Kenya 2013: The ICC Election

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The conventional wisdom in the Kenyan media is that the 2013 election has been an ethnic census, not an issue-based contest. This is a half-truth which fails to recognize the issues that drive the ethnicization of politics. The half-truth has two sides to it. It is true that the easiest way to predict how an individual voted would be to know his or her ethnicity. What is not so obvious is the flip side: to make sense of how ethnic blocs have voted, for whom, we actually need to look at the issues.

What are the issues?The overriding issues in this election were two: land and ICC. In highlighting the land question, CORD hoped to win in two places where this question is the most volatile: the Coast and the Rift Valley. It is said that the largest landowners in Kenya are its three big political families: Kenyatta, Moi, Kibaki. The land issue on the Coast is defined as that between the Kenyatta family and the people. As expected, CORD has won most of the Coast handsomely.

In the Rift Valley, there are two clashing notions of land rights – a colonial era notion that land belongs to those native to the land vsa market-based notion that land belongs to whoever holds the title. This pit two ethnic groups,Kalenjin andKikuyu,against one another and was at the heart of the 2007 election violence. CORD expected to rally the Kalengin against the Kikuyu and win in the Rift Valley in 2013.

But the unexpected happened. CORD lost in the Rift Valley, and spectacularly too. Instead of a repeat of the 2007 ethnic conflict, you had an ethnic reconciliation. This is the main story in this election. The explanation for this lies in the domestic impact of the ICC.

The Jubilee coalition mobilized support around the question of peace and against the ICC’s intervention in Kenya. Raila and CORD failed to trounce Kenyatta and Jubilee in Kalenjin areas. The Kalenjin followed Ruto who told them they had been sacrificed as lambs at the alter called ICC.In the process, Jubilee put together a peace coalition. The National Alliance (TNA) evoked Kenyatta’s legacy in that Uhuruclaimed to build a grand national reconciliation.

Two contradictory political processes have unfolded in Kenya since the 2007 election. One was typified by the Constitutional referendum of April,2010, which passed witha thumping 66.9% ‘yes’ in all major provinces except Rift Valley. Opposition to it was led by Ruto.The counter-movement began when the ICC declared, a year later, in April 2011, that it would charge ‘the Ocampo 6’ with ‘crimes against humanity.’

I suggest we think of two kinds of ethnic groups when it comes to politics. The first are ethnicities that are so highly politicized that they tend to polarize politics ethnically. We can call these fighting ethnicitiescentrally organized for political action. The two prime examples historically are the Kikuyu and Luo. On the other side, you have ethnicities without extreme ethnic politicization, without a centralized political organization or direction. They do not vote one way, but many ways – e.g., Maasai. In Kenya, their orientation is known as AGIP (any government in power).

Whereas the 2010 referendum had a de-ethnicizing effect on Kenyan politics, the involvement of the ICC had the opposite effect, re-ethnicizing Kenyan politics, with more and more ethnicities organizing politically and centrally. The result is that the country has re-divided into two large ethnic coalitions.

The ICC is the single factor with the most influence on this election. The ICC process has polarized politics in Kenya because the electoral process did not unfold on a level playing field. Led by individuals who stand charged before the ICC, one side in the electoral contest could not contemplate defeat; if defeated, they wouldlose all. Everyone knows that the worst thing to do in a contest is to leave your opponent without an escape route. To do so is to turn the contest into a life-and-death struggle. You transform adversaries into enemies. Not surprisingly, the Jubilee coalition presents itself as the coalition of victimized sacrificial lambs. Yet, it is an open secret that among its supporters are those armed for a fight to the finish.

The other side is beginning to sense that its embrace of the ICC in particular – and the judicial option in general – may have been a political blunder, but the realization has come a little late. The political leadership of CORD now says it was actually in favor of a national jurisdiction; it did not favor going to the ICC. But it does not deny that it championed the judicial option. Neither did it oppose the Hague option when the ICC stepped in. One part of the CORD coalition, the human rights lobby, embraced the ICC option openly and enthusiastically. Its slogan said so: ‘don’t be vague, let us go to Hague.’ It did not matter that the slogan had originally been coined by Ruto. The political cost has been high.

The result is that CORD has lost the middle ground in this election. This is most obvious in the Rift Valley. On its part, Jubilee has been able to tap into the overwhelming sentiment for peace. Jubileepresented itself as a party of a grand nationalreconciliation, and it managed to portray CORD as the party of vengeance. This was not an election for Jubilee to win. It was an election for CORD to lose. The credit for the loss goes to human rights fundamentalists in its ranks.

The larger lesson is that a judicial process needs to be subordinated to the political process. We need to distinguish between criminal and political (mass) violence, for political violence has a constituency. In a situation of mass violence like 2007 in Kenya, the political cost of a judicial process – whether the courts are foeign (ICC) or local – is unacceptably high.

The judicial process tends to be a winner-take-all process. In the court of law, you are right or wrong, innocent or guilty; both parties cannot be guilty in a court of law. In a civil war, however, both parties often bear some share of the guilt.

The judicial process criminalizes one side, which is then politically disenfranchised. Everyone knows that there was a clear attempt to disenfranchise the leadership of the Jubilee coalition before the election on grounds that it was the subject of a judicial process. This single fact, if none other, made it clear to the Jubilee leadership that this was likely to be their last chance to have a political voice.

My main point is this: those committed to political reform need to ensure that all adversaries are represented in the political process, and none ruled out as enemies. Targeting leaders of political parties in a civil war-type situation in courts of law, and thereby excluding them from the political process, is a recipe for rekindling the civil war.