



# Policy Brief

INSIDE

Executive summary	1	4. Policy Gaps and Recommendations	13
1. Introduction	2	5. Summary Recommendations	16
2. Context	2		
3. Policy Interventions and Analysis	9		

## Ethnicity and Ethnic Politics in Kenya: Policy Gaps Analysis

### Executive Summary

Kenya like most African countries is multi-ethnic and is perceived to be one of the most ethnically fragmented societies in Africa. Notably, there is no statistical evidence to confirm the exact number of ethnic groups in Kenya, as for decades the total number of ethnic groups in Kenya stood at 42 based on the census that was conducted in 1969. The 2009 Census found that there were more than 42 ethnic groups in the country. In particular, the 2009 population census listed no less than 111 ethnic groups in Kenya up from 42 in 1969, which is partly attributed to the success of the struggles by some of the historically marginalized communities, to be officially recognized by the state.

Ethnicity has taken place in different sectors in Kenya including, senior government appointments, county government employment, employment in Parastatals, students' admission in secondary schools, employment in Universities as well as geographical locations of universities in Kenya. In terms of appointments, the cabinet composition during Jomo Kenyatta, Daniel Moi, Mwai Kibaki and Uhuru Kenyatta regimes demonstrate ethnicity based on the dominant tribes in the cabinet. In this regard, employment in the County government have contravened the law by recruiting more than 70% from dominant groups, employment in Parastatals have also been based on ethnicity. Student admission in secondary schools does not portray ethnic balance, employment in universities is dominated by few ethnic groups thus denying other tribe employment opportunities, and lastly, some counties do not have a single university.

In order to address ethnicity, it is vital to establish laws that will give the judiciary the teeth to deal with hate mongers. in the same vein, it is imperative for the government to come up with measures to create a sense of common belonging through the development of ideologies with which people can collectively identify. Additionally, it is important for the government to come up with measures to implement the Truth Justice and Reconciliation Commission (TJRC) as well as the Ndung'u Land Report findings. The

implementation of these findings will help sought out the injustices that have prevailed over the years, and provide for extensive solutions towards the animosity that has existed since independence. Lastly, there is need for the introduction of the quota system with regards to senior government appointments in order to avoid the employment of people from one region thus enhancing diversity and inclusivity consequently breaking the cycle of negative ethnicity in the public service sector.

## 1.0 Introduction

Ethnicity and politics are intertwined in many African countries and as such ethnic identity has for long been perceived as a major driver of politics in the continent. It is often used in Africa by the political elites for their self-interest, a practice that is usually referred to as politicization of ethnic identity or simply as ethnic politics.

In the literature, Mozaffar as cited in KHRC (2018) offers<sup>1</sup> a relatively good articulation of what politicization of ethnic identity entails. He observes that the politicization of ethnic identity is a strategically rational behavior involving the contingent (as opposed to the reflexive) activation of objective ethnic markers by political elites to form groups, define group interests, and organize collective action to advance their political goals<sup>2</sup>. Whichever way one looks ethnicity is a key organizing principle of politics evident from the patterns of voting patterns in Kenya since independence.

Belonging to an ethnic group is a social identity marker which can create affinity and comfort among members. Nevertheless, majority of Kenyans place more weight of importance to national identity to ethnicity according to the Afro barometer country wide survey conducted in 2012. It is worth noting that the preference either way may be attributed to a number of factors that include but not limited to: the extent of pluralism or competition in society, the history of the nation-state or of conflict as well as the current political environment<sup>3</sup>.

This brief presents, with a few examples, the picture of ethnicity in regard to employment in public service, employment in Parastatals, political representation and access to resources. It further analyses gaps in policy interventions towards promoting diversity and inclusion and draws recommendations for action.

## 2.0 Context

Kenya like most African countries is multi-ethnic and is perceived to be one of the most ethnically fragmented societies in Africa. The 2009 Census found that there were more than 42 ethnic groups in the country<sup>4</sup>, in particular no less than 111 ethnic groups up from 42 in 1969. This is partly attributed to the success of the struggles by historically marginalized communities including the Endorois, Ogiek, and Sengwer, to be officially recognized by the state.

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<sup>1</sup><https://www.khrc.or.ke/publications/183-ethnicity-and-politicization-in-kenya/file.html>

<sup>2</sup>Ibid

<sup>3</sup>[http://afrobarometer.org/sites/default/files/media-briefing/kenya/ken\\_r5\\_presentation3\\_identity.pdf](http://afrobarometer.org/sites/default/files/media-briefing/kenya/ken_r5_presentation3_identity.pdf)

<sup>4</sup><https://www.khrc.or.ke/publications/183-ethnicity-and-politicization-in-kenya/file.html>

Notably, the increased number of tribes demonstrates enhanced awareness by certain sub-groups that they were treated as distinct from the larger groups into which they were subsumed during the colonial period. For example, the 2009 population census included statistics for the Marachi, Maragoli, Marama and other groups that were previously counted as part of the Luhya ethnic group. It also included Mijikenda and Kalenjin sub-groups, such as the Boni, Choli, and Dahalo, and the Kipsigis, Marakwet, and Nandi, respectively<sup>5</sup>.

On the one hand, ethnicity has inherent richness in terms of knowledge, solutions and culture to mention a few positives. On the other hand, it presents challenges that call for better management by the government to ensure diversity and inclusion in the different spheres of life, economic, social and political. Nonetheless, ethnic politics continues to be the part of Kenya's economic, social and political processes.

## 2.1 Public Appointments

There are various legislative provisions that speak to the principle of diversity and inclusivity and what is often referred to as the face of Kenya to be reflected in all sphere of life. In particular, section 7 of the National Cohesion and Integration Act (NCIA), 2008 states that all public appoints shall seek to represent diversity of the people of Kenya and that no more than a third of its staff from the staff shall be from the same ethnic group.

Even before the enactment of legislations such as the NCIA, 2008 and the Constitution of Kenya, 2010 the emphasis in public appointments has been ethnic balancing, proportionally to population shares across ethnic groups. It is evident from annexe 1 and 2a that cabinet appointments by the first President in Kenya, Jomo Kenyatta for the period 1966-1978 was dominated by the Kikuyu and Luo ethnic groups. Kikuyus were overrepresented, slightly over 28% against a proportionate population share of 20.5% whereas for the Luos it was over slightly 14% against 13%. One of the largest tribes that was markedly underrepresented was Kalenjins, on average about 6% against 11%. Of note is that the President was Kikuyu a reflection of the dominant ethnic group in the cabinet.

During Presidents Daniel Moi's regime from 1979 to 2001 as shown in annexe 2b, was the reverse of President Kenyatta's regime. Although initially overrepresented in continuation from the previous regime, from 1979 to 1982, the Kikuyus were grossly underrepresented in the latter period of President Moi's terms from 1994 to 2001. Conversely, the dominance and overrepresentation of the Kalenjin, the tribe of President Moi and Kamba's were notable. Most of this pattern and movement were driven by the politicization of ethnics. Outside the President's tribe, the other ethnic groups that benefit is attributed to various factors including rewards based on how they voted, loyalty and so on.

For the more recent regimes, Former President, Mwai Kibaki from 2003 to 2012 and the ongoing President Uhuru Kenyatta from 2013 to date, the pattern of appointments has remained more or less similar with slight variations for the latter. For President Uhuru, a Kikuyu the over-representation, at least in 2013 was not by Kikuyu but Kalenjins and Somalis, on the account of his Deputy President's negotiation and

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<sup>5</sup>Ibid

“power sharing pact” as reported in the media. This is surprising given the new constitutional order and legislative reforms as well as the requirement of vetting and approval by the National Assembly of public nominees for the cabinet positions.

## 2.2 Ethnicity and Employment

Data shows that there is significant variation in regard to adhering to the principle of equality and inclusion in public service recruitment, at the two levels of government or any other government agency. This is often tracked and monitored by various agencies, the Public Service Commission (PSC) for National government employment, the County Service Public Board for recruitment at the County. Other agencies including the National Cohesion and Integration Commission (NCIC) and the National Gender and Equality Commission (NGEC) publicize reports providing an audit of the extent to which the principles of equality and inclusion are observed in line with their mandates.

### 2.2.1 Ethnic Composition of Employees in Parastatals

According to NCIC 2016, about 185 state corporations were audited on ethnic composition in employment; notably, some of these corporations operate at the national level with one office in Nairobi. While others had their operations at county level, some operated nationally with offices in several counties with head office in Nairobi<sup>6</sup>.

- **Over-Representation of Ethnic Group in Employment in Parastatals**

Like has been mentioned earlier, over represented communities were those whose proportion of employees in parastatals was higher than their proportion in the national population. Overall, and according to the NCIC Parastatals audit in 2016 the dominant ethnic groups were overrepresented. Notably, these dominant groups that included the Luo, Kalenjin, Kikuyu and Luhya comprised more than 11% of the national population, and were overrepresented in Parastatals employment by more than one percent. This implies that people born in these communities have the advantage of getting jobs over the smaller communities particularly where tribalism takes precedence over merit and representation of diversity. Other over-represented ethnic communities in parastatal employment include the Taita, the Mijikenda, the Embu, the Swahili, the Kisii and the Borana.

- **Under-Represented Ethnic Communities**

It is worth noting that some communities have been underrepresented in employment in Parastatals in Kenya. The share of the following communities in employment of parastatals is short of their national population proportion. They include the Kenyan Somali, Turkana, Kamba, Maasai, Meru, Kuria, Tharaka, Teso, Mbeere, Suba, Samburu, Orma, Gosha, Kenyan Asian, Burji and the Dasenach.

### 2.2.2 County Public Service Board

There are checks and balances in public service recruitment with a view of ensuring ethnic balance and inclusion as provided for in the County Government Act, 2012. In this regard, there are three county organs that are responsible for county employment; that is, the Office of the Governor, The County Public Service Board and the County Assembly Service Board. On the same note, the Public Service

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<sup>6</sup>NCIC (2016) Audit of Parastatals in Kenya; Nairobi

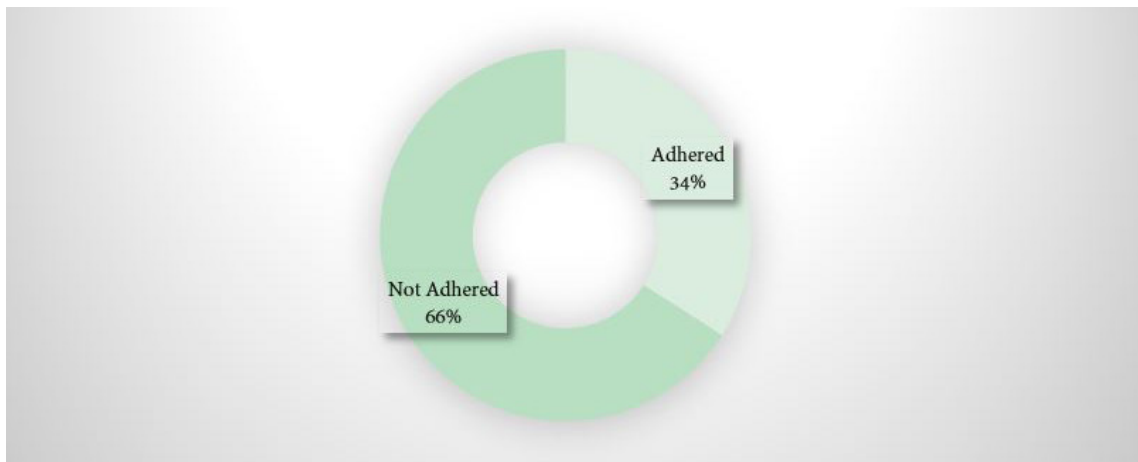
Commission (PSC) is not left behind. As per Article 234(2i) of the Constitution they should among other functions, hear and determine appeals in respect of county governments. In this regard, the PSC is therefore a shared institution between the national and county governments<sup>7</sup>.

Section 58 of the County Government Act, 2012 sets the County Public Service Board (CPSB) as an independent institution in charge of county employment. Furthermore, Section 59 (1) sets out the functions of the Board which include; the establishment and abolishment of offices in the county public service and the appointment of persons to hold or act in offices of the county public service including in the Boards of cities and urban areas within the county and to confirm appointments.

Additionally, Section 65(1) of the Act directs that in selecting candidates for appointment, the County Public Service Board shall consider the standards, values and principles set out in Articles 10, 27 (4), 56 (c) and 232 (1) of the Constitution. Of more importance is that the CPSB is supposed to conduct audits on the status of ethnic diversity in the county public service. In so doing, the Board should come up with monitoring and data management systems to have the details of all employees within the county whether recruited by it or not in order to understand whether the county public service has adhered or contravened the law that requires the Board to ensure that at least thirty (30) percent of the vacant posts at entry level are filled by candidates who are not from the dominant ethnic community.

NCIC (2016) revealed that only fifteen counties (31.9%) adhered to section 65 of the CGA by recruiting more than 30% of the vacancies from minority ethnic groups (non-dominant ethnic group), since the counties were established in 2013 to date (see chart 1).

**Chart 1: County Adherence to Ethnic Diversity in County Employment**



Source: NCIC (2016); Ethnic and Diversity Audit of the County Public Service

On the other hand, figure 1 specifically shows a list of the Counties that contravened section 65 of the CGA, Act 2012 on ethnic diversity and inclusion in employment in new appointments (2013-present). Alongside each county, they are ordered from the one with the highest proportion of dominant ethnic group to the least.

<sup>7</sup>NCIC (2016) Ethnic and Diversity Audit of the County Public Service; Page 11

**Table 1: Counties that contravened Section 65 of the CGA Act, 2012**

No.	County	Ethnic Group with the Highest Number	Percentage
1	Nyamira	Kisii	97.9
2	Bomet	Kalenjin	97.9
3	Kirinyaga	Kikuyu	97.8
4	Elgeyo Marakwet	Kalenjin	97.6
5	Kisii	Kisii	97.5
6	Tharaka Nithi	Tharaka	95.6
7	Kericho	Kalenjin	95.3
8	Murang'a	Kikuyu	95.2
9	Uasin Gishu	Kalenjin	94.4
10	Turkana	Turkana	93.4
11	Nyandarua	Kikuyu	93
12	Machakos	Kamba	92.9
13	Nandi	Kalenjin	92.8
14	Siaya	Luo	92.7
15	Meru	Meru	92.6
16	Samburu	Samburu	92.4
17	Makueni	Kamba	91.6
18	Homa Bay	Luo	91.1
19	Kitui	Kamba	91.1
20	West Pokot	Pokot	90.8
21	Vihiga	Lugha	89.6
22	Nyeri	Kikuyu	88
23	Mandera	Somali	86.1
24	Kisumu	Luo	82.3
25	Wajir	Somali	81.6
26	Kakamega	Luhya	81.2
27	Kwale	Mijikenda	80
28	Bungoma	Luhya	78.8
29	Baringo	Kalenjin	78.4
30	Kilifi	Mijikenda	77
31	Kajiado	Maasai	75
32	Kiambu	Kikuyu	74.4

Source: NCIC (2016); Ethnic and Diversity Audit of the County Public Service; Page 17

### 2.2.3 Ethnicity in Kenya Universities

Ethnicity in Kenyan universities can be traced to the historical background and how the colonial government created divisions among the indigenous groups in Kenya. Other pertinent issues entail students' admission, employment of staff, the composition of the university councils, the appointment of Vice-Chancellors and Chairs of university councils, and location of universities and constituent colleges in various counties in the country<sup>8</sup>.

Some of the areas that were favoured due to their economic benefits and in turn exposed to missionary activities included Rift Valley, Central Kenya and some parts of Western Region of Kenya. The first institutions of learning including schools and universities were first established in these areas.

**Table 2: Ethnic Composition Public Universities and Constituent Colleges in Kenya by 2016**

No.	Ethnicity	Vice Chancellors and Principals of Public Universities and Constituent Colleges in Kenya		Public Universities Employees	
		Frequency	Employment%	Population%	Employment%
1	Kikuyu	4	12.9	17.7	23.6
2	Luo	6	19.4	10.8	15.6
3	Kalenjin	2	6.5	13.3	15.4
4	Luhya	4	12.9	14.2	15.3
5	Kisii	1	6.5	5.9	8.3
6	Kamba	4	12.9	10.4	8.7
7	Meru	4	12.9	4.4	4.5
8	Mijikenda	2	19.7	5.2	2.3
9	Somali	1	3.2	*	*
10	Teso	1	3.2	*	*
11	Embu	*	*	0.9	1.4
12	Taita	*	*	0.7	1.2
	Total	31	100	83.5	96.3

Source: Taaliu S.T. (2017); Ethnicity in Kenyan Universities; School of Education and Social Sciences, University of Embu

\*Data only for top ten

There are evident variances with regards to regional employment in the public universities and constituent colleges. According to the NCIC Act of Kenya, no public establishment should recruit more than one-third of its staff members from one tribe. Despite the fact that the Kikuyu ethnic group constitutes the largest ethnic group in Kenya in terms of the proportion of the total population (17.7%), it takes up 23.6% of all the jobs in the public universities and constituent colleges in Kenya<sup>9</sup>.

<sup>8</sup>Simon Thurania Taaliu (2017); Ethnicity in Kenyan Universities; School of Education and Social Sciences, University of Embu

<sup>9</sup>Ibid

On the other hand, the Kikuyu, Luo, Luhya, Kalenjin, Kisii and Kamba collectively make up 72.3% of the Kenyan population but constitute 86.9% of the total workforce in public universities and constituent colleges. This goes against the legal provision that calls for ethnic balance in public employment, to this end 36 other ethnic groups who reside within the country are excluded from employment in public universities. Notably, in 2016 the Kenyan universities workforce comprised of 10 ethnic groups in Kenya which took up 96.3% of the total workforce in the public universities and constituent colleges (see table 2).

Furthermore, as shown in table 2, most Vice Chancellors and Principals were drawn from the dominant ethnic group within the location of the university/college thus contravening the law on diversity and inclusivity in employment.

## **2.2.4 Geographical Location of Public Universities**

According to the Kenyan Constitution 2010, the national government bears the responsibility of providing education including Higher Education to the citizens. Chapter 11 of the constitutions stipulates the powers and functions of the two levels of Government and is clearly spelt out in the Fourth Schedule of the constitution. The Universities Act (2012) places the responsibility of management of higher education to the Commission for University Education (CUE), the Commission mandate is meant to ensure the establishment of public universities and constituent colleges in each of the 47 Counties in Kenya with special consideration to Counties that do not have universities. It is evident that apart from Nairobi County, which is the capital city of the country, all the counties are ethnically based, meaning that if one examines the composition of each and every county in Kenya, the residents therein share a common history, race, religion, language or dialect, physical appearance, political affiliation and culture.

Notably, the location of universities and constituent colleges in Kenya is mostly politically motivated, meaning that the government of the day establishes universities or a constituent college in particular region for political gain. In most cases, the counties with the ethnic group/tribe which supports the government end up being rewarded with a public university or a constituent college in their county. Similarly, the opposition counties suffer the consequences of the government in power not establishing single university in their region. In some instances, the ethnic group from the opposition are rewarded or promised a public university and in return are expected to reciprocate in supporting the current regime in the general elections.

To this end, out of the 47 counties, 20 had a public university or a constituent college and 17 did not have a single university by the year 2016. Notably, Nairobi County has 5 major public universities namely; University of Nairobi, Kenyatta University, Multimedia University of Kenya, the Cooperative University of Kenya, and the Technical University of Kenya. Not to mention that Jomo Kenyatta University of Science and Technology though in Kiambu County is less than 10 kilometers away from Kenyatta University in Nairobi County.

Some of the counties including; Wajir, Mandera, Marsabit, Isiolo, Lamu, and Tana River Counties do not have a public university or a constituent college. These counties are located in the arid areas which were originally marginalized by the colonial government because they were viewed to have minimal economic benefit. This is evident from table in annexe 3 which shows marginalization with regards to the establishing of universities per county in Kenya.



## 3.0 Policy Interventions and Analysis

The government has put in place institutions and policies that aim at enhancing ethnic cohesion and integration as well as diversity management and inclusivity. In particular, the Constitution of Kenya, 2010 provides a key basis for promoting national unity, through Article 27 (4) stating that, ‘the State shall not discriminate directly or indirectly against any person on any ground, including race, sex, pregnancy, marital status, health status, ethnic or social origin, colour, age, disability, religion, conscience, belief, culture, dress, language or birth. The subsequent clause states that ‘a person shall not discriminate directly or indirectly against another person on any of the grounds specified or contemplated in clause (4) and thus need to ensure ethnic balance in access to education, in employment and so on. It further provides that women and men have the right to equal treatment including the right to equal opportunities in political, economic, cultural and social spheres.

Other provisions in the law including Article 41 and 55 of the Constitution speak to issues of fair labour relations and inclusion of the youth in access to, representation and participation in political, social, economic and other spheres of life.

Overall, the law addresses the question of ethnicity in five main areas of politics and governance, electoral system, political parties, public appointments, the devolved system of government and inter-ethnic relations.

### 3.1 Inter-Ethnic Relations

The NCIC Act, 2008 was informed by the need to address ethnic discrimination at all times and places. In addition, this provision is complemented by Article 27(4) and 27(5) of the Constitution both of which prohibit discrimination on the basis of ethnic identity.

To this end, there is an elaborate institutional framework established to implement the policies and legislation on ensuring diversity and inclusivity in public service employment. At the national government level, the PSC prepares annual “Evaluation Report on Public Service Compliance with the values and principles in Articles 10 and 232 of the Constitution”. In this regard the PSC developed in 2017 a formula on proportionate representation to guide recruitment in public service in order to promote ethnic diversity.

Conversely, agencies such as the National Cohesion and Integration Commission (NCIC) as part of its mandate prepare on a regular basis reports that audit ethnic and diversity in recruitment in public service by Counties. Likewise, the National Gender and Equality Commission (NGEC) through their report on the status of equality and inclusion in Kenya reviews the extent to which these principles have been implemented in public sector employment at the two levels of government.

From the context section it is clear that there are gaps that undermine adherence to diversity and inclusivity in public service. Besides Naituli G. and Nasimiyu, S.K. (2019) also point out that there are

huge variations in terms of both access to and quality of educational and employment benefits among different ethnic groups in Kenya<sup>10</sup>. Below are impediments of ethnic inclusivity in employment in parastatals.

### **(a) Political Interference**

Despite the law being clear on the roles of appointing bodies in state corporations, several challenges have been observed including political interferences during recruitments. In particular, some County officials manipulated the recruitment process to ensure that their preferred people mostly from their ethnic groups secured employment in regional Parastatals. This action only serves to cement negative ethnicity in Parastatals.

### **(b) Regional Parastatals**

Some regional Parastatals are meant to employ the locals. Their location in the region and their labour based employment have been mentioned as some of the factors leading to their gross contravention against the NCI Act. Besides, this labor-based employment has very low remuneration, implying that people may not be willing to relocate, leave their families and to earn meagre salaries that may not be able to sustain them.

Moreover, perceptions about regional parastatals including that they are hostile to outsiders especially during electioneering period, is another factor that may inhibit their attraction to work in these parastatals. Similarly, some areas are associated with some health threats as well as cultural differences. For example, malaria endemic zones may make not be attractive to some people from other regions to relocate and work these areas.

The section below specifically notes gaps and issues contributing to ethnicity in employment at the County level. Undoubtedly there are some similarities to those related to employment in parastatals.

### **a) Stereotypes about Some Regions**

NCIC (2016) revealed that some counties experienced socio-cultural obstacles to employ skilled and professional personnel from outside their boundaries based on the stereotypes about them. For instance, one of the CPSBs pointed out that the interest of most professionals to apply for jobs in some regions may be impeded by the perceptions that some regions have high prevalence of Malaria, HIV/AIDS, and intolerable weather. Such assumptions and stereotypes can be detrimental to the country in the long run, in the sense that such perceptions reduce the opportunity to enhance ethnic cohesion as enshrined in the NCIC Act, 2008.

### **b) Insecurity and Reduced Safety**

Some Kenyans are not comfortable working in some regions in Kenya due to fear of insecurity cases and personal safety. A study conducted by NCIC in 2016 observed that People are more satisfied and comfortable working near the home of their co-ethnics. Notably, the fear among the citizens to work in other counties can be attributed to ethnic clashes, terrorism and incidents of insecurity in some parts of Kenya in the past. The fears were reinforced by the 2007/08 post-election violence where communities ganged against each other, allowing many employees from the non-dominant communities to move may make the county fall short of its legal obligations on representation of ethnic diversity in employment.

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<sup>10</sup>Naituli G. and Nasimiyu, S.K. (2019); Politics of Ethnicity and Dominance in Kenyan Universities

### **c) Lack of Independence of County Public Service Boards and Political Interference**

Most CPSBs are not independent due to regular interference and manipulation by both the Executive and the County Assemblies. These interferences reduce their levels of objectivity on matters of recruitment, thus contravening the CGA, 2012 that clearly sets the roles of the various organs that are meant to observe ethnic diversity and inclusion in county public service. Most county employment structures including the CPSBs and the County Assembly Service Boards (CASBs) often operate under the influence of the Office of Governor or the County Assemblies.

### **d) Poor Institutional Checks and Balances**

Transparency and accountability are key requirements in ensuring ethnic diversity and inclusion in County employment. The objective of creating three employment organs in the counties, that is, the County Assemblies, the County Governor and the CPSB was meant to enhance transparency and accountability and integrity within the county's jurisdiction. Despite the need for enhanced transparency and accountability counties often fall short of cross reference and checking systems across these organs thereby creating a lacuna in the recruitment process. Additionally, the law has not provided for a solution in cases where the County Assemblies reject the recruitment list from the CPSB or whenever the Board is in disagreement with the Governor with regards to the nominated people. All these challenges may entrench ethnicity in county employment therefore a need for clear checks and balances in county public service.

### **e) Balancing Diversity and Merit**

Most CPSBs have been unable to uphold diversity and merit together as stipulated in section 65 of CGA, 2012, that requires the Boards to consider open and transparent recruitment of public servants. Embracing open and transparent recruitment requires the following three overriding factors; - merit, fair competition and representation of the diversity of the county. In this regard, the CPSBs should find a balance between the three principles as espoused by the County Government Act, 2012 in order to uphold both diversity and merit.

### **f) Misinterpretation of Section 65 of County Government Act, 2012**

Misinterpretation of section 65 on dominant ethnicities is another challenge affecting ethnic diversity and inclusion in county employment. Counties interpretation of clause on dominant ethnicities is mixed, to some it means numeric dominance while to others it may imply financial or political dominance. This notwithstanding, section 65 is indicative of the threshold that no more than 70% employees should come from one dominant tribe, which means that no single community should get more than 70% of the posts at entry level regardless of whether it is dominant or not.

## **3.2 Electoral System**

Since independence, Kenya has had the first-past-the-post (FPTP) electoral system, a variation of the plurality system<sup>11</sup>. The electoral system also provides for a two-threshold-system in the presidential election that a candidate must receive more than half of all the votes cast in the election as well as at least 25% of the votes cast in a majority of the counties to be declared the president. If no candidate meets

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<sup>11</sup><https://www.khrc.or.ke/publications/183-ethnicity-and-politicization-in-kenya/file.html>; Page 40

the threshold, then the two candidates with the greatest number of votes are required to go for a second round of a presidential election at which point, FPTP applies and the candidate with the plurality of the vote wins.

These thresholds are intended to ensure that a president appeals to a wider section of the Kenyan society, and specifically, beyond his or her ethnic group. This however, has not yielded the desired outcome as politicians' form ethno-regional coalitions; previous attempts to change the electoral system have been futile. The Independent Review Commission on the 2007 General Elections (Kriegler Commission) proposed the idea of introducing a mixed Member Proportional System (MMP) system in Kenya but has not been adopted to date. Mixed systems such as MMP, combine the essential features of both plurality systems and proportional representation (PR) systems. Allocation of seats in the legislature is determined using a plurality system as well as a proportional representation system. This is mainly because plurality and mixed systems push politics to revolve around parties rather than ethnic leaders. More importantly, these systems promote inclusivity in the sense that both majorities and minorities have a place and stake in national governance.

In the same vein, BBI report recommends an electoral system that is a more consociation model, other than the winner take it all system, which works best for ethnically divided societies like Kenya. Another BBI proposal regards the need to make the current FPTP system fairer by extending the two-round system to parliamentary elections and/or reserve a certain number of seats for ethnic minorities.

### 3.3 Political Parties

The Political Parties Act was first introduced in 2007 and later revised in 2011, when the Office of the Registrar of Political Parties (ORPP) was introduced as a regulator of the political parties. The Political Parties Act, 2011 requires that, for a political party to qualify for full registration, the composition of its governing Board and recruited members ought to reflect regional and ethnic diversity. Political parties that meet the required threshold also access public funding which among others should be used to promote representation of the youth and marginalized groups.

Ethnic incitement is also prohibited by the Political Parties Act, 2011, a significant reason for our ethicized politics is the lack of a strong referee in the political field. If political parties are to live to the dictates of the law, the ORPP must be more vigorous and independent in its regulatory and enforcement role. It is no surprise that the BBI report in cognizant of the weakness of the ORPP has made various proposals to this effect. Some of these proposals include: -

- Recruit and appoint a substantive Registrar of Political Parties and ensure that this position is maintained in future.
- While recruiting for the Registrar, ensure the requirements should be comparable to that of a Chairperson for an independent Commission as provided in Chapter 15 of the Constitution.
- Strengthen the Office of the Registrar in monitoring the implementation of the Political Parties' Code of Conduct, and sanctioning where necessary.
- Remove the legal enforcement power against hate speech from the NCIC to the Registrar of Political Parties and DCI when it comes to criminal infringement<sup>12</sup>.

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<sup>12</sup>Republic of Kenya (2019) Building Bridges to A United Kenya: From A Nation of Blood Ties to A Nation of Ideals

### 3.4 Devolution and Public Resources

Devolution was intended to be institutional mechanism for the political inclusion of ethnic communities. In order to implement the devolved system of government, the 47 County governments are entitled to not less than 15% of the audited national revenue in any financial year. In addition to this share of the national revenue, some counties benefit from the Equalization Fund which is established under Article 204 of the Constitution to improve the conditions of some of the marginalized counties to the level enjoyed by the rest of the country. Reported cases especially in the media, however show emergence of intra-county ethnic minorities.

At present, the boundaries of the majority of the counties coincide with the territorial boundaries of regions considered to be the ancestral homes of certain ethnic communities. These communities form the majority in those counties, and as such, smaller ethnic communities have found themselves excluded in county politics and economic governance. Exclusion of the minority groups is present despite the fact that the County Assemblies oversight mandate requires them not to approve nominations for appointment to the County Executive Committee if they do not take into account representation of the minorities, marginalized groups and communities and cultural diversity within the county.

### 4.0 Policy Gaps and Recommendations

Policy/Initiatives	Identified Gaps	Recommendations
Electoral System	Winner take it all Electoral System	<ul style="list-style-type: none"> <li>MCA's in partnership with the National Assembly should advocate for Mixed Systems Election Model that promotes party-based politics and inclusivity as opposed to ethnic politics.</li> </ul>
Regulation of Political Parties	Weak Office of the Registrar of Political Parties (ORPP)	<ul style="list-style-type: none"> <li>The National Assembly should allocate more resources to strengthen the capacity of the ORPP to monitor, regulate and enforce compliance with the Political Parties Act, 2011 That calls for inclusion and diversity in its membership</li> </ul>
Inter-Ethnic Relations	General exclusion of the minority at county levels	<ul style="list-style-type: none"> <li>MCA's should exercise oversight on the enforcement of legislation, guidelines and mechanisms for inclusive public participation events thus including the minorities in these events.</li> <li>MCA's should sensitize the community to come up with monitoring mechanisms of who attends county public participation events and from which community thus creating a data base of ethnic representation in those events.</li> <li>The MCA's should push the Executive to audit all county employees since devolution to understand the level of ethnic diversity and inclusion in county employment.</li> </ul>

Policy/Initiatives	Identified Gaps	Recommendations
Ethnicity and Employment General Issues	<ul style="list-style-type: none"> <li>• Stereotypes about some Counties</li> <li>• Perceptions of insecurity and reduced personal safety</li> </ul>	<ul style="list-style-type: none"> <li>• MCAs should oversee county government implementation and enforcement of the law that requires that at least 30% of the employees in the county are from the minority ethnic group.</li> </ul>
	<ul style="list-style-type: none"> <li>• Inadequacy Checks and Balances</li> </ul>	<ul style="list-style-type: none"> <li>• MCAs should advocate for clear monitoring mechanisms to enhance transparency and accountability in County recruitment.</li> </ul>
	<ul style="list-style-type: none"> <li>• Balancing Diversity and Merit during county recruitments</li> </ul>	<ul style="list-style-type: none"> <li>• The County Government should develop policy and principles to guide implementation of the balance between diversity and merit to avoid misinterpretation</li> </ul>
	<ul style="list-style-type: none"> <li>• Misinterpretation of Section 65 of CGA on what dominant ethnicities means</li> </ul>	<ul style="list-style-type: none"> <li>• MCAs should demand enforcement and accountability of the government to ensure full enforcement of the law that requires that no single community gets more than 70% of the posts at entry-level regardless of whether it is dominant or not.</li> <li>• The MCAs should push for annual ethnic and diversity audits of the CPSBs and submit the findings to NCIC with the aim of monitoring the progress of counties in complying with the law.</li> <li>• The national government through the Kenya School of Government (KSG) should establish regular training sessions for the CPSBs, on the various statutes, policies and related changes concerning ethnic diversity and inclusivity when and if they occur.</li> <li>• MCAs should push for the development of County Minority Register (CMR) detailing minority and marginalized communities to track the progressive attainment of inclusion in county public service.</li> </ul>
	<ul style="list-style-type: none"> <li>• Historical injustices as drivers of negative ethnicity</li> </ul>	<ul style="list-style-type: none"> <li>• MCAs in collaboration with the National Assembly should push for the implementation of Truth, Justice and Reconciliation Commission (TJRC) as well as Ndungu Land Reports findings consequently addressing historical hatred among some tribes that have been marginalized for long.</li> </ul>

Policy/Initiatives	Identified Gaps	Recommendations
Education	Ethnicity in Education	<ul style="list-style-type: none"> <li>• The National Government should incorporate issues of diversity and inclusivity principles and values in the education curriculum to inculcate the appreciation of diversity and cultural dynamism in Kenya.</li> <li>• The national and county government should collaborate in public sensitization programmes on the role of individual citizens in promoting cohesion.</li> <li>• NCIC should partner with other institutions including the media and civil society organizations in regular public sensitization campaigns against negative ethnicity.</li> </ul>
Parastatals	Ethnicity in Parastatals	<ul style="list-style-type: none"> <li>• Parastatals should develop inclusive employment policies and practices to ensure representation of the face of Kenya in its recruitment, promotion, and training.</li> <li>• The National Government through the Kenya School of Government should incorporate modules on principles of diversity and inclusion in public service employment.</li> <li>• NCIC and like-minded institutions should undertake explanatory research to established barriers for the inclusion of underrepresented communities in Parastatals employment.</li> </ul>
General Ethnicity	General Recommendations	<ul style="list-style-type: none"> <li>• The National government should hold sensitization campaigns in a multi sectoral approach to educate and instill a sense of common belonging and national cohesion among Kenyans.</li> <li>• MCAs should advocate for the quota system for senior government appointments as a way of enhancing diversity and inclusivity in the public service sector consequently addressing historical hatred among some marginalized tribes in Kenya.</li> </ul>

Sources: Authors analysis as well NCIC and KHRC Studies

## 5.0 Summary Recommendations

Independence of agencies mandated to oversee adherence to principles of diversity and inclusivity in public service recruitment, including the PSC and NCIC are often compromised by political interference. It is therefore important that they are strengthened through improved resourcing and legislatively by enhancing their prosecutorial powers. As an aside, at the County level, there are calls from the BBI report for replication of PSC for improved staff welfare and overall inclusivity.

Incorporating training of all public institutions on the legal requirement for inclusion and awareness of the cost of exclusion in relation to service delivery is another critical input to fostering ethnic inclusivity. Related courses, for instance on inclusive employment policies and practices could be inbuilt in various courses offered at the Kenya School of Government. Whether for parastatals or whatever level of public institutions, at either the national and county governments explanatory research to establish barriers to inclusion of underrepresented communities is imperative.

Other soft initiatives such as embedding cultural diversity in curriculum of our education system may instill better awareness and habit towards promoting national cohesion and sense of belonging. When complemented with public sensitization programs through multi sectoral approach with the media and other institutions may bear better results. On school and university enrollments the issues of diversity, especially integration of the marginalized is emphasized in various policies and the BBI report.

Overall Nyaura E.J. (2018) points out that fostering institutional development is an antidote for negative ethnicity. On this point the emphasis is support institutions with the mandate to eliminate discrimination on the basis of ethnicity and promote tolerance such as the NCIC and the Ethics & Anti-Corruption Commission. Parliament support to approve NCIC prosecutorial powers to enforce laws on negative ethnicity is important in strengthening their power. Negative ethnicity is traceable from historical injustice that include tribal clashes, massacres and land justices. For a lasting solution, the government should come up with measures to implement the Truth Justice and Reconciliation Commission (TJRC) as well as the Ndung'u Land Report Findings.



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## Annexes

### Annexe 1: Population Distribution by Ethnic Groups (%)

Select Ethnic groups	Population Distribution by Ethnic Groups (%)						
	1962	1969	1979	1989	1999	2009	2019
Kikuyu	19	20.1	20.9	20.8	18.5	17.7	17.1
Luhya	12.6	13.3	13.8	14.4	14.2	14.2	14.3
Luo	13.3	13.9	12.8	12.4	10.8	10.8	10.7
Kamba	10.8	10.9	11.3	11.4	10.3	10.4	9.8
Kalenjin	10.5	10.9	10.8	11.5	12.1	13.3	13.4
Others	33.8	30.9	30.4	29.5	34.1	33.6	34.7

Source: Kanyinga (2008:354); NCIC (2016:29) and KNBS Census Report 2019

### Annexe 2 (a) and (b): Cabinet Appointments by Ethnic Group and Presidential Regime

#### Annexe 2a: President Kenyatta's Cabinet for the period 1966-1978

Ethnic Group	1966		1967		1968		1970		1978	
	No	%	No	%	No	%	No	%	No	%
Kikuyu	6	28.6	6	28.6	8	31.6	6	28.6	6	28.6
Luhya	2	9.5	2	9.5	1	5.3	2	9.5	1	4.8
Luo	3	14.3	3	14.3	3	15.8	2	9.5	3	14.3
Kalenjin	1	4.8	1	4.8	1	5.3	2	9.5	1	4.8
Kamba	1	4.8	2	9.5	2	10.5	2	9.5	2	9.5
Kisii	2	9.2	2	9.5	1	5.3	2	9.5	2	9.5
Meru	1	4.8	1	4.8	1	5.3	1	4.8	1	4.8
Mijikenda	2	9.3	2	9.5	2	10.5	2	9.5	3	14.3
Other	3	14.3	2	9.5	1	10.5	2	9.5	2	9.5

Source: KHRC (2018); Ethnicity and Politicization in Kenya; Page 24

#### Annexe 2b: President Moi's Cabinet for the period 1966-1978

Ethnic Group	1979		1982		1985		1987		1994		1998		2001	
	No	%	No	%	No	%	No	%	No	%	No	%	No	%
Kikuyu	8	30	7	25	5	20	4	14.2	1	4.2	1	4	1	4
Luhya	3	11	3	11	2	8	3	10.7	4	16.7	5	19	4	14
Luo	3	11	3	11	4	16	5	17.8	1	4.2	0	0	2	7
Kalenjin	3	11	3	7.4	3	12	2	7.1	4	17	6	22	5	17
Kamba	2	7.6	2	7.4	2	8	3	10.7	4	16.6	4	14.8	4	14.3
Kisii	2	7.6	2	7.4	1	4	2	7.1	2	8.3	2	7.4	2	7.1
Meru	1	3.8	2	7.4	1	4	1	3.5	2	8.3	1	3.7	1	3.6
Mijikenda	2	7.6	2	7.4	2	8	2	7.1	2	8.3	2	7.4	2	7.1
Other	2	7.6	3	11	5	20	6	21.2	4	16.6	6	22	7	25

Source: KHRC (2018); Ethnicity and Politicization in Kenya; page 24

### Annexe 3: Geographical Location of Public Universities across 47 Counties by 2016

No.	County	No. of Universities	Universities
1	Mombasa	1	Technical University of Mombasa
2	Kwale	N/A	N/A
3	Kilifi	1	Pwani University
4	Tana River	N/A	N/A
5	Lamu	N/A	N/A
6	Taita Taveta	1	Taita Taveta University College
7	Garissa	1	Garissa University College
8	Wajir	N/A	N/A
9	Mandera	N/A	N/A
10	Marsabit	N/A	N/A
11	Isiolo	N/A	N/A
12	Meru	1	Meru University of Science and Technology
13	Tharaka Nithi	1	Chuka University
14	Embu	1	University of Embu
15	Kitui	1	South Eastern Kenya University
16	Machakos	1	Machakos University
17	Makueni	N/A	N/A
18	Nyandarua	N/A	N/A
19	Nyeri	2	Karatina University, Dedan Kimathi University of Technology
20	Kirinyaga	1	Kirinyaga University of Science and Technology
21	Murang'a	1	Murang'a University of Science and Technology
22	Kiambu	1	Gatundu University College, Jomo Kenyatta University of Science and Technology
23	Turkana	1	Turkana University College
24	West Pokot	N/A	N/A
25	Samburu	N/A	N/A
26	Trans Nzoia	N/A	N/A
27	Uasin Gishu	2	Moi University, University of Eldoret
28	Elgeyo Marakwet	N/A	N/A
29	Nandi	1	Koitalel Samoei University College
30	Baringo	N/A	N/A
31	Laikipia	1	Laikipia University
32	Nakuru	1	Egerton University
33	Narok	1	Maasai Mara University
34	Kajiado	N/A	N/A
35	Kericho	1	University of Kabianga
36	Bomet	1	Bomet University College

No.	County	No. of Universities	Universities
37	Kakamega	1	Masinde Muliro University of Science and Technology
38	Vihiga	1	Kaimosi University College
39	Bungoma	1	Kibabii University
40	Busia	1	Alupe University
41	Siaya	N/A	N/A
42	Kisumu	3	Jaramogi Oginga Odinga University of Science and Technology, Maseno University
43	Homa Bay	1	Tom Mboya University College
44	Migori	1	Rongo University
45	Kisii	1	Kisii University
46	Nyamira	N/A	N/A
47	Nairobi	5	The University of Nairobi, Multimedia University of Kenya, Technical University of Kenya, Kenyatta University, Co-operative University of Kenya

Source: Taaliu S.T. (2017); Ethnicity in Kenyan Universities; School of Education and Social Sciences, University of Embu

NOTES

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