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Initial consultations after the December 2007 crisis

The 11 June 2008 by-elections

After the general elections held on 27 December 2007, voters in some constituencies, returned to the polls on 11 June 2008, to elect five Members of Parliament and about 50 councillors. These by-elections, which took place in the constituencies of Ainamoi, Emuhaya, Embakasi1, Kilgoris and Wajir North, were the first to be held after the formation of the grand coalition government between President Mwai Kibaki's Party of National Unity (PNU) and Prime Minister Raila Odinga's Orange Democratic Movement (ODM). These have been closely observed with the aim of measuring the popularity of the two parties and all the more so as they took place only few months in the wake of political violence that ravaged the country at the beginning of 2008.

The stakes of the vote

The by-elections of 11 June 2008 took place in a setting where the Grand Coalition between PNU and ODM was experiencing divisions with distinct camps emerging between the two political parties. This was mainly on the question of a possible amnesty for the instigators of the electoral violence and on the issue of the internally displaced people (IDPs). The by-elections also took place at a time when several ministers such as William Ruto (Agriculture), Charity Ngilu (Water), James Orendo (Land) and Anyang' Nyong'o (Medical Services) claimed that the survival of the coalition government was questionable. Additionally, the by-elections were a test for the new government, based on a fragile alliance between the two main parties which were opposed in the December 2007 general elections. Thus, the mere fact that PNU and ODM chose to maintain the competition by presenting their own candidates clearly revealed the lack of mutual confidence in the Grand Coalition.

A majority of the parliamentary seats at stake had been won by ODM in December 2007. After that vote,

the party had 99 seats in Parliament and despite the loss of three seats, it still had the majority of MPs. In Ainamoi and Embakasi, the 11th June election was a consequence of the assassination of MPs, David Kimutai Too and Mellitus Mugabe Were, respectively, who were killed at the end of January 2008. Concerning Emuhaya, the seat was without an MP as its holder, Kenneth Marende, was elected Speaker of the National Assembly. Hence, these elections were especially important for ODM, whose ambition was to recapture the lost seats. In the two remaining constituencies, the stakes were slightly different as the results had not been given and consequently, there was no elected MP. In Kilgoris, the results of the December 2007 elections were cancelled by the Electoral Commission of Kenya (ECK). The constituency, mostly populated by the Maasai and Kipsigis communities, witnessed divisions between the two communities, resulting in a certain amount of violence during the vote-tallying process. A group invaded the counting hall and destroyed some voting papers and other documents, leading to the cancellation of the vote. Lastly, in Wajir North, the

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election was postponed because, in December 2007, the ODM and PNU candidates tallied an exactly equal number of votes, each one with 3,675 votes. Therefore, the by-elections were additionally of importance since they could change the balance in Parliament, PNU and its affiliate parties totalling 75 seats.

Another pertinent issue in these elections was the voter turn-out. In December 2007, one of the main characteristics of the polls despite moderate mobilisation was the high involvement of the youth. They registered in large numbers on the voting lists before the polls. However, after the accusations of rigging and the post-electoral violence, it was predictable that the voter turn-out would be low. This was confirmed on the voting day, as in most constituencies, relatively few people came out to vote. Only in Kilgoris, where the turn-out was 85.3% with 62,341 out of 73,315 registered, and in Wajir North, which recorded a 74% turn-out (out of 14,176 registered voters 10,518 came to the polls) was the story different. At the other extreme, Embakasi recorded the lowest voter turn-out, with only 26.7%, that is 67,342 people who voted out of almost 250,000 registered voters. It is thus obvious that the people called to elect their representatives had lost interest in the process. This may partly be a result of fear, due to the violence that erupted after the announcement

of the results of **Choice of candidates, impact of ethnicity and the battle between PNU and ODM** the December 2007 election. In

Ainamoi for instance, a major question was on how voters would be involved, considering that many of them had fled the constituency during the electoral violence and

most had not yet returned. Ainamoi, where the land question is crucial in a region with a high number of squatters, was actually greatly affected by the violence. In a constituency of roughly 73,000 registered voters, the winner, Benjamin Lang'at obtained only 17,532 votes against his main rival Paul Chepkwony who garnered 15,689 votes. The fact that the elections took place on a Wednesday and no special arrangements made to allow employees to vote may also explain the low turn-out. Crucially, in Emuhaya, a group of voters even refused to go to the polls unless the candidates paid them to do so, claiming "*this time, they have to give us something, before we give them the job*".² Corruption was also a sore point as the elections took place under the supervision of the same ECK that had been accused of having failed to guarantee free and fair elections in December. In the preparations of the 11th June elections, ODM accused the Commission of trying to rig the vote in favour of PNU in Kilgoris.³ The polls were once more a test of the institution's credibility. This time around, the results were accepted as free and fair by the international representatives. However, ODM complained to the ECK concerning the manner in which voting occurred in Kilgoris and Embakasi, accusing the other party of massive voter-buying and intimidation.

During these by-elections, the Orange Democratic Party-Kenya (ODM-K) of Vice-President Kalonzo Musyoka chose not to present any candidate, preferring

instead to support PNU, with which it had signed a power-sharing agreement after the December 2007 elections.⁴ Concerning the designation of the candidates for the two main parties, PNU retained the consensus method, but that led to protests about those chosen and great confusion and disarray. For instance, in Kilgoris, the PNU leaders favoured Gideon Konchella, a former Minister of Immigration, while the Maasai leaders would have preferred Samuel Tunai as their candidate, although he is less well known. In the end, G. Konchella was picked as the PNU candidate but S. Tunai chose to stay in the race under a UDM ticket, endangering the ambition of the Maasai leaders to present just one candidate as the community representative. On its part, ODM opted for primaries, which took place on the 23rd of May. These were marked by a low turn-out, confirming the waning interest for the poll. Although the method could be regarded as more 'democratic', even here, the choice of candidates also provoked some protests. In Ainamoi, it is the brother of the late David Kimutai Too, Benjamin Lang'at, who was designated against nine other ODM aspirants. He was supported by several heavyweights from the Rift Valley, such as W. Ruto. However, this choice was criticised by another contestant, John Koech, who claimed that the vote was rigged. It was also feared that B. Lang'at might not be elected as some local residents and leaders felt the party headquarters imposed on them a person who was not popular.

Another characteristic of the vote was the exacerbation of the ethnic/clan factor, especially in

Kilgoris and Wajir North, but also to a lesser extent in Embakasi. In Kilgoris, the Maasai leaders openly announced before the election that they intended to support someone from their community, claiming that they had a right to control the region that was part of their land. The Maasai leaders wanted to unite so that the parliamentary seat did not go to a Kipsigis, a community considered alien to Trans Mara district. Kilgoris constituency has about 40,000 Maasai voters and about 30,000 Kipsigis, with several immigrant populations.⁵ The ODM candidate, John Kipyegon Ng'eno, was a Kipsigis, which is a Kalenjin sub-group. This was a contributing factor in inciting the Maasai to unite. During the campaign, the ethnic factor played a considerable role. For instance, Joseph Nkaissery, an ODM Maasai MP, broke ranks with his party to support G. Konchella, considering that the ODM candidate, who was from the Kipsigis community, would weaken the Maasai in Trans Mara.⁶ G. Konchella also benefited from the support of various Maasai politicians, such as Francis ole Kaparo, the former Speaker of the National Assembly. The only Maasai leader who did not support him was William ole Ntimama, who campaigned for the ODM candidate. Wajir North displayed a totally different scenario—only two candidates contested the seat: Ali Ibrahim (Kanuu and former MP for the constituency since its creation in 1997) and Mohammed Gabow (ODM). In this region, it is the clans that played a crucial role. The two men belong to the Ajuran, the largest group in that region. However Ali Ibrahim had an advantage as he is from the

dominant Garen sub-clan, whereas M. Gabow comes from the Waqle. Nevertheless, the vote of the smallest groups, like the Garre, could also be crucial and the competition was likely to be very tense. The vote was actually very important, both for PNU and ODM, because both parties had five MPs in the North-Eastern Province. As a consequence, a victory would have given a slight advantage to the winner. This may explain why on the PNU side, the ministers Uhuru Kenyatta, Yusuf Hajji and Vice-President Kalonzo Musyoka travelled to the province to lend their support to the PNU candidate. Finally, in Embakasi, the ethnic factor was also present, as the constituency is considered as globally pro-Kibaki and populated by a large Kikuyu population. Some analysts believe that in December 2007, Mellitus Mugabe Were won (34,000 votes) because the PNU votes were split between Ferdinand Waititu (PNU, 28,000 votes) and John Ndirangu (Democratic Party, 22,000 votes). Nonetheless, during the campaign period, F. Waititu's main challenger, Esther Muthoni Passaris, constantly reminded voters that she had Kikuyu roots, but the simple fact that she was an ODM candidate, considered as a Luo party, did not work in her favour.

The winner according to election results

The 11th June by-elections were undoubtedly a competition between PNU and ODM. After the vote, ODM won the polls in Ainamoi (Benjamin Lang'at: 17,532 votes, against 15,689 for Paul Chepkwony of UDM), in Emuhaya (Wilbur Ottichilo: 10,947 votes against Sikalo Ochiel with 8,488 for Kaddu

and in Wajir North Mohamed Gabow garnered 5,759 votes against 4,759 for Ali Ibrahim of Kanuu), whereas PNU won in Embakasi (F. Waititu won with 36,536 votes against 27,339 for E. Passaris) and in Kilgoris (G. Konchella won 33,440 votes against 26,088 for John Ng'eno). Concerning the local elections, ODM won 22 seats and PNU nine, while the remainder was divided between several smaller parties. From the figures, it would appear that ODM won the elections. However, a detailed analysis reveals that the party did not win more than its rival, more so if one considers that since the death of the MPs Kipkalya Kones and Lorna Laboso in a plane accident a one day before the poll, two of the seats that ODM won in December would again be subject to an election.

Moreover, in some constituencies, ODM's victory was more or less assured. For instance, Ainamoi is an ODM stronghold and it was almost certain that the result would be decided before the vote. An agreement between the different ODM aspirants was highly possible. Following a similar logic, Emuhaya constituency situated in Western province, was considered as almost acquired because of ODM's popularity in the province. In this case, apart from the competition between the ODM candidate, Wilbur Ottichilo, and the Kaddu candidate, Julius Ochiel, it was also a test of Musalia Mudavadi's influence. The latter is considered the new leader in the predominantly Luhya region, since his election as an MP in December 2007 and his appointment as Vice-President in March. The victory of the ODM candidate has confirmed the ascendancy of the later and of

ODM, which obtained 18 out of the 24 parliamentary seats in the province in December 2007.

Thus, the apparent ODM victory should not camouflage a more complex reality, as three of the seats that were at stake had been won by the party in December 2007, whereas the two remaining ones had not been attributed to any party. The rings hollow for Raila Odinga's party, as it only regained what it had lost. Moreover, after the loss of two other MPs, the gain in absolute terms is only one MP. On the side of the PNU, the win is slightly more as its number of MPs increases from 43 to 45. Whatever the situation and whoever the winner is, the manner in which the by-elections took place with a high stakes between the two parties leaves serious doubts as to their cooperation and the viability of the Grand Coalition government in the long term.

Endnotes

- 1 A forthcoming issue of Mambo will analyse the elections in Embakasi in detail.
- 2 *Sunday Nation*, 15/06/08, p. 13: « In Emuhaya, some said 'no bribe, no vote' ».
- 3 *Daily Nation*, 05/06/08, p. 5: « Race for five seats hots up ».
- 4 However, ODM-K presented candidates in the local elections.
- 5 *Daily Nation*, 23/05/08, p. 9: « Threat of ethnic showdown looms in Kilgoris poll contest ».
- 6 *The Sunday Standard*, 25/05/08, pp. 1-2: « Parties pick candidates for June's by-elections ».

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