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MOBILIZING A DEFENSIVE KIKUYU-KALENJIN ALLIANCE: The Politicization of the International Criminal Court in Kenya's 2013 Presidential Election

Aditi Malik

ABSTRACT: *Since the restoration of multiparty political competition, Kenya has witnessed three violent elections. However, the 2013 presidential election concluded relatively peacefully and the winning Jubilee Coalition succeeded in uniting the “historically rival” Kikuyu and Kalenjin communities behind its banner. What factors explain these notable developments? Drawing on original interviews with elites as well as relevant secondary sources, this article shows that the birth of a Kikuyu-Kalenjin coalition and the lack of violence in 2013 were not due to Kenyan elites’ commitments to peace. Rather, politicians steered clear of instrumentalizing violence because new institutional arrangements prevented them from doing so. The research also demonstrates that the leaders of Jubilee—Uhuru Kenyatta and William Ruto—strategically made use of the International Criminal Court indictments against them to consolidate Kikuyu and Kalenjin support behind their coalition. As such, this study shows how international legal interventions can be tactically recast to pursue domestic political ends.*

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INTRODUCTION

Sitting across from my interviewee in his Mombasa office, I ask him the following questions: since the restoration of multiparty political competition in the 1990s, why is it that some of Kenya's presidential elections have been accompanied by local-level violence, in the form of inter-ethnic clashes, while others have gone off peacefully? And how did Kenya manage to avoid election-related conflict in 2013 after the devastating violence of 2007–08? "In Kenyan politics, there are no permanent enemies," comes the reply.¹ It is a pithy statement, but in the context of Kenya's elections, this assertion says a lot. First, it reflects the fluidity of the country's party system. A notable feature of electoral politics in Kenya, in fact, is that practically every five years a number of new parties emerge, while others disintegrate and disappear. Second, the electoral coalitions that are formed prior to every contest look drastically different—uniting some ethnic groups during one election while dividing the very same communities at other times. Put differently, in Kenya it is not uncommon to find that communities that were engaged in conflict during one election vote on the same side the next time around.

This sort of variation came to the fore once again in Kenya's most recent March 2013 presidential election. With the exception of the 2002 contest, since the reinstatement of multipartyism in the country, every such election in Kenya (1992, 1997, and 2007) has been accompanied by violent inter-communal clashes. Furthermore, during each of these episodes, the Rift Valley region has been the epicenter of conflict, where ethnic Kikuyus and Kalenjins—with diametrically opposing electoral preferences—have violently confronted one another. In contrast, 2013 was a relatively peaceful election and, this time around, the Kikuyu and Kalenjin communities rallied behind the same coalition (Jubilee). Additionally, this was the first national election to be held after the promulgation of Kenya's new constitution in 2010. Consequently, a considerable amount of research has already been produced on the various factors that set the 2013 election apart from previous contests. These include the comparative lack of electoral violence, the conflict-prevention role played by information and communication technologies, and the performance of the new constitution itself (Cheeseman, Lynch, and Willis 2014; Long et al. 2013; Trujillo et al. 2014).

The present analysis considers the role of another distinct element that marked the 2013 election: the decision of the International Criminal Court (ICC) to try the two main leaders of Jubilee—Uhuru Kenyatta and William Ruto—for their alleged roles in organizing the post-election violence of 2007–08. Drawing on interviews with police officers, community elders, civil society leaders and human rights activists, electoral officials, academics, political experts, journalists, civil servants, and, most importantly, politicians and political party leaders from across the political spectrum, the argument developed here shows that the ICC indictments provided “Uhuruto,” as they came to be known, with a convenient platform to mobilize the long-time antagonistic Kikuyu and Kalenjin groups behind Jubilee. Contrary to some claims in the existing literature as well as a popular and pervasive narrative in Kenya—and by carefully teasing out the sequence through which the alliance was formed and the means through which it consolidated electoral support—this research demonstrates that as opposed to its genesis, the ICC most directly impacted Jubilee’s campaign strategy.

In presenting the argument outlined above, the article is organized as follows. I begin by detailing the study’s methodology and, in particular, by describing its data collection protocol. While it is true that the ICC and its role in the 2013 presidential election has already received some attention in both academic and policy circles, this research is unique as it is based primarily on in-depth interviews with politicians and political party leaders. In contrast, existing studies on the role of the ICC have either drawn on interviews with peace activists, IDP leaders, and religious elites in the Rift Valley, or on nationally representative survey data (Lynch 2014; Wolf 2013). A separate but related vein of work has considered the relationship between treaty compliance, international criminal justice, and democracy in the context of Kenya’s 2013 election (Mueller 2014). In contrast, this analysis presents primary data from those elites who were most directly invested in the presidential election and affected by its results. Overall, these interviews show that the ICC didn’t directly impact coalition-building in the run-up to the 2013 election; rather it was critical in giving the two main leaders of Jubilee a provocative basis to yoke and collectively mobilize their two communities.

After discussing the research methodology, the article proceeds to providing a theoretical framework for understanding the repeated episodes of election-related ethnic violence that have broken out in Kenya since the early 1990s. Although it is certainly true that the relative lack of violence around the 2013 election was a noteworthy aspect of the contest, this very fact also raises crucial questions about how one can

make sense of previous instances of electoral conflict that have occurred in the country. To this end, I hold that due to the volatility of Kenya's political parties and the attendant uncertainty that elites regularly face over the composition of the electoral playing field, the politicization of deep-seated inter-ethnic grievances has been a recurring strategy. With respect to the Kikuyu-Kalenjin cleavage in particular—whose unity behind Jubilee was a significant feature of the 2013 election—such politicization has typically involved invoking insider versus outsider narratives around the emotive issue of land (Klaus 2015; Klopp 2001). Thus, while the deliberate fomentation of inter-ethnic grievances has been at the heart of electoral violence in Kenya, in some moments—particularly around the 2002 and 2013 elections—the country's political class largely steered clear of deploying such divisive tactics and thereby contributed to the maintenance of (relative) peace in these instances.

After presenting this larger theoretical framework to account for temporal variations in the incidence of inter-ethnic election violence in Kenya, the third section of the article turns to the 2013 presidential election. More concretely, it delves into an in-depth examination of the birth of the Jubilee Alliance and, to this end, it demonstrates that a number of preceding domestic developments—rather than the ICC investigations—served as the motivating forces for crafting the Kenyatta-Ruto partnership.

Thereafter, and in the fourth section, the argument hones in on the role of the ICC. Specifically, the research contends that where the court's involvement most directly impacted the electoral process was in persuading Kikuyus and Kalenjins to rally behind Jubilee. Although there is a tendency in the study of Kenya to paint the country's elections as "ethnic censuses," more recent scholarship has shown that Kenyan voters don't cast their ballots on the basis of ethnic considerations alone (Bratton and Kimenyi 2008; Ferree et al. 2014). Indeed, and in light of the ubiquitous splits and mergers that characterize the country's party system, voters frequently have to be persuaded or won over by competing parties (Horowitz 2012). This, I hold, was especially true for the task of consolidating cross-ethnic support from Kikuyus and Kalenjins behind Jubilee in 2013. After all, given the many episodes of violence between the two communities and the deep-rooted grievances around the issue of land, Uhuruto had to devise creative strategies to credibly market their partnership to voters. More precisely, and to put it in the words of one expert, "Kenyatta and Ruto did not—and could not—just tell their [ethnic groups] how to vote or behave, but instead had to persuade them" (Lynch 2014: 94).

The ICC emerged as a powerful tool in this regard as it gave the leaders of Jubilee a common enemy against which to collectively mobilize Kikuyus and Kalenjins. By casting the ICC as a neo-imperial—and therefore illegitimate—intervention into Kenya’s domestic politics, Kenyatta and Ruto were able to mount an inventive and influential campaign that turned on “saving” the entire Kikuyu and Kalenjin communities from international criminalization. As a leading politician from the Orange Democratic Party (ODM) put it, “[d]uring the campaigns, they [Kenyatta and Ruto] kept saying, ‘this is a referendum against the ICC.’ So many people voted for Jubilee because they thought the ICC was about to jail their sons and that they needed to be helped.”²

In the final section, the article considers the implications of Jubilee’s 2013 victory for future stability in Kenya. On this point, I hold that whereas abandoning divisive electoral tactics and uniting Kikuyus and Kalenjins behind the alliance were both crucial factors for maintaining peace in the Rift Valley—and in Kenya more generally—in 2013, it is possible that violence could return to Kenya in the future because the country’s political parties continue to be marked by high levels of volatility.

METHODOLOGY

This article grew out of a larger project on the determinants of electoral violence in ethnically divided societies. More specifically, and through a cross-regional comparison of Kenya and India—along with sub-national comparisons within each country—my previous work developed a theory to account for temporal variations in the incidence and intensity of inter-ethnic electoral violence.³ Existing scholarship on this topic has already generated a venerable literature on such conflict (Brass 2003; Berenschot 2011; Cleven 2013; Varshney 2002; Wilkinson 2004). However, while this literature has provided numerous explanations to account for spatial variations in the incidence of election-time violence, we still know remarkably little about the causes of variation over time. Furthermore, although most scholars agree that the mobilization of election-related conflict involves deliberate provocation by politicians, few researchers have spoken with such elites directly as part of their data-collection protocol.

In order to fill the theoretical and empirical gaps identified above, my work used in-depth interviews with a range of different elites—most importantly, politicians and political party leaders—as the primary sources of data. In addition to these interviews, I also made use of relevant secondary data, including government, non-governmental,

and media reports to develop the analysis presented in this article. With regard to fieldwork, over five months in 2013 (from January to February and from September to December), I conducted over ninety interviews. Thus, I collected data for this project both before and after the March elections of that year. My interviews took place in Nairobi, Mombasa (in the Coast region), and Nakuru and Eldoret towns (in the Rift Valley). Due to the sensitive nature of this project, however, when citing an interview in this article, I withhold the name and position of the respondent so as to maintain his or her anonymity.

The project relied on a snowball sampling strategy. In order to identify respondents—particularly those in the political class—I started by visiting the Nairobi offices of the major political parties. By doing so, I met individuals serving in capacities such as Executive Director or Secretary General. In instances where I was able to secure an interview with such officials, they often referred me to more senior party members, including (in some cases) members of Parliament. Frequently, it also happened that individuals from one party gave me referrals to those in other parties. Similarly, for electoral officials, political experts, and academics, I usually gained interview access to such individuals by visiting their offices directly. Additionally, human rights activists and civil society leaders in Nairobi proved to be very useful in connecting me to ethnic and religious elites, community elders, journalists, and civil servants—both within Nairobi and in the Coast and Rift Valley areas.

Prior to field research, I compiled two questionnaires: the first was developed for interviews with politicians and political party leaders and the second was created for sessions with elites from outside the political class.⁴ Each of these questionnaires consisted of semi-structured, non-leading questions. In the former questionnaire, in addition to asking respondents about the sources of violence or peace in each presidential election that had been concluded in Kenya up to that point, I also posed a handful of items about the history and mission of the political party in question. Furthermore, when discussing the 2013 election, I asked specific questions about the ICC and its role therein. In the second set of interviews, the questions on the history and outlook of particular political parties were replaced with items about the mission of the specific organization (electoral, human rights, civil society, or council of elders) where I was conducting the interview. Additionally, these interviews typically included some discussion about the impact of the organization in question as it relates to electoral violence in Kenya. Finally, when discussing the logic—and particular episodes—of election-related conflict in the country, I also used my interviews with individuals from outside the political class to verify the claims that had been made to

me during my sessions with politicians. Thus, apart from being independent sources of data, as far as was possible, I used this second set of interviews to check the veracity of statements that had been made to me in other sessions.

My field interviews varied in length from twenty-five to ninety minutes on average and were conducted in English. I typically met politicians and political party leaders, police officers, civil society leaders, academics, political experts, electoral officials, journalists, and civil servants at their offices. Interviews with human rights activists, ethnic and religious elites, and community elders were conducted in public places such as restaurants or coffee shops. I began every interview by introducing myself and my project to the respondent and also sought his/her permission to record the session using a voice recorder. In instances where such permission was not granted, I took detailed notes of the interviews. At the end of each day, I transcribed my interviews.

THE ROOTS OF ELECTORAL VIOLENCE IN DIVIDED SOCIETIES

This research holds that electoral violence stems from the deliberate politicization of inter-communal grievances held by antagonistic communities. When these groups are also voting on opposite sides during an election, then the fomentation of grievances can be expected to give rise to high levels of violence. In places such as Kenya—where ample grievances are available for manipulation—the instrumentalization of electoral violence is aided by the notorious instability of the country's party system.

Indeed, in the study of electoral politics in Kenya, it is not uncommon to see statements such as “[the country's] political parties are barely distinguishable in terms of ideology, programs, platforms, or organization” (Mueller 2011: 104). While some observers have argued that “ideology is rarely central to coalition-building” in Kenya, others have categorically stated that “the proliferation of political parties along ethnic lines has resulted in the fragmentation of the party system and the absence of parties with a genuine national following” (Branch and Cheeseman 2010: 20–21; Resnick 2011: 743). The February 2013 data from the Office of the Registrar of Political Parties provides a vivid illustration of the reality of political party fragmentation in the country: as per its count, there are fifty-nine registered parties in Kenya (Republic of Kenya 2013). Of these, the key constituents of the major coalitions, including ODM, Wiper Democratic Movement-Kenya (WDM-K), the National Alliance (TNA), and the United Republican Party (URP),

all have distinct bases of ethnic support from which they mobilize supporters.

But Kenya's electoral arena is also home to countless "briefcase parties" that lack physical addresses and offices altogether. Indeed, when one looks at the data from the Registrar of Political Parties, it quickly becomes clear that a number of the country's registered parties merely provided a town or city name as their official address. To put it in the words of one interlocutor, the problem of political party fragmentation in Kenya can be summed up as follows:

We have over forty [sic] parties for no reason at all. Many of them do not even have offices. They are like "walking parties." You meet a party chairman, he tells you, "oh would you like a certificate to run?" You go to a hotel, he signs it [the certificate], he gives it to you and you can go and run. That's how it has been for a long time and it is a big problem.⁵

Moreover, because political parties in Kenya typically operate as vehicles through which powerful individuals can hope to ascend to office, they tend to lack foundational ideological principles. Consequently, defections and electoral realignments routinely occur from one election to the next. Indeed, in the pursuit of winning coalitions, there is considerable variation in how alliances are cobbled together. As one interviewee stated, elites may "join hands on the basis of personalities, or deals on power-sharing, or access to money and influence, or tribal grouping.... It has nothing to do with parties or party structures.... The parties are just a façade for entities led by individuals."⁶

In addition to the highly unstable nature of political parties in Kenya, another key feature is that parties operate as ethnic organizations.⁷ To put it in the words of one interviewee, "With leaders creating parties rather than parties creating leaders in this country, ethnicity has just become an instrumentalized tool for gaining power."⁸ Another respondent similarly opined,

Parties aren't ideological [and] that's just a phenomenon [of] our politics in Kenya. I'm not sure I have any explanation for why this is but it seems to have been the case since independence that political groupings—because I am not sure we can even call these organizations parties in the strict sense—haven't had an ideological contest in any election.... So what we have here is usually a political grouping and it is usually [created] either around an individual or around a set of like-minded or like-intentioned individuals. And when they come together, these like-intentioned individuals use ethnicity as a tool to mobilize the people. It's a very easy way to get votes.⁹

Non-elite Kenyans who I frequently interacted with expressed similar sentiments. In fact, these individuals often employed shorthand along the following lines to describe the country's key political parties: on several occasions, I was told that the TNA "is a party for Kikuyus" or that the ODM "is a Luo party." Such statements add credence to existing claims in the literature, which hold that "parties [in Kenya can be] classified as mono-ethnic" organizations (Elischer 2013: 43). And while it is certainly true that, come election time, Kenyan parties craft multi-ethnic alliances with one another, at their core, the parties themselves continue to be mono-ethnic entities (Mueller 2008; Omolo 2002).

Since volatile and unstable parties have been a pervasive and constant feature of electoral politics in Kenya, how, then, can one account for temporal variations in the outbreak of electoral violence in the country? Before addressing this issue, it is vital to detail how the outcome variable is operationalized. On this matter, I propose that we might think about the phenomenon of inter-ethnic electoral violence as follows. In any given election period, which is typically defined as six months before and three months after a contest, the chosen unit of analysis—country, province, city, and so on—can either experience inter-ethnic electoral violence or it can succeed in maintaining ethnic peace (Straus and Taylor 2012). Should violence occur, furthermore, it can be of a high intensity (severe) or of a low intensity (mild).¹⁰

As stated above, this research posits that in an ethnically divided society, inter-communal electoral violence will stem from the deliberate politicization of long-standing grievances held by rival communities. The reason that divisive tactics of this nature are likely to give rise to conflict is because elections are key focal points around which citizens seek to define their access to the state. Thus, if one is interested in understanding *when* rather than at *what intensity* ethnic violence is likely to occur in association with a particular election, the most direct clue can be gleaned by looking at whether or not political elites are driving wedges in the electorate.

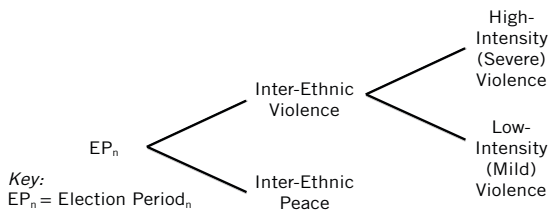


Figure 1. The Possibilities for Inter-Ethnic Violence around a Single Election

The severity at which violence occurs, in contrast, turns on a different set of variables. Stated specifically, when politicization is compounded by an ethnically divided electorate—by which I mean an electorate in which historically rival groups are voting in opposing camps—then we can expect election-related conflict to take place at a high intensity. This is because in such circumstances, voters are likely to perceive elections as zero-sum games. But when ethnic rivals are yoked in an alliance, then politicization will either amount to no violence at all or, at worst, to mild levels of electoral violence. In fact, we have strong theoretical reasons to expect that politicians will steer clear of emphasizing differences between groups that comprise an electoral alliance. Furthermore, I suggest that elites will only act contrary to such expectations when they miscalculate the payoffs of politicization or when they are keen on breaking up a coalition of their competitors.

A crucial assumption that grounds the above theory is that in ethnically divided societies, come election time, rival groups are more likely to be antagonists rather than allies. Existing studies on political behavior have already shown this to be the case in a number of different countries in sub-Saharan Africa, including Malawi, Nigeria, and Zambia (Bah 2005; Ferree and Horowitz 2007; Posner 2005; Sisk 2012). In line with an instrumentalist orientation, survey-based research in these countries has also found that ethnic identities tend to become stronger when they are exposed to political competition (Eifert, Miguel, and Posner 2010). Outside the African continent, too, extant scholarship has demonstrated that divided ethnic groups tend to hold strikingly different electoral preferences. In India, for instance, it is routine for Muslims and upper-caste Hindus to cast their ballots for rival political parties (Wilkinson 2004). Finally, in several Latin American countries—including Bolivia, Ecuador, Guatemala, and Peru—researchers have found that voters from marginalized indigenous communities tend to vote very differently from those in non-indigenous groups (Madrid 2005).

An important implication of this body of scholarship, then, is that politicians who seek to mount winning coalitions by uniting long-time ethnic rivals in divided societies will find themselves contending with a challenging task. Moreover, given the fact that in any electoral contest it is more likely than not that *some* deeply divided ethnic groups will have opposing electoral preferences, should such a configuration be met with the politicization of extant grievances, then, as per the theory developed here, severe inter-communal electoral violence can be expected to take place.

PATTERNS OF ELECTORAL VIOLENCE IN KENYA

As is true of a number of countries in sub-Saharan Africa, division rather than unity has generally characterized the way that long-time ethnic antagonists have voted in Kenyan elections. Stated specifically, when one looks at the following dyads—Kikuyu-Kalenjin, Kikuyu-Luo, and Kikuyu-Mijikenda—one finds that these groups voted for diametrically opposed parties or coalitions in the 1992, 1997, and 2007 presidential contests. In 1992, for instance, the vast majority of Kalenjin and Mijikenda voters rallied behind the Kalenjin incumbent Daniel Arap Moi of Kenya African National Union (KANU), whereas Luos supported Oginga Odinga of FORD-Kenya and Kikuyus split their votes between co-ethnic leaders Kenneth Matiba of the Forum for the Restoration of Democracy (FORD)-Asili party and Mwai Kibaki of the Democratic Party. In light of the argument presented above—about the relationship between an ethnically divided electorate and the scale of inter-communal electoral violence—a key question, therefore, becomes what factors account for the instances in which the groups constituting these dyads have voted with one another rather than against one another?

With regard to the Kikuyu-Kalenjin cleavage in particular, I hold that as part of broader accommodationist tactics, Kenyan elites have only united these groups in those instances when they found themselves confronted by a set of revised institutional arrangements—such as term limits or a new electoral threshold—that systematically disincentivized fomenting inter-ethnic grievances and instrumentalizing election-time violence. In presenting the evidence that follows, I focus on Kikuyus and Kalenjins (as opposed to other ethnic groups) for two reasons. First, although it is certainly true that other regions in Kenya, such as the Coast, Nyanza, and (to a lesser extent) the former Western province, have all experienced some inter-ethnic election-related conflict through the instrumentalization of divisions between Kikuyus and Mijikenda, Kikuyus and Luos, and Kikuyus, Kalenjins, and Luhyas, respectively, the Rift Valley has consistently witnessed high levels of election-related ethnic conflict in every violent election. Second, in light of the fact that this article focuses on the strategies of the Jubilee Alliance in uniting Kikuyus and Kalenjins—and the role of the ICC in that process—it makes sense to focus on these two groups in particular.

As stated above, in the 1992 election, Kalenjins had supported Moi while Kikuyus had rallied behind two different co-ethnic opposition leaders—Matiba and Kibaki. It bears noting that by the time of this particular election, Moi had already been president of Kenya for fourteen years. Thus, the return of multipartyism brought with it considerable uncertainty for the KANU administration (Bates 2008). The

electoral rules, moreover, stipulated that the winning candidate had to secure 25 percent of the votes in at least five of the country's eight provinces. Confronted with this requirement and desperate to hold on to the reigns of power, the instrumentalization of ethnic violence emerged as a promising tactic. Stated specifically, and in light of the fragmented nature of the opposition, the KANU regime realized that it could organize clashes against those groups that were allied with rival parties and use such violence to either a) force individuals from these communities into changing their electoral preferences or b) displace them from their homes and prevent them from casting their vote entirely.

The Rift Valley stood out as a particularly appropriate region to mount such pre-election clashes. After all, long-standing grievances between Kalenjins and Kikuyus and Kalenjins and Luos over the question of land gave KANU politicians a readily usable issue that they could exploit to mobilize indigenous communities (specifically Kalenjins and Maasais) against "unwanted interlopers" (that is, Kikuyus and Luos). To put it in the words of one expert, "the prospect of gaining access to land [provided] a powerful selective incentive to [the indigenous communities in the Rift Valley] to drive away their neighbors" (Kahl 2006: 146). While the aggregate estimates of the human costs of electoral violence around the 1992 presidential election vary, according to a parliamentary committee report produced in September of that year, 596 individuals died and another 48,000 were displaced by pre-election conflict in the Rift Valley alone (Republic of Kenya 1992: 85). Despite the devastating scale of these clashes, for the incumbent regime the violence proved to bear fruit: with only 36 percent of the total votes cast, KANU won the election.

In 1997, the Moi government replicated the above strategy in the Rift Valley and also extended it to the Coast where similar land grievances are present. Specifically, incumbent elites mobilized Kalenjins and Maasais in the Rift Valley and the Mijikenda in the Coast against Kikuyus, Luos, and to a lesser extent Kambas—all of whom were allied with opposition parties. As a result, KANU secured for itself another five years in executive office, this time with approximately 40 percent of the total votes cast.

The 2002 election, however, played out differently. Having served two terms as president in the multiparty era, Moi had to appoint a successor who could take over KANU's leadership. In other words, the term limits that had been introduced in the 1990s came to haunt the incumbent regime in 2002. Faced with this important decision—and in the absence of Kalenjin leaders within the party who had his kind of appeal in the community—Moi put his confidence in the relatively young and inexperienced Uhuru Kenyatta. Theoretically, this move made sense as

it “conflated Kikuyu-Kalenjin elite interests” within KANU and thus put the party in a position to craft a winning, multi-ethnic coalition (Kanyinga 2009: 338). In reality, however, the choice of Uhuru quickly backfired: it alienated a number of veteran leaders of the party, including George Saitoti and Oginga Odinga’s son Raila Odinga, who defected and joined hands with the opposition to create the multi-ethnic National Alliance Rainbow Coalition (NaRC). In other words, rather than being fragmented as they had been in the previous two presidential elections, in 2002, opposition parties united to challenge the dominance of KANU in Kenya’s electoral arena. They fielded Mwai Kibaki as their leader and thus, for the first time since the restoration of multiparty politics in the country, the presidential election was fought between two co-ethnic candidates. Due to these unique circumstances, “the ethnic character of Kenyan politics was neutralized in 2002.”¹¹

What bears noting about the 2002 contest, however, is that neither KANU nor NaRC had sought to unite Kikuyus and Kalenjins because they were committed to maintaining electoral peace in the country. Instead, it was the reality of term limits that seemed to prompt KANU to build an alliance between the two communities and it was Moi’s ill-chosen appointment of Kenyatta as the party’s presidential candidate that resulted in the opposition’s success in coming together and creating its own multi-ethnic coalition. Indeed, many interviewees suggested that Moi’s naming of Kenyatta effectively “did him in” as it contributed to the birth of the formidable NaRC alliance.¹² However, because the coalition had “no plan beyond displacing KANU,” once Kibaki became president, things started to unravel very quickly.¹³ In particular, two key stipulations of the memorandum of understanding (MoU) that had solidified NaRC’s formation—a) that there would be a “50/50 power-sharing formula... with regard to cabinet membership” and b) that constitutional reform would be undertaken, in part, to make Odinga Prime Minister—were reneged on (Elischer 2010: 217). Consequently, in September 2004, Odinga’s LDP party announced, “that it would contest the 2007 election [from] outside the NaRC coalition” (Elischer 2010: 217).

As with the contests of the 1990s, therefore, the 2007 election once again saw the Kikuyu-Kalenjin divide make an appearance in Kenya’s electoral politics. Specifically, this time around, Kikuyus rallied behind Kibaki’s Party of National Unity (PNU) while Odinga’s ODM won over the vast majority of Kalenjins. Given the overwhelming sense that ODM was slated to win the election, it is not surprising that following the declaration of Kibaki’s victory, violence quickly erupted in Kenya (Wolf 2009). More concretely, groups allied with ODM (Luos and

Kalenjins) attacked PNU supporters (mostly Kikuyus). ODM politicians, moreover, were able to easily mobilize such violence drawing not only on the “stolen election” narrative, but also by making the case that the “greedy Kikuyus” had once again—and to the detriment of other communities—held on to political power, thus ensuring that the land issue would go unsettled for at least another five years.¹⁴ As such, the combination of elite politicization and an ethnically divided electorate in 2007–08 served to animate severe electoral violence in Kenya but especially in the Rift Valley, where over 700 people died and another 330,000 were displaced from their homes.

In light of such devastating conflict, two key questions emerge about the 2013 election. First, what prompted elites to try and unite Kikuyus and Kalenjins this time around? And second, how did they succeed in doing so? A key argument of this article is that the Kikuyu-Kalenjin cross-ethnic alliance emanated from the new institutional conditions that emerged during the period leading up to the election. Specifically, and in response to the post-election violence, Kenya promulgated a new constitution in 2010, which introduced a number of new “rules of the game.” Most significant for this article are three key changes. First, the largely unitary form of government was replaced by a decentralized county system. Under this arrangement, Kenya was divided up into forty-seven counties, each with its own governor and county assembly. Second, the previous plurality electoral threshold was altered to a simple majority rule, which meant that the winning party or alliance now had to amass more than 50 percent of the total votes cast. Additionally, in order to avoid a run-off, the victorious candidate or coalition had to secure 25 percent of the votes cast in twenty-four of the country’s forty-seven counties. Third and finally, strict deadlines were set for the formation of coalitions and the submission of documents to the Registrar of Political Parties. With reference to the 2013 election in particular, all political parties had to file their papers by December 4, 2012—three months prior to the March election of the following year.

All in all, these new requirements meant that, as was true in 2002—when the issue of term limits became relevant for the first time—there was considerable uncertainty about the shape that electoral politics would take in 2013. Lessons learned from previous elections, moreover, came into clear focus this time around. As one interviewee summarized, “elections have long involved a game of numbers in Kenya. But with the new rules of 2010, this was truer than ever.... Every party knew that it would have to create alliances if it wanted to have any shot at winning in 2013.”¹⁵

Given their significant demographic size—Kikuyus and Kalenjins account for approximately 30 percent of Kenya's total population—the institutional revisions of 2010 provided powerful reasons to electorally unite these two communities (ICG 2013: 13). At the same time, however, and especially in light of the history of violence—and the unresolved issue of land grievances—between them, elites also knew that they would face an uphill battle in achieving this goal.

THE BIRTH OF THE JUBILEE ALLIANCE AND KIKUYU-KALENJIN UNITY IN 2013

What factors prompted Uhuru Kenyatta and William Ruto to formally come together in late 2012? These two leaders, after all, had been in squarely opposing camps in 2007: Kenyatta was allied with PNU and Ruto was a member of the multi-ethnic “pentagon” in Odinga's ODM. While on the one hand Jubilee's emergence may be located within the broader context of frequent electoral realignments that have come to typify Kenyan politics, at the same time, there were many important reasons why Kenyatta and Ruto could have chosen not to join hands. Indeed, owing to the history of conflict and the deep-seated and enduring grievances between their two ethnic groups, it is entirely plausible that the two politicians would have failed to consolidate Kikuyu and Kalenjin support behind Jubilee. As such, one might expect that the risk of their alliance backfiring would have served as a deterrent for coming together. And yet, not only did Kenyatta and Ruto develop an alliance, but they also managed to win the 2013 election.

Both inside and outside Kenya, the “puzzle” of the birth of Uhuru Ruto has often been explained as a direct product of the ICC intervention (Cheeseman et al. 2014). According to a United States Institute of Peace study, for instance, scores of ordinary Kenyans residing in ten different counties that had experienced the post-election violence “estimated that the ICC charges against Uhuru Kenyatta and William Ruto directly contributed to the formation of the Jubilee Alliance” (Elder, Stigant, and Claes 2014: 11). Along similar lines, a politician in Mombasa categorically told me:

This is what happened. Ruto looked at Uhuru and he felt “we're Siamese twins. We're linked at the hip. If he dies, I die. If he goes to jail, I go to jail.” That's why the Ruto-Uhuru alliance became very attractive to them personally. The ICC factor is what brought them together. Now the issue is—if the ICC factor was not there, would these two guys have been together? I doubt it.¹⁶

Likewise, another interviewee stated,

The Kikuyus and Kalenjins are very bitter with each other. Everybody knows that. But when this whole ICC issue happened—and the way it was politicized—the leaders... both of them decided to make a compromise... They decided that they couldn't move ahead without one another and that's why they accommodated.¹⁷

Claims of this nature have also found traction in the popular press in Kenya and in academic circles. According to Makau Mutua (2012), for example, Kenyatta and Ruto “formed a pact because the ICC accuse[d] them of masterminding the [2007–08] violence targeting ‘each other’s people.’” Similarly, Tom Wolf (2013: 146) has held that the two men used their “international ‘criminal-indictee’ status” remarkably successfully to forge an electoral coalition.

Although pervasive, a central flaw with all of these accounts is that they erroneously give primacy to the ICC without paying attention to sequencing and other key domestic events that were unfolding around the same time. Simply stated, and as one expert has documented, although the court's pre-trial chamber initiated investigations against Kenyatta and Ruto in March 2010, it didn't confirm the same until nearly two years later in January 2012 (Mueller 2014). By this time, furthermore, a number of intervening developments had occurred, all of which more directly impacted the decision of the two leaders to form an alliance.

First, fairly soon after the conclusion of negotiations following the post-election violence, and for a few different reasons, a rift between Ruto and Odinga emerged. A major reason for this split was Odinga's handling of the issue of forced evictions of Kipsigis (a sub-tribe of the Kalenjin) from the Mau Forest in the Rift Valley. Indeed, the matter proved to be so divisive that as early as 2009, it led to an indelible crack in the Ruto-Raila pact (Bartoo 2009). As one political party leader told me:

Raila was the one who was responsible for the evictions of the squatters from the Mau Forest. So the Kalenjins felt that this friend who they had partnered with [in 2007] was not of good intentions. Ruto had said to Raila, “this is our land and these are my people.” And so there was the expectation that Raila would stand by the Kalenjins. But he didn't. Because of that, there was a parting of ways between these two characters [Ruto and Raila].¹⁸

Second, suspicions about Raila's intentions toward the Kalenjins made their way to the elders of the community who in turn started to think

seriously about how best they could secure the “future of the Kalenjin people” in the next election.¹⁹ To this end, and especially given the recurring rounds of violence they had suffered since the 1990s, the idea of forming a union with a Kikuyu politician emerged as an attractive option. To put it in the words of one Kalenjin elder,

The Kikuyu community forms the largest non-indigenous community in the region. They own property and they are the wealth creators.... They are the people we [Kalenjins] have had very hard times with. We have fought, we have chased each other, we have burned houses. So from the point of view of the [Kalenjin] elders, and particularly in pursuing the issue of peace, we [knew that we] had to devise a method whereby the two warring people could actually begin to see the direction they are going in.... *So when the elders saw Ruto breaking away from the other group [ODM], we began to consult with the elders from the Kikuyu community and we all agreed that this alliance [was worth pursuing] (emphasis added).*²⁰

Community leaders in the Central Rift Valley echoed this sentiment. In an interview with a Kikuyu elder in Nakuru, for instance, I learned that as early as January 2011, Uhuru had been advised to “get together with Ruto and talk.”²¹ In light of the internal divisions within these two communities—and given the fact that neither Ruto nor Kenyatta were the undisputed kingpins of their respective ethnic groups—ignoring the advice of Kalenjin and Kikuyu elders would have been tantamount to political suicide (Lynch 2014). Thus, not only were there crucial reasons—exogenous to the ICC—Ruto and Odinga began to part ways, but, furthermore, such factors also contributed to bringing Kenyatta and Ruto closer together and to ultimately forming the Jubilee Coalition.

THE ROLE OF THE ICC IN KENYA'S 2013 ELECTION

Apart from the question of how the Uhuruto union came about, an equally important issue surrounding the 2013 election relates to how the two leaders managed to successfully market their alliance and consolidate cross-ethnic Kikuyu and Kalenjin support behind Jubilee. Drawing on the “ethnic census” understanding of Kenyan elections, one set of answers might posit that any marketing efforts were entirely unnecessary. After all, because Kenyans have a tendency to vote ethnically, once Jubilee was formed, Kikuyus and Kalenjins naturally voted for the coalition.

The problem with such an argument is that not only does it neglect the internal divisions within these communities, but it also ignores the outstanding grievances that they hold against one another (Lynch 2014; Wolf 2013). Stated differently, while it might be accurate to assert that *ceteris paribus* voters in large Kenyan ethnic groups, such as the Kikuyu, Luo, and Kalenjin, would prefer to vote ethnically, one cannot assume that such patterns will manifest in contexts where a) there has been a history of ethnic conflict, b) there are grievances simmering beneath the surface, or c) there are multiple ethnic parties that claim to represent the same community. Rather, in such situations, ethnicity is often mediated by other factors such as issue-based concerns and/or the expectations that voters have about “their” party’s performance at the polls (Chandra 2004; Ferree et al. 2014). With regard to Jubilee, therefore, the very idea that two leaders—one from the “victim” community and the other from the “perpetrator” group—could count on collectively mobilizing co-ethnic support seemed implausible. What was needed, in other words, was a powerful platform to sell the alliance to voters.

My research suggests that this is precisely what the ICC provided. Through extensive fieldwork, I learned that the “shared indictee” status made it possible for Kenyatta and Ruto to tap into a popular sentiment that held that the court had been unjust and had targeted the wrong individuals. As one interviewee told me, for instance,

In 2007, it was Raila and Kibaki who [had] contested over the presidency. So the responsibility over the violence is supposed to be borne by the two. But the investigations by the Waki Commission ended up with Ruto and Uhuru’s names and these are now matters at the ICC. So the question is: why is Raila’s name not in the envelope? Why is Kibaki’s name not in the envelope?²²

Much like they had felt over the Mau Forest evictions, in other words, when it came to the ICC issue, Kalenjin voters once again felt that Odinga had betrayed them and had not protected “their man” from international prosecution.²³ To quote one respondent in particular, “Ruto has come to bear Raila’s cross at the ICC.... After all he [Ruto] had done Raila’s bidding in 2007. And yet, while Ruto was indicted, Raila was not.”²⁴ Analogously, and among the Kikuyus, there was a similar sense that “whatever Uhuru might have done at that time [in 2007–08], he did it for Kibaki. So how can they [the ICC] prosecute one man but not the other?”²⁵ Drawing on this powerful narrative, then, and by strategically appropriating the ICC issue, Kenyatta and Ruto “galvanize[d] sympathy around themselves.”²⁶

Moreover, they framed the matter as one that would have long-term implications for the future of their respective communities. As one interviewee told me,

Their [Kenyatta and Ruto's] main message during the campaigns was "we are being sacrificed by Raila and Kibaki. We are being sacrificed. So vote us in." So they mobilized their tribes. They said, "It's the tribes that are on trial. It is not the individuals. It is the Kalenjins who fought so they are on trial. It is the Kikuyus who defended themselves so they are on trial."²⁷

Similarly, another respondent stated,

They [Kenyatta and Ruto] went to their communities and pleaded with them saying, "if you don't elect us we are going to be jailed for a hundred years by the ICC. And then if that happens what will happen to you all?" So as members of their communities, the people listened and were sympathetic with them.... They were voted for on the basis of sympathy but also because they put this fear into the communities' minds.²⁸

In sum, the context of the 2013 election was such that the prospect of a Jubilee defeat was connected with dire consequences—ICC and Western neo-imperialism and a Luo president—for both Kikuyus and Kalenjins, who then went on to defensively vote for Jubilee.

Whereas the above discussion has provided strong support for the idea that the ICC was directly relevant to Jubilee's victory in 2013, admittedly, there is little consensus on this matter in the existing literature. Put concretely, while studies based on exit polls assert that the ICC was not an important factor for voters—least of all for Jubilee voters—qualitative studies and survey-based research have both held that the ICC was critical for mobilizing Kikuyus and Kalenjins behind Uhuruto (Ferree et al. 2014; Lynch 2014; Wolf 2013). According to a February 2013 IPSOS-Synovate survey, for instance, Jubilee and Coalition for Reform and Democracy (CORD) supporters had strikingly different opinions about whether or not the ICC cases should go forward: while 84 percent of CORD supporters felt that the trials should be held at The Hague, 68 percent of Jubilee supporters were in favor of having the cases dismissed with amnesty (Wolf 2013: 165). As such, public opinion data lends credence to the idea that if used correctly, the ICC had significant mobilizing potential for Jubilee voters in 2013. On the issue of exit poll data, furthermore, it bears noting that given how controversial and politicized the indictments were, it is entirely possible that voters—from different electoral camps—would

have underreported the effect that the ICC had on their voting decisions.²⁹ As such, while scholars are right to assert that ethnic considerations were moderated by issue-based concerns in 2013, it appears likely that exit polls failed to adequately capture the importance of the ICC in affecting vote choice.

THE FUTURE OF THE JUBILEE ALLIANCE AND ITS IMPLICATIONS FOR KIKUYU-KALENJIN RELATIONS

With Kenya's next elections slated for August 2017, the question about whether there will be a recurrence of violence is gaining significant attention (Gettleman 2016). During fieldwork, for instance, a number of respondents noted that because the birth of the Jubilee Alliance's founding partnership was "circumstantial" and that "there was nothing in terms of ideology that was common to the two men [Kenyatta and Ruto]," a lot would hinge on the outcome of the ICC trials.³⁰ In one interviewee's opinion, for instance, "[t]he alliance is only durable as long as Ruto and Uhuru are treated similarly by the ICC. But if, for example, tomorrow Uhuru is acquitted and Ruto is jailed or the other way around, there is almost no chance of it being sustained."³¹ Similarly, another respondent noted that "[t]he next elections in 2017 have the chance of being extremely violent, far worse than previously.... There is a lot of talk that Ruto will be the sacrificial lamb to the ICC and that the coalition will not hold."³²

At the time of this writing, the cases against both Kenyatta and Ruto have been dismissed. Nevertheless, recent events—the opposition's demands that the electoral commission be disbanded, and subsequent protests and violence—have raised concerns about how the 2017 elections will play out. Put differently, while the birth of Jubilee in 2013 protected the Rift Valley from election-related conflict, violence still appears to be an option that is on the table for the longer term. With the majority electoral threshold firmly in place for the presidential election and given Uhuru and Ruto's continuing commitment to stick together, it seems unlikely that high-intensity violence will occur in 2017. At the same time, however, given the volatile nature of Kenya's party system, it is possible that future contests could incentivize the deployment and instrumentalization of election-time conflict. Taken together, then, a key implication of this research is that until the very nature of political contestation in Kenya is veritably altered—and institutional re-engineering has previously proven inadequate in this regard—the outbreak of electoral violence will continue to be a possibility for the country.

CONCLUSION

The 2013 Kenyan election was unique insofar as a) it was the first presidential election to be held after the promulgation of the country's new constitution in 2010, b) it was a comparatively peaceful contest, and c) it occurred at a time when international criminal indictments had been levied against one of the main presidential hopefuls and his running mate, both of whom come from historically rival ethnic communities. The fact that the ICC was part of the broader setting in which the election took place has led some analysts to suggest that it was the key reason why Uhuru Kenyatta of TNA and William Ruto of URP joined hands to begin with. In this article, I have challenged such a narrative and have shown that rather than affecting coalition-building, the ICC provided the two Jubilee leaders with a powerful platform on which to collectively mobilize their communities. Specifically, this research has demonstrated how Kenyatta and Ruto strategically made use of—and undermined—an international legal intervention to achieve an electoral victory. Finally, and as it pertains to the question of peace, the article has shown that the relative lack of violence in 2013 cannot be attributed to Kenyan politicians' commitments to this goal. Instead, and owing to a number of new institutional conditions—and in particular to a majority electoral threshold—the instrumentalization of ethnicity and violence ceased to be viable options for power-seeking elites in 2013.

Despite the relatively peaceful nature of the 2013 election, however, there are good reasons to be concerned about whether Kenya will be able to maintain this equilibrium in the long-term. On this matter—and especially in light of the fact that the country's political parties continue to be marked by volatility and frequent coalitional realignments—depending on how the electoral alliances are built and which communities they bring together versus keep apart, this research suggests that violence could return to Kenya around future elections.

NOTES

1. Interview, senior police officer, Mombasa, October 3, 2013.
2. Interview, ODM politician, Nairobi, December 10, 2013.
3. I define "ethnically divided societies" as those in which ethnicity operates as a salient—and divisive—societal cleavage. Both Kenya and India, for instance, are diverse, multi-ethnic societies. Moreover, in both countries, certain kinds of ethnic cleavages—mainly tribal and linguistic in Kenya and religious and caste in India—define key societal divisions. The relevance of these cleavages has repeatedly been seen not only when it comes to episodes of election-related conflict, but also in the realm of political behavior—with regard to the

formulation of electoral preferences and the distribution and redistribution of resources—more broadly.

4. These questionnaires were approved by the Institutional Review Board at Northwestern University. Prior to commencing my interviews in Kenya, moreover, I obtained a research permit from the National Council for Science, Technology, and Innovation (NACOSTI) in Nairobi.

5. Interview, ODM Party official, Nairobi, September 18, 2013.

6. In Kenya, the terms “tribe,” “ethnic group,” and “ethnic community” are often used interchangeably. With the exception of interview data, when referring to specific ethnic affiliations, this article uses the terms ethnic group or ethnic community rather than tribe. Interview, political expert, Nairobi, October 17, 2013.

7. Nevertheless, come election time, these very parties and their leaders clamor to create multi-ethnic winning coalitions. This is a necessary strategy because no one ethnic group in the country is large enough to help Kenyan politicians secure the presidency.

8. Interview, professor of political science, Nairobi, December 3, 2013.

9. Interview, civil servant, Nairobi, November 25, 2013.

10. In keeping with recent studies, I classify an episode of electoral violence as high-intensity or severe if ten or more individuals die due to the clash. In contrast, if one to nine individuals are killed, then such an episode can be understood to be a case of low-intensity or mild violence (Bob-Milliar 2014). Along with death tolls, other quantitative indicators that may be used to categorize the intensity of a particular episode of election violence include injury counts and the number of individuals displaced from their homes.

11. Interview, political analyst, Nairobi, October 15, 2013.

12. Interview, NaRC Party official, Nairobi, December 5, 2013; Interview, Chama Cha Mwananichi (CCM) politician, Nakuru, October 23, 2013.

13. Interview, NaRC Party official, Nairobi, December 5, 2013.

14. Interview, civil society leader, Nakuru, October 23, 2013.

15. Interview, NaRC Party official, Nairobi, December 5, 2013.

16. Interview, WDM-K politician, Mombasa, October 5, 2013.

17. Interview, civil society leader, Nairobi, September 16, 2013.

18. Interview, FORD-Kenya Party official, Nairobi, September 19, 2013.

19. Interview, Kalenjin elder, Eldoret, November 5, 2013.

20. Interview, Kalenjin elder, Eldoret, November 5, 2013.

21. Interview, Kikuyu elder, Nakuru, October 25, 2013.

22. The Commission of Inquiry on Post-Election Violence (CIPEV), also known as the Waki Commission, was the official commission established by the Kenyan government in 2008 to investigate the post-election violence of 2007–08. CIPEV produced its report on this matter—popularly known as the Waki Report—in October 2008. Interview, NARC-Kenya Party official, Nairobi, September 16, 2013.

23. Interview, civil society leader, Nakuru, October 23, 2013.

24. Interview, civil society leader, Nakuru, October 23, 2013.
25. Interview, civil society leader, Nairobi, February 2, 2013.
26. Interview, religious leader, Mombasa, October 4, 2013.
27. Interview, United Democratic Forum (UDF) Party official, Nairobi, October 18, 2013.
28. Interview, ODM Party official, Nairobi, September 18, 2013.
29. Interview, IPSOS-Synovate researcher, July 16, 2015.
30. Interview, civil society leader, Nairobi, September 16, 2013. Interview, FORD-Kenya Party official, Nairobi, September 19, 2013.
31. Interview, political expert, Nairobi, November 29, 2013.
32. Interview, political expert, Nairobi, October 17, 2013.

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