

Politics and International Criminal Court Debate: A Critical Discourse Analysis of Utterances by Politicians in Kenya

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Abstract Language plays a critical role in political action. The choice of words written or spoken is a very important tool in political engagements. This paper aims at analyzing utterances by politicians in Kenya on International Criminal Court (ICC) debate. This study uses Critical Discourse Analysis (CDA) to analyze these utterances so as to reveal the sources of power abuse, dominance, inequality and bias and how these sources are initiated, maintained, reproduced and transformed within specific political and historical context. This paper draws data from political speeches and utterances from press conferences, Newspapers, interviews, political rallies and other forms of media from the time the ICC debate begun in the year 2009 after parliament voted against constitutional amendment that would have allowed a credible and independent local court. From the analysis it is evident that politicians use language that does not conform to the norms of the society and thus threatening national cohesion and perpetuating animosity among different ethnic groups as they politicize the ICC debate.

Keywords: Political discourse, International Criminal Court, utterances, Critical Discourse Analysis

1. Background

Language is an important tool in politics. Politics is a struggle for power in order to put certain political, economic and social ideas into practice. Politicians have continued to persuade their audience of the validity of their claims by using rhetoric's. According to the Oxford English Dictionary, rhetoric's is the art of using language so as to persuade or influence others. Although language is an unquestionable important element of politics, it can misrepresent as well as represent realities, it can weave visions and imaginaries which can be implemented to change realities and in some cases improve human well-being, but it can also rhetorically obfuscate realities, and construe them ideologically to serve unjust power relation (Fairclough, 2006).

Language therefore has a key role in the exchange of values in social life and transforming power into right and obedience into duty (Byram, 2010). It is against this background that this paper analyses the utterances by politicians in Kenya on the ICC debate.

2. Objectives

The objective of this study is to analyze utterances by politicians in Kenya on the ICC based cases at The Hague.

International Criminal Court

The International Criminal Court investigations in Kenya began after the 2007-2008 post- election violence. This was after the disputed presidential election that was held on 27th December 2007 and the Electoral Commission of Kenya officially declared the then incumbent President Mwai Kibaki as being the winner. Supporters of the then opposition candidate Raila Odinga accused the government of electro malpractice and rejected the results. A series of protests and demonstrations followed, and fighting mainly along tribal lines led to many deaths, injuries and displacements.

It was after a failed attempt to conduct a criminal investigation of the key perpetrators of the post election violence that the matter was referred to the International Criminal Court in The Hague, Netherlands. In 2010, the Prosecutor of the ICC Luis Moreno Ocampo named six people as being the key suspects: Deputy Prime Minister Uhuru Kenyatta, the then Industrial Minister Henry Kosgey, the then Higher Education Minister William Ruto and the then Head of Public Service Francis Muthaura, the then head of operations at Kass FM, Joshua arap Sang and former Police Commissioner Mohammed Hussein Ali. All were accused of crime against humanity.

The efforts by the government of Kenya and the National Assembly to stop the ICC process failed even after trying to appeal to both the United Nations Security Council and the court itself regarding the admissibility of the case. Despite all these oppositions, the suspects cooperated and attended preliminary charges hearing in September the same year. It was on 23 January 2012 that the Pre-Trial Chamber II confirmed the charges against Deputy Prime Minister Uhuru Kenyatta, Francis Muthaura, William Ruto and Joshua arap Sang and declined to confirm the charges against Mohammed Hussein Ali and Henry Kosgey. The four have since appealed against the ruling.

3. Literature Review

Discourse refers to expressing oneself in words. According to Fairclough (1989) the term refers to "the whole process of interaction of which a text is just part." Discourses are used in everyday contexts for building power and knowledge, for regulation and normalization, for the development of new knowledge and power relations, and hegemony. Political discourse, as a sub-category of discourse in general, can be based on two: functional and thematic. Political discourse is as a result of politics and it is historically and culturally determined. It fulfills different functions due to political activities. It is thematic because its topic is primarily related to politics such as political activities, political ideas and political relations.

People use language to wield power over others. Power is a complex and abstract idea and has a significant influence on our attitudes; which word is chosen affects people's perception of the others and of themselves. According to Edward (2006) people do not react to the world on the basis of sensory input but, rather, of what they perceive that input to mean. This is because language use corresponds to views of the social status of the language users, thus providing simple labels which evoke social stereotypes that go far beyond language itself. For instance listening to a given variety, acts as a trigger or a stimulus that evokes attitudes or prejudices or stereotypes about the community to which the speaker is thought to belong.

Wareing (2004) states that effective functions of language is concerned with who is allowed to say what to whom and of which is deeply tied up with power and social status. In addition, he notes that words can also have a strong influence on our attitudes; which word is chosen affects people's perception of the others and of themselves.

Eldelman (1977) states that the knowledgeable politician becomes successful by using his or her knowledge of informal influence. According to Jones & Peccei (2004) this can be achieved through "presuppositions" and "implicature". These tools can lead to listener to make assumptions about the existence of information that is not made explicit in what is actually said but that might be deduced from what was said. Presuppositions are background assumptions embedded within a sentence or phrase. These assumptions are taken for granted to be true regardless of whether the whole sentence is true. Such technique is particularly useful in political discourse because it can make more difficult for the audience to identify or reject views communicated in this way, persuading people to take for granted something which is actually open to debate. Like presuppositions, implicatures lead the listener to infer something that was not explicitly asserted by the speaker. However, unlike presuppositions, these operate over more than one phrase or sentence and are much more independent on shared knowledge between the speaker and the hearer and on the context of the discourse.

Similarly, Jones & Peccei (2004) points out that language can be used not only to steer people's thoughts and beliefs but also to control their thoughts and beliefs. Byram (2010) concurs with him by explaining that how individual choose and use different language systems therefore varies according to who the speakers are, how they perceive themselves and what identity they want to project.

Ojwang (2002) notes that language is an instrument of control as well as communication. Linguistic forms allow significant information to be conveyed and be distorted. In this way the, the hearers can either be manipulated or informed. In this article we realize that politicians have continued to manipulate the public by using rhetoric's for the purpose of winning public support and also pitting the public against their political opponents on the ICC debate. Language use also varies according to whether the situation is public or private, formal or informal, who is being addressed and who might be able to overhear.

Meyerhoff (2006) also points out that we draw powerful inferences about people from the way they talk. Since politics is concerned about power: power to control other people's behavior and often to control their values, politicians throughout ages have achieved success in politics by skillful use of rhetoric by which they aim to persuade their audience of the validity of their views, delicate and careful use of elegant and persuasive language.

4. Theoretical Framework

This study uses Critical Discourse Analysis (CDA) because it is concerned with studying and analyzing written texts and spoken words to reveal the discursive sources of power, dominance, inequality and biased and how these sources are initiated, maintained, reproduced and transformed within specific social, economic, political, and historical contexts (Van Dijk, 1988). It tries to illuminate ways in which the dominant forces in the society construct versions of reality that favours

their interests. By unmasking such practices, Scholars aims to support the victims of such oppression and encourage them to resist and transform their lives (Foucault, 2000).

CDA aims to systematically explore often opaque relationships between discursive practices, texts, and events and wider social and cultural structures, relations and processes. It strives to explore how these non-transparent relationships are a factor in securing power and hegemony, and it draws attention to power imbalances, social injustices in hope of spurring people to corrective actions (Fairclough, 1993).

Fairclough (2000) identifies three central tenets of CDA namely: social structure (class, status, age, ethnic identity and gender); by culture (the general accepted norms of behavior in the society); and discourse (the words we use). The goal of CDA is to determine the relationship between these three central tenets. Our discourses reflect the societal norms and beliefs i.e. we say things in conformity with the way they should normally be said in our society, and there are certain things we do not say because the society has constrained us not to say them. Likewise, our identity in the social structure is shown in the way we think, act and speak. A text is a record of communication, which involves the presentation of facts, beliefs and the construction of identities of participants. It is produced by socially-situated speakers. It is therefore more than just words spoken or written on the pages of books, but how such words are used in particular social context.

This paper analyses utterances by politicians in Kenya on ICC debate and their socio political implications. Since the beginning of the ICC trials at The Hague there has been a lot of debate. This has been seen as politicizing and ethnicizing the process. This paper therefore aims at analyzing utterances by politicians in Kenya on International Criminal Court (ICC) debate using CDA.

5. Methodology

This paper draws data from political speeches, press conferences, Newspapers, interviews, political rallies and other forms of media from the time the ICC debate begun in the year 2009 after parliament voted against constitutional amendment that would have allowed a credible and independent local court. Data in the form of textual extracts are then analyzed using CDA.

6. Findings, Analysis and Discussions

When the Kenyan parliament was unable to come up with a local tribunal to try the perpetrators of post election violence the cases were referred to ICC in The Hague. The prosecutor of the ICC Luis Moreno Ocampo who has since retired, promised to use Kenya as an example to other countries and politicians. Kenyan politicians being unhappy they have been lobbying other African countries to support to defer cases, claiming that the trials could threaten reconciliation process. A process which was meant to bring ethnic communities which fought each other during post election violence to live together in harmony. Politicians have made utterances that indicate their dissatisfaction with the famous Ocampo list. However Kenyans on the other hand supports the process as indicated in the opinion poll conducted in 2009 by Synovate. In the opinion poll which surveyed 1501 adults nationwide 54% of respondent's preferred ICC trials in Hague, 23% preferred forgiveness and 23% preferred trials locally.

On 20 February 2011 Njonjo Mue the head of the Kenya office of the International Centre for Transitional Justice was reported by NTV (a television channel in Kenya) saying, "The political elite is working not so much in the interest of justice for victims of post election violence as in the interest of trying to shield those who bear the greatest responsibility that have been named by ICC" This is a clear indication that the politicians in Kenya are unhappy with the decision to try the accused at the Hague as it touches on those deemed to be powerful in the political circle. On the other side, those who were affected are seen to be less powerful therefore the law should only be applied to the meek in the society.

On February 2011 NTV Kenya reported on Mr. Uhuru's anger on The Speaker Kenneth Marende's action on judicial appointments. House Speaker Kenneth Marende had rejected President Kibaki's judicial nominations of Chief Justice, Deputy Chief Justice, Attorney General and Chief Prosecutor. The president had nominated the officers without consulting the Prime Minister Raila Odinga contrary to the National Accord which requires him to consult before appointments. In addition, the nominations done by the president was contrary to the new constitution which stipulates clearly that the officers must be interviewed and vetted before being nominated to take up the offices. Deputy Prime Minister Uhuru Kenyatta addressing a public rally directed his anger at the speaker and Prime Minister Raila Odinga by claiming that "There was an attempt to mobilize support for the presidents' nominees because of the ICC indictments." Uhuru went ahead and said "I will face The Hague Court and come back a free man." As result of being angered by the decision he said that "Hague is not anyone's mothers' house. He even referred to The Prime Minister as "Kehe" a Kikuyu term meaning uncircumcised. This was not true as the new constitutional dispensation bars the president from direct

nominations. Associating the nominees with Hague based cases was even more suspicious as this was tantamount to trying to use the judicial nominations to stop the cases. This is a clear indication of power struggle between the President versus the Prime Minister and the house speaker. The president is seen by his supporters as powerful and capable of appointing without consultation or respecting the constitution. The interviews and vetting of the officers were later done as per the constitution. Making reference to The Prime Minister as 'kehe' is tantamount to abusing and undermining him because he comes from the Luo community which does not practice circumcision and therefore not fit to be a leader. This gives a prejudice or stereotype about the Luo community and also the community in which the speaker comes from that is the Kikuyu community due to their cultural practices.

As a result of rejection of the constitution office nominations of which could have helped in the ICC cases there was an ugly exchange of words between Prime Minister Raila Odinga, Deputy Prime Minister and suspended Higher Education Minister William Ruto. Prime Minister Raila while addressing a public rally at Tononoka grounds in Mombasa said "Kuna vijana wengine, akiamka asubuhi bangi, wengine, anamka asubuhi anatafuta mali ya kuiba. Anaona plot pale, amenyakua, nyingine hapa amenyakua, sasa kila mara kortini tu. Anatoka hii anaenda koti hii" (There are some youths, when they wake up in the morning they take bhang. Others wake up in the morning to look for property to grab. They get a plot there and grab, another here they also grab. Now they are constantly in court. They leave this court and go into another). The crowd on the other hand was chanting the names of Uhuru and Ruto. (Reported on 28 February by Kenyaupdate.blog.com) In this case the speaker presupposes certain things which are known to those who are familiar to historical events in which those referred have been accused. These are tactics used by politicians so as not to be pinned down for defaming their opponents. Even without mentioning the names the crowd knew those who were being referred to that is why they were chanting their names. The use of Kiswahili by politicians shows that most politicians use it so as to reach majority of Kenyans who speak Kiswahili.

Report by Kenyaupdate.blog.com on 28th February indicates that Prime Minister Raila also came under attack by Deputy Prime Minister when he was being interviewed by a Kikuyu language radio station, where he referred to The Prime Minister Raila as 'Kemundu' which means a small person in Kikuyu language. Mr. Uhuru believes that the Prime Minister is the one pushing for the cases to be handled by ICC. However, cases at the ICC are handled independently and are not influenced by politics in a country. Mr. Uhuru wants people to believe that ICC is a plot to block him from rising to presidency. Mr. Uhuru has continuously been using Kikuyu language especially abusive language. According to Wareing (2004) the language used by speakers affects people's perception of themselves.

On 28 February 2011 Mr. Ruto also while speaking at St. Maria secondary school in Marakwet west district where he had presided over fund-raiser, without mentioning Prime Minister Raila by name stated "Tulikuwa KICC tukichunga kura wakati vita vikitokea, Sasa yeye anasema eti mimi nilipanga vita Eldoret, Kakamega, Kisumu, Bungoma, mpaka Mombasa. Si huyu mtu ni wazimu?" (We were at KICC (Kenyatta Conference Centre) protecting our votes when chaos broke and now he is saying that I was planning the fighting in Eldoret, Kakamega, Kisumu and Bungoma even Mombasa. Isn't he a mad man? Mr. Ruto was insinuating that he never participated in post election violence hence being accused falsely. By mentioning where he was, he makes the listener believe his statement without questioning.

On 8 February 2012 Prime Minister Raila Odinga while addressing a rally in Bungoma sought to distance himself from allegations that he advocated the intention of killing off political competition by saying "I am not the type of politician to resort to such tactics to boost my bid for the presidency". From his statement one tend to believe that he is not a bad person after all as depicted by his opponents who believe that he is taking advantage of the situation to clinch presidency come 2013 elections.

When the president's name was mentioned on ICC related issues as it was said that there was a meeting held in the state house of which hosted 'Mungiki' members during the skirmishes. 'Mungiki' is an outlawed group which is believed to have participated in the killing of people in Naivasha in the Rift Valley province during post election violence. The President's supporters defended him. This was evident in the then Internal Security Minister Saitoti's statement on February 2012, "Leave President Mwai Kibaki's name out of ICC talks!" In a statement he was lashing out at those dragging president Kibaki's name into ICC debates terming it 'unwarranted', 'uncalled for' as well as 'disrespectful' of the person who is the president of Kenya. Linking the President and the activities of Mungiki at State house is tantamount to accusing the president of participating in post election violence. A case that has not been confirmed or ascertained.

On 23rd January 2012, when Mr Ruto emerged from the court room at The Hague he said "We have absolutely no reason to be here. We are innocent people." Mr Henry Koskey also added "I have no guilt, none at all, and it is my belief that this case will show that I have no guilt whatsoever." Koskey was later to be acquitted for not being guilty while Mr Ruto still has a case to answer. All the accused wanted the listeners to believe that they were innocent and were falsely being accused. According to Byram (2010) this is a way of projecting innocence.

Prior to the court session at The Hague, 40 Members of Parliament who accompanied them held a small demo outside the ICC to protest against the ICC proceedings. Moyale Member of Parliament Mohamud Mohamed Ali said, "We

are opposed to the ICC trials as we feel we are able to handle our cases and this is not right. The best solution is a local solution." The speaker's assertion makes the hearer think that what he is saying is true or authentic. However, to those who understand the historical events surely the Member of Parliament is not being sincere as they had the opportunity in parliament to establish a local tribunal to deal with the post-election cases but they instead insisted that the cases be referred to the ICC. Some were heard saying "stop being vague go to Hague." This is a clear indication that they supported the ICC process and also they never trusted the Kenyan courts.

On 20 January 2012 the then Justice Minister Mutula Kilonzo referring to the beginning of cases said "It is encouraging that the judicial process had started. 'It's about time the judicial process begins. The country deserves closure. The chickens have come home to roost after politicians foiled the formation of a local tribunal to try the cases.'" What Mr. Mutula meant here was that what he had warned them has now come to happen as he had wanted the cases to be handled locally through the formation of a local tribunal but the politicians refused. Now the cases were referred to The Hague. By then Mr. Mutula believed that the Kenyan courts were better than The Hague but Members of Parliament never listened to him when he was fronting for the formation of a local tribunal.

7. Conclusions

This study examined utterances by politicians in Kenya on International Criminal Court (ICC) debate. This study notes that ICC is neither a tribal nor a political process but a judicial one. In addition, working within the discipline of Critical Discourse Analysis, our findings show clearly that beyond the politicians' utterances there are generally hidden meanings. The analysis of utterances by politicians in Kenya shows that politicians have politicized the ICC cases in their debates. This has an adverse effect on the common citizen as they trade counter-accusations. Their utterances can cause animosity among ethnic groups. It is also evident that two of the accused, that is Mr. Sang and Mr. Muthaura, have not participated in the debate as they are not politicians.

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