and leading to the occurrence of political violence. Such societies can be characterised as conflicted democracies, which present particular obstacles to TJ, as discussed.

The interest of this thesis was to understand how TJ shapes political dynamics in those societies and the effects of such dynamics on political stability, as well as other factors and questions that emerged during the interpretivist approach of process tracing conducted in the case studies. Based on the case studies and subsequent analysis from a comparative perspective, this thesis arrived at the following conclusions:

First, it needs to be stressed that political violence in Lebanon and Kenya was systematic and not a matter of isolated events. Through a processual approach to political violence, it is possible to observe that the politically motivated assassination of Hariri in Lebanon and the post-electoral violence in Kenya are acute episodes of political violence inserted into a greater process. In the first case, for instance, a terrorist bombing was responsible for the political assassination of Rafik Hariri, with a motivation connected to Lebanon's history and political circumstances. In the second case, post-electoral violence in Kenya following the 2007 general elections turned into intercommunal violence, which has structural roots in a history of inequalities given Kenya's colonial past. It was neither the first nor last time that a political assassination occurred in Lebanon. In the same way that it was not the first time that Kenya has suffered from electoral violence, nor the last. Those two cases, therefore, demonstrate a process of continuities of violence inserted into self-reinforcing dynamics, where violence is emergent from a greater process.

Second, the analysis shows that when political violence takes place inside a conflicted democracy, there is a particular scenario that makes the success of TJ measures a challenging endeavour. Conflicted democracies have a specific characteristic where sharp internal divisions in the body politic are so acute that, in addition to political circumstances, they can lead to political violence. Such conditions contribute to a fragile political environment where TJ faces serious obstacles because there can be a lack of commitment from the elites to make TJ work since accepting the norm and making it work accordingly would require a deep social transformation that, in most cases, are not in the political elites' interests, as it was not in the interest of Lebanese and Kenyan political elites. That observation is aligned with the phenomenon of "norm hijacking" (cf. Subotić, 2009) when the political elites use TJ according to their domestic political ends.

The manipulation of TJ by the political elites leads to the emergent factors of this thesis: the role of coalitions and power-sharing arrangements when international criminal justice and domestic politics intersect. As deeply conflicted societies, power-sharing arrangements were a valuable tool for both Lebanon and Kenya, especially regarding political stability, the maintenance of democracy, and ending intercommunal violence in the case of Kenya. However, in a context of political instability and systematic political violence, power-sharing agreements presented an adverse effect when part of a TJ process: they placed the control of the TJ tools in the hands of the political elites involved in the abuses, compromising the TJ process. Moreover, by perpetuating the power of the political elites who were involved in political violence and that are part of the government, it became easier for them to make a pact to avoid international criminal prosecution. As previously discussed, the two cases demonstrate the tendency of a specific political dynamic when political actors or coalitions are involved in international criminal trials: they often employ self-preservation mechanisms to avoid criminal prosecution. Those mechanisms can consist of either strengthening an established coalition when the threat of criminal prosecution comes after one side – as was the case of the 8 March camp in Lebanon, in the specific case of the exemplary event – or forming a new alliance when the threat of criminal prosecution reaches both sides (cf. Hillebrecht, 2020), as in the case of political violence in Kenya, where intercommunal violence was committed or supported by coalitions from both sides

Finally, this thesis has demonstrated how the political dynamics shaped by TJ have affected political stability in Lebanon and Kenya. Analysing the combined data from the case

studies and the political stability index measurement, the threat of international criminal accountability has not only strengthened old coalitions or created new alliances, enabling the political leaders to hold onto power or win the following election, as proposed by Hillebrecht (2020), but has also contributed to political stability by encouraging leaders to prioritise the stability of the regime. That is, when the political leaders had to prioritise the stability of the regime to protect themselves against international criminal prosecutions, they promoted a (provisory) stabilising effect in the government.

9.1 Final Considerations and Avenues for Future Research

External interferences are part of the history of Lebanon and Kenya. They were also present in relation to the architecture of power-sharing arrangements, such as the Doha Agreement in Lebanon and the National Accord and Reconciliation Act following the post-election violence in Kenya. However, as discussed, while the arrangements were tools to restore dialogue and peace, they were also a means of bringing the political elites involved in political violence to positions of power in the government – consequently, to the position of controlling the TJ measures. The international community, although also politicised and hardly standing in a neutral position in conflict situations, must be aware of the arrangements they are promoting. In a situation of emergence, where ending a conflict is the primary goal, the power-sharing agreements are a valuable tool, but for TJ to thrive, they must be considered from an independent position instead of dependent on the elite's goodwill.

Based on the interviews with civil society, much has been said about the obstacles to TJ, including that the international criminal tribunals per se did not promote TJ in those countries in the sense of transformation. The overall feeling was disappointment, especially concerning the international tribunals. In the case of Lebanon, my impression was that there are many divergent points of view, and the story would be different depending on the person I was in contact with (the person's background, religion, nationality, etc.), not only in terms of the semi-structured interviews that I have conducted but also regarding the literature review: who wrote that book? What is this author's background or even political position? That is an illustration of the plurality of Lebanese society. To ponder on that matter was an academic exercise in neutrality and in following a scientific method as a means of avoiding bias. The solution I found was to collect information from different sides and display it to construct a conversation between two main points of view. Nonetheless, there was one overall agreement:

Transitional Justice in Lebanon and Kenya was political. The underlying issue not only in Kenya but also in Lebanon is that "tribunals are as effective as states want them to be."[53]

At this point, the expansion of TJ through the "new approaches" becomes a valuable resource to reflect on what conflicted democracies long for in terms of TJ. The work of the tribunals for those societies and of TJ as a whole was not satisfactory because the processes of TJ became compromised and excluded key structural factors, such as socioeconomic and structural inequalities, which have the greatest impact on citizens' lives. To deliver transformative change, therefore, the "continuities of injustice" are a key factor to be addressed in deeply conflicted societies, as defended by the "justice in transition" approach (cf. Gready & Robins, 2017). For this purpose, the key agency should be inclusive (to include the "new" civil society), not exclusive as has been the case, where the political elites, who are already compromised to avoid criminal prosecutions and maintain or gain their political power, have the TJ tools in their own hands. In sum, the entire process of TJ must be re-evaluated in conflicted democracies, taking into consideration a paradox where states accept TJ as an internationalised norm, but it does not fulfil its goals of deep social transformation because political elites manipulate the norm according to their particular motives, while using the shield of "democratic state", posing additional obstacles to a proper TJ process.

Re-evaluating the processes of TJ in conflicted democracies, therefore, emerged as an avenue for future research, also considering the dynamics that TJ plays in a context of political instability. Taking this work as a starting point, future research could, for instance, investigate paths for a successful "transition" in conflicted democracies, in the sense of broad and inclusive processes that generate *transformation*, not only a transition from violence – which is nevertheless a primordial goal – but also as a means of avoiding reoccurrence of violence. As this work has pointed out, although this thesis has focused on the "exemplary events" as part of the research question and methodological issues, political violence in Lebanon and Kenya was systematic. Considering political violence from a processual perspective, the acute events of political violence are not isolated, but they are part of a retroactive dynamic that illustrates the continuities of violence. In that sense, if future research is interested in TJ in conflicted democracies experiencing political instability, this thesis provides the basis for scrutinising the

[53] Personal interview with a former STL and ICC staff member. Online, 03/06/2022.

effects of TJ in such situations, for example, whether TJ measures are destabilising in volatile contexts.

References

Abboud, Alessandra (2019). The Consociational Democracy and its Application in Lebanon. *Geopolitica*. Online. Avaliable at: https://www.geopolitica.info/the-consociational-democracy-and-its-application-in-lebanon/. Accessed on 04/04/2022.

Adar, Korwa and Munyae, Isaac (2001). Human Rights Abuse in Kenya under Daniel Arap Moi 1978-2000. *African Studies Quarterly*. Vol. 5, No. 1,1-17.

Al Jazeera (2008). *The Constitution of Kenya (Amendment) Bill was passed by a unanimous 200-0 majority in a session broadcast live on television*. 18/03/2008. Available at: https://www.aljazeera.com/news/2008/3/18/kenyan-mps-pass-power-share-law. Accessed on 15/01/2022.

Al Jazeera (2022). *Sabra and Shatila massacre: What happened in Lebanon in 1982?* 16/09/2022. Available at: https://www.aljazeera.com/news/2022/9/16/sabra-and-shatila-massacre-40-years-on-explainer#:~:text=News%7CExplainer-,Sabra%20and%20Shatila%20massacre%3A%20What%20happened%20in%20Lebanon%20in%201982,Lebanese%20civilians%20in%20two%20days.&text=It%20was%20one%20of%20the,conflict%20known%20for%20its%20brutality. Accessed on 26/01/2023.

Alesina, Alberto and Perotti Roberto (1996). Income distribution, political instability, and investment. *European Economic Review*. Vol. 40(6), 1203-1228.

Amnesty International (1997). *Lebanon: Human Rights developments and violations*. Amnesty International Ltd. Available at: https://www.amnesty.org/en/documents/mde18/019/1997/en/. Accessed on 26/01/2023.

Amnesty International (2014). *Crying for Justice: Victims' Perspectives on Justice for the Post-Election Violence in Kenya*. Amnesty International Ltd.

Aoláin, Fionnuala Ni and Campbell, Colm (2005). The Paradox of Transition in Conflicted Democracies. *Human Rights Quarterly*. Vol. 27, 172—213.

Arbour, Louise (2006). Economic and social justice for societies in transition. *United Nations High Commissioner for Human Rights*, Second Annual Transitional Justice Lecture hosted by the Center for Human Rights and Global Justice at New York University School of Law and by the International Center for Transitional Justice, 25.

Arendt, Hannah (1969). Reflections on Violence. *Journal of International Affairs*, Vol. 23, No. 1, Political Conflict: Perspectives on Revolution, 1-35.

Arnould, Valerie and Sriram, Chandra L. (2014). Pathways of Impact: How Transitional Justice Affects Democratic Institution-Building. *TJDI Policy Paper*. Vol. 1.

Arthur, Paige (2009). How "Transitions" Reshaped Human Rights: A Conceptual History of Transitional Justice. *Human Rights Quarterly*. Vol. 31, Johns Hopkins University Press, 321-367.

Barnett, Richard David; Ochsenwald, William L.; Maksoud, Clovis F.; Kingston, Paul; Khalaf, Samir G.; and Bugh, Glenn Richard (2023). Lebanon. *Encyclopedia Britannica*. Available at: https://www.britannica.com/place/Lebanon. Accessed on 27/02/2023.

BBC News (2011). *Mau Mau uprising: Bloody history of Kenya conflict*. Available at: https://www.bbc.com/news/uk-12997138. Accessed on 06/10/2022.

Beaulieu, Emily (2014). *Electoral Protest and Democracy in the Developing World*. Cambridge University Press.

Bellemare, Daniel (2011). Indictment, *The Prosecutor v/s Mustapha Amine Badreddine et al*. Special Tribunal for Lebanon.

Berastegi, Amaia Alvarez (2017). Transitional justice in settled democracies: Northern Ireland and the Basque Country in comparative perspective. *Critical Studies on Terrorism*. Vol. 10, 542-561.

Berti, Benedetta (2011). Peace vs. Justice in Lebanon: The Domestic and Regional Implications of the UN Special Tribunal. *Strategic Assessment*. Vol. 13, No. 4.

Berti, Benedetta (2011a). *Hezbollah on Trial: Lebanese Reactions to the UN Special Tribunal's Indictments*. Foreign Policy Research Institute.

Birch, Sarah; Daxecker, Ursula; and Höglund, Kristine (2020). Electoral violence: An introduction. *Journal of Peace Research* Vol. 57, No. 1, 3-14.

Black, Ian (2010). Lebanon PM: It was wrong to accuse Syria of assassinating Rafiq al-Hariri. *The Guardian*, 06/09/2010. Available at https://www.theguardian.com/world/2010/sep/06/lebanon-syria-hariri-assassination. Accessed on 10/03/2022.

Blick, Atticus (2021). The Special Tribunal for Lebanon: How did it survive for so long? *European Journal of International Law* (EJIL: Talk!). Available at: https://www.ejiltalk.org/the-special-tribunal-for-lebanon-how-did-it-survive-for-so-long/. Accessed on 31/01/2023.

Bosi, Lorenzo; Demetriou, Chares; and Malthaner, Stefan (2014). A Contentious Politics Approach to the Explanation of Radicalization. In *Dynamics of Political Violence: A Process-Oriented Perspective on Radicalization and the Escalation of Political Conflict*, ed. Lorenzo Bosi, Chares Demetriou, and Stefan Malthaner. Farnham, UK: Ashgate, 1-23.

Britannica, The Editors of Encyclopaedia (2020). Mau Mau. *Encyclopedia Britannica*, 20 Mar. 2020. Available at: https://www.britannica.com/topic/Mau-Mau. Accessed on 4/10/2022.

Brown, Stephen and Sriram, Chandra Lekha (2012). The Big Fish Won't Fry Themselves: Criminal accountability for post-election violence in Kenya. *African Affairs.* Vol. 111, No. 443, 244-260. DOI: https://doi.org/10.1093/afraf/ads018.

Buckley-Zistel, Susanne (2018). Transitional Justice. *The Oxford Handbook of International Political Theory*, ed. Chris Brown, and Robyn Eckersley. Oxford: Oxford University Press, 153–165.Buckley-Zistel, Susanne; Beck, Tereza K.; Braun, Christian; and

Mieth Friederike (2014). Transitional justice theories: An introduction. *Transitional Justice Theories*, ed. Susanne Buckley-Zistel, et al. Abingdon: Routledge, 1-16.

Burgis-Kasthala, Michelle (2013). Defining Justice during Transition? International and Domestic Contestations over the Special Tribunal for Lebanon. *The International Journal of Transitional Justice*. Vol. 7, 497-517.

Calas, Bernard (2008). From Rigging to Violence: Mapping of political regression. *Les Cahiers d'Afrique de l'Est / The East African Review*. Vol. 38.

Calfat, Natalia Nahas (2018). The Frailties of Lebanese Democracy: Outcomes and Limits of the Confessional Framework. *Contexto Internacional*. Vol. 40(2).

Chaitani, Youssef (2007). *Post-Colonial Syria and Lebanon: the decline of Arab nationalism and the triumph of the state.* I.B.Tauris & Co Ltd, London.

Checkel, Jeffrey T. (2021). Process Tracing – Towards a New Research Agenda. *European University Institute and Peace Research Institute Oslo*. Paper prepared for the Annual Convention of the American Political Science Association.

Coalition For the International Criminal Court (2018). *The Crime of Aggression*. Available at: https://www.coalitionfortheicc.org/explore/icc-crimes/crime-aggression. Accessed on 09/12/2022.

Dahir, Abdi Latif (2014). Kenya's Wagalla massacre 30 years later, *Al Jazeera*, 27/02/2014. Available at: https://www.aljazeera.com/features/2014/2/27/kenyas-wagalla-massacre-30-years-later. Accessed on 19/10/2022.

Dancy, Geoff; Lessa, Francesca; Marchesi, Bridget, Payne, Leigh; Pereira, Gabriel, and Sikkink, Kathryn (2014). *The Transitional Justice Research Collaborative Dataset*. Available at www.transitionaljusticedata.com.

Der Spiegel International (2009). *New Evidence Points to Hezbollah in Hariri Murder*. 23/05/2009. Available at: https://www.spiegel.de/international/world/breakthrough-in-tribunal-investigation-new-evidence-points-to-hezbollah-in-hariri-murder-a-626412.html. Accessed on 02/02/2022.

Deutsche Welle (2011). *Lebanon falls into political turmoil as government collapses*. 13/01/2011. Available at: https://www.dw.com/en/lebanon-falls-into-political-turmoil-as-government-collapses/a-6399911. Accessed on 06/09/2022.

Doyle, Mark (2008). Kenya stokes tribalism debate, BBC News, 04/01/2008. Available at: http://news.bbc.co.uk/2/hi/africa/7168551.stm. Accessed on 19/11/2022.

Elster, Jon (2004). *Closing the Books: Transitional Justice in Historical Perspective*. Cambridge University Press.

Espinal, Rosario (1991). Reviewed Work(s): Democracy in Developing Countries: Latin America by Larry Diamond, Juan J. Linz and Seymour Martin Lipset. *Journal of Latin American Studies*, Cambridge University Press. Vol. 23, No. 2, 431-433.

Forum For International Criminal and Humanitarian Law (FICHL) (2009). *The Principle of Complementarity and the Exercise of Universal Jurisdiction for Core International Crimes*. Available at http://www.fichl.org/activities/the-principle-of-complementarity-and-the-exercise-of-universal-jurisdiction-for-core-international-crimes/. Accessed on 20/03/2021.

France 24 (2010). *Hezbollah leader calls for Hariri probe boycott*. 29/10/2010. Available at: https://www.france24.com/en/20101029-hezbollah-leader-calls-boycott-un-probe-pm-murder-rafiq-hariri-lebanon. Accessed on 05/02/2022.

France 24 (2011). *UN court issues indictments in Hariri assassination*. 30/06/2011. Available at: https://www.france24.com/en/20110630-special-hariri-tribunal-arrest-warrants-lebanon-justice-un. Accessed on 05/02/2022.

General Assembly Security Council (2005). Letter dated 29 March 2005 from the Chargé d'affaires a.i. of the Permanent Mission of Lebanon to the United Nations addressed to the Secretary-General. Available at: https://undocs.org/S/2005/208. Accessed on 08/02/2022.

George, Alexander L. and Bennett, Andrew (2005). *Case Studies and Theory Development in the Social Sciences*. Cambridge, MA: MIT Press.

Gerring, John (2007). *Case Study Research: Principles and Practices*. New York, NY: Cambridge University Press.

Geukjian, Ohannes (2014). Political Instability and Conflict after the Syrian Withdrawal from Lebanon. *Middle East Journal*, Vol. 68, No. 4, 521-545.

Geukjian, Ohannes (2017). *Lebanon after the Syrian withdrawal: external intervention, power-sharing and political instability*. Oxon: Routledge, 2017.

Global Conflict Tracker (2022). Instability in Lebanon. *Center for Preventive Action*. Available at: https://www.cfr.org/global-conflict-tracker/conflict/political-instability-lebanon. Accessed on 15/02/2021.

Gready, Paul and Robins, Simon (2017). Rethinking civil society and transitional justice: lessons from social movements and 'new' civil society. *The International Journal of Human Rights*. Vol. 21:7, 956-975.

Guzzini, Stefano (2012). *The Return of Geopolitics in Europe? Social Mechanisms and Foreign Policy Identity Crises*. Cambridge: Cambridge University Press.

Guzzini, Stefano (2017). Militarizing politics, essentializing identities: Interpretivist process tracing and the power of geopolitics. *Cooperation and Conflict*, vol. 52, No. 3, 423-445.

Hafner-Burton, Emilie and Tsutsui, Kiyoteru (2005). Human Rights in a Globalizing World: The Paradox of Empty Promises. American Journal of Sociology, Vol. 110, No., pp. 1373-1411.

Hansen, Thomas Obel (2009). Political Violence in Kenya: A study of causes, responses, and a framework for discussing preventive action. *Institute for Security Studies.* Paper 205.

Hansen, Thomas Obel (2011). Transitional Justice: Toward a Differentiated Theory. *Oregon Review of International Law*. Vol. 13 (1).

Hansen, Thomas Obel (2013). Kenya's power-sharing arrangement and its implications for transitional justice. *The International Journal of Human Rights*. Vol. 17:2, 307-327. DOI: 10.1080/13642987.2013.752949

Hansen, Thomas Obel (2014). The Vertical and Horizontal Expansion of Transitional Justice: Explanations and Implications for a Contested Field. *Transitional Justice Theories.* Ed.by Susanne Buckley-Zistel, Teresa Koloma Beck, Christian Braun, and Friederike Mieth. Abingdon: Routledge, 105-124.

Hansen, Thomas Obel (2019). In pursuit of accountability during and after war. *Journal of Strategic Studies*. Vol. 42:7, 946-970.

Hartley, Jean (2005). Case Study Research. In Catherine Cassell and Gillian Symon (eds.), *Essential Guide to Qualitative Methods in Organizational Research*, UK: Sage.

Hijazi, Ihsan (1991). Syria-Lebanon Cooperation Pact Signed. *The New York Times*. 23/05/1991. Available at: https://www.nytimes.com/1991/05/23/world/syria-lebanon-cooperation-pact-signed.html. Accessed on 01/08/2022.

Hillebrecht, Courtney (2020). International Criminal Accountability and the Domestic Politics of Resistance: Case Studies from Kenya and Lebanon. *Law & Society Review* Vol. 54, No. 2, 453-486.

Höglund, Kristine (2009). Electoral Violence in Conflict-Ridden Societies: Concepts, Causes, and Consequences. *Terrorism and Political Violence*. Vol. 21:3, 412-427. DOI: 10.1080/09546550902950290.

Human Rights Watch (2009). *Kenya: Deliver Justice for Victims of Post-Election Violence*, 03/10/2009. Available at: https://www.hrw.org/news/2009/08/03/kenya-deliver-justice-victims-post-election-violence. Accessed on 01/05/2022.

Humphrey, Michael (2011). The special tribunal for Lebanon: emergency law, trauma and justice. *Arab Studies Quarterly*. Vol. 33(1), 4-22.

Huntington, Samuel P. (1991). *The third wave: democratization in the late twentieth century*. University of Oklahoma Press.

Hurwitz, Leon (1973). Contemporary Approaches to Political Stability' *Comparative Politics*. Vol. 5, No. 3, Special Issue on Revolution and Social Change, 449-463.

Independent Review of the Elections Commission (IREC) (2008). *Report of the Independent Review Commission on the General Elections held in Kenya on 27 December 2007*.

International Association for Humanitarian Policy and Conflict Research (HPCR International) (2008). *Transitional Justice: Actors & Activities*. Available at: http://www.peacebuildinginitiative.org/index5ee8.html?pageId=1884. Accessed on 08/12/2022.

International Center for Transitional Justice (2009). *What is Transitional Justice?* Available at https://www.ictj.org/sites/default/files/ICTJ-Global-Transitional-Justice-2009-English.pdf. Accessed on 10/02/2021.

International Center for Transitional Justice (2014). *Failing to Deal with the Past: What Cost to Lebanon?* Available at https://www.ictj.org/sites/default/files/ICTJ-Lebanon-Impunity-Report-2014.pdf. Accessed on 14/02/2021.

International Center for Transitional Justice (2019). *Kenya*. Available at https://www.ictj.org/our-work/regions-and-countries/kenya. Accessed on 14/05/2021.

International Center for Transitional Justice (2022). *Lebanon*. Available at https://www.ictj.org/location/lebanon. Accessed on 14/02/2022.

International Criminal Court (2009). *Waki Commission list of names in the hands of ICC Prosecutor* [Press release]. 16 July 2009. Available at: https://www.icc-cpi.int/news/waki-commission-list-names-hands-icc-prosecutor. Accessed on 10/10/2022.

International Criminal Court (2010). *Situation in the Republic of Kenya: ICC-01/09.* Available at: https://www.icc-cpi.int/kenya. Accessed on 12/03/2022.

Iqbal, Zaryab and Zorn, Christopher (2008). The Political Consequences of Assassination. *Journal of Conflict Resolution*. Vol. 52, No. 3, June: 385-400.

Jacobs, Andreas (2011). Nairobi Burning: Kenya's post-election violence from the perspective of the urban poor. *Peace Research Institute Frankfurt Reports*. Frankfurt am Main: Hessische Stiftung Friedens- und Konfliktforschung, 110.

Kalyvas, Stathis N. (2019). The Landscape of Political Violence. *The Oxford Handbook of Terrorism*. Ed. Erica Chenoweth, Richard English, Andreas Gofas, and Stathis N. Kalyvas. OUP Oxford.

Kanyinga, Karuti (2000). *Re-distribution from Above: The Politics of Land Rights and Squatting in Coastal Kenya.* Nordiska Afrikainstitutet.

Kemboi, Charles and Murumba, Ruth (2017). Election Violence in Kenya: Tracing the Root and Healing the Wounds. *European Journal of Research and Reflection in Arts and Humanities.* Vol. 5, No. 1.

Kenya National Dialogue and Reconciliation (KNDR) (2008). *Statement of Principles on Long-Term Issues and Solutions*. Available at https://peacemaker.un.org/kenya-statementlongtermissues2008. Accessed on 10/10/2021.

Kenya Transitional Justice Network (KTJN) (2013). *Truth, Justice, and Reconciliation Commission Report*. Available at: https://www.africaportal.org/publications/kenya-transitional-justice-network-summary-truth-justice-and-reconciliation/. Accessed on 12/09/2022.

Khatib, Lina (2021). How Hezbollah holds sway over the Lebanese state: Hybrid status means power without responsibility. *Chatham House*. The Royal Institute of International Affair, Research paper.

Khatib, Lina and Wallace, Jon (2021). Lebanon's politics and politicians. Chatham House, *The Royal Institute of International Affairs*. Available at: https://www.chathamhouse.org/2021/08/lebanons-politics. Accessed on 11/08/2021.

Kim, Hunjoon and Sikkink, Kathryn (2010). Explaining the Deterrence Effect of Human Rights Prosecutions for Transitional Countries. *International Studies Quarterly* Vol. 54, No. 4, 939-963.

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

Klaus, Kathleen (2020). Raising the stakes: Land titling and electoral stability in Kenya. *Journal of Peace Research*. Vol. 57(1), 30-45.

Knudsen, Are (2010). Acquiescence to Assassinations in Post-Civil War Lebanon? *Mediterranean Politics*. Vol. 15.

Krause, Jana (2019). Stabilization and Local Conflicts: Communal and Civil War in South Sudan. *Ethnopolitics*. Vol. 18:5, 478-493. DOI: 10.1080/17449057.2019.1640505.

Krause, Jana (2020). Restrained or constrained? Elections, communal conflicts, and variation in sexual violence. *Journal of Peace Research*. Vol. 57(1), 185-198.

Kritz, Neil J. (1995). *Transitional Justice: How Emerging Democracies Reckon with Former Regimes*, Volume I: General Considerations. United States Institute of Peace Press.

Kurtulus, Ersun (2009). The Cedar Revolution: Lebanese Independence and the Question of Collective Self-Determination. *British Journal of Middle Eastern Studies*, Vol. 36, No. 2, 195-214.

Lamont, Christopher (2021). *Research Methods in International Relations*. SAGE Publications Ltd, 2nd ed.

Le Van, A. Carl (2011). Power Sharing and Inclusive Politics in Africa's Uncertain Democracies. *Governance: An International Journal of Policy, Administration, and Institutions*. Vol. 24, No. 1, 31-53.

Lebanese Forces News (2009). *Aoun withdraws support for Special Tribunal*. Available at: https://www.lebanese-forces.com/2009/05/05/46271/. Accessed on 06/09/2022.

Lebanese Forces News (2009b). *Syrians are in quest of return to Lebanon*. Available at: https://www.lebanese-forces.com/2009/05/03/46029/. Accessed on 06/09/2022.

Lijphart, Arend (1969). Consociational Democracy. *World Politics*. Vol. 21, No. 2, 207-225.

Lijphart, Arend (1980). *Democracy in Plural Societies: A Comparative Exploration.* Yale University Press.

Lijphart, Arend (2004). Constitutional Design for Divided Societies. *Journal of Democracy*, vol. 15, No. 2, 96-109.

Lin, Ann Chih (1998). Bridging Positivist and Interpretivist Approaches to Qualitative Methods. *Policy Studies Journal*. Vol. 26, No. I, 162-180.

Lührmann, Anna; Tannenberg, Marcus; and Lindberg, Staffan I (2018). Regimes of the World (RoW): Opening New Avenues for the Comparative Study of Political Regimes. *Why Choice Matters: Revisiting and Comparing Measures of Democracy*. Vol. 6, No. 1.

Lutz, Ellen and Sikkink, Kathryn (2001). The Justice Cascade: The Evolution and Impact of Foreign Human Rights Trials in Latin America. *Chicago Journal of International Law*. Vol. 2, No. 1, Article 3.

Makdessi, Marwan (2009). Hariri sees new page in Lebanon ties with Syria. *Reuters*, 20/12/2009. Available at: https://www.reuters.com/article/us-syria-lebanon-idUSTRE5BJ0MZ20091220. Accessed on 02/02/2022.

Malthaner, Stefan (2017). Processes of Political Violence and the Dynamics of Situational Interaction. *International Journal of Conflict and Violence*. Vol. 11, 1-10. DOI: 10.4119/UNIBI/ijcv.627.

Marshall, Monty G. and Gurr, Ted Robert (2005). Peace and conflict 2005: A Global Survey of Armed Conflicts, Self-Determination Movements, and Democracy. *Center for International Development and Conflict Management* (CIDCM), University of Maryland, College Park, MD, USA.

Masakhalia, Alan E. (2011). Focus on tribalism in Kenya. *Open Democracy*. Available at: https://www.opendemocracy.net/en/focus-on-tribalism-in-kenya/. Accessed on 10/11/2022.

Mcauliffe, Pádraig (2021). Transitional Justice, Institutions and Temporality: Towards a Dynamic Understanding. *International Criminal Law Review.* 2021.

Merkel, Wolfgang (2014). Is There a Crisis of Democracy?. *Democratic Theory*. Vol.1, No. 2: 11-25.

Mihr, Anja (2017). Regime Consolidation through Transitional Justice in Europe: The Cases of Germany, Spain and Turkey. *International Journal of Transitional Justice*. 2017. Vol. 11, 113-131. DOI: 10.1093/ijtj/ijx003.

Murphy, Brian (2009). Sudan's Leader Arrives in Qatar. *The Washington Post*. 30/03/2009. Available at: https://www.washingtonpost.com/wp-dyn/content/article/2009/03/29/AR2009032902507.html. Accessed on 10/11/2021.

Mwakideu, Chrispin (2016). A slap in the face for the ICC. *Deutsche Welle*, 04/06/2016. Available at: https://www.dw.com/en/opinion-ruto-verdict-a-slap-in-the-face-for-the-icc/a-19167280. Accessed on 25/10/2022.

Nagy, Rosemary (2013). The Scope and Bounds of Transitional Justice and the Canadian Truth and Reconciliation Commission. *The International Journal of Transitional Justice*. Vol. 7, 52-73.

Nashabe, Omar (2012). The Special Tribunal for Lebanon (STL): International Justice Dissected. *UN in the Middle East: Issam Fares Institute for Public and International Affairs*. American University of Beirut, 2012.

Nasser, Salem H. (2012). International law and Politics: International Criminal Courts and Judgments – The case of the Special Tribunal for Lebanon. *Gonzaga Journal of International Law*. Vol. 15, 146-171.

National Accord and Reconciliation Act (2008). Published by the National Council for Law Reporting with the Authority of the Attorney-General. Kenya Law Reports. Available at: http://kenyalaw.org/kl/fileadmin/pdfdownloads/Acts/NationalAccordandReconciliationAct_No4of2008.pdf. Accessed on 25/10/2022.

Newman, Michael (2019). *Transitional Justice: Contending with the past*. Cambridge, UK; Medford, MA, USA: Polity Press. Kindle e-book.

Norman, Ludvig (2015). Interpretive Process Tracing and Causal Explanations. *Qualitative and Multi-Method Research*. Vol. 13, 4-9.

Norman, Ludvig (2021). Rethinking causal explanation in interpretive international studies. *European Journal of International Relations*. Vol. 27(3), 936-959.

Nyambura, Zipporah (2017). In Kenya, politics split on ethnic divide. *Deutsche Welle*, 26/10/2017. Available at: https://p.dw.com/p/2X6Ta. Accessed on 28/07/2021.

O'Donnell, Guillermo and Schmitter, Philippe C. (1986). *Transitions from Authoritarian Rule: Tentative Conclusions about Uncertain Democracies*, Baltimore: Johns Hopkins University Press.

O'Mahoney, Joseph (2015). Why Did They Do That?: the methodology of reasons for action. *International Theory*. Vol. 7(2), 231-262.

Ogot, Bethwell A. (1995). The Decisive Years: 1959-1953. *Decolonization and Independence in Kenya: 1940-1993.* Ed. Ogot, Bethwell A. and Ochieng, William Robert. Ohio University Press, 48-83.

Okilwa, Nathern (2015). Educational Marginalization: Examining Challenges and Possibilities for Improving Educational Outcomes in Northeastern Kenya. *Global Education Review*. Vol. 2, 5-18.

Olsen, T. D.; Payne, L. A.; and Reiter, A. G. (2010). The justice balance: When transitional justice improves human rights and democracy. *Human Rights Quarterly* Vol. 32(4), 980-1007.

Ominde, Simeon Hongo; Ntarangwi, Mwenda; and Ingham, Kenneth (2023). Kenya. *Encyclopedia Britannica*. Available at: https://www.britannica.com/place/Kenya. Accessed on 27 February 2023.

Payne, Leigh, Olsen, Tricia; and Reiter, Andrew (2010). *Transitional Justice Database Project*. Available at

http://www.tjdbproject.com/index.php?page=10&&startyear=1990&endyear=2010#. Accessed on 10/01/2021.

Petallides, C. J. (2011). Cedars to the East: A Study of Modern Lebanon. *Inquiries Journal/Student Pulse*. Vol. 3. Available: http://www.inquiriesjournal.com/a?id=603. Accessed on 03/01/2022.

Petras, James (1990). The Metamorphosis of Latin America's Intellectuals'. *Latin American Perspectives*. Vol. 17, No. 2 102-112. Sage Publications.

Public Law 101-513, Nov. 5, 1990. 101st Congress. The Harvard Law Review Association, 1990. Available at: https://www.govinfo.gov/content/pkg/STATUTE-104/pdf/STATUTE-104-Pg1979.pdf. Accessed on 14/10/2022.

Rabushka, Alvin and Shepsle, Kenneth (2009). *Politics in Plural Societies: A Theory of Democratic Instability*. Columbus, Ohio: Merrill, 1972, 2nd ed.

Reut Institute (2006). 5th Issue: International Responses to Events in Lebanon and Gaza. Reut Institute. Available at: http://www.jstor.org/stable/resrep10524. Accessed on 06/09/2022.

Rome Statute of The International Criminal Court (1998). Available at: https://www.icc-cpi.int/sites/default/files/RS-Eng.pdf. Accessed on 08/12/2022.

Roth, Wendy D. & Mehta, Jal D (2002). The Rashomon Effect: Combining Positivist and Interpretivist Approaches in the Analysis of Contested Events. *Sociological Methods & Research*. Vol. 31 No. 2, 131-173. DOI: 10.1177/004912402237292

Salamey, Imad (2009). Failing Consociationalism in Lebanon and Integrative Options. *International Journal of Peace Studies*, vol. 14, No. 2, 83-105.

Salehi, Mariam (2021). Tunisia's Re-Confgurations and Transitional Justice in Process: How Planned Processes of Social and Political Change Interplay with Unplanned Political Dynamics. *Re-Confgurations: Contextualising Transformation Processes and Lasting Crises in the Middle East and North Africa*. Ed. Rachid Ouaissa, Friederike Pannewick, and Alena Strohmaier. Springer, 37-49.

Schaffer, Kay and Smith, Sidonie (2004). *Human Rights and Narrated Lives: The ethics of recognition*. Palgrave Macmillan.

Scharf, Michael P (2011). Introductory note to the decision of the appeals chamber of the Special Tribunal for Lebanon on the definition of terrorism and modes of participation. *International Legal Materials*. Vol. 50, No. 4, 509-602. Cambridge University Press.

Schenker, David (2006). The Syria Accountability and Lebanese Sovereignty Restoration Act of 2003: Two Years On. *The Washington Institute for Near East Policy.* Jun 7.

Schenker, David (2009). Washington Balances Syrian Engagement with Commitment to Lebanese Allies. *The Washington Institute for Near East Policy*, online. Available at: https://www.washingtoninstitute.org/policy-analysis/washington-balances-syrian-engagement-commitment-lebanese-allies. Accessed on 14/03/2022.

Schimmelfennig, Frank (2005). Strategic Calculation and International Socialization: Membership Incentives, Party Constellations, and Sustained Compliance in Central and Eastern Europe. *International Organization*, 59, pp 827-860. DOI:10.1017/S0020818305050290.

Schwarzmantel, John (2010). Democracy and violence: a theoretical overview. *Democratization*. Vol. 17:2, 217-234. DOI: 10.1080/13510341003588641.

Seaver, B. M. (2000). The Regional Sources of Power-Sharing Failure: The Case of Lebanon. Political Science Quarterly, 115(2), 247–271. DOI: 10.2307/2657902.

Seils, Paul (2013). Towards a Transitional Justice Strategy for Syria. *ICTJ Briefing* . Available at: https://www.ictj.org/sites/default/files/ICTJ-Syria-Analysis-2013_0.pdf. Accessed on 10/02/2021.

Siegel, Richard Lewis (1998). Transitional Justice: A Decade of Debate and Experience. *Human Rights Quarterly*. Vol. 20, No. 2, 431-454, 1998.

Sikkink, Kathryn (2011). *The Justice Cascade: How Human Rights Prosecutions Are Changing World Politics*. W. W. Norton & Company.

Sikkink, Kathryn and Kim, Hun Joon (2013). The Justice Cascade: The Origins and Effectiveness of Prosecutions of Human Rights Violations. *Annual Review of Law and Social Science.* Vol. 9, 269-85.

Sikkink, Kathryn and Walling, Carrie Booth (2007). The Impact of Human Rights Trials in Latin America. *Journal of Peace Research*. Vol. 44, no. 4, 427-445, 2007.

Skaaning, S.-E., Gerring, J., & Bartusevičius, H (2015). A Lexical Index of Electoral Democracy. *Comparative Political Studies*. Vol. 48(12), 1491-1525.

Skaaning, Svend-Erik (2021). Lexical Index of Electoral Democracy (LIED) dataset v6.0, DOI: https://doi.org/10.7910/DVN/WPKNIT, Harvard Dataverse, V2.

Special Tribunal for Lebanon (2022). Available at: https://www.stl-tsl.org/en. Accessed on 12/02/2021.

Special Tribunal for Lebanon. *The Trial Chamber, Summary of Judgment Document: STL-11-01/T/TC*. 18 August 2020. Available at https://www.stl-tsl.org/crs/assets/Uploads/20200818-F3840-PUBLIC-Summary-of-Judgment-FILED-EN-FINAL.pdf. Accessed on 12/08/2022.

Sriram, Chandra Lekha; Martin-Ortega, Olga; and Herman, Johanna (2011). Justice delayed? Internationalised criminal tribunals and peace-building in Lebanon, Bosnia and Cambodia. *Conflict, Security & Development*. Vol. 11:3, 335-356.

Stewart, Brandon and Wiebelhaus-Brahm, Eric (2017). The Quantitative Turn in Transitional Justice Research: What Have We Learned About Impact? *Transitional Justice Review*. Vol. 1, No. 5, Article 4.

Subotić, Jelena (2009). Hijacked justice: dealing with the past in the Balkans. Ithaca: Cornell University Press.

Subotić, Jelena (2012). The Transformation of International Transitional Justice Advocacy. *International Journal of Transitional Justice.* Vol.6(1), 106-125.

Sutton, Rupert (2014). Lebanon's Arab Spring: The Cedar Revolution Nine Years On. *A New Paradigm: Perspectives on the Changing Mediterranean*. Ed. Sasha Toperich and Andy Mullins. Center for Transatlantic Relations SAIS, 74-84.

Svensson, Palle (1986). Stability, Crisis and Breakdown: Some Notes on the Concept of Crisis in Political Analysis. *Scandinavian Political Studies.* Vol. 9 (2), 129-139.

Tabler, Andrew (2010). Ahmadinezhad's Lebanon Visit and the Fate of the Hariri Tribunal. *The Washington Institute for Near East Policy*. Policy Watch 1710.

Taif Agreement (1989). Available at: https://aceproject.org/ero-en/regions/mideast/LB/lebanon-taif-agreement-1989/view. Accessed on 28/04/2021.

Tavaana Group (2022). *The Cedar Revolution in Lebanon*. Available at: https://tavaana.org/en/en/content/cedar-revolution-lebanon-0. Accessed on 06/09/2022.

Teitel, Ruti G (2003). Transitional Justice Genealogy. *Harvard Human Rights Journal*. Vol. 16, 69-94.

Teitel, Ruti G (2008). Editorial Note – Transitional Justice Globalized. *The International Journal of Transitional Justice*. Vol. 2. DOI: 10.1093/ijtj/ijm041.

Teitel, Ruti G (2013). Rethinking Jus Post Bellum in an Age of Global Transitional Justice: Engaging with Michael Walzer and Larry May. *The European Journal of International Law*. Vol. 24, No. 1, 335-342.

The Global State of Democracy Indices (2020). Available at: https://www.idea.int/gsod-indices/sites/default/files/gsod-methodology-november-2020.pdf. Accessed on 29/11/2022.

The Truth, Justice and Reconciliation Act (2008). Available at: http://kenyalaw.org/kl/fileadmin/pdfdownloads/Acts/TruthJusticeandReconciliationCommissionAct_.pdf. Accessed on 29/09/2022.

Thoms, Oskar N. T.; Rom, James; and Paris, Roland (2010). State-Level Effects of Transitional Justice: What Do We Know? *The International Journal of Transitional Justice*. Vol. 4, 329-354.

Transitional Justice Research Collaborative Data Base (2022). Available at: https://transitionaljusticedata.com/. Accessed on 20/01/2022.

Truth, Justice and Reconciliation Commission (2013). *The Final Report of the Truth, Justice and Reconciliation Commission of Kenya*.

Truth, Justice, And Reconciliation Commission (2008). Commissions of Inquiry - CIPEV Report (Waki Report).IX. *Government Documents and Regulations*. Vol. 5.

UN Peace Maker (2006). Document Retrieval. *Security Council Resolution 1701: The situation in the Middle East*. Available at: https://peacemaker.un.org/israellebanon-resolution1701. Accessed on 03/08/2022.

UN Secretary-General (2005). *Statement attributable to the Spokesman for the Secretary-General on dispatch of investigative team to Beirut* (Feb. 18, 2005). Available at: http://www.un.org/sg/statements/index.asp?nid=1314. Accessed on 08/02/2022.

UN Security Council (2004). The rule of law and transitional justice in conflict and post-conflict societies. *New York: United Nations Security Council, Report of the Secretary-General, UN*. Doc. S/2004/616.

UN Security Council (2005). *Statement by the President of the Security Council*. S/PRST/2005/4 (15/02/2005).

UN Security Council (2005a). *Report of the Fact-finding Mission to Lebanon inquiring into the causes, circumstances and consequences of the assassination of former Prime Minister Rafik Hariri*. S/2005/203.

UN Security Council (2009). *Letter dated 2 February 2009 from the Secretary-General to the President of the Security Council*. S/2009/67.

United Nations (2010). *Guidance Note of the Secretary-General: United Nations Approach to Transitional Justice*. Available at https://www.un.org/ruleoflaw/files/TJ_Guidance_Note_March_2010FINAL.pdf. Accessed on 29/04/2021.

Van Schaack, Beth (2018). Transitional Justice Pre-Transition: The International Community's Efforts in Syria. *Stanford Public Law Working Paper*. Available at SSRN: https://ssrn.com/abstract=3259970 or http://dx.doi.org/10.2139/ssrn.3259970.

Vandeginste and Sriram (2011). Power Sharing and Transitional Justice: A Clash of Paradigms? *Global Governance*. Vol. 17, No. 4, 489-505.

Verdeil, Éric (2019). A Dysfunctional Political System. *Atlas of Lebanon: New Challenges.* Eric Verdeil, Ghaleb Faour et Mouin Hamzé (ed.). Presses de l'Ifpo, CNRS Liban. Collection: Contemporain Co-éditions: Beyrouth, 32-33.

Vinjamuri, Leslie and Snyder, Jack (2004). Advocacy and Scholarship in the Study of International War Crime Tribunals and Transitional Justice. *Annual Review of Political Science*. Vol. 7, 345-62.

Vinjamuri, Leslie and Snyder, Jack (2004b). Trials and Errors: Principle and Pragmatism in Strategies of International Justice. *International Security*. The MIT Press.Vol. 28, No. 3, 5-44.

Waki Commission (2008). Final Report. *The Commission of Inquiry into Post-Election Violence* (CIPEV), Nairobi.

Wambua, Muema (2019). Transitional Justice and Peacebuilding: The ICC and TJRC Processes in Kenya. *African Conflict and Peacebuilding Review.* Vol. 9, No. 1, 54-71.

Washington University Law (2022). Legal English. Online. Available at: https://onlinelaw.wustl.edu/blog/legal-english-de-factode-jure/. Accessed on 11/12/2022.

Wedeen, Lisa (2003). Seeing like a Citizen, Acting like a State: Exemplary Events in Unified Yemen. *Comparative Studies in Society and History*. Vol. 45(4), 680-713. DOI:10.1017/S001041750300032X

Weiffen, Brigitte (2012). From Domestic to International Instruments for Dealing with a Violent Past: Causes, Concomitants and Consequences for Democratic Transitions. *Memory and Political Change.* Ed. Aleida Assmann Linda Shortt. Palgrave Macmillan Limited, 89-111.

Weiffen, Brigitte (2014). Unsettling events: The concept and measurement of democratic crisis and its relationship to democratic regression. *ECPR Joint Sessions of Workshops.* April 10-15, Salamanca.

Weiffen, Brigitte (2018). The crisis of democracy: Conceptualization and empirical assessment. *IPSA World Congress* Brisbane, Australia, July 21-25.

Weiffen, Brigitte (2018b). Transitional Justice: Eine konzeptionelle Auseinandersetzung'. In *Handbuch Transitional Justice*, A. Mihr et al. Ed. Springer Fachmedien Wiesbaden GmbH. DOI 10.1007/978-3-658-02994-4_4-1.

Wierda, Marieke and Triolo, Antony (2012). Resources. *International Prosecutors*. Ed. Luc Reydams, Jan Wouters, Cedric Ryngaert. Oxford University Press, 113-170.

Worth, Robert and Bakri, Nada (2008). Deal for Lebanese Factions Leaves Hezbollah Stronger. *The New York Times*, 22/05/2008. Available at: https://www.nytimes.com/2008/05/22/world/middleeast/22lebanon.html. Accessed on 02/04/2021.

APPENDIX 1: Interviews

Interviews available upon request

Professor at FGV University, Sao Paulo. Unstructured interview: Lebanon Case Study. Digital interview, recorded on Zoom platform. 08/03/2022.

Haki Yetu Organization. Semi-structured interview. Kenya Case Study. Digital interview, recorded on Zoom platform. 22/03/2022.

Kenya Country Office at the ICC. Semi-structured interview. Kenya Case Study. In-person interview at the ICC. The Hague, Netherlands. 23/03/2022.

Member of the National Commission for the Missing and Forcibly Disappeared in Lebanon and Lecturer at the Saint Joseph University of Beirut. Lebanon Case Study. Digital interview, recorded on Zoom platform. 18/04/2022.

Former Registrar/Deputy Registrar at the Special Tribunal for Lebanon and at the ICC. Semi-structured interview. Lebanon Case Study. Digital interview, recorded on Zoom platform. 03/06/2022.

Former Head of the Outreach and Legacy at the Special Tribunal for Lebanon. Semi-structured interview. Lebanon Case Study. Digital interview, recorded on Zoom platform. 20/09/2022.

Annex 1

Ayyash et al. case: Key Developments

2011	On 17 January 2011, the Prosecutor submitted the original indictment against Mr Ayyash, Mr Oneissi, Mr Sabra, and Mr Mustafa Amine Badreddine to the Pre-Trial Judge. It was subsequently amended due to a number of case developments, including the joinder with Mr Merhi's case and the death of Mr Badreddine. The indictment was amended on 11 March, 6 May, and 10 June 2011; 7 March 2014; and 12 July 2016. On 28 June 2011, the Pre-Trial Judge confirmed the indictment against the Accused in Ayyash et al. and ordered their arrest the same day. (Note: these orders were updated on 11 October 2016 following the amendment of the indictment upon the death of Mustafa Amine Badreddine.) The indictment was partially unsealed on 28 July 2011 (revealing the identity of the Accused and the charges against them) and fully unsealed (along with the confirmation decision) on 16 August 2011. The original indictment and accompanying arrest warrants were transmitted to the Lebanese authorities on 30 June 2011 and subsequently sent to Interpol. International arrest warrants were issued on 8 July 2011. These were retransmitted as necessary when the indictment was amended.
2012	On 1 February 2012, after determining that the Accused had absconded and did not wish to participate in the trial, the Trial Chamber decided to hold the trial *in absentia*. This decision came following investigations and attempts to locate and arrest the Accused. On 2 February 2012, the Head of Defence Office assigned counsel to the four Accused. On 16 May 2012, three Legal Representatives of Victims were appointed. Following jurisdictional challenges by Defence Counsel for Mr Ayyash, Mr Badreddine, Mr Oneissi, and Mr Sabra, the Trial Chamber ruled on 27 July 2012 that the Tribunal had been legally established under UN Security Council Resolution No. 1757 (2007), which integrated the provisions of a draft Agreement between the UN and Lebanon. This was confirmed by the Appeals Chamber on 24 October 2012. On 15 November 2012, the Prosecution filed its Pre-Trial Brief in the Ayyash et al. case.
2013	On 9 January 2013, the Defence Counsel for each of the Accused filed their Pre-Trial Briefs.

	The Prosecutor filed an indictment against Mr Merhi on 8 October 2012 and again on 5 June 2013, which the Pre-Trial Judge confirmed on 31 July 2013. On 11 December 2013, the Pre-Trial Judge submitted the Ayyash et al. case file to the Trial Chamber. Along with the submission, he filed a detailed report setting out the parties' and participating victims' arguments, recommendations regarding witnesses, his assessment of the contentious issues of fact and law and other information. On 20 December 2013, the Trial Chamber decided that Mr Merhi too could be tried *in absentia*.
2014	On 16 January 2014, the Ayyash et al. Trial opened with statements by the Prosecution, the Legal Representative of Victims, and Defence counsel for Mr Badreddine and Mr Oneissi. On 11 February 2014, the Trial Chamber ordered the joinder of the Merhi case with the Ayyash et al case. Trial proceedings were adjourned to give Mr Merhi's counsel adequate time to prepare for trial. The trial resumed on 18 June 2014.
2015	On 28 July 2015, the Appeals Chamber confirmed a Trial Chamber decision that call data records from Lebanese telecommunications companies had not been illegally transferred to the UNIIIC or the STL, and that had deferred a decision on the admissibility of Prosecution Call Sequence Tables (chronological lists of calls related to a particular telephone number over a specific period of time, including information about the time, date, type, duration, and location of the call). This decision was significant, since evidence related to the alleged movements of, and contacts between, the Accused, as shown through analysis of cellular telephone and network records, is a critical part of the Prosecution's case.
2016	On 11 July 2016, following reports that Mustafa Amine Badreddine had been killed in May 2016, the Appeals Chamber determined that there was sufficient evidence to conclude that he was deceased. The Appeals Chamber ordered that the proceedings against him be terminated, without prejudice to resuming them should he be found alive in the future. The Trial Chamber terminated the proceedings against him the same day, and the Prosecutor filed an amended indictment the following day.
2017	Between 28 August and 8 September 2017, the Legal Representatives of Victims presented the victims' case, which the Trial Chamber interposed during the Prosecution case.

2018	On 7 February 2018, the Prosecution completed the presentation of its evidence marking the conclusion of the Prosecution case. On 14 May 2018, the Defence case for Mr Oneissi began. The Oneissi Defence called two witnesses who testified on 14 and 15 May, and 5, 6 and 7 June 2018, and tendered documents for admission into evidence. The presentation of evidence in the case concluded on 28 June 2018. On 16 July 2018, the Prosecution and the Legal Representatives of Victims filed their final trial briefs. Defence counsel for the four Accused filed theirs on 13 August 2018. On 21 September 2018, the closing arguments in the Ayyash et al. case concluded after 9 hearing days. The presentation of the closing arguments by the Prosecution, Defence and the Legal Representatives of Victims concludes the trial hearings in the case but is not a finding of guilt or innocence. The judges withdrew to deliberate whether the Prosecution has proved its case beyond reasonable doubt and will issue a Judgment in due course.
2020	On 5 August 2020, the Trial Chamber issued a scheduling order postponing the public pronouncement of the Judgment in the Ayyash et al. case, which it had scheduled for Friday 7 August 2020. This was out of respect for the countless victims of the explosion that shook Beirut on 4 August, and the three-day period of public mourning in Lebanon. On 18 August 2020, the Trial Chamber pronounced its Judgment in the Ayyash et al. case. The Trial Chamber found unanimously Salim Jamil Ayyash guilty beyond reasonable doubt and found Hassan Habib Merhi, Hussein Hassan Oneissi, and Assad Hassan Sabra not guilty of all the counts charged against them in the indictment. The Trial Chamber considered the evidence individually and in its totality. The reasoned Judgment is 2,641 pages. On 11 December 2020, the Trial Chamber pronounced its Sentencing Judgment in the case. It unanimously sentenced the convicted Accused Salim Jamil Ayyash to five concurrent sentences of life imprisonment. It also issued a renewed arrest warrant, an international arrest warrant, order and request for the transfer and detention of Mr Ayyash. It also called on those shielding Mr Ayyash from justice to surrender him to the Tribunal.
2021	On 12 January 2021, the STL Prosecution and the Defence Counsel for Mr Salim Jamil Ayyash filed notices of Appeal against the Trial Chamber's Judgment of 18 August 2020, and the Defence against the Sentencing Judgment of 11 December 2020, in the Ayyash et al. case. The Legal Representative of Participating Victims also filed a notice of Appeal

	against the Sentencing Judgment. The filing of the notices of Appeal marks the beginning of the Appeals phase in the Ayyash et al. case. On 24 February 2021, the Appeals Chamber dismissed the LRV Notice of Appeal against the Sentencing Judgment as inadmissible. The Appeals Chamber authorized the participating victims to participate in the appellate proceedings for the purpose of expressing their views and concerns on issues affecting their personal interests. On 29 March 2021, the Appeals Chamber ruled that the Defence for Mr Ayyash have no standing to appeal his conviction in his absence. The convicted Accused Mr Ayyash, as an individual, retains all the safeguards required under international human rights standards including the right to appeal the Judgments if he appears, or request a retrial. On 29 March 2021, the Prosecution submitted the Appeal Brief comprising eight grounds of appeal, all built towards finding Mr Merhi and Mr Oneissi guilty of counts 1 and 6-9 of the amended consolidated indictment. On 4 October 2021, the Appeals Chamber held an appeal hearing in the case of Prosecutor v. Merhi and Oneissi. The Chamber heard oral arguments from the Prosecutor, Defence Counsel for Messrs Hassan Merhi and Hussein Oneissi, and the Legal Representatives of Victims in relation to the Appeal filed by the Prosecutor against the Trial Judgment. The Presiding Judge of the Appeals Chamber, Judge Ivana Hrdličková, announced at the end of the hearing that a scheduling order for the issuance of the Appeals Judgment will be issued in the next few months.
2022	On 10 March 2022, the Appeals Chamber issued the Appeal Judgment in the Prosecution's appeal in the case of Prosecutor v. Merhi and Oneissi (STL-11-01). The Appeals Chamber reversed the acquittals of Hassan Habib Merhi and Hussein Hassan Oneissi and convicted them of all counts against them. On 16 June 2022, the Appeals Chamber sentenced Hassan Habib Merhi and Hussein Hassan Oneissi to five concurrent sentences of life imprisonment in the case of Prosecutor v. Merhi and Oneissi (STL-11-01). This concluded the proceedings in Case No. STL-11-01.

Source: Special Tribunal for Lebanon, 2022: 1.

Annex 2

The Prosecutor v. Uhuru Muigai Kenyatta: ICC Timeline

5 November 2009	**Request to investigate "proprio motu" in Kenya** OTP notifies ICC President of intention to request to investigate in Kenya regarding the 2007/2008 post-election violence. The ICC's Presidency assigns the situation to Pre-Trial Chamber II. Note: While the case initially involved Francis Kirimi Muthaura and Mohammed Hussein Ali, Pre-Trial Chamber II declined to confirm the charges against Mr. Ali; and the charges against Mr. Muthaura were later withdrawn.
31 March 2010	**Investigations in Kenya begin** Pre-Trial Judges authorize OTP to open investigation *proprio motu* in Kenya into alleged crimes against humanity.
15 December 2010	**Summonses to appear requested** OTP requests from Pre-Trial Chamber II the issuing of summonses to appear for six suspects in the Kenya situation: William Samoei Ruto (Ruto), Henry Kiprono Kosgey (Kosgey), Joshua Arap Sang (Sang), Francis Kirimi Muthaura (Muthaura), Uhuru Muigai Kenyatta (Kenyatta) and Mohammed Hussein Ali (Ali).
8 March 2011	**Summonses to appear issued** Pre-Trial Judges issue summonses to appear for all six suspects, dividing them into two cases (See Ruto and Sang case).
8 April 2011	**First appearance** Pre-Trial phase begins as Mr Muthaura, Mr Kenyatta and Mr Ali have first day in Court, appearing voluntarily before Judges of Pre-Trial Chamber II
21 September 2011	**Confirmation of charges hearing opens** Pre-Trial phase continues as Pre-Trial Judges open hearing to consider evidence in order to decide whether or not to confirm the charges and commit the Muthaura, Kenyatta and Ali case to trial.

5 October 2011	**Confirmation of charges hearing closes** Pre-Trial Judges to deliberate and decide in due course whether or not to confirm the charges and commit the Muthaura, Kenyatta and Ali case to trial.
23 January 2012	**Decision: Charges not confirmed for Ali** Pre-Trial Judges decline to confirm charges against Ali, and state he is no longer a suspect before the Court, though Prosecutor may present additional evidence to reopen a confirmation of charges hearing against him.
23 January 2012	**Decision: Charges confirmed for Mr Muthaura and Mr Kenyatta, commits their case to trial** Pre-Trial Chamber II confirms charges against Mr Muthaura and Mr Kenyatta and commits the case to trial.
11 March 2013	**Muthaura's charges dropped** OTP withdraws charges against Muthaura. Statement
5 December 2014	**Kenyatta's charges dropped** OTP withdraws charges against Kenyatta.
13 March 2015	**Proceedings terminated** Trial Chamber V(B) terminates the proceedings in this case

Source: International Criminal Court, 'Kenyatta Case' (ICC-01/09-02/11).

Annex 3

The Prosecutor v. William Samoei Ruto and Joshua Arap Sang: Main judicial developments

2009 2010	**Opening of the Investigation** On 5 November 2009, the ICC Prosecutor notified the President of the Court of his intention to submit a request for authorisation to start an investigation into the situation in Kenya pursuant to article 15(3) of the Rome Statute, in regard to the 2007-2008 post-election violence in Kenya, in which approximately 1,300 people were allegedly killed. On 6 November 2009, the Presidency of the Court assigned the situation to Pre-Trial Chamber II, composed of Judge Ekaterina Trendafilova (presiding judge), Judge Hans-Peter Kaul and Judge Cuno Tarfusser. On 31 March 2010, Pre-Trial Chamber II granted, by majority, the Prosecution's request to open an investigation into alleged crimes against humanity in Kenya. The investigation covers crimes against humanity committed between 1 June 2005 (the date of the Rome Statute's entry into force for Kenya) and 26 November 2009 (the date the Prosecutor's filed the request for authorisation to start the investigation).
2010 2011	**Summonses to Appear** On 15 December 2010, the ICC Prosecutor requested Pre-Trial Chamber II of the ICC to issue summonses to appear for six Kenyans on the basis that there existed reasonable grounds to believe that they were criminally responsible for crimes against humanity. On 8 March 2011, Pre-Trial Chamber II, by majority, issued the decisions on the applications submitted by the Prosecutor and summoned William Samoei Ruto, Henry Kiprono Kosgey and Joshua Arap Sang to appear before the Court on 7 April 2011.
2011	On 31 March 2011, the Government of Kenya filed an application challenging the admissibility of the case before the ICC. On 30 May 2011, Pre-Trial Chamber II rejected this application. Pre-Trial Chamber II's decision was confirmed, on 30 August 2011, by the Appeals Chamber.

	At the initial appearance hearing, that took place on 7 April 2011, the Chamber scheduled the confirmation of charges hearing in this case for 1 September 2011.
2011 2012 2013	**Confirmation of Charges and Committal for Trial** The confirmation of charges hearing was held from 1 to 8 September 2011. On 23 January 2012, the Judges declined to confirm the charges against Mr Kosgey. Pre-Trial Chamber II confirmed the charges against Mr Ruto and Mr Sang and committed them to trial before an ICC Trial Chamber, which started on 10 September 2013. The defendants are not in the custody of the Court.
2016	**Termination of the Case** On 5 April 2016, Trial Chamber V(A) decided, by majority, that the case against William Samoei Ruto and Joshua Arap Sang was to be terminated. This decision does not preclude new prosecution in the future either at the ICC or in a national jurisdiction. This decision may be subject to appeal. This decision was taken after considering the requests of Mr Ruto and Mr Sang for the Chamber to find 'no case to answer', dismiss the charges against both accused and enter a judgment of acquittal. The Chamber also considered the opposing submissions of the Prosecutor and the Legal Representative of the Victims and received further submissions during hearings held from 12 to 15 January 2016. On the basis of the evidence and arguments submitted to the Chamber, Presiding Judge Chile Eboe-Osuji and Judge Robert Fremr, as the majority, agreed that the charges were to be vacated and the accused were to be discharged. The majority of the Chamber, having concluded that the Prosecution did not present sufficient evidence on which a reasonable Trial Chamber could convict the accused, also concluded that a judgment of acquittal was not the right outcome, but only vacation of the charges and discharge of the accused. The majority also agreed that there is no reason to re-characterise the charges.

Source: International Criminal Court, 'Case Information Sheet' (ICC-01/09-01/11).