

## President Kenyatta's Need for Power and the Strained Kenya – International Criminal Court Relations Between 2013 and 2017

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**Abstract:** This paper explores how the need for power as a personality trait of President Kenyatta influenced Kenya's antagonistic foreign policy towards the International Criminal Court (ICC) between 2013 and 2017. Despite the ICC promising to deliver illusive justice to victims of the 2007/2008 post-election violence in Kenya, by holding Kenyatta to account for the atrocities committed during the violence; support for the Court's intervention among Kenyans dwindled in the aftermath of the 2013 general elections, when Kenyatta assumed the Presidency. While scholarly debates suggest that persons holding political powers are less likely to face prosecution at the ICC, since power provides them with the leverage to circumvent the judicial process to their advantage; there is yet to be an analytical measure on how Kenyatta's trait on need for power, influenced Kenya's relations with the ICC. Guided by Leadership Trait Analysis (LTA), this paper undertakes quantitative content analysis using profiler plus software; on two speeches and three interviews, purposively sampled from utterances delivered by Kenyatta on the ICC, between 2013 and 2017, to measure his need for power. The paper finds that Kenyatta was low in need for power, explaining why he enabled his followers to feel strongly against the ICC, and why he built team spirit among members of his team against the ICC. It recommends that the ICC should undertake psychological investigations on leaders whom it seeks to prosecute, with the view to determine how their personality traits will affect the success of investigations and prosecution by the Court.

**Keywords:** Uhuru Kenyatta, Need for Power, Foreign Policy, and International Criminal Court.

### INTRODUCTION

Prior to the 2007/2008 Post Elections violence, Kenya had been a model state party to the International Criminal Court (ICC). This was attributed to the country's relative stability in comparison to some of its African neighbours (Plessis and Gevers, 2010). In the guise of this stability, there were growing cases of election related violence instigated by politicians to acquire and maintain political power (CIPEV Report, 2008). However, these acts of violence largely went unaccounted. For the few cases that were reported to law enforcement agencies, there was limited evidence of investigations and prosecution though the judicial systems (CIPEV Report, 2008; Kimani, 2018). This set in a culture of impunity among the country's political class, and loss of public confidence in the country's judicial systems. Afro – Barometer surveys conducted in 2011 and 2015 revealed that 64% and 76% of Kenyans respectively, believed that official impunity was widespread in Kenya, and powerful political figures went unpunished within the judicial system. This questions whether the stability observed in Kenya was premised on justice and human rights.

Impunity in Kenya's political landscape was encapsulated in the mantra of “*accept and move on*”, which was commonplace within Kenyan's political parlance. Politicians perpetrated this mantra for two main reasons. One, to entrench false peace which was viewed as stability

(Nyong'o, 2007) and two, to stifle discussions on accountability for crimes and justice for victims of election related violence (Owiso, 2017). With this status quo, politicians pursued and maintained power without checks, thereby cementing the “*big man syndrome*” in Kenya's political discourse (Nzomo, 2016). The syndrome dictated that when the leader's position was already determined, anybody with a divergent opinion halted public expression of their own alternative positions out of either respect for the leader or fear of repression. The politicians' interests therefore prevailed in all facets of governance in Kenya.

Intervention by the ICC not only sought to deliver the illusive justice for victims of the 2007/2008 post-election violence, but also threatened to dismantle the status quo in Kenya. By prosecuting Kenyatta for election related violence, the ICC for the first time, intended to bring power to account. It is partly for this reason that 68% of Kenyans supported the interventions by the ICC in its initial period (IPSOS Kenya, 2011). Support for the interventions was highest in Central and Rift Valley regions of Kenya at 88% and 85% respectively (IPSOS, 2011). This was attributed to the assertion that these regions were dominated by members of the Kikuyu and Kalenjin ethnic communities, a majority of whose rights were violated during the 2007/2008 post – election violence (Lugano, 2017).

### **Power and Kenyan Relations with the ICC**

Kenyatta's case at the ICC was unique for two main reasons. One, it was the first time that an accused person had been propelled to power democratically after being charged at the ICC. Two, it was the first time that a sitting head of state was being tried for crimes against humanity at the ICC (Block, 2014). This gave immense hope on the superiority of international criminal law, to hold the most powerful persons to account. Despite the promise to deliver justice and deter future election related violence, support for the ICC plummeted after Kenyatta's ascendancy to the presidency in the 2013 general elections. The presidency is considered the highest position of political power in Kenya, and it sits at the helm of foreign policy decision making structure (Adar, 2015). An Afro Barometer Survey conducted in 2014 indicated that nationally, the supports for ICC had fallen from 61% to 55% after Kenyatta's election as the President. The survey further indicated that fewer than half of the respondents drawn from the Kalenjin ethnic community (34%) and Kikuyu ethnic community (44%), still believed that the ICC process was an important effort in the fight against impunity in Kenyan (Afro – Barometer, 2015). This was in the backdrop that the two communities were most affected by the 2007/2008 post – election violence in Kenya.

The background of this paper makes a proposition that the ICC threatened the status quo enjoyed by political elite in the Kenya. This status quo accorded the elite insulation from accountability for violence geared at acquiring and maintaining power. (Owiso, 2017). It would be argued therefore, that intervention by the ICC eroded Kenyatta's ability to maintain power as the head of state. To avert this constrain to power, Kenyatta had to shake off the restraining influence that the ICC may have had on him (Simons, 1998; Muller, 2013). This could have led to the antagonistic relation between Kenya and the ICC between 2013 and 2017. Mackie argues that persons holding political power can avoid prosecution at the ICC (Mackie, 2012), since power provides them with leverage to circumvent ICC process to their advantage (Lugano, 2017). In line with these assertions, Kenyatta could have pursued power as his ultimate goal for the purpose of defeating his prosecution at the ICC (Muller, 2013).

In the face of this evidence, there is a dearth of analytical research on how need for power as a personality trait inherent in Kenyatta influenced

Kenya's antagonism towards the ICC between 2013 and 2017. Discussions around Power and the ICC interventions have only focused on state power. They seek to determine how the ICC could have impacted on the Kenya's state power in line with state – centric assumptions. These arguments focus on the state and neglect the leaders of the state, whom the ICC could have directly impacted on their ability to acquire and maintain power. Furthermore, with the ICC's termination of Kenyatta's case, it is not clear if the Courts deterrence mechanism would still apply in Kenya in light of Buitelaar's propositions. Buitelaar, (2015) argues that the ICC can only deter future crimes by punishing those responsible for previous atrocities. In the Kenyan case, the ICC never punished the perpetrators of the crimes, thereby questioning its ability to deter any future election related violence.

Guided by Leadership Trait Analysis (LTA), this paper explored how Kenyatta's trait on need for power influenced Kenya's antagonist relations with the ICC between 2013 and 2017. The paper explains how need for power influenced particular foreign policy actions undertaken by Kenyatta towards delegitimizing the ICC's interventions in Kenya.

### **Leadership Trait Analysis**

Leadership Trait Analysis (LTA) was developed by Margaret Hermann (1980). The approach has three key assumptions that underpin the variables for discussion, methodology and structure of this paper. First, the approach advances that leaders are central in determining foreign policy behaviour of their nations. Focus should therefore be placed in understanding the leader's personality when examining state relations. In line with this assumption, this paper focuses on President Kenyatta. It looks into how Kenyatta's personality influenced Kenya's antagonistic relations with the ICC during his tenure in office between 2013 and 2017.

Second, the approach assumes that when analyzing a leader's personality and how it influences foreign policy, their personality should be fragmented in fine psychological components referred to as personality traits. Hermann (1980) identifies seven politically relevant personality traits which are: nationalism, need for power, belief in ability to control events, distrust of others, self – confidence, task focus and conceptual complexity. This paper explored Kenyatta's trait on need for power, which is one of the personality traits identified through

LTA. This was guided by the discussions on how Kenyan leaders utilize violence to acquire state power through elections. (CIPEV Report, 2013) The intervention by the ICC in Kenya was aimed at prosecuting Kenyatta among other leaders who allegedly utilized violence to acquire state power after the 2013 general elections. The inverse also holds that once Kenyatta was prosecuted for crimes against humanity emanating from the 2007/2008 post – election violence, he aimed at acquiring state power for the purpose of beating his prosecution at the ICC (Mackie, 2012; Muller, 2013). These discussions reveal the intricate relation of violence, and the acquisition and maintenance of state power within the Kenyan political realm. Hence the academic need to look into how Kenyatta’s need for power influenced Kenya’s relations with the ICC.

Third, the approach assumes that high profile political leaders are inaccessible and therefore may not be available for clinical psychological assessment that reveals information about their personalities (Hermann, 1980; Lodge & Taber, 2000). The approach therefore proposes that to undertake such an assessments research should rely on the leader’s spontaneous public verbal outputs such as interviews and speeches. When such outputs are processed by content analysis schemes tied to psychological notions, they expose fundamental information about a leaders’ personality traits (Winter, 2003). This assumption guides the methodological underpinning of this paper. In exploring Kenyatta’s need for power and its influence on the Kenya’s relations with the ICC, the paper undertakes quantitative content analysis of three purposively sampled interviews

and two speeches of Kenyatta. These speeches and interviews are publicly available on YouTube, and capture Kenyatta’s sentiments on Kenya’s relations with the ICC between 2013 and 2017.

To comprehensively determine a leaders’ personality trait, Hermann prescribes using at least five thousand words from both speeches and interviews delivered by the leader. This paper utilizes a total of five thousand eight hundred and fifty-three (5853) words from the three interviews and two speeches by Kenyatta delivered between 2013 and 2017. This implies that the data utilized in the paper is sufficient for making factual inference on Kenyatta’s trait on need for power.

LTA approach provides standard norming group for measuring a leader’s trait. In developing this norming group, Hermann, (1980) explored the leadership styles of 87 heads of states from 46 Countries and 122 national leaders form 48 countries. Based on the result of this undertaking, Hermann developed the norming group against which a leader’s personality traits could be measured. If the leader’s scores are a standard deviation below the norming groups’ mean, then the leader is considered low on the particular trait under investigation. If the leader’s scores are one deviation above the norming groups’ mean, then the leader is considered high in the trait under investigation. **Table 1** below shows the norming group established by the Hermann on the trait of need for power. It displays both standards of measuring for heads of state and political leaders. This research utilized the measure on heads of state, since Kenyatta was a head of state during the period that the study focuses on.

**Table 1:** Norming group for the measure of need for power as a personal trait

Personality Trait	Heads of State	Political Leaders
Need for Power	Mean = 0.50	Mean = 0.50
	Low < 0.37	Low < 0.38
	High > 0.62	High > 0.62

**Source:** Dyson, S. B. (2006). Personality and Foreign Policy: Tony Blair's Iraq decisions. *Foreign Policy Analysis*, 2(3), 289-306.

Structurally the paper has first undertaken quantitative content analysis of the speeches and the interviews to determine if Kenyatta was high or low in the trait on need for power. Using this result, the paper discusses Kenyatta’s foreign policy actions towards the ICC guided by the propositions advanced by the Hermann on the trait of need for power. LTA approach recommends that, when investigating a leaders’ trait on need for power, focus should be placed on verbal outputs

where the leader engage in assaults, verbal threats or accusations. Verbal outputs that give unsolicited advice or assistance, and words that are seen as attempting to regulate other persons or groups, (Hermann, 1980; 2002; 2005). These presumptions on measuring the trait on need for power guided the content analysis undertaken on the sampled interviews and speeches.

## METHODS AND DATA

This paper adopts an exploratory case study design. The design enables the paper to move beyond answering the “what” question in the debate on Kenya’s relation with the ICC, to answering the “how” and “why” question (Baxter & Jack, 2018) using the case of Kenyatta. Investigations on political leaders’ personality traits require unique methods of data collection, as leaders are not readily available or willing to be interviewed for psychological analysis (Kesgin, 2012). Due to the difficulty of direct access, this study used quantitative content analysis technique to analyze publicly available verbal outputs to measure Kenyatta’s trait on need for power. Similar studies have employed the techniques with great success (Winter, 2003; Dyson 2006; Khandal, 2018). Dyson (2006) refers to the approach as “*at – distance – measure technique*”. This paper undertook quantitative content analysis on three interviews and two speeches delivered by Kenyatta between 2013 and 2017. The speeches and interviews were sourced from YouTube. YouTube has gained currency as a source for data. This is partly due to its ease of access and low cost of collecting data. Studies such as (Wambui, 2016), have utilized YouTube as reliable data source with great success. The source provides readily available data and can be made reference to for the purposes of verification of the data. Since the source is a public utility source for information and data, there was no need for special approval prior to the use of the data.

The study area of this paper comprised of Kenyatta’s speeches and interviews delivered between 2013 and 2017. The speeches and interviews were purposively sampled by the research from among a myriad number of speeches and interviews. The choice for the sampled data was due to their rich content on issues pertaining to Kenya’s relations with the ICC. As an inclusion and exclusion criteria, the paper only analysed Kenyatta’s speeches and interviews, delivered between 2013 and 2017, where he discussed or mentioned issues around Kenya’s relations with the ICC. The saturation of the data was met after the research had surpassed the five-thousand-word count as guided by LTA approach. The interviews which formed the primary data of this research existed in audio – visual format. They were downloaded into the researchers’ personal computers, transcribed into text and coded for quantitative content analysis using the LTA coding scheme.

Cumulatively the word count from the speeches and the interviews was five thousand, eight hundred and fifty-three (5,853), and has surpassed the five-thousand-word mark prescribed by Hermann (1980) for factual analysis. This data was thus sufficient to provide an objective measure on Kenyatta’s trait on need for power. Tables 2 and 3 depict the typology of the Speeches and Interviews of Kenyatta utilized in this paper.

**Table 2:** Typology of Speeches by Uhuru Kenyatta

S/No	Speeches	Date	No of Words
US1	Speech at the 26 <sup>th</sup> African Union Summit in Addis Ababa	31/Jan/2016	2659
US2	Speech at the Joint Sitting of the Kenya Parliament	06/Oct/2014	2243

**Source:** Researchers’ own tabulation of sampled speeches for Analysis

**Table 3:** Typology of interviews by Uhuru Kenyatta

S/No	Interviews	Date	No of Words
UI1	Interview with Marc Perelman on France 24	26/April/2016	535
UI2	Interview with Daniel Pelz on DW News – DW African Desk	08/April/2016	145
UI3	Interview with Husein Mohamed on Citizen TV Kenya	09/April/2014	271

**Source:** Researchers own tabulation depicting Sampled Interviews for Analysis

## CONTENT ANALYSIS

Quantitative content analysis is the statistical and systemic analysis of text. It involves the classification of parts of a text through application of a structured coding scheme, counting and comparisons of key words or content, followed by the interpretation of the underlying context (Rose et. al. 2015). Content analysis enables research to draw conclusion about the message content. This

paper exploited quantitative content analysis since it used the coding scheme for LTA to measure Kenyatta’s trait on need for power against the norming group developed by Hermann (1980). The paper relied on counting words and phrases which were indicative of need for power in Kenyatta verbal outputs. The percentage of use of such words and phrases within the speech or interview determined whether Kenyatta was high or low on

the trait guided by the norming group mean depicted in Table 1. The focus was on the words and phrases that suggest power as indicated in the previous section of this paper on LTA.

**Profiler Plus**

To ensure accuracy and minimize human error associated with word count in undertaking quantitative content analysis, the paper has utilized Profiler Plus software. This is a computerized software developed by Levine and Young, (2014) for undertaking quantitative content analysis based on LTA coding technique developed by Hermann (1980). It has been widely used to explore the personality traits of various political leaders (Dyson, 2006; Kesgin, 2012).

Profiler plus categorized words in the verbal outputs as indicative of either high or low in need for power. It then scanned Kenyatta verbal outputs for words and phrases where he engages in assaults, verbal threats or accusations, verbal outputs that give unsolicited advice or assistance, words that are seen as attempting to regulate other persons or groups. (Hermann, 1980; 2002; 2005). The score on need for power is then calculated as being the ratio of words tagged as low, or high on need for power, and presented between 0 - 1. Zero being the lowest, and one being the highest. This software has been hailed for reducing the time spent on analyzing content for leadership traits and for ensuring systemic and objective results (Kesgin, 2012).

Once the data is run through profiler plus for quantitative content analysis, the software undertakes statistical analysis to determine the number of times specific words, phrases, or parts of speeches and interviews that connote need for

power are used. The results are presented in numerical format, which includes the number of indicators within a particular speech or interview that depict Kenyatta as high or low in the trait on need for power. The software further provides the frequency of use of such words and calculates the ratio for each speech and interview. This is then measured against the norming group’s mean to determine whether Kenyatta is high or low in the trait on need for power. Since the software is a quantitative analytical tool, it only provides the numerical results but does not highlight the exact words or phrases; which is usually the case in qualitative content analysis.

The results enabled the paper determine if Kenyatta was high or low in the trait on need for power. This guided the discussion of Kenyatta’s foreign policy actions towards the ICC, in line with Herman’s (1980) propositions on leaders’ trait on need for power.

**Profiler Plus Results on Kenyatta’s Trait on Need for Power**

Table 4 displays the content analysis results as processed using Profiler Plus software for the two speeches (US1 and US2), and three interviews (UI1, UI2 and UI3). They have been presented against the norming group for political leaders on the trait of need for power displayed in the second column (Standard) of the table. The eighth column on Table 4 (UU), is the result for the cumulative utterances from both speeches and interviews. It displays the measure for all the five thousand eight hundred and fifty-three words. This enabled the paper reach a conclusion and determine a position on need for power as a trait inherent in Kenyatta.

**Table 4:** Profiler plus results on Uhuru Kenyatta’s Speeches and Interviews

Trait	Standard	US1	US2	UI1	UI2	UI3	UU
NAT	Mean = 0.42 Low < 0.32 High > 0.53	0.2879	0.169	0.1429	0	0.3333	0.2086

**Source:** Levine, N. & Young, M. (2014, August). Leadership trait analysis and threat assessment with profiler plus. In Proceedings of ILC 2014 on 8th international Lisp conference (pp. 50-59).

In first speech, US1, delivered at the 26<sup>th</sup> Extra – Ordinary African Union Summit on 31<sup>st</sup> January, 2016, two thousand six hundred and fifty-nine (2659) words were analyzed using profiler plus. 22 words were indicative of Kenyatta as being high in need for power, while 34 words indicated him as low in need for power. The ratio result of the speech is 0.39, which is 0.11 deviations lower than the mean of the norming group which is 0.42.

In the second speech, US 2, delivered at the Joint Sitting of the Kenyan Parliament on 6<sup>th</sup> October, 2014, a total of two thousand two hundred and forty-three (2243) words were analyzed. Profiler Plus depict that of this total, 26 words were indicative of the leader as being high in need for power, while 51 words indicated him as low in need for power, the resultant ratio was 0.3 which is

0.2 standard deviation, lower than the mean of 0.42.

In the first interview, UI1, conducted by Marc Perelman of France 24 conducted on 26<sup>th</sup> April, 2016 a total of 535 words were extracted for analysis. Profiler plus reveal that of the total, 6 words were found to depict Kenyatta as high in need for power, while 14 words depicted him as low in the trait. The resultant ratio for this interview was 0.3 which is lower than the norming group mean. The second interview, UI2 conducted by Daniel Pelz of DW News – DW African Desk, conducted on 8<sup>th</sup> April, 2016, a total of 145 words were extracted for analysis, of the total, there was no word that depicted the leader as high in need for power. However, 12 words from among those uttered by Kenyatta during the interview depict him as low in need for power. The resultant ratio was zero (0), which are 4 deviations below the norming group mean on need for power. In the third interview UI3, conducted on 9<sup>th</sup> April 2014, by Husein Mohamed of Citizen TV – Kenya, a total of 271 words were extracted for analysis. 13 words were indicative of him as being high in need for power, while 40 words were indicative of him as being low in need for power. The resultant ratio for the interview was 0.25 which is lower than the norming group mean of 0.42.

Cumulatively, for all the five thousand, eight hundred and fifty-three (5853) words from the two speeches and three interview (UU), 67 words depicted Kenyatta as high in need for power while, 151 words depict him as low in need for power. The profiler plus results for UU is 0.32. This was 0.1 deviations lower than the norming group mean of 0.42.

## DISCUSSION

The Profiler Plus results on Kenyatta's trait on need for power reveal that Kenyatta was low in need for power. LTA Approach explicates two key assumptions that underpin behavior of leaders' low in need for power (Hermann, 1980). First, such leaders enable their followers to feel strongly and be responsible for foreign policy decisions and actions. Second, they build team spirit among their groups, with the view to building relationships of trust geared towards achieving clear goals (Dyson, 2006; Manriquez, 2019). These assumptions guided the ensuing discussions on Kenya's relations with the ICC between 2013 and 2017.

### **Enable Followers to Feel Strongly and Responsible for Foreign Policy Actions**

In Kenya, the primary followers of political leaders are members of their ethnic communities (Kanyinga, 2011). Leaders have often utilized ethnicity for political mobilization and competition for political capital (Lugano, 2013). This has resulted into establishments of ethnic leaders for the various ethnic communities within the country. This stretches the "big man syndrome" which Nzomo, (2016) alludes to, by delimiting it from the national leadership level, and equally applying at the ethnic communities. Since all major ethnic communities in Kenyan has a "big man" who defines the community's political course.

Before the 2007 general elections and during the post-election violence, Kenyatta who is from the Kikuyu ethnic community supported the Party of National Unity (PNU) led by the then President Mwai Kibaki (Kendall, 2014). Kibaki also hailed from the Kikuyu ethnic community, thereby explaining Kenyatta's support for his presidency. As at the time of the violence Kibaki was the "big man" within the Kikuyu community and most Kikuyu leaders supported his candidature. It was argued by the Prosecutor of the ICC that the attacks during the 2007/2008 post-election violence were designed in such a way that, perceived PNU supporters were attacked, including those of the Kikuyu tribe (Wanyeki, 2012). This explains the significant support of 88% which the ICC interventions enjoyed in Central Kenya, which is mainly dominated by members of the Kikuyu ethnic community (IPSOS Synovate, 2011). In retaliation, members of the Kikuyu ethnic community attacked members of the Kalenjin ethnic community, further explaining the significant support for the ICC (85%) among residents of the Rift Valley region in Kenya, who are members of the Kalenjin ethnic community as documented in the IPSOS Survey Report of 2011. The Prosecutor of the ICC argued that both the attack and retaliatory attacks, were organized and financed by the "big men" and their supporters from both communities (Murithi, 2013). It was these attacks that Kenyatta was charged for at the ICC.

Kenyatta mounted an anti – ICC campaign in the course of seeking the presidency in the 2013 General Elections (Dancy, et al, 2019). In the political campaigns which were defined with ethnic prejudice and stereotyping, Kenyatta advanced three dominant narratives against the ICC (Wanyeki, 2012). One, that the ICC was a tool of the western powers geared at dominating Africans whom it considered powerless. As such

he called on his supporter to reject the ICC, since it was a neo – colonial architecture (Wolf, 2013). However, this could not have been the case, since Kenya had ratified the Rome Statue making ICC part of its domestic judicial infrastructure. Two, that the Court's intervention threatened the country's peace and stability, therefore threatening its ability to move on (Lynch, 2014). Three that the Court had refused to charge those most responsible for the crimes that happened during the 2007/2008 post-election violence. These narratives were geared at invoking ethnic sentiments among his follower, not only to gain political power but also to gain their support in straining Kenyan's foreign policy towards the ICC (Khendall, 2014; Shilaho, 2016). Gekara&Muriithi argued in the Daily Nation that "the Jubilee Alliance (The political party on whose ticket Kenyatta ran for the presidency) had vowed to make the election a referendum on the ICC cases". At one of his campaign rallies, Kenyatta reportedly pronounced that "*A vote for us is a vote of no confidence in the ICC*" while his running mate averred that "*Presidential victory for the Jubilee Alliance may indicate there is something wrong with the charges its two leaders are facing*" (Kendall, 2014).

Kenyatta's rhetorics against the ICC were successful, since he managed to secure victory for the Presidency. In his election he received 95% of the votes from members of his Kikuyu ethnic community (IEBC, 2014). After Kenyatta's victory, the support which the ICC previously enjoyed among members of the Kikuyu ethnic group, who were the primary followers of Kenyatta, plummeted. This explained why fewer than half of the Kikuyu (44%) respondents in the Afro-barometer Survey, believed that the ICC process was not an important effort in the fight against impunity in Kenya (Afrobarometer, 2014). Lynch (2013) argued that for members of the Kikuyu community, the idea that the leader of their community were being victimized by the ICC, made Kenyatta deserving of their support. It seemed that it was the entire community on trial and not just Kenyatta (Branch, 2012). In mobilizing their supporters against the ICC, the community also used songs such as "Hague Bound" which depicted Kenyatta as being wrongly persecuted for the love of his community and his supporters.

It further explains why nationally, the support for the ICC process had fallen from 61% to 55%, indicating that the backlash against the ICC process by Kenyatta had impacted how his

followers viewed the interventions by the ICC (Afrobarometer, 2014; Helfer and Showalter, 2017). With this growing public support against the ICC, Kenyatta pursued anti – ICC foreign policy and premised his foreign policy of withdrawal from the Court and continuous assault of the ICC on the seemingly dwindling public confidence. He had successfully enabled their followers to feel strongly about their anti – ICC foreign policy decision.

In his pursuit of antagonistic relations with the ICC, Kenyatta maintained the rhetoric that the ICC threatened Kenya's ability to move on in light of the 2007 – 2008 post – election violence. During his address at the 26<sup>th</sup> Extra – Ordinary Summit of the African Union delivered on 31<sup>st</sup> January, 2016 (US1) Kenyatta, presented a raft of measures which Kenya had undertaken in the aftermath of the post-election violence, he insinuated as follows;

*"...we successfully mediated the dispute surrounding the 2007 election and pacified the country. A power-sharing coalition was formed with a mandate to undertake far-reaching measures to prevent future violent disputes, entrench the rule of law, prevent abuses of legal power and entrench equity in our body politic while also securing justice for the victims of the post-election violence. We enacted a new, progressive constitution which instituted Devolution of power and resources, strengthened the protection of fundamental rights, and enhanced institutional and political checks and balances. It also provided the legal foundation for the national economic transformation roadmap, Vision 2030..."*

Excerpt from US 1 – Kenyatta's address at the at the Extra – Ordinary Summit delivered on 31<sup>st</sup> January, 2016

Kenyatta alluded in his speech that the measures put in place were sufficient to ensure justice for victims of the violence, hence there was no sufficient reason for the ICC's interventions. This was not factual. In 2016 when Kenyatta made the speech, no person had been brought to account by the local judicial system for organizing and financing the atrocities of the 2007/2008 post-election violence (Human Rights Watch, 2008). However, drawing from Kenyatta's assertions the measures he elucidates were sufficient to enable the country move forward.

These arguments sought to entrench status quo in Kenya. Kenyatta needed the African Union and the International community to focus mainly on the nascent political infrastructure in Kenya and ignore justice for victims of the post – election violence which involved holding perpetrators of crime to account. In doing this, he aimed at stifling discussions on justice and move attention from his prosecution at the ICC. In addition, Kenyatta guised his interest of defeating his prosecution at the ICC in broad discussion on the country governance system, which in his opinion, would deliver justice for victims of the violence.

In further stifling discussions on justice, Kenyatta called for peace and reconciliation. He argued that the interventions by the ICC threatened peace and reconciliation which was a key focus in his government. During his address at the Summit he made the following pronounces;

*“...we felt it incumbent upon us to bear responsibility for reconciliation and leadership of peace. Our Government wants to lead Kenya to prosperity founded on national stability and security. Peace is indispensable to this aspiration. Reconciliation, therefore was not merely good politics; it is key to everything we want to achieve as a Government...”*

Excerpt from US 1 – Kenyatta’s address at the at the Extra – Ordinary Summit delivered on 31<sup>st</sup> January, 2016

Drawing from such pronouncements, we can assert that that Kenyatta’s government was keen on entrenching peace and stability and not holding perpetrators of crimes to account. This defined the conflict on the objective between the ICC and the Kenyan government. While the ICC was focused on pursuing justice, by holding perpetrators to account, the government was focused on peace and stability and avoided holding perpetrators to account. It is such peace that Nyon’go (2007) refers to as false peace, as it lacks justice which is a key ingredient in establishing peace. Ogot (2010) describes it as peace of the cemetery. Justice in the parlance of false peace as was perpetrated by Kenyan government was cobbled in the mantra of “accept and move on”. This was geared at calling on the victims of the post-election violence to ignore their wishes on justice, accept the violations which occurred and find a way to move beyond their pain and loss.

### **Build Team Spirit and Trust among their Groups with Clarity of Objectives**

The second LTA assumption that guides foreign policy action of leaders with low need for power is that they build team spirit among their groups with clear foreign policy objective. In Kenyatta case he built team spirit and trust among members of the National Assembly of the Jubilee Alliance, members of the cabinet, and other African leaders with the sole purpose of pursuing an anti – ICC foreign policy (Hodgins, 2015).

In a bid to keep the ICC at bay, members of the Kenyan cabinet posed questions of autonomy of the Kenyan state and ownership of the ICC process (Musila, 2009). This elite solidarity was demonstrated when the Kenyan government undertook all within its power to deny the ICC prosecutor crucial evidence needed for the prosecution of the Kenyatta’s case at the ICC (Lugano, 2013). The government was further accused of witness interference, political and diplomatic attacks on the ICC (Kendall, 2014). In May 2013, the Prosecutor reported to the ICC information on witness interference, where witnesses had reported that they were targeted by government officers seeking to influence their testimonies. It was further reported that government officials had fostered an anti – ICC climate in Kenya (Momanyi, 2013). The face of the Kenyan cabinet in the anti – ICC crusade was The Attorney General – GithuMuigai. The Attorney General was at the fore in disputing the Kenyan case at the ICC in solidarity with the Kenyan leaders. While defending the government and the Kenyatta on the count of non – cooperation and witness interference, he claimed that the government had fully cooperated and presented the ICC prosecutor with all the evidence requested and the termination of the Kenyan case was only due to the incompetence of the Court (Murimi, 2016). This assertion was vindicated by Kenyatta in his address at the African Union Summit in 2013 as depicted in US 1 – Speech at the African Union Summit.

*“...From the beginning of the cases, I have fully cooperated with the Court with the earnest expectation that it afforded the best opportunity for me to clear my name. I have attended court whenever required and complied with every requirement made of me in connection with my case. Other Kenyans charged before that court have similarly cooperated fully...The Government has cooperated to the maximum; the Court itself found that Kenya's Government has fully complied*



*in 33 out of 37 instances, and was only prevented from cooperating 100% by legal and constitutional constraints... ”*

Excerpt from US 1 – Kenyatta’s address at the at the Extra – Ordinary Summit delivered on 31<sup>st</sup> January, 2016

However, in the determination of one of the Kenyan cases at the ICC, the judge found that *“The proceedings are declared a mistrial due to a troubling incidence of witness interference and intolerable political meddling that was reasonably likely to intimidate witnesses”* (Reasons of Judge Eboe-Osuji, 2016)

While pursuing the withdrawal strategy from the ICC Members of the National Assembly displayed solidarity with the Kenyatta. This was indicated in the actions of the Members of the National Assembly who had passed a motion to withdraw Kenya from the Rome Statute which was the founding architect of the ICC (Hodgins, 2015). The motion was sponsored by the Jubilee Alliance majority leader – Aden Duale (BBC, 2014). In his address at the African Union Summit, while making his case for withdrawal from the Court, Kenyatta took cognizance of the actions of the National Assembly. He states in his speech that;

*“...Leaders in my country have escalated their anxiety to the national Parliament, where a legislative process to withdraw altogether from the Rome Treaty is under consideration. As I said, it would not be right to ignore the fact that concern over the conduct of the ICC is strong and widespread...”*

Excerpt from US 1 – Kenyatta’s address at the at the Extra – Ordinary Summit delivered on 31<sup>st</sup> January, 2016

The Members of the National Assembly further showed solidarity and team spirit with Kenyatta regarding the ICC cases when it passed an amendment to the Public Benefit Organization Act which was intended to limit the funding for civil society organizations to 15% of their budget. The organizations were thought to be sympathetic to the ICC process in Kenya (Kendall, 2014). The contestation of the place of the civil society organizations was also displayed in Kenyatta’s address at African Union Summit when he stated that;

*“...Every plea we have made to be heard before that court has landed upon deaf ears. When Your Excellences’ resolution was communicated to the*

*Court through a letter to its president, it was dismissed as not being properly before the Court and therefore ineligible for consideration...When a civil society organization wrote a letter bearing sensational and prejudicial fabrications, the Court took urgent and substantial decisions based on it. Before the ICC, African sovereign nations’ resolutions are NOTHING compared to the opinions of civil society activists. The AU is the bastion of African sovereignty and the vanguard of our unity. Yet the ICC deems it altogether unworthy of the minutest consideration...”*

Excerpt from US 1 – Kenyatta’s address at the at the Extra – Ordinary Summit delivered on 31<sup>st</sup> January, 2016

To limit the actions of these organizations, the Members of the National Assembly who were Kenyatta’s allies under the Jubilee Alliance and would therefore be considered part of their team in government enacted the amendment. The Kenyan government had orchestrated these tactics as a team led by Kenyatta, to tarnish the public perception of the ICC (Orina, 2014).

Kenyatta further incorporated other African leaders, through the African Union (AU), in Kenya’s anti – ICC campaigns. In his address at the 26<sup>th</sup> Extra – Ordinary Summit, Kenyatta had called on the members of the African Union to help Kenya wade off the interventions by the ICC. He utilized discussion on sovereignty and calls on neo – colonialism to convince the AU members to castigate the ICC’s interventions in Kenya. He asserted as follows:

*“...As Kenya's President, it gives me a feeling of deep and lasting pride to know that I can count on the African Union to listen and help in trying times. Africa has always stood by our side.... We come to you to vindicate our independence and sovereignty. Our unity is not a lie. The African Union is not an illusion...The philosophy of divide-and rule, which worked against us all those years before, cannot shackle us to the ground in our Season of Renaissance. Our individual and collective sovereignty requires us to take charge of our destiny, and fashion African solutions to African problems...It will be disingenuous, Excellencies, to pretend that there is no concern, if not outrage, over the manner in which ICC has handled not just the Kenyan, but all cases before it...”*

Excerpt from US 1 – Kenyatta’s address at the at the Extra – Ordinary Summit delivered on 31<sup>st</sup> January, 2016

Prior to the Extra – Ordinary Summit, a delegation of the AU which included Kenyan government officials delivered a letter to the President of the ICC, asking State Parties of the ICC to consider transferring the case against Kenyatta to Kenyan national jurisdiction (Kendall, 2014). In July, 2012 and September, 2013, the Chairman of the African Union, acting at the behest of the Kenyan Government sent two letters to the ICC requesting for a referral of Kenyatta and Rutos’ cases at the ICC. They argued that the case was limiting Kenyatta from discharging functions of the office of the President (Kendall, 2014; Muller, 2013).

The letters did not achieve the intended objectives of either deferring or terminating Kenyatta’s case. Kendall, (2014), argues that according to the ICC and its state parties, the letters were not recognizable under the operational framework of the ICC, what Clarke (2009) refers to as “legal encapsulation”. However, the letters achieved the leaders’ objective of displaying the ICC as insensitive and disrespectful to Africa and Kenya. The letters further sought to build a case against the ICC in the eyes of the Kenyan populace. It followed that at the African Union Kenyatta addressed how the ICC refused to accept Kenya’s perspective on the case, but respected the opinions of civil society organizations. It was these civil society organizations that the national Assembly caped their external sources of funding. Kenyatta addressed this matter in US 1 where he stated that;

*“...When Your Excellencies’ resolution was communicated to the Court through a letter to its president, it was dismissed as not being properly before the Court and therefore ineligible for consideration. When a civil society organisation wrote a letter bearing sensational and prejudicial fabrications, the Court took urgent and substantial decisions based on it. Before the ICC, African sovereign nations’ resolutions are nothing compared with the opinions of civil society activists...”*

Excerpt from US 1 – Kenyatta’s address at the at the Extra – Ordinary Summit delivered on 31<sup>st</sup> January, 2016

The AU summit resolved that the case against Kenyatta should be suspended until his term in office expires (Dersso, 2013). It is the view of this paper that the ICC should have accepted this

proposal as a tactical move. The power that Kenyatta wielded with the office of the Presidency provided him with the ability to circumvent the cases at the ICC. Once this power subsided with the expiry of his term in office, there would have been higher chances of success for his prosecution at the ICC. The tactical move is justified by the fact that the ICC has entered into the international political arena as a key player. For its survival within the arena, it must employ political maneuvers in a bid to achieve its goals. To retreat and advance after the expiry of the terms of office of the Kenyatta would have been a clever strategy for the ICC.

The incorporation of Members of the Kenyan Nation Assembly, Members of the Kenyan Cabinet and African leaders under the auspice of the AU in Kenya’s anti – ICC debates; brings to the fore the debate on the place of collective psychological factors in Kenya’s foreign policy towards the ICC. Collective psychological factors which are also known as crowd action, led to initiating of controversies through available channels of conflict resolution such as the African Union and the National Assembly. These factors also influence, the identity of the parties to a dispute, the claims they put forth, justifications advanced in support of the claims, the outcome and resulting effect (Laswell, 1968) on the claim. In the Kenyan case, Kenyatta was defined as a victim of global power imbalance, with ICC viewed as a Western neo – colonial tool keen on humiliating poor Africans. This explains why the African Union and other African leaders claimed that the ICC was unfairly prosecuting Kenyatta due to his race. This rhetoric impacted and defined the African states antagonism with the ICC. The entry of African Union and the Kenyan National Assembly in the discussions on the relations between Kenya and the ICC, vindicates assertions that collective psychological factors entered into the Kenyan foreign policy decisions towards the ICC. It is imperative therefore, that for the ICC to exist in the international political arena, it must learn to cope and establish mechanisms to condition their decision despite crowd action.

Kenyatta’s case was terminated due the solidified campaign against the ICC. This termination was based on insufficient evidence since the Kenyan government and failed to provide the Prosecutor with vital documents for the case. In the ICC’s ruling delivered on 19<sup>th</sup> September, 2016, the judges found that Kenya had failed “*to take all reasonable steps to*

*execute a request for cooperation from the Court, including by not providing clear, relevant and timely responses or taking any meaningful steps to compel production of requested information”*(ICC-01/09-02/11).

The termination of the cases presented three scenarios in the Kenyan political landscape. One it ended the possibility of holding persons in power to account for crimes related to election violence in Kenya. This compromised the ability of the ICC to deter future election related violence (Buitelaar, 2015) which the Kenyan political class had continuously utilized to ascend to power (CIPEV, Report, 2008). Two, it cemented the assertion in Kenya, that “big men” in power cannot be punished for the atrocities they commit in their pursuit of power. Three it entrenched impunity within the country’s political realm and ended the quest for justice for the victims of the 2007/2008 post – election violence. Refusal to cooperate with the ICC and provide requisite information as determined by the ICC was in itself an act of impunity by the Kenyan government.

## CONCLUSION

This paper has explored Kenyatta’s trait on need for power, and determined that he was low in need for power as guided LTA approach. The score for the cumulative utterances by Kenyatta (UU) was 0.32 which was 0.1 deviations below the norming group mean on need for power for heads of states. The measure of this trait explains how Kenyatta acted towards the ICC and why. In giving this explanation, the paper advances two key behaviours by Kenyatta towards the ICC. One, it explains why Kenyatta enabled his followers to feel strongly about the ICC’s interventions in Kenya. Based on the anti – ICC rhetoric advanced by Kenyatta, his followers, who had previously supported the ICC’s interventions, would later feel that the court was not effective in fighting impunity in the country (Afro – Barometer, 2015). The paper further reveals that Kenyatta pursued peace and stability for the country and advocated for false peace while stifling discussions on justice and accountability for the atrocities committed during the 2007/2008 post – election violence.

Two, the measure explains why Kenyatta built a team spirit among members of the National Assembly, Members of Cabinet and African leaders against the ICC. It was for this reason that the members of these groups pursued the anti – ICC actions which were aimed at delegitimizing the ICC intervention in Kenya. This buttress the

need to investigate the impact of collective psychological factors in ICC interventions in Kenya. With the termination of Kenyatta case, at the ICC, the paper questions ICC’s ability to deter future violence in Kenya, in line with Buitelaar’s assertions, that deterrence was subject to ICC’s punishments for crimes committed (Buitelaar, 2015). Termination further entrenched the status quo in Kenya political realm, leaving the victims of the 2007/2008 post-election violence to “*accept and move on*”

Going by the findings of this paper, it would be vital for the ICC to undertake psychological investigations on leaders whom it aims at prosecuting, with the view to determine how their traits on need for power would influence their countries actions towards the Court. With such knowledge the office of the Prosecutor of the ICC would coble a better approach and strategy towards such prosecutions. The strategy would include waiting for the terms of leadership of the leaders to expire before embarking on their prosecution or, inventing modes of collecting evidence which may not be reliant on the corporation of the government which the leader heads.

## REFERENCES

1. Adar, K. G. "Foreign policy processes in African states." *In Foreign policy analysis beyond North America*, (2015): 101-120.
2. Anyang' Nyong'o, P. "A leap into the future: a vision for Kenya's socio-political and economic transformation." *African Books Collective* (2007).
3. Block, N. M. "The ICC and the Situation in Kenya: Impact and Analysis of the Kenyatta and Ruto/Sang Trials" (*Doctoral dissertation*) (2014).
4. Buitelaar, T. "The ICC and the Prevention of Atrocities." (2015).
5. Clark, R. S. "Negotiating provisions defining the crime of aggression, its elements and the conditions for ICC exercise of jurisdiction over it." *European Journal of International Law*, 20.4 (2009): 1103-1115.
6. Dersso, S. "African Union Summit on the ICC—Extraordinary Solidarity of Elites." Sep. 15, 2020, <http://solomondersso.wordpress.com/2013/10/12/the-trouble-with-african-leadership-solidarity-for-self-protection/>. Accessed on September 15, 2020.

7. Dyson, S. B. "Personality and foreign policy: Tony Blair's Iraq decisions." *Foreign Policy Analysis*, 2.3 (2006): 289-306.
8. Gevers, C. & Du Plessis, M. "Another stormy year for the International Criminal Court and its work in Africa: notes and comments." *South African Yearbook of International Law*, 35.1(2010): 163-180.
9. Helfer, L. R. & Showalter, A. E. "Opposing international justice: Kenya's integrated backlash strategy against the ICC." *International Criminal Law Review*, 17.1(2017): 1-46.
10. Hermann, M. G. "Explaining foreign policy behavior using the personal characteristics of political leaders." *International Studies Quarterly*, 24.1(1980): 7-46.
11. Hodgins, S. "Uhuru Kenyatta vs. The International Criminal Court: Narratives of Injustice & Solidarity." (2015).
12. Human Rights Watch. "Ballots to bullets: Organized political violence and Kenya's crisis of governance." *Human Rights Watch*, 20.1A (2008).
13. Kendall, S. "'UhuRuto' and Other Leviathans: The International Criminal Court and the Kenyan Political Order." *African Journal of Legal Studies*, 7.3(2014): 399-427.
14. Kesgin, B. "TansuÇiller's Leadership Personality and Foreign Policy." *Perceptions*, 17.3(2012): 29.
15. Lasswell, H. D. "The impact of crowd psychology upon international law." *Wm. & Mary L. Rev.*, 9, (1967): 664.
16. Lekalake, R. & Buchanan-Clarke, S. "Support for the International Criminal Court in Africa." (2015).
17. Levine, N. & Young, M. "Leadership trait analysis and threat assessment with profiler plus." *In Proceedings of ILC 2014 on 8th international Lisp conference* (2014): 50-59.
18. Lynch, G. & Zgonec-Rozej, M. "The ICC intervention in Kenya." *London: Chatham House* (2013).
19. Mackie, A. "Perceptions, Politics, and Peace: The Limits of Globalization in Legitimizing the International Criminal Court." *Macalester International*, 30.1(2012): 12.
20. Momanyi, B. & Jennings, S. "Kenya Witnesses Face Harassment." *International Justice-ICC, ACR*, (2013): 350.
21. Mueller, S. D. "Kenya and the International Criminal Court (ICC): politics, the election and the law." *Journal of Eastern African Studies*, 8.1(2014): 25-42.
22. Murithi, T. "The African Union and the International Criminal Court: An Embattled Relationship?" (2013).
23. Musila, G. M. "Between rhetoric and action: the politics, processes and practice of the ICC's work in the DRC." *Institute for Security Studies Monographs*, 164 (2009): 148.
24. Nzomo, M. "Leadership and Statecraft in African Foreign Policy and Diplomatic Engagements." *In KG, Adar PL Loch and P. Inoti (Eds.), African Diplomacy and Leadership: Reflections of Diplomats and Scholars*, (2016): 99-166.
25. Ogot, B. A. "Who, If Anyone, Owns the Past?: Reflections on the Meaning of 'public History'." *Anyange Press* (2010).
26. Orina, D. M. "A critical evaluation of the cases of Kenyatta and Ruto before the International Criminal Court." (2014).
27. Owiso, M. O. "Transitional Justice and the Institutionalization of Democracy: Historical legacies and the truth process in Kenya." (2017).
28. Simmons, B. A. "Compliance with international agreements." *Annual review of political science*, 1.1(1998): 75-93.
29. Truth, J. & Reconciliation Commission. "Commissions of Inquiry-CIPEV Report (Waki Report)." (2008).
30. Wolf, T. P. "Getting it 'Wrong'(Again)? Wajojiwa vs. Wapiga Kura in the 2013 Kenyan Election." *Kenya's Past as Prologue: Voters, Violence and the 2013 General Election*, (2015):56.

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