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# The aristocracisation of Kenya politics

*How the electoral process in Kenya produces powerful political families that use identity to wield power*

**Andrew M. Mwenda**

Many factors may have influenced the 2013 election in Kenya. But three of these stand out.

The first is the influence of political families who have held sway over Kenya's politics since independence. The second is the role of money derived from wealth that has been accumulated through politics. The third is the ability of this political aristocracy to leverage identity to secure a following.

These factors are interconnected and self-reinforcing. They also have powerful implications on the nature of the state in Kenya and its ability to foster political institutions and public policies that can serve the ordinary citizen.

This election pitted the son of the first president against the son of the first vice president. Raila Odinga's father, Jaramogi Oginga Odinga, was the first vice president of Uhuru Kenyatta's father, Jomo Kenyatta.

Many of the other current influential politicians in Kenya; Musalia Mudavadi who run in the election, Noah Katana Ngala, Eugene Wamalwa, Gideon Moi etc., are sons of the first generation of post-independence leaders of that country.

These politicians may represent economic and social interests within Kenyan society. However, their political base is largely ethnic and their clout is derived from money.

People make political choices based on a number of considerations. They may vote on the basis of the ability of a candidate or political party to promote public policies that may improve the welfare of citizens. Here a political party or candidate may promise to deliver public goods such as roads, hospitals, boreholes, schools, farm implements, fertilizer and bridges. It/he/she may also promise to deliver public services like electricity, education, agricultural extension services and healthcare. These promises are realised at a later date. So they are uncertain. Thus quite often, voters in poor countries also demand private goods during campaigns. Candidates may buy sugar, salt, rice, meat and alcohol or even make direct cash payments to voters. These are paid immediately. So they are certain. For many voters, they do better holding a candidate to account during campaigns than wait for the

benefits of public policy. This structure of incentives tends to favour candidates who possess large sums of cash.

But voters may also make choices on the basis of ideology because a party or candidate's political platform appeals to their ideals. Many may vote a party or candidate that supports democracy and human rights. People may also vote because the candidate appeals to their patriotism and stands in opposition to foreign interference in local affairs. We see elements of this in the recent elections in Kenya where the West's threats of "grave consequences" if Kenyans elected those indicted by the International Criminal Court (ICC) served to mobilise voters in favor of the Uhuru-Ruto ticket.

However, people do not live on material interests and ideals alone. People also have "spiritual" needs as well. These bring them a sense of belonging and meaning to their lives. Such spiritual needs may include religion, race, or ethnic group.

For example, across Sub-Sahara Africa, people identify with U.S. President Barack Obama. This may be because of his ideals. But for the most part it is because Obama is seen to share their race. It matters less what his policies and ideals towards Africa are. For the vast majority of Africans, Obama feeds into our emotional need to see one of our own occupying the most powerful office in the world – for in his achievement we see an image of our own future. His success opens for us wider horizons on what we can achieve.

People do not vote on "either or" of these factors. They may consider all of them. Depending on the moment and holding other factors constant, the result reflects the average distribution of attention to all the three factors in an election and how the candidates have used them.

In Kenya's case, identity is a powerful influence. Even material interests are pressed forward through the prism of identity. One reason why ethnicity is a powerful political weapon is that while the political class in that country is filthy rich, most Kenyan voters are wretched poor. The country's Gini coefficient (the measure of income gap between the rich and the poor) at 42.5 is one of the highest in Africa.

Thus, identity is one factor that allows Kenyan politicians to transcend economic differences with their voters. The more acute the income differences between politicians and their voters, the higher will be the tendency of the elite to rely on other issues such as identity to secure a following. By appealing to a common identity, a rich political class is able to create a common platform with poor voters on a shared heritage, ethnicity and culture. The income gap between a rich political class and an impoverished voting population in Kenya provides an important slice to the explanation for high levels of ethnic polarisation in that country.

This factor is very pronounced in the politics of the Republican Party in the United States. There, the rich white class commands the loyalty of poor white voters. To win this loyalty, the leaders of the Republican Party appeal to "traditional values" of anti-abortion, anti-gay

rights, Christianity, and patriotism. However, “traditional values” is also sometimes a code word for white supremacy. Here, poor whites that may feel alienated from the affluence of their kinare given a psychological feeling of importance. By appealing to their sense of racial superiority, the corporate barons of the Republican Party are able to build a common cause with poor whites against those from other races, especially black people, with whom they share a common economic predicament.

These dynamics are also to be found in Kenya as well. Of course there are differences over policy among Kenya’s political class. But these differences are in degree or detail. Overall, the political class in Kenya possesses wealth and money and therefore a shared interest in the existing regime of property rights and the political institutions and public policies that undergird this structure. Since most of this wealth is derived from controlling the state, the political class in Kenya may be united around money but is divided around power. Who gets power has powerful implications on who makes money. The contest for power, therefore, tends to obscure the economic unity of this class by highlighting their ethnic differences. Electoral competition in Kenya therefore tends to get politically charged around the issue of identity.

However, the distribution of the population makes it difficult for any one ethnic group to win elections on its own. The largest ethnic group, the Kikuyu, constitute only 22 percent of the population. The second largest, the Luhya, are only 14 percent. Therefore, no one can rely on their ethnic group and win a national election. To overcome this handicap, politicians in Kenya have to form alliances with others from different ethnic groups. These alliances are sometimes built around the economic interests of their constituents. Sometimes they are not. However, depending on how leaders at the top structure the coalition, even when they have not solved the underlying economic or land disputes, ordinary voters in Kenya tend to side with their leaders.

As seen in the recent election, over 90 percent of Luos voted for Odinga. Over 90 percent of Kalenjin, who had voted Raila by a similar margin in 2007 changed sides and voted for Uhuru. This is because Uhuru, a Kikuyu, allied with William Ruto, a Kalenjin and perhaps the most influential politician in the rift valley. Equally, the Kikuyu overwhelmingly voted Uhuru, a factor that may explain why with a small addition of votes from a few other communities, the Jubilee coalition won. Raila’s Luo allied with the Kamba and other coastal groups. Regardless of the underlying principles of the CORD coalition, it was unable to rally sufficient numbers of ethnic block votes to stop the Jubilee train.

The tendency of Kenyans to vote in ethnic blocks explains why the democratic process in that country tends to sustain elite privilege even at the expense of public policies that are supposed to serve the ordinary citizen.

For example, Kenya's 2012/13 budget is in excess of US\$ 16 billion for a population of only 40 million. This equals to per capita expenditure of US\$400 per person. Compare this with Uganda whose expenditure per capita is US\$ 114 or Rwanda at US\$118. There is little in Kenya's public goods and services, compared to Uganda and Rwanda, to show for this high level of public expenditure. Instead, at a basic salary of US\$ 13,500 per month, an MP in Kenya earns more than twice what an MP in France earns (US\$6,400) – a country whose GDP is almost 80 times larger.

Thus, given that France's per capital income is US\$35,000, there is really a close relationship in income between an average citizen in France and their representative who earn US\$77,000 per year. The income of a Kenyan MP at US\$ 162,000 (or US\$350,000 in PPP) per year compares sadly with Kenya's per capita income of US\$830 (\$1,700 in PPP). Therefore, the income gap between an MP in Kenya and that of his average voter is really large, making it difficult for the democratic process to produce legislators who can be real champions of the interests of their constituents.

Therefore, in spite of electoral democracy, and in spite of large outlays of government revenue compared to its neighbours, the ability of the state in Kenya to deliver public goods and services to the citizens remains relatively low. This is because in building a winning electoral coalition, Kenyan politicians need not appeal directly to the masses that vote. Rather they need to negotiate with powerful ethnic intermediaries that represent the masses. These powerful men and women then act as a bridge between the presidential candidate or political party and their co-ethnics.

This organisation of electoral coalitions has powerful implications on the strategies of the state. It means that the productive margin in the search for votes does not lie in provision of public goods and services to citizens. It lies with providing private goods to influential ethnic intermediaries. Private goods to elites may include a politically influential and economically lucrative ministerial appointment or an appointment to a board of a powerful state enterprise – and with it, huge perks and privileges including official cars, flights abroad etc. But it will also include unofficial opportunities to profit through corruption. Here, the politician may directly steal from the state or use the state to direct public sector tenders to companies owned by friends and allies.

If a politician can win the presidency by placating the interests of a few elites from a given community, that is a more cost-effective and cost-efficient strategy compared to providing public goods and services to that region. But this does not mean that the coalition ignores provision of public goods and services to ordinary voters. Constituents do demand public goods and services. Politicians win votes by showing how able they have been to leverage their positions to secure “development projects” for their constituencies. These projects may include roads, bridges, hospitals and schools. The point is that the primary driver of the

coalition is the trade in private goods among elites – public goods and service to the citizen coming as a second.

The second consequence of these political strategies is corruption. To keep powerful elites in the coalition, the president and his ruling party have to turn a blind eye to official theft. Take the example of the Uhuru-Ruto ticket. Whatever the issues that may have underpinned it, it was an alliance of the largest and third largest ethnic groups in Kenya. Meanwhile, the Raila-Musyoka ticket was an alliance of the fourth and fifth largest ethnic communities of Kenya. The second largest ethnic community, the Luhya – themselves a conglomeration of 16 sub ethnic groups – have never voted as a block. From the word go, therefore, this arithmetic meant that the dice was loaded in favour of the Uhuru-Ruto ticket.

Without Ruto's support, it is unlikely that Uhuru would have defeated Raila. Indeed, Raila may have realised that his break-up with Ruto was the critical factor that denied him the presidency. If Uhuru desires to win a second term, and holding other factors constant, the last thing he can afford is a breakdown of his relationship with Ruto. However, assuming Ruto and many of those in his group turn out to be incompetent and/or corrupt, what options does Uhuru have? Can he fire him? If yes: at what price?

Ethnic block voting, therefore, tends to strengthen the hand of elites over the masses. But this is only possible by leveraging ethnicity. However, to become a powerful ethnic powerbroker, the individual politician needs to accumulate wealth and money to sustain a large retinue of hangers-on – hence corruption. Within the context of such patronage politics, corruption becomes the way the system works, not the way it fails. Hence, in the specific context of that nation's politics, the democratic process in Kenya tends to produce an anti-democratic outcome.

# Managing the Triple Dimensions of the Vote

Akoko Akech<sup>1\*</sup>

## Introduction

What aspects of competitive electoral politics does an institution such as Kenya's Independent Electoral and Boundaries Commission (IEBC) manage in electoral contest, especially closely contested presidential elections? What other aspects do other institutions manage?

The management of electoral competitions, especially the presidential elections in divided societies such as Kenya, is a process that requires a concerted effort of several institutions: an institution for managing the voter registration, voting and vote tallying process, on the one hand, and other institutions that can provide checks and balances, on the other.

The first institution should be made up of competent but partisan, and not impartial, public servants, representing the dominant political interests at a given moment, who can register, count, tally votes and declare results. The tasks here require administrative competence, but also a careful representation of main political divides in the body that oversees the working of its bureaucracy.

The second institutions should be made up of competent and impartial judicial officers on the one hand, and partisan civil society based organizations capable of monitoring the electoral processes and pursuing various group interests in the electoral process, on the other. Perhaps the success management of election depends more on the balancing of the competing factional political interests than the elusive search for impartial public servants or organizations, which can stand above the dominant political interests of given a society.

Moreover, counting votes cast in an elections means much more than aggregation of voters' policy preferences or choices, sanctioning good or bad leadership. General Elections, particularly the presidential elections, are akin to Arjun Appadurai's tournaments of value. Presidential elections are moment when mostly dominant male politician exchange baskets of votes or strategic public offices in process similar to the exchange of Kula among the men of substance in Massim group of islands of the eastern tip of New Guinea.

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In these processes, social distinction, honor, reputation, and memory are critical in establishing stable alliances and determining political outcomes. The exchange is uneven. Not all partners share the same values nor are their interests necessarily symmetrical or well aligned. Thus, vote- baskets or public offices determine the value of men and a few women who participate in these tournaments. The asymmetries of interests and values define the challenges and opportunities of an alliance of such men who capture state power. Betrayals are costly. In such contests, the value of the vote is socially constructed.

## The value of the vote

What is the implication of looking at the vote as a socially constructed commodity for the management of political competitions? There are two key concepts of the elections, which may be a good starting point in examining the significance of votes in tournaments of value such as Kenya's presidential elections: one the Luo of Kenya's conception of the electoral contests, and the other Acholi or Langi of Uganda's conception of electoral contest.

To the Luo of Kenya, casting the secret ballot is something akin to '*goyo ombulu*', predicting which color of a red and black bead or seed will show up, if it is shaken in closed palm and then placed on the down on an even surface. *Goyo ombulu* conveys fair idea that an electoral contest should be a fair chance of either winning or losing a contest. However, to the Acholi or the Langi of Uganda, the process of casting the secret ballot is something akin to the process of '*bolo kwir*', which is, casting either the venom, implanting the gene, or both. It is more consequential than the Luo of Kenya's conceive of it.

These two conceptions of the value of vote capture the reason why the management of elections is a multidimensional affair. The Luo of Kenya's conception of the electoral process suggests that an electoral process requires a competent bureaucracy that can superintend an electoral process and deliver a fair result.

On the contrary, the Acholi or Langi conception suggests that voters do more than participate in an equal opportunity process of determining leadership. Through dominant male elites, voters can cast venom, implant genes of harmony or disharmony, or both, in an electoral contest. Badly managed tournaments of value by the elite beget inter-ethnic animosity. It turns yesteryear friends into today's deadly foes at the polls and beyond.

Consequently, successful management of electoral contests calls the management of voter registration, voting and tallying of the votes, the process conveyed by '*goyo ombulu*'. However, an equally critical aspect managing electoral competition calls for the management of the consequences of voting together as an alliance of elite and ethnic groups. '*Bolo kwir*' conveys this second aspect.

How has Kenya managed these aspects of electoral contests? A look at the evolution of the institution of managing electoral competition, from the Attorney General Chambers to the Independent Electoral and Boundaries Commission reveals several milestones have been achieved in managing the count and the disputes that may arise out of it. The challenge remains the management of venomous or deadly implants of electoral contests, especially in the game of exchanging votes and strategic public offices.

## **Managing Elections in Post-colonial Kenya**

The institution for managing Kenya's election has undergone several changes- from the days when metallic containers, *debe*, with a narrow slot for inserting ballot, (1960s-1980s) through to the opaque plastic boxes with a narrow slot for casting (mostly 1990s and 2000s), to the transparent plastic boxes, with a slot for inserting the ballot (2008 to present).

For the first three decades of independence, under the *de facto* or *de jure* one-party state rule, there was no competitive presidential election. However, the parliamentary elections were fairly competitive, especially under Kenyatta's regime more than Moi's. Political contest was mainly conducted with the ruling party- Kenya Africa National Union. An officer at the Attorney General's Office, who relied on the Provincial Administration, especially the District Commissioners, as presiding officers, conducted the elections.

However, after the fiasco of the 1988 *Mlolongo* elections, and particularly, after the re-introduction of multiparty politics, after the repeal of the Section 2(a) of the then Constitution of Kenya, the Moi regime created the Electoral Commission of Kenya. However, Moi, the incumbent appointed all the commissioners and its staff. The Electoral Commission of Kenya, under retired Judge Justice Zachaeus Chesoni, was perceived to be partisan.

Consequently, following Daniel Moi's contested victory the 1992 presidential election and initial demands for a new Constitution, a series of significant legal amendments and elite consensus emerged with an agreement, popularly known as the Inter Party Parliamentary Group (IPPG) amendments in 1997. The IPPG agreement addressed the questions of freedoms of assembly, movement and association, and the re-composition of the Electoral Commission of Kenya.

Significantly, this agreement led to the amendment of the Chief's Act and Public Order Act, allowing members of the opposition parties greater freedom of assembly and association and mobilization across the country. However, the most significant part of this agreement, the agreement on re-composing the electoral commission was not legislated. It remained just a gentleman's agreement, albeit one that Moi honored.

Through the IPPG agreement, the leading political parties, with parliamentary representation, nominated their representatives to the electoral commission, and Moi appointed these

nominees to the Electoral Commission. Perhaps, the commission that presided over the 1997, and 2002 general elections, and 2005 referendum on the constitution, delivered results that enjoyed legitimacy, not because it was composed of the most impartial public servants, but because of it was made up of partisan public servants, representing the various partisan interests, checking and balancing each other's political interests.

In 2007, in spite of the IPPG agreement, Mwai Kibaki's disregarded the IPPG gentleman's agreement. Noting that the IPPG was a just a 'gentlemen's agreement,' and not a legally binding clause of the constitution, Mwai Kibaki, made several appointments to the commission that would render it incapable of being a fair arbiter of closely contested elections. These unilateral appointments eroded the legitimacy of the Samuel Kivuitu led Electoral Commission as neutral refer in the 2007 General Elections, particularly the presidential elections

However, following the 2008 Africa Union and Kofi Annan led mediation process, Kenya embarked on a series of reform process, which included disbanding the electoral commission and recreating it a new one: the Interim Independent Electoral Commission and then the Independent Election and Boundaries Commission.

The electoral commission underwent radical changes aimed at ensuring its independence. Critically, it embraced the concept of competing political interests, wherein the participation of the agent of competing political in the electoral process a critical measure of ensuring fair outcomes of all electoral outcomes.

Although the commission has conducted several by-election well. It also stands accused of incompetence, corruption and conflicts of interests, especially in the procurement of electronic equipments for the 2013 General Elections. If the Independent Electoral and Boundaries Commission, led by Isaack Hassan, manages the count well or fairly, especially the counting and tallying of presidential votes, it will have done so, not just because of the new rules, but because it made up of public servants who have competing political leanings or loyalties, and therefore can only agree to obey the rules of the game, and not to rig the election in favor of a presidential candidate.

Moreover, unlike 2007, Kenya's law clearly provides adequate time frame within which any dispute arising out of the presidential contest. In other words, if there are grounds to believe that the in-built mechanism of checks and balances of the Independent Electoral Boundaries and Commission failed to produce a free and fair outcome of a presidential election, then the Supreme Court of Kenya shall determine the veracity of such claims and resolves any dispute arising out of the count.

Consequently, there are internal and external institutions, which are critical in the management of electoral competition and ensuring that the every vote cast counts. However, these institutions address only one critical aspect of the management of electoral competition: Fair count.

The most critical aspects of managing elections begin the morning after victory. It is managing the cleavages wrought by bruising electoral contests and narrow margins of victory, undoing the dirty work of creating friends or foe categories across various ethnic groups- building bridges across ethno- political regional divides. It is the management of the potential seeds of discord within the victor's camp, lest it flower in the next general election.

# Kenya Election 2013: The ICC Election

**Mahmood Mamdani**

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 vs a market-based notion that land belongs to whoever holds the title. This pit two ethnic groups, Kalenjin and Kikuyu, against one another and was at the heart of the 2007 election violence. CORD expected to rally the Kalenjin 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 altar called ICC. In the process, Jubilee put together a peace coalition. The National Alliance (TNA) evoked Kenyatta's legacy in that Uhuru claimed 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 with a 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 ethnicities centrally 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 would lose 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. Jubilee presented itself as a party of a grand national reconciliation, 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 foreign (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.





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