

ETHNIC AND DIVERSITY AUDIT OF COMMISSIONS IN KENYA

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Ethnic and Diversity Audit of Commissions in Kenya

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Abbreviations

EACC	Ethics and Anti-Corruption Commission
IEBC	Independent Electoral and Boundaries Commission
PSC	Parliamentary Service Commission
PSCK	Public Service Commission
CIC	Commission for the Implementation of the Constitution
NLC	National Land Commission
JSC	Judicial Service Commission
CRA	Commission on Revenue Allocation
SRC	Salaries and Remuneration Commission
TSC	Teachers Service Commission
NPSC	National Police Service Commission of Kenya
KNCHR	Kenya National Human Rights and Equality Commission
CAJ	Commission on Administration of Justice
NHRI	National Human Rights Institution
NGEC	National Gender and Equality Commission
NCI Act	National Cohesion and Integration Act

Preface

One key mandate of the National Cohesion and Integration Commission (NCIC) is to ensure ethnic diversity in public institutions recruitment. Article (7 (1) of the NCI Act, 2008 requires all public establishments to represent the diversity of the people of Kenya in employment. Further, Article 7 (2) states that not more than a third of the total employees in one public institution should be from one ethnic group. The mandate is reinforced by Article 232 (l) (h), of the Constitution which states the need for representation of Kenya's diverse communities as one of the values and principles of the public service.

This Report, Ethnic and Diversity audit of Commissions in Kenya, is one of the steps the Commission has taken to ensure compliance with diversity legislations. Having been established by an Act of Parliament to implement programmes that promote inclusivity, eliminate discrimination and protect diversity in most spheres of public recruitment, the NCIC found it prudent to interrogate the level of inclusiveness within the commissions in order to mitigate some of the deeply held perceptions about negative ethnicity in Kenya.

Given the importance of representation of diversity in the commissions, this Report recommends several strategies that will enable these institutions to adhere to the existing legal frameworks thereby improving cohesion levels in their jurisdictions. It is the conviction of this Commission, that through this Report, commissions will strive to be more inclusive and Kenyans will remain vigilant in holding them accountable for the obligations vested in them by law.

In addition, by publishing this Report, the Commission has presented this country with policy recommendations that will ensure ethnic equality and equitable distribution of opportunities in the Commissions. This will lead to enhanced unity of purpose amongst Kenyans of all walks of life.

Hon. Francis Ole Kaparo, EGH, SS

COMMISSION CHAIRMAN

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This Report is a result of data submitted by 15 Commissions between September 2015 and May 2016. It would not be what it is without the contribution of various stakeholders who played unique roles.

The Commission extends a lot of gratitude to all the commissions covered under this study for their swift responses to the questionnaires, for availing information in the required format and engaging in in-depth discussions about their data during validation forums.

This Report would not have been successfully completed without the support of SIDA Sweden and the United Nations Development Programme (UNDP) who rendered technical as well as financial support to the Commission in the course of its development.

The Commission takes this opportunity to thank all the Commissioners for offering clear policy guidance and ensuring quality assurance in the course of the development of this Report. Additionally, the Commissioners accelerated the process of data collection by engaging with policy organs of the various commissions to underscore the importance of the audit and supported the consolidation of the policy recommendations of the Report. I would like to recognize the contribution of the commissioners in the Research, Policy and Planning Committee, Commissioners Linda Ochiel, Dr. Joseph Nasongo and Prof. Gitile Naituli whose constructive criticism and progressive guidance to the research technical team culminated into this concrete Report.

The Commission acknowledges its staff, Dr. Sellah King'oro, Jescah Otieno and Naomi Gichuru who were directly involved in the conceptualization and execution of the study. Appreciation also goes to the interns in the Research Department within this period.

In spite of the various contributions from the aforementioned, NCIC has made every effort to verify the information in this Report at the time of writing. As such, it retains responsibility for the accuracy of the views expressed and the evidence presented.

Hassan S. Mohamed, OGW
COMMISSION SECRETARY

Executive Summary

Traditional narrative divides legal and political power in Government among the legislature, the executive and the judiciary. The resulting question of who inspects the classical three arms of Government and their incidental institutions has necessitated the establishment of commissions whose main objective is to secure the observance by all state organs of democratic values and principles. With such a momentous task, commissions ought to operate beyond reproach in regard to observance of the said values and principles.

The Ethnic and Diversity Audit of commissions was carried out in 2016 with the aim of finding out the ratio of the various ethnic groups who comprise the current staff of commissions, assessing the compliance of commissions with the National Cohesion and Integration Act, No. 12 of 2008 and identifying ethnic representation among Commissioners. Using the quantitative approach, the study employed the census methodology and collected data from all the 15 commissions in Kenya.

With a total of 5,679 staff in all commissions, 93% comply with the NCI Act, 2008 as they have not employed more than 33.3% of their staff from one ethnic group. Only one of the 15 surveyed commissions flouted the Act. The Judicial Service Commission flouted section 7(2) of the NCI Act (2008) by employing 39% of its employees from one ethnic community, the Kikuyu.

The study reveals that the most represented ethnic community in the employment of commissions is the Kikuyu which forms 22.2% of the employees. Other dominant groups include the Kalenjin (12.8%), Kamba (11.3%), Luhya (11.1%) and Luo (9.4%) communities. Notably, employment within the commissions has also included minority communities such as the Maasai, Njemps, Rendille, Orma and the Ogiek to mention but a few. Nevertheless, it was evident that only 19.6% of all commission positions are occupied by staff of such minority origin.

The Kikuyu community dominates the employee composition of all commissions save for the Commission on Revenue Allocation (CRA) at 18% and the Commission on the Implementation of the Constitution (CIC) at 25% that are predominantly Luo.

When the representation of ethnic groups in commissions is compared to that of the national population, the study noted both overrepresentation and underrepresentation of some ethnic communities. While the Kikuyu community accounts for 17.7% of the national population, it has a proportion of 22.2% in commission employment, a variance that would easily be used to bring in some of the underrepresented or “forgotten” ethnic groups. Groups such as the Kalenjin and Maasai are relatively proportional; while the Meru and Kuria are underrepresented. A notable concern is the non-representation of the Dasenach, Galla, Konso, Waat, Galjeel, Isaak, Leysan and Gosha ethnic groups, to which this research refers to as the “forgotten” ethnic groups.

The study used the richness of the population of employees to establish its diversity. In that regard, the Parliamentary Service Commission has 29 ethnic communities in its staff, being the highest among all commissions. However, using the mean to establish diversity evenness, the Commission on Administrative Justice (CAJ) turned out to be the most diverse commission with a mean of 2.4, followed by the Judicial Service Commission at 2.9 and the National Cohesion and Integration Commission at 3.0.

The study demonstrates that the workforce of commissions which have regional presence is more diverse. As such, commissions that have decentralized offices are likely to have more ethnic groups than those that have only one office in Nairobi. Some of these include the Teachers Service Commission (TSC), the Independent Electoral and Boundaries Commission (IEBC) and the Ethics and Anti-Corruption Commission (EACC).

The composition of the members of the Board of commissions in Kenya includes 20 ethnic groups spanning from the majority Kikuyu, Luo and Luhya to the minority Turkana, Gabbra, Kuria and Njemps among others. Most of the Commissioners appointed belong to the Kikuyu community which forms 16.5% of the commissioners.

Unlike Commissioners, the CEOs of commissions are drawn from a leaner scope of ethnic groups. The CEOs of the 15 commissions belong to eight ethnic groups. The majority of them are from the Luhya community with a proportion of 26.7%. However, worth noting is the gender representation among CEOs, which is in the spirit of the Constitution. Female CEOs are composed of 33% while 67% are male.

The study recommends that the President and the parliament should include at least one person from the minority communities in each appointment to a commission. Further, there is need for parliament to review Article 250(4) of the Constitution – the law forming all commissions – to have appointments accommodate all ethnic groups as opposed to reflecting regional balance.

Further, the Joint Parliamentary Committee on National Cohesion and Equal Opportunities should support NCIC in the development of policies that will enhance the participation of ethnic minority and marginalized groups in the general labor market and specifically in public service employment.

There is also need to make commissions grassroots oriented to improve service but majorly to strengthen diversity in employment. It would be an opportunity to strategically tap into areas where minority groups have a say, away from the competitive nature of national exposure. Furthermore, each Commission should endeavor to make the advertisements for job vacancies in a way that accommodates some of the rudimentary strategies applicable at the grassroots to add on to the two dailies approach

Moreover, it necessitates the National Cohesion and Integration Commission to form a deliberate and progressive formula to create a balance of the “seemingly minorities against the perceptive majority” through generating an Ethnic Quota Recruitment System or Strategy for all commissions. Finally, there is need for NCIC to develop a draft on the Minimum Standards and Principles for Recruitment, as well as train staff of all commissions to ensure inclusiveness and diversity within such institutions.

CHAPTER

1

**COMMISSIONS
IN KENYA**

1.0 Background

The first ever created commission in Kenya, the Public Service Commission, dates back to 1954 when the Civil Service Commission was established by the British Colonial Government following the Holmes Commission Report, 1948. The Civil Service Commission acted as an advisory to the Governor in matters of appointments. At independence in 1963, it was enshrined in the constitution and renamed the Public Service Commission (Mbote & Akech, 2011).

The Kenyan government set up another commission soon after independence in 1964 with the aim to expand manpower capacities and fight poverty. Although focused on the education sector, the Ominde Commission dealt with cultural, social, religious and other needs. Even though the general election was held between May 18 and May 25, 1963, there was no electoral commission in place at the time.

Among the first commissions to be set up was the Teachers Service Commission which though established in 1967, had its history dating back to the 1950s when teachers led by retired President Daniel T. Moi vigorously fought for the formation of one teacher body. To this day, Kenya has created over twenty five commissions since independence (Ibid).

1.1 Problem Statement

Despite the myriad types of commissions this country has established, permanent or temporary, there is a general similarity in the functions adduced to them. This similarity is reflected in the objectives of commissions and independent offices as stated in Article 249(1b) of the Constitution of Kenya 2010. This Article states that their objective is to secure the observance of democratic values and principles by all State organs.

Some of the values and principles of the public service as highlighted in Article 232(1h) of the Constitution include responsive, prompt, effective, impartial and equitable provision of services; representation of Kenya's diverse communities; and affording adequate and equal opportunities for appointment, training and advancement, at all levels of the public service, of the members of all ethnic groups among others.

The implication of this responsibility upon commissions is an assumption that they themselves being part of the public service, will maintain high standards and full observance of all democratic values and principles.

This study therefore, presents an avenue to evaluate whether Commissions in Kenya are leading by example through observance of the values and principles of

the public service which demand representation of diversity. This study analyzes equitable distribution of employment to the different ethnic groups in Kenya by focusing on the specific employees of each Commission and its members.

1.2 Objectives and Research Questions

This study has the following main objectives:

1. To find out the ratio of the various ethnic groups who comprise the current staff of Commissions
2. To assess the compliance of Commissions with the National Cohesion and Integration Act, 2008
3. To identify ethnic representation among Commissioners
4. To proffer strategies to ensure compliance and sustenance of the same.

In order to fulfil the purpose of this research, the following questions were posed:

1. What is the proportion of the various ethnic groups represented in the secretariats of Commissions?
2. What is the status of compliance of Commissions with the NCI Act, 2008?
3. What is the ethnic balancing of the appointment of commissioners?
4. How can Commissions improve inclusion of minority community groups in employment?

1.3 Definition of Terms and Concepts

Commission: Chapter 15 of the Constitution of Kenya 2010 defines commissions as autonomous bodies with a three pronged collective responsibility to protect the sovereignty of the people; ensure observance of democratic values and principles by all State organs, and promote constitutionalism. Apart from just being independent entities, they undertake oversight, and conduct investigations, conciliation, mediation and negotiation (The Constitution of Kenya, 2010). As per this definition, this study identifies fifteen commissions including constitutional and statutory. These are: the Commission for the Implementation of the Constitution; the Commission on Revenue Allocation; the Independent Electoral and Boundaries Commission; the Judicial Service Commission; the Kenya National Human Rights and Equality Commission; the National Land Commission; the National Police Service Commission; the Parliamentary Service Commission; the Public Service Commission; the Salaries and Remuneration Commission; the Teachers Service Commission; Ethics and Anti-Corruption Commission; Commission on Administrative Justice; National Gender & Equality Commission; and the National Cohesion and Integration Commission.

Ethnic Audit: This is the process of examining the extent to which diversity on the basis of ethnicity is being institutionalized in order to help identify skewed past representation, and point towards effective and efficient ways of ethnic balancing in public employment. For the National Cohesion and Integration Commission, the main purpose of conducting an ethnic audit is to create an encouraging environment for reflection, analysis, and open discussions on the challenges Kenyans face on matters ethnicity, and in this case, employment. The aim is to

identify best practices from balanced commissions and demonstrate that it is crucial as well as practical to check others, while also ‘checking’ one-self.

Fourth Arm of Government: Proponents of classical or strict limitation of powers envisioned a neat typology of three arms of Government, i.e. parliament, executive and judiciary. From the 1980s, there has been an argument for a fourth arm of Government in Kenya’s constitutional framework, Commissions. These have an express provision outlining their independence from other arms of Government, and are supposed to be administratively and financially delinked from the executive, parliament and judiciary.

Inclusion: This study borrows from Miller & Katz’s (2002) definition of inclusion. They defined it more than just the state of included; to a sense of belonging, feeling respected, valued for who you are, feeling a level of supportive energy and commitment from others so that you can do your best.

Compliance: Compliance means acting in accordance with a request or a command, rule or instruction. In this context, compliance means the process by which an organization ensures that it observes and complies with the statutory laws.

1.4 Limitations

The main limitation of this study is the definition of ethnicity in Kenya. There are competing sets of categorization of ethnic groups in government documents. The study adopted a middle ground but this area needs to be realigned to ensure consistency in future studies and adoption of policies that will enhance equality of opportunity on the basis of ethnic backgrounds.

1.5 Summary of the Report

This study has six chapters. Chapter one forms the background of the study. It looks into the problem statement, objectives and research questions, definition of terms and concepts, limitations and organization of chapters.

Chapter two is the literature review which covers the nature and form of commissions in Kenya, democratic values and principles in the Kenyan context, the essence of equality of opportunity for Commissions and a general look into the fulfilment of Commission’s mandate.

Chapter three lays down the research methodology used to undertake this study. It highlights the research design, sampling procedure, data collection, analysis & presentation and the ethical considerations which NCIC paid attention to in the course of the study.

Chapter four presents an interpretation of data and an analysis of the general findings along the first three objectives of the study and other emerging themes.

Chapter five presents the findings of the study by illuminating the general representation of ethnic groups in Commissions in Kenya both among the staff and

the members forming the Commission. The chapter goes further to look into the status of each Commission, mentioning whether it has contravened or complied with section 7(2) of the NCI Act.

Finally, chapter six gives a summary of the study, presents the conclusion and proffers strategies of improving the representation of diversity within Commissions

CHAPTER

2

THE ROLE OF COMMISSIONS IN GOVERNANCE

2.1 Fourth Arm of Government

Traditional narrative divides legal and political power between the legislature, the executive and the judiciary (Makong'o et. al, 2003). The upshot is that an institutional lacuna is created to inspect the classical three arms of Government and their incidental institutions. Consequently, Commissions are set up to fill in this gap and they ought to be neutral (Ackerman, 2000).

Under the Constitution of Kenya, the commissions and independent offices are designed in such a way that they are neutral since they do not operate under direction from any of the classical arms of Government. It is argued that the establishment of the commissions and independent offices under the Constitution of Kenya 2010 will provide elaborate checks and balances mechanisms that will ensure efficient, accountable and equitable governance of the political and economic affairs of the state at all levels.

The sumptuary rules of the Chinese Imperial Civil Service established a rigidly defined set of dress requirements for all public officials: from the black lacquer-treated hats with protruding wings and the black boots trimmed with white lacquer to the ceremonial belts backed with jade, rhinoceros horn, gold or silver. Each distinctive subunit or rank of the civil service also had a badge of rank in the form of a cloth chest piece embroidered, in the case of the civil hierarchy, with birds in pairs. The top rank had two stately cranes soaring above clouds. The lowest rank had a pair of earth-bound quails, pecking the grass. The military ranks wore breast patches carrying images of fierce animals such as lions, tigers, bears and panthers (Dillon, 1998). The purpose of this was to set apart the institutions of commissions from the rest of government. This has necessitated the contemporary rhetoric that Commissions are the fourth arm of Government as opposed to the fourth estate which refers to the media.

2.2 Integrity Agencies

The concept of an integrity branch or arm of government is often said to have originated in a paper by Professor Bruce Ackerman, a US academic, at the turn of the 21st century (Ackerman, 2000). McMillan enumerated a set of institutions comprising the integrity branch as to include Auditors-General and ombudsmen, administrative tribunals, independent crime commissions, military disciplinary bodies, inspectors-general of taxation and of security intelligence, and a plethora of commissioners - dealing with privacy, information access, human rights and anti-discrimination, and public service standards.

It seems clear that when we consider branches of government, our focus is on institutional integrity rather than personal integrity, although the latter, as Justice Spiegelman observes 'as a characteristic required of occupants of public office, has implications for the former'. There is clearly very strong interplay between institutional integrity and personal integrity.

'Integrity' is a commonly encountered word but the term is often used loosely. This failure to use 'integrity' with sufficient particularity is regularly encountered in the literature. The term has been used to mean 'accountability'; professionalism/acting properly; 'honesty'; 'good reputation'; 'ethics'; 'trust'; and it is commonly used to mean incorruptibility. All these descriptions, when applied to the public sector contain shades of the sense in which integrity is used.

The word is based on the Latin *integritas* meaning 'whole, entire' and complete'. Hence, an integer means a whole number. So the predominant meaning of integrity is something which is whole and healthy, that is functioning well, as intended. In this sense the word applies in its holistic sense to the integrity system as a whole - its systemic meaning.

In our context therefore, Commissions should not only be whole but, together with the people working therein, they should exude transparency and accountability, professionalism and observance of values and principles of democracy. It is best for Commissions to lead by example so that as they require the three arms of government to observe these values, they themselves should set a practical example of how this can be achieved. Nevertheless, it is the measures which go beyond observance of legal obligations - the notions of ethics, the public trust, and honest and trustworthy behavior, which inject that additional integrity requirement.

With the integrity branch, citizens have come to expect more of governments than just compliance with laws, policies and procedures. This is where the twin facets of integrity, the health and wholeness of the system, which in turn is dependent on the honesty, incorruptibility and morality of individual officers, comes in. It is only by injecting a further element into the system - integrity - that those aspirations are met. Moreover, it is only through the presence of an active and sensitive integrity branch that supervises and monitors the system, that integrity and the aspirations of citizens can be assured.

2.3 Commissions in Kenya

Kenya has had over twenty five commissions since independence, most of which have been temporary (Mbote & Akech, 2011). Currently, there are three main types of Commissions in Kenya. These are Constitutional, Statutory and Commissions of inquiry.

2.3.1 Statutory Commissions

These Commissions are formed by acts of parliament with specific mandates. They perform functions that are exercised by either the Executive or the Legislature. The

rationale for their establishment is that there are matters with policy and technical complexity which would require that they be relocated to a narrower body with relevant expertise.

Omollo (2014) argues that expertise to comprehend complex and technical policy problems formed the backdrop for establishment of such commissions. He adds that formation of such commissions is also informed by the need to reduce the workload of the legislative branch. Examples of commissions in this category in the Kenyan context include the National Cohesion and Integration Commission among others.

2.3.2 Constitutional Commissions

The Constitution of Kenya 2010 entrenches a number of commissions. Although established under different Articles of the Constitution, all the twelve commissions have been enumerated under Article 248. As has been highlighted in this discourse, the objects for the establishment of these Commissions include: to protect the sovereignty of the people of Kenya, to secure observance of democratic values and principles by all State organs and to promote constitutionalism (CoK, 2010). It is noteworthy that the Constitution tasked the National Assembly with enacting legislations to give full effect to the provisions relating to the Commissions.

The Commissions established under the 2010 Constitution of Kenya include:

1. Ethics and Anti-Corruption Commission (EACC)
2. The Independent Electoral and Boundaries Commission (IEBC)
3. The Parliamentary Service Commission (PSC)
4. The Public Service Commission (PSCK)
5. The Commission for the Implementation of the Constitution (CIC)
6. The National Land Commission (NLC)
7. The Judicial Service Commission (JSC)
8. The Commission on Revenue Allocation (CRA)
9. The Salaries and Remuneration Commission (SRC)
10. The Teachers Service Commission (TSC)
11. The National Police Service Commission of Kenya (NPSC)
12. Kenya National Human Rights and Equality Commission (KNCHR)
13. The Commission on Administration of Justice (CAJ)

The commissions and independent offices are expected to check presidential and public authority at two levels. First, the general constitutional mandate of all commissions under Article 249 is to protect the sovereignty of the people, secure the observance by all state organs of democratic values and principles, and promote constitutionalism.

Second, the constitutional commissions have been mandated with specific constitutional powers that, under the 1969 Constitution, were presidential powers, or were statutory powers usurped by the President. These include powers to constitute and abolish offices in the public service, powers to alter administrative

boundaries, powers on revenue allocation, and financial and administrative powers over Parliament and the Judiciary.

2.3.3 Commissions of Inquiry

Commissions of inquiry have been widely used by the Government, usually for purposes of carrying out investigations. It is noted that the subjects of commissions of inquiry are: consideration of legislative policy, inquiry into the activities of administrative departments, and inquiry into social conditions.

The place of Commissions of inquiry in Kenya's governance system is further illustrated by the enactment of the Commissions of Inquiry Act Cap 102 of the Laws of Kenya. The Act empowers the President to appoint commissioners to inquire into and report on matters of public interest referred to them.

Some of the commissions of inquiry the Truth Justice and Reconciliation Commission, the Judicial Commission of Inquiry into Tribal Clashes in Kenya (Akiwumi Commission) and the Ndung'u Commission of inquiry among others.

Some scholars are apprehensive about the idea of commissions of inquiry. They assert that commissions of inquiry are not meant to find out the truth. If they accidentally stumble on it, it is quickly buried in collective and official amnesia. He claims that every time a commission of inquiry is set up to investigate any matter, it is usually a warning that the State plans to do absolutely nothing about the problem (Gomery, 2006).

Other scholars have also voiced that certain matters should not be subject to the investigations of a commission of inquiry. Bowry (2013) for instance asserts that matters of terrorism, State security and in-house security failures are not fit for the public glare. This follows against the backdrop of the intended appointment of a commission of inquiry by President Uhuru Kenyatta to look into the Westgate terror attack incident.

2.4 Democratic Values in the Kenyan Context

In their bid to protect the sovereignty of the people of Kenya, to secure observance of democratic values and principles by all State organs and to promote constitutionalism, Commissions in Kenya are guided by several democratic values which are stipulated in various legislative documents. The next section discusses the legislative frameworks of diversity in employment in Kenya.

2.4.1 Legislative frameworks of Diversity in employment

The Constitution of Kenya, 2010

The Constitution addresses the question of representation of diversity in public employment in the principles and values of the public service, and in the Bill of Rights where the Right to Equality and the freedom from Discrimination is guaranteed.

The Preamble and Article 10 of the Constitution recognise ethnic diversity and the rights and equality of communities as a fundamental principle upon which the state is founded. At this early stage, the Constitution calls for the protection of communities and their cultures and particularly the marginalised communities. These principles and values are important as the Constitution expressly requires that they direct its interpretation, the enactment and interpretation of laws and the formulation and implementation of all policies. Other values relevant to ethnic equality include the principles of devolution of power, inclusion, participation of the people in governance, and non-discrimination. The principle on non-discrimination is provided for in detail in the Bill of Rights.

Article 27 on 'Equality and Freedom from Discrimination' expressly prohibits, the State or any individual from directly or indirectly discriminating against another 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 State is mandated to implement affirmative action measures to redress the genuine needs of groups or individuals who might have suffered from previous discrimination.

The Right to Equality and non-Discrimination is further reinforced by the Rights of Minorities and Marginalized Groups recognized under Article 56. In this regard, the Constitution requires the State to take affirmative action to redress past discrimination for minorities and marginalized groups and to particularly ensure that they:

- (i) participate and are represented in governance and other spheres of life;
- (ii) are provided with special opportunities in educational and economic fields;
- (iii) are provided with special opportunities for access to employment;
- (iv) develop their cultural values, languages and practices; and
- (v) have reasonable access to water, health services and infrastructure.

The Constitution defines the term 'Marginalized Groups' as (a) group(s) of people who, because of laws or practices before, on, or after the effective date, were or are disadvantaged by discrimination on one or more (of the) grounds. This definition opens these rights to a greater category of communities, people or groups of people.

The Constitution, in several other provisions entrenches the equality of ethnic groups in Kenya by requiring their fair representation in appointments to all public and elected offices (Article 100) including the national executive, the public service, defence forces, the police, and (appointments to) all commissions, amongst others.

The Public Service Recruitment and Training Policy

The Public Service Recruitment and Training Policy (2005) provides an overarching framework on recruitment, training, promotion and performance management in the public sector. Its underlying principles are as follows:

- (i) Equal opportunity for every person to apply for advertised vacancies;

- (ii) Affirmative action in regard to gender equality, encourage participation of physically challenged persons and persons from marginal regions without adversely compromising the principles of meritocracy; and
- (iii) Regional distribution in recruitment of officers in the public service.

Employment Act (2007)

The Act places a legal obligation towards the promotion of equality of opportunity in employment in order to eliminate discrimination in employment policy or practice. It prohibits employers from discriminating directly or indirectly, against an employee or prospective employee or harass an employee or prospective employee on grounds of race, colour, sex, language, religion, political or other opinion, nationality, ethnic or social origin, disability, pregnancy, mental status or HIV status in the recruitment, training, promotion, terms and conditions of employment, termination of employment or other matters arising out of the employment.

The NCI Act (2008)

The National Cohesion and Integration Act, enacted in the aftermath of the December 2007 violence, establishes a dedicated framework for the promotion of equality of opportunity, good relations, harmony and peaceful co-existence between different ethnic and racial communities of Kenya.

Section 7 of the Act obligates all public establishments to ensure representation of Kenya's diversity by having no more than one third of staff from the same ethnic group.

CHAPTER

3

RESEARCH METHODOLOGY

3.1 Introduction

This chapter describes and explains the methodology deployed in this study. Specifically, it includes how the research was conducted, what considerations were made during the collection of data and how the interpretation and analysis of data were undertaken.

3.2 The Research Process

There are many models of the research process, most of them devised according to a series of stages. Cohen and Manion (1994) identify eight stages of action research. Other representations of the research process, include the five stages of research shown in diagrammatic form showing design, sampling, data collection, data analysis and the report as presented by Blaxter et al. (1999, p.8).

This research included eight steps in the course of undertaking this study. These comprised the following:

1. Formulating the Research Problem
2. Literature Review
3. Developing the objectives
4. Preparing the Research Design including Sample Design
5. Collecting the Data
6. Analysis of Data
7. Generalisation and Interpretation
8. Preparation of the Report or Presentation of Results-Formal write-ups of conclusions reached.

Data was collected between June and November 2015.

3.3 Research Design

Selltiz *et al* define research design as the arrangement of conditions for collection and analysis of data in a manner that aims to combine relevance to the research purpose with economy in procedure (1965). The aim of a research design is to plan and structure a given research project in such a manner that the eventual validity of the research findings is maximized.

This study uses the descriptive research design. The study used the mixed methods approach. According to Creswell (2003) this is a research approach for collecting, analyzing and mixing both quantitative and qualitative data in a single study or series of studies.

The unit of analysis in this study is organizational. Commissions are evaluated with special attention focused on the unique qualities of these social organizations such as organizational structure, lines of authority, promotional policy, the

representativeness of minority groups on the pay roll, labour relations, and productivity.

It is also a Synchronic/cross-sectional study since a given phenomenon i.e. representation of diversity in employment within Commissions is studied at a specific point in time. Nevertheless, the findings of this report may be the basis of diachronic studies that will follow similar methodology and focus on the same issues in the future.

3.4 Sampling Procedure

The study adopted census sampling, because data was gathered on every member of the population. A census, according to Larson & Farber (2003) is a complete enumeration of the population. The use of this technique was motivated by the need for accurate information for the subdivisions of the population, in this case, both staff and commissioners. Moreover, the use of the census survey facilitated the elimination of the sampling error likely to result from selection of a subset of individuals for study. The total number of commissions included in the study is fifteen.

3.5 Data Collection

The fieldwork period took place between September and November 2015 and was a 'distinct and discrete phase of the investigation' (Onwegbuzie & Johnson, 2006). During this time, visits were made to all commissions, and select members of staff participated in an in-depth discussion on the status of data earlier submitted by their institution. The discussions brought up key and emerging issues in regard to the representation of diversity within Commissions. Each visit lasted on average four hours, which included a general tour of the commission offices and the in-depth discussion.

3.6 Editing and Coding

Filled questionnaires that were submitted by Commissions were scrutinized to ensure that all fields were filled with relevant information. All the questionnaires were then "collated and classified" and kept for subsequent analysis and will be held on file even after the research is complete so that the researcher is "prepared to be accountable for the investigations" (Onwegbuzie & Johnson, 2006). Field notes were written up based on the in-depth discussions.

3.7 Data Analysis and Presentation

Processing and analyzing data involves a number of closely related operations which are performed with the purpose of summarizing the collected data and organizing these in a manner that they answer the research questions (objectives).

The initial questionnaires were analysed and the data was presented in Chapter Four in statistical and tabular format where appropriate. Statistical software, specifically SPSS version 20.0 was used to analyse the quantitative data. The data collected both from the questionnaires and validation forums formed part of the content for analysis in Chapter Five.

3.8 Ethical Considerations

In planning and conducting research, as well as in reporting research findings, this study fulfilled several obligations. Consideration was made while designing the study to ensure there is no potential risk or harm especially because the nature of information sought was sensitive.

Firstly, the research team developed a comprehensive justification/rationale document to assuage fears but excite interest to receive consent for participation by the participants. Moreover, attempts were made to be open and honest through clearly defining the purpose of the study by the use of letters sent to specific institutions prior to data collection. The study also ensured protection of the identity of the staff by not disclosing their names but the names of their institutions in the report. An assurance of validation was also given once data had been collected and analyzed. This was done through physical visits and one-one-one engagements with the relevant stakeholders in each institution.

3.9 Reliability and Validity

In order to guarantee trustworthiness of the study, the research employed some mechanisms that ensured validity, and reliability of the research process. Validity (credibility) is concerned with whether the study actually investigates what it claims to investigate and reports the exact findings established after the process. To measure the content validity of the questionnaire, consultations were made with relevant stakeholders, and comments incorporated in the format of the questionnaires.

Moreover, the study has operationalized key concepts, and ensured data triangulation through combining various data generation techniques (questionnaires and interviews). On the other hand, reliability is concerned with whether the results of the study can be reproduced using a similar methodology, as well as the extent to which the population is accurately represented (Joppe, 2000). The study utilized the questionnaire as the main instrument for data collection, which was considered highly stable. When dealing with a stable measure, the results are highly repeatable. Additionally, being that the study utilized the census sampling technique; the representation is considered accurate, hence reliable.

3.10 Ethnic Diversity in Kenya

There are more than 42 ethnic communities in Kenya. Language and cultural background are the main criteria used for ethnic identification in Kenya. There are three main language groups in which the ethnic communities in Kenya can be grouped:

- Bantu-speaking
- Nilotic-speaking
- Cushitic-speaking

There are other distinct language groups such as the Arabs, Asians, Europeans and Americans.

For the purpose of including all communities, this audit used the Housing and Population Census, 2009 to operationalize the ethnic categories as follows;

1. Suba
2. Embu
3. Kamba
4. Kikuyu
5. Kisii
6. Kuria
7. Luo
8. Maasai
9. Mbeere
10. Meru
11. Nubi
12. Samburu
13. Taita
14. Taveta
15. Teso
16. Turkana
17. Tharaka
18. Luhya (so stated)
 - Bakhayo
 - Banyore
 - Banyala
 - Bukusu
 - Idakho
 - Isukha
 - Tiriki
 - Kabras
 - Marachi
 - Marama
 - Kisa
 - Maragoli
 - Samia
 - Tachoni
 - Batsotso
 - Wanga
 - Tura
19. Kalenjin (so stated)
 - Keiyo
 - Nandi
 - Kipsigis
 - Tugen
 - Pokot
 - Marakwet
 - Njems
 - Arror
 - Bung'omok
 - Cherangany'
 - Dorobo
 - El Molo
 - Endo
 - Ogiek
 - Sabaot
 - Samor
 - Sengwer
 - Senger
- Terik
- Endorois
20. Mijikenda (so stated)
 - Giriama
 - Digo
 - Rabai
 - Chonyi
 - Duruma
 - Kauma
 - Kambe
 - Ribe
 - Jibana
 - Boni
 - Dahalo
 - Pokomo
 - Waata
21. Swahili (so stated)
 - Amu
 - Bajuni
 - Chitundu
 - Jomvu
 - Munyoyaya
 - Mvita
 - Ngare
 - Pate
 - Siu
 - Vumba
 - Wachangamwe
 - Wafaza
 - Wakatwa
 - Wakiliffi
 - Wakilindini
 - Wamtwapa
 - Washaka
 - Watangana
22. Kenyan Somali (so stated)
 - Ajuran
 - Degodia
 - Gurreh
 - Hawiyah
 - Murile
 - Ogaden
23. Ilchamus
24. Njemp
25. Borana
26. Burji
27. Dasanech
28. Gabra
29. Galla
30. Gosha
31. Konso
32. Orma
33. Rendille
34. Sakuye

- 35. Waat
- 36. Galjeel
- 37. Kenyan Arabs
- 38. Kenyan Asians
- 39. Kenyan Europeans
- 40. Kenyan Americans
- 41. Isaak

42. Leysan

Source: Republic of Kenya (2010)
2009 Kenya Population and
Housing Census Vol II,
Government Printer

CHAPTER 4 FINDINGS

4.1 Introduction

This chapter discusses the general findings of this study. These findings are elucidated from the data submitted by all the Commissions in Kenya.

4.2 General Representation of Ethnic Groups in Commissions in Kenya

This section gives a general representation of employment in all Commissions.

4.2.1 Dominant Ethnic Representation in Commissions

Table 46 demonstrates that the largest representation in the employment of Commissions is made up of the Kikuyu at 22.2%. Other groups that are dominant include the Kalenjin (12.8%), Kamba (11.3%), Luhya (11.1%) and Luo (9.4%). Worth noting is the huge disparities between the first and the second ethnic communities.

4.2.2 Sparsely Represented Ethnic Communities in Commissions

Notably, employment within the commissions has also included minority communities such as the Maasai, Njemps, Rendille, Orma and the Ogiek to mention but a few. However, the research revealed that only 19.3% of all commission positions are occupied by staff of such minority origin. This implies that the big communities are still taking up most of the jobs.

Table 1: Ethnic Representation within Commissions in Kenya

	Ethnic Group	Number	Percentage
1.	Kikuyu	1312	21.8
2.	Kalenjin	821	13.6
3.	Kamba	675	11.2
4.	Luhya	669	11.1
5.	Luo	571	9.5
6.	Kisii	426	7.1
7.	Meru	386	6.4
8.	Somali	236	3.9
9.	Samburu	139	2.3
10.	Maasai	142	2.4
11.	Taita	126	2.1
12.	Mijikenda	129	2.1
13.	Borana	118	2.0
14.	Turkana	51	0.8
15.	Kuria	28	0.5
16.	Gabbra	27	0.4
17.	Teso	31	0.5
18.	Swahili	22	0.4
19.	Rendille	20	0.3

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20	Mbeere	14	0.2
21	Taveta	11	0.2
22	Tharaka	10	0.2
23	Suba	10	0.2
24	Njemps	15	0.2
25	Burji	8	0.1
26	Nubi	5	0.1
27	Orma	11	0.2
28	Embu	9	0.1
29	Arab	2	0.03
30	Other Kenyans	2	0.03
31	Foreigner	1	0.02
32	Sakuye	2	0.03
	Total	6029	100.0

4.3 Comparison with National Population

Table 2: Comparison with National population

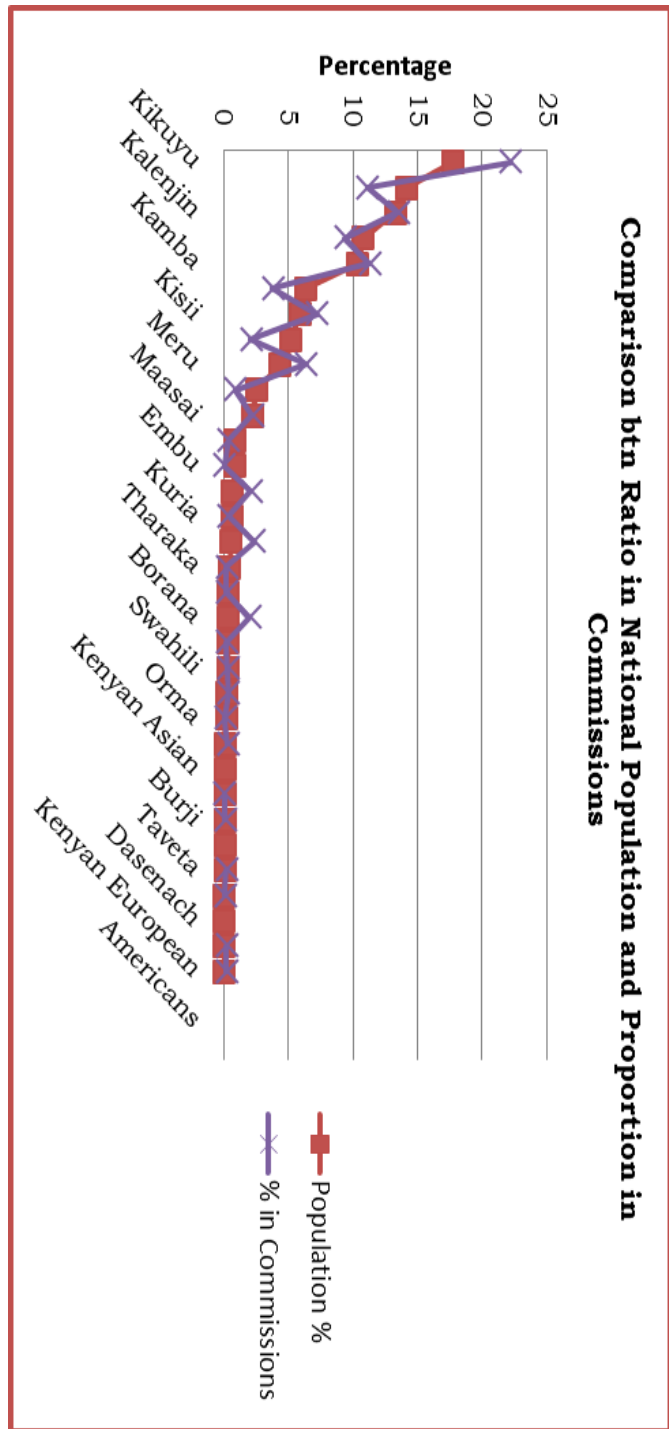
Ethnic Group	Population Census 2009	Population %	No. in Commissions	% in Commissions	% Variance
Kikuyu	6,622,576	17.7	1312	21.8	4.1
Luhya	5,338,666	14.2	669	11.2	-3
Kalenjin	4,967,328	13.3	821	13.6	0.3
Luo	4,044,440	10.8	571	9.5	-1.3
Kamba	3,893,157	10.4	675	11.2	0.8
Kenyan Somali	2,385,572	6.4	236	3.9	-2.5
Kisii	2,205,669	5.9	426	7.1	1.2
Mijikenda	1,960,574	5.2	129	2.1	-3.1
Meru	1,658,108	4.4	386	6.4	2
Turkana	988,592	2.6	51	0.8	-1.8
Maasai	841,622	2.2	142	2.4	0.2
Teso	338,833	0.9	31	0.5	-0.4
Embu	324,092	0.9	9	0.1	-0.8
Taita	273,519	0.7	126	2.1	1.4
Kuria	260,401	0.7	28	0.5	-0.2
Samburu	237,179	0.6	139	2.3	1.7
Tharaka	175,905	0.5	10	0.2	-0.3
Mbeere	168,155	0.4	14	0.2	-0.2
Borana	161,399	0.4	118	2	1.6
Suba	139,271	0.4	10	0.2	-0.2
Swahili	110,614	0.3	22	0.3	0
Gabbara	89,515	0.2	27	0.4	0.2

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Orma	66,275	0.2	11	0.1	-0.1
Rendille	60,437	0.1	20	0.3	0.2
Kenyan Asian	46,782	0.1	1	0.2	-0.8
Kenyan Arab	40,760	0.1	2	0.05	-0.05
Sakuye	26,784	0.1	2	0.03	-0.17
Burji	23,735	0.1	8	0.1	0
Gosha	21,864	0.1			-0.1
Taveta	20,828	0.1	11	0.2	0.1
Nubi	15,463	0.01	5	0.1	0.09
Dasenach	12,530	0.01			-0.01
Njemps	5,228	0.014	15	0.2	0.186
Kenyan European	5,166	0.014	1	0.2	0.186
Other Africans					0
Americans					0
Total	37,504,255			100	

4.3.1 Representation in comparison to National population

The data on table 47 reveals that some communities are over represented in the commissions, while others are underrepresented. While the Kikuyu community accounts for 17.7% of the national population, it has a proportion of 22.2% in Commission employment, a variance that would easily be used to bring in some of the underrepresented or “forgotten” ethnic groups. Groups like the Kalenjin and Maasai seem relatively proportional; while the Meru and Kuria are underrepresented. A notable concern is the non-representation of the Dasenach, Galla, Konso, Waat, Galjeel, Isaak, Leysan and Gosha ethnic groups, to which this research refers to as the “forgotten” ethnic groups.



4.4 Individual Compliance and Contraventions

93% of the Commissions comply with the NCI Act, 2008 because they have not employed more than 33.3% of their staff from one ethnic group. Only one of the fifteen surveyed Commissions flouted the Act.

The Judicial Service Commission flouted section 7(2) of the NCI Act (2008) by employing 39% of its employees from one ethnic community, the Kikuyu.

There is a trending pattern in the commissions about ethnic groups that dominate the political power play in the country. The Kikuyu community seems to dominate the employee composition of all commissions save for the Commission on Revenue Allocation (CRA) at 18% and the Commission on the Implementation of the Constitution (CIC) at 25% that are predominantly Luo. Without disregarding the fact that the Kikuyu community is over represented by about 5.7%, it is interesting to note that the two commissions that have Luo as majority staff only came into existence in the period following the post-election violence in 2008 and the promulgation of the 2010 constitution.

Table 3: Individual Compliance and Contraventions among Commissions

	Commission	Ethnic Group	Percentage
1.	NLC	Kikuyu	15.8
2.	IEBC	Kikuyu	16.3
3.	EACC	Kikuyu	17.4
4.	CRA	Luo	18
5.	CAJ	Kikuyu	18
6.	NCIC	Kikuyu	18
7.	KNHCR	Kikuyu	19
8.	PSC	Kikuyu	20.1
9.	NPSC	Kikuyu	23
10.	NGEC	Kikuyu	24
11.	PSCK	Kikuyu	24
12.	TSC	Kikuyu	24.3
13.	CIC	Luo	25
14.	SRC	Kikuyu	25
15.	JSC	Kikuyu	39

4.5 Diversity in Commissions

Diversity should be pegged upon the representation of the face of Kenya under Article 232 (h) of the Constitution which states that the values and principles of public service include; (h) representation of Kenya's diverse communities. In this regard, it would seem, as indicated by Table 49 that fourteen commissions have complied. The study used the richness of the population of employees to establish

its diversity. In that regard, the Parliamentary Service Commission has 29 ethnic communities in its staff, being the highest among all commissions. However, using the mean to establish diversity evenness, the Commission on Administrative Justice (CAJ) turned out to be the most diverse commission with a mean of 2.4, followed by the Judicial Service Commission at 2.9 and the National Cohesion and Integration Commission at 3.0.

Table 4: Who is the most diverse?

Commission	Total No. of Staff	No. of Ethnic Groups	Mean
Commission for Administration of Justice	45	19	2.4
Judicial Service Commission	23	8	2.9
National Cohesion and Integration Commission	51	17	3.0
Commission for Revenue Allocation	51	14	3.6
Constitutional Implementation Commission	59	13	4.5
National Gender and Equality Commission	51	10	5.1
Kenya National Commission on Human Rights	95	17	5.6
Salaries and Remuneration Commission	65	11	5.9
National Police Service Commission	73	11	6.6
National Land Commission	450	23	19.5
Public Service Commission	225	21	10.7
Ethics and Anti-Corruption Commission	437	26	16.8
Parliamentary Service Commission	765	29	26.4
Independent Electoral and Boundaries Commission	860	28	30.7
Teachers Service Commission	2902	28	103.6

4.5.1 Diversity: National and Regional Presence

Table 49 above demonstrates that the workforce of commissions which have regional presence seems to be nationally oriented. As such, commissions that have decentralized offices are likely to have more ethnic groups than those that have only one office in Nairobi. Some of these include the Teachers Service Commission (TSC), the Independent Electoral and Boundaries Commission (IEBC) and the Ethics and Anti-Corruption Commission (EACC).

4.6 General Representation of Commissioners in Kenya

The Composition of the members of the Board of Commissions in Kenya includes twenty ethnic groups spanning from the majority Kikuyu, Luo and Luhya to the minority Turkana, Gabbra, Kuria and Njemps among others.

Most of the Commissioners appointed to Commissions belong to the Kikuyu community which forms 16.5% of the commissioners.

Table 5: Ethnic Representation among Commissioners

	Ethnic Group	Number	Percentage
1.	Kikuyu	20	16.5
2.	Luo	17	14.0
3.	Luhya	15	12.2
4.	Meru	11	9.1
5.	Kamba	11	9.1
6.	Somali	11	9.1
7.	Kalenjin	9	7.4
8.	Kisii	6	5.0
9.	Borana	3	3.2
10.	Mijikenda	3	2.4
11.	Swahili	3	2.4
12.	Maasai	3	2.4
13.	Taita	2	1.6
14.	Njemps	2	1.6
15.	Gabbara	2	1.6
16.	Samburu	1	0.8
17.	Kuria	1	0.8
18.	Turkana	1	0.8
	Total	121	100

4.7 Diversity amongst CEOs in Commissions

Unlike Commissioners, the CEOs of commissions are drawn from a leaner scope of ethnic groups. The CEOs of the 15 commissions belong to eight ethnic groups. The majority of them are from the Luhya community with a proportion of 26.7%.

Table 6: Ethnic Composition of Commission Secretaries

Ethnic Group	Number	Percentage
Luhya	4	26.7
Luo	3	20.0
Kikuyu	2	13.3
Kisii	2	13.3
Taveta	1	6.7
Somali	1	6.7
Embu	1	6.7
Borana	1	6.7
	15	100

Table 7: Detailed information on CEOs in Commissions

Name of Commission	Name of CEO	Ethnic Group of CEO
Commission for Administration of Justice	Leonard Ngaluma Saningo	Taveta
National Cohesion and Integration Commission	Hassan S. Mohamed	Somali
National Gender and Equality Commission	Paul Kuria	Kikuyu
National Land Commission	Tom Aziz Chavangi	Luhya
Kenya National Commission on Human Rights	Patricia Nyaundi	Kisii
Public Service Commission	Alice Atieno Otwala	Luo
Teachers Service Commission	Nancy Macharia	Kikuyu
Constitutional Implementation Commission	Joseph Kosure	Luo
Independent Electoral and Boundaries Commission	Ezra Chiloba	Luhya
Commission for Revenue Allocation	George Ooko	Luo
National Police Service Commission	Omumu Jairus Ojango	Luhya
Judicial Service Commission	Winfride B. Mokaya	Kisii
Salaries and Remuneration Commission	Anne Gitau	Embu
Ethics and Anti-Corruption Commission	Halakhe Wago	Borana
Parliamentary Service Commission	Jeremiah Nyegenye	Luhya

Gender Representation among CEOs

Gender representation among CEOs is in the spirit of the Constitution. Female CEOs are composed of 33% while 67% are male.

Table 8: Gender Representation among Commission CEOs

Ethnic Group	Number	Percentage
Female	5	33.3
Male	10	66.7
	15	100

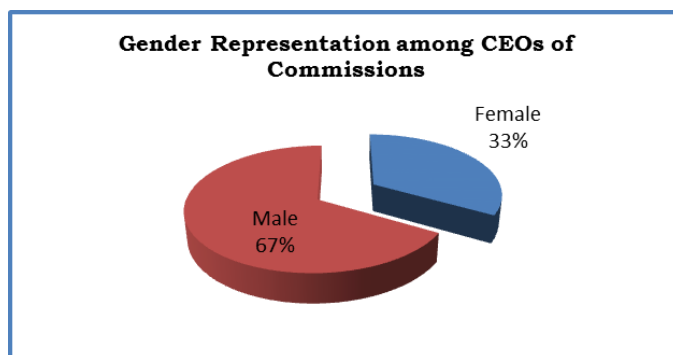


Figure 1: Gender Representation among CEOs of Commissions

4.8 Gross Allocations to Commissions

The study established that almost half of the Commissions (46.6%) were allocated about 500,000 Kenya shillings in the 2016/2017 financial year. Nevertheless, allocations vary from 193 billion to the TSC to 355 million to the CRA. CIC was not allocated funding this financial year as it had already been wound up. The SRC, the only Commission dominated by non-Kikuyu employees comes seventh when gross estimates are ranked.

Table 9: Gross Estimates to Commissions in the financial year 2016/2017

Commission	Gross Estimates 2016/2017	Highest Ethnic Group	Percentage
Teachers Service Commission	193,992,348,650	Kikuyu	24.3
Independent Electoral and Boundaries Commission	18,565,800,000	Kikuyu	16.3
Parliamentary Service Commission	10,382,000,000	Kikuyu	20.1
Ethics and Anti-Corruption Commission	2,691,080,000	Kikuyu	17.4
National Land Commission	1,434,548,504	Kikuyu	15.8
Public Service Commission	1,179,370,000	Kikuyu	24
Salaries and Remuneration Commission	533,040,000	Luo	18
The Commission on Administrative Justice	468,632,000	Kikuyu	18
Judicial Service Commission	450,000,000	Kikuyu	39
National Police Service Commission	435,340,000	Kikuyu	23
Kenya National Commission on Human Rights	428,785,600	Kikuyu	19
National Gender and Equality Commission	416,270,878	Kikuyu	24
National Cohesion and Integration Commission	410,000,000	Kikuyu	18
The Commission on Revenue Allocation	355,781,774	Kikuyu	25
Total Expenditure	231,742,997,406		

CHAPTER

5

THE STATUS OF COMMISSIONS' COMPLIANCE WITH THE NCI ACT

1.1 Introduction

This study uses the threshold set by the NCI Act, 2008 which stipulates in section 7(2) that no public establishment shall have more than one third of its staff from one ethnic group.

5.2 COMMISSIONS THAT COMPLY WITH THE NCI ACT

5.2.1 The National Land Commission

The National Land Commission of Kenya is an Independent government Commission established under the Constitution of Kenya to manage public land on behalf of the national and county governments. It was established under the National Land Commission Act, 2012.

The National Land Commission is chaired by Dr Swazuri Mahammud and has nine commissioners and 98 employees. The National Land Commission complies with the provision of section 7(2) of the NCI Act. The largest ethnic group which draws staff from the Kikuyu community forms 15.8% of the entire employment.

Table 10: The Ethnic Composition of General Staff at the National Land Commission

	Ethnic Group	Number	Percentage
1.	Kikuyu	71	15.8
2.	Kalenjin	70	15.6
3.	Luhya	50	11.1
4.	Luo	45	10.0
5.	Kamba	40	8.9
6.	Somali	31	6.9
7.	Meru	25	5.6
8.	Kisii	21	4.7
9.	Maasai	15	3.3
10	Mijikenda	14	3.1
11	Borana	11	2.4
12	Embu	8	1.8
13	Njemps	8	1.8
14	Orma	8	1.8
15	Taita	8	1.8
16	Turkana	6	1.3
17	Samburu	5	1.1
18	Kuria	4	0.9
19	Gabbra	3	0.7
20	Swahili	2	0.4
21	Sakuye	2	0.4
22	Teso	2	0.4
23	Rendile	1	0.2
	Total	450	100.0

NLC Staff by Job Grade

The senior management comprises of grade 1, 2 and 3. The majority of senior staff belong to the Kalenjin community (16.9%).

Table 11: Ethnic profiling of Staff at the National Land Commission by Senior Grades

Ethnic Group	Grade 1	Grade 2	Grade 3	Total	Percentage
Kalenjin		1	12	13	16.9
Luhya	1	3	6	10	13.0
Kikuyu		3	7	10	13.0
Luo		1	6	7	9.1
Somali			6	6	7.8
Kamba			6	6	7.8
Maasai			4	4	5.2
Mijikenda		1	2	3	3.9
Borana		1	2	3	3.9
Kisii			3	3	3.9
Meru			3	3	3.9
Samburu			2	2	2.6
Taita			2	2	2.6
Kuria			1	1	1.3
Njemps			1	1	1.3
Orma			1	1	1.3
Teso			1	1	1.3
Turkana			1	1	1.3
Total	1	10	66	77	100.0

The ethnic representation of commissioners at NLC is very inclusive. The commission draws each of the nine commissioners from a different ethnic community. As a result all the nine groups represented among commissioners encompass 11.1%.

Table 12: Ethnic Representation among Commissioners at NLC

No.	Ethnic group	Number	Percentage
1.	Mijikenda	1	11.11
2.	Njemps	1	11.11
3.	Kikuyu	1	11.11
4.	Luhya	1	11.11
5.	Luo	1	11.11
6.	Kalenjin	1	11.11
7.	Kamba	1	11.11
8.	Somali	1	11.11
9.	Meru	1	11.11
	Total	9	100.00

5.2.2 The Independent Electoral and Boundaries Commission (IEBC)

The Independent Electoral and Boundaries Commission (IEBC) is an independent regulatory agency that was founded in 2011 by the Constitution of Kenya. The Commission is responsible for conducting or supervising referendum and elections to any elective body or office established by the Constitution, and any other elections as prescribed by an Act of Parliament. It was created in a provision of the 2010 constitution and the Independent Electoral and Boundaries Commission Act. Its mandate includes the continuous registration of voters and revision of the voter's roll, the delimitation of constituencies and wards, the regulation of political parties process, the settlement of electoral disputes, the registration of candidates for elections, voter education, the facilitation of the observation, monitoring and evaluation of elections, the regulation of money spent by a candidate or party in respect of any election, the development of a code of conduct for candidates and parties and monitoring of compliance with legislation on nomination of candidates by parties.

The highest ethnic group in the employment of the IEBC is the Kikuyu. It forms 16.3% of the workforce. The Commission has included minority communities such as the Njemps, Suba, Nubi, Kuria etc. In fact, it is the only commission that has employed a Sakuye.

Table 13: Ethnic composition of general staff at IEBC

No.	Ethnic Group	Number	Percentage
1.	Kikuyu	140	16.3
2.	Kalenjin	136	15.4
3.	Luhya	103	12.0
4.	Luo	90	10.5
5.	Somali	74	8.6
6.	Kamba	71	8.3
7.	Kisii	47	5.5
8.	Mijikenda	49	5.7
9.	Meru	33	3.8
10.	Maasai	28	3.3
11.	Borana	17	2.0
12.	Teso	9	1.0
13.	Turkana	9	1.0
14.	Embu	8	0.9
15.	Gabbara	7	0.8
16.	Taita	7	0.8
17.	Kuria	6	0.7
18.	Suba	6	0.7
19.	Samburu	4	0.5
20.	Swahili	4	0.5
21.	Njemps	3	0.4

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22.	Nubi	3	0.4
23.	Rendile	3	0.4
24.	Sakuye	2	0.3
25.	Burji	1	0.2
	Total	860	100

The senior management is also representative with Kalenjin and Kikuyu communities as the largest ethnic community at 17%.

Table 14: Ethnic profiling among IEBC senior staff

Ethnic group	Grade 1	Grade 2	Grade 3	Grade 4	Total	Percentage
Kalenjin	1		1	7	9	17.0
Kikuyu			1	8	9	17.0
Luhya	1		1	5	7	13.2
Luo				6	6	11.3
Somali			1	4	5	9.4
Kisii		1		3	4	7.5
Kamba			1	2	3	5.7
Boran				2	2	3.8
Embu				2	2	3.8
Swahili				1	1	1.9
Gabra				1	1	1.9
Maasai				1	1	1.9
Mijikenda				1	1	1.9
Nubian		1			1	1.9
Suba				1	1	1.9
Total	2	2	5	44	53	100.0

The commissioners are also balancing with Somali having the largest percentage at 22.2%.

Table 15: Ethnic profiling among commissioners at IEBC

No.	Ethnic Group	Number	Percentage
1.	Somali	2	22.2
2.	Swahili	2	22.2
3.	Borana	1	11.1
4.	Njemps	1	11.1
5.	Kikuyu	1	11.1
6.	Kuria	1	11.1
7.	Luhya	1	11.1
	Total	9	100

5.2.3 Ethics and Anti-Corruption Commission (EACC)

The Ethics and Anti-corruption Commission was established after Kenya's President Mwai Kibaki signed the Ethics and Anti-Corruption Act on 29 August 2011. The EACC replaced the Kenya Anti-Corruption Commission (KACC). The Commission is mandated to combat and prevent corruption through enforcement of the law, educating the public and enlisting their support against corruption and providing preventive services through promotion/ development of good practices to seal opportunities and loop holes that facilitate corruption.

The Ethics and Anti-corruption Commission complies with section 7(2) of the NCI Act as the largest ethnic community is Kikuyu at only 17.4% of the workforce.

Table 16: Ethnic composition of general staff at EACC

No.	Ethnic Group	Number	Percentage
1.	Kikuyu	76	17.4
2.	Kalenjin	66	15.1
3.	Luhya	53	12.1
4.	Luo	42	9.6
5.	Kamba	41	9.4
6.	Meru	30	6.9
7.	Kisii	25	5.7
8.	Somali	18	4.1
9.	Borana	16	3.7
10.	Mijikenda	11	2.6
11.	Embu	10	2.3
12.	Maasai	8	1.8
13.	Taita	8	1.8
14.	Teso	6	1.4
15.	Turkana	6	1.4
16.	Samburu	5	1.1
17.	Taveta	4	0.9
18.	Swahili	3	0.7
19.	Orma	3	0.7
20.	Rendile	2	0.5
21.	Gabbra	1	0.2
22.	Burji	1	0.2
23.	Kenyan Asian	1	0.2
24.	Njemps	1	0.2
	Total	437	100.0

The senior management is also representative with the Kikuyu as the largest ethnic community at 26.5%.

Table 17: Ethnic profiling among senior management at EACC

Ethnic group	Grade 1	Grade 2	Grade 3	Grade 4	Grade 5	Total	percentage
Kikuyu		1	2	4	2	9	26.5
Luhya				4	1	5	14.7
Luo			1	2	1	4	11.8
Kamba				3	1	4	11.8
Meru				3		3	8.8
Somali			1	1		2	5.9
Kalenjin			1		1	2	5.9
Samburu				1		1	2.9
Kisii				1	1	2	5.9
Taveta					1	1	2.9
Borana	1					1	2.9
Total	1	1	5	19	8	34	100.0

EACC has five commissioners appointed by the president. Each of the Commissioners belong to a unique ethnic group. Consequently, each of them represents 20% of the board.

Table 18: Ethnic Representation among EACC Commissioners

Ethnic Group	Number	Percentage
Kamba	1	20
Kalenjin	1	20
Somali	1	20
Kikuyu	1	20
Taita	1	20
Total	5	100

5.2.4 The Commission on Revenue Allocation

The Commission on Revenue Allocation was established under Article 215 and 216 of the Constitution of Kenya. Its key role is recommendation of the basis for equitable sharing of revenues raised nationally between the National and the County Governments as well as sharing of revenue among the County Governments. It was constituted in 2011.

The chairperson for Commission on Revenue Allocation is Micah Cheserem. CRA complies with section 7(2) of the NCI Act. Its highest number of staff comes from the Luo community comprising 17.6% of the entire staff.

Table 19: General Staff Distribution by Ethnic Group at Commission for Revenue Authority

	Ethnic group	Number	Percentages
1.	Luo	9	17.6
2.	Kikuyu	8	15.7
3.	Luhya	8	15.7
4.	Kisii	6	11.8
5.	Kamba	4	7.8
6.	Kalenjin	3	5.9
7.	Meru	3	5.9
8.	Somali	3	5.9
9.	Mijikenda	2	4.0
10.	Swahili	1	2.0
11.	Maasai	1	2.0
12.	Borana	1	2.0
13.	Kuria	1	2.0
14.	Turkana	1	2.0
	Total	51	100.0

The senior staff at CRA comprise of groups 1, 2 and 4. The senior management of CRA is also representative as the largest group of employees is Luo with 25%.

Table 20: Ethnic balancing of Senior Staff at CRA

Ethnic Group	Grade 1	Grade 2	Grade 4	Total	Percentage
Luo	1	1	2	4	25.0
Kikuyu		2	1	3	18.8
Luhya			3	3	18.8
Kisii		2	1	3	18.8
Kamba		1	1	2	12.5
Kalenjin			1	1	6.3
Total	1	6	9	16	100.0

CRA has eight commissioners. These commissioners are distributed among 7 ethnic groups with the highest percentage being Somali at 25%.

Table 21: Ethnic balancing of Commissioners at CRA

	Ethnic Group	Number	Percentage
1.	Somali	2	25.0
2.	Kalenjin	1	12.5
3.	Kamba	1	12.5
4.	Kisii	1	12.5
5.	Kikuyu	1	12.5
6.	Luhya	1	12.5
7.	Luo	1	12.5
	Total	8	100.0

5.2.5 Commission on Administrative Justice

The Commission on Administrative Justice (CAJ), also known as the Office of the Ombudsman is an independent commission established by the Commission on Administrative Justice Act, 2011 pursuant to Article 59 (4) of the Constitution of Kenya. The CAJ is mandated to address all forms of maladministration, promote good governance and efficient service delivery in the public sector by enforcing the right to fair administrative action. It investigates abuse of power, manifest injustice and unlawful, oppressive, unfair or unresponsive official conduct.

The commission on Administrative Justice is chaired by Dr. Otiende Amollo. It has three commissioners and 45 employees. The Commission on Administrative Justice complies with section 7(2) of the NCI act as the largest ethnic community is Kikuyu at only 17.8% of the workforce.

Table 22: Ethnic composition of Commission on Administrative justice general staff

	Ethnic Group	Number	Percentage
1.	Kikuyu	8	17.8
2.	Luo	6	13.3
3.	Luhya	5	11.2
4.	Kisii	5	11.2
5.	Kalenjin	4	8.9
6.	Mijikenda	3	6.6
7.	Taveta	2	4.5
8.	Somali	2	4.5
9.	Borana	1	2.2
10.	Kamba	1	2.2
11.	Foreigner	1	2.2
12.	Embu	1	2.2
13.	Kuria	1	2.2
14.	Maasai	1	2.2
15.	Meru	1	2.2
16.	Sabaot	1	2.2
17.	Swahili	1	2.2
18.	Turkana	1	2.2
	Total	45	100

The senior staff comprises of job group 1, 3, 4 and 5 as listed below. The senior management has Luhya as the largest ethnic community having 27%.

Table 23: Ethnic profiling among CAJ senior staff

Ethnic group	Group 1	Group 3	Group 4	Group 5	Total	Percentage
Luhya			2	1	3	27
Luo		1		1	2	18
Kikuyu		1			1	9

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Kisii		1			1	9
Kamba		1			1	9
Masai			1		1	9
Taveta	1				1	9
Somali		1			1	9
Total	1	5	3	2	11	100

The three commissioners are from three ethnic communities namely Kikuyu, Kamba and Borana.

Table 24: Ethnic balancing among CAJ Commissioners

	Ethnic Group	Number	percentage
1	Borana	1	33.3
2	Kikuyu	1	33.3
3	Luo	1	33.3
	Total	3	100.0

5.2.6 National Cohesion and Integration Commission

NCIC was established under the National Cohesion and Integration Act (Act No.12 of 2008). The Commission was borne out of the realization that long lasting peace, sustainable development and harmonious coexistence among Kenyans requires deliberate normative, institutional and attitudinal processes of constructing nationhood, national cohesion and integration.

National Cohesion and Integration Commission is chaired by Hon. Xavier Ole Kaparo. It has eight commissioners and 55 employees. NCIC complies with the NCI Act having the Kikuyu community as the largest group consisting of 18.2% of the 55-person workforce.

Table 25: Ethnic composition of general staff at NCIC

	Ethnic Group	Frequency	Percentage
1.	Kikuyu	10	18.2
2.	Kalenjin	8	14.5
3.	Kamba	6	10.9
4.	Luhya	6	10.9
5.	Luo	5	9.1
6.	Somali	3	5.5
7.	Borana	3	5.5
8.	Tharaka	3	5.5
9.	Maasai	2	3.6
10.	Mijikenda	2	3.6
11.	Taita	1	1.8

12.	Swahili	1	1.8
13.	Embu	1	1.8
14.	Gabbara	1	1.8
15.	Kenyan Arab	1	1.8
16.	Kisii	1	1.8
17.	Rendille	1	1.8
		55	100.0

The senior management is also representative with Kamba community as the largest ethnic community at 15.8%.

Table 26: Ethnic profiling among NCIC Senior Management

	Ethnic Group	NCIC 1 & 2	NCIC 3	NCIC 4	Total	Percentage
1.	Kamba	1	1	1	3	15.8
2.	Kikuyu			2	2	10.5
3.	Luo	1		1	2	10.5
4.	Luhya		1	1	2	10.5
5.	Maasai			2	2	10.5
6.	Somali	1		1	2	10.5
7.	Borana		1		1	5.3
8.	Tharaka			1	1	5.3
9.	Kisii			1	1	5.3
10.	Embu			1	1	5.3
11.	Kalenjin				1	5.3
12.	Taita		1		1	5.3
	Total		5	10	19	100.0

The NCIC has eight commissioners who are appointed by the President. The composition of commissioners is representative because each commissioner belongs to a different ethnic group thus forming 12.5% each. Additional members are drawn from the Commission of Administrative Justice, the Kenya National Commission for Human Rights and the National Gender and Equality Commission.

Table 27: Ethnic profiling among commissioners at NCIC

	Ethnic Group	Number	Percentage
1.	Maasai	1	12.5
2.	Luo	1	12.5
3.	Kikuyu	1	12.5
4.	Gabbara	1	12.5
5.	Somali	1	12.5
6.	Mijikenda	1	12.5
7.	Luhya	1	12.5
8.	Meru	1	12.5
	Total	8	100

5.2.7 Kenya National Commission on Human Rights

The Kenya National Commission on Human Rights is an Independent National Human Rights Institution (NHRI) established under Article 59 (1) of the Constitution of Kenya 2010, and the Kenya National Commission on Human Rights Act, 2011. The Commission implements two key broad mandates: first, it acts as a watchdog over the Government in the area of human rights. Secondly, it plays a key leadership role in advising and moving the country towards becoming a human rights state.

The Human Rights commission has complied with section 7(2) of the NCI act as the largest ethnic community is Kikuyu at 18.9% of the workforce.

Table 28: Ethnic composition of General staff at Human Rights Commissions

	Ethnic Group	Number	Percentage
1.	Kikuyu	18	18.9
2.	Kamba	15	15.8
3.	Luo	13	13.7
4.	Kisii	9	9.5
5.	Luhya	9	9.5
6.	Kalenjin	8	8.5
7.	Somali	6	6.3
8.	Taita	4	4.2
9.	Meru	3	3.2
10.	Mijikenda	4	4.5
11.	Kuria	2	2.1
12.	Embu	1	1.1
13.	Turkana	1	1.1
14.	Maasai	1	1.1
15.	Teso	1	1.1
	Total	95	100.0

The senior management is also representative with Kikuyu community as the largest ethnic community at 23.1%.

Table 29: Ethnic profiling among KNCHR senior management

Ethnic group	KN1	KN2	KN3	KN4	TOTAL	Percentage
Kikuyu			2	4	6	23.1
Luhya				3	3	11.5
Luo			1	2	3	11.5
Kalenjin			1	2	3	11.5
Kisii	1		2		3	11.5
Meru			1	1	2	7.7
Kamba				1	1	3.8
Mijikenda				1	1	3.8
Turkana				1	1	3.8
Somali				1	1	3.8

Kuria				1	1	3.8
Taita		1			1	3.8
Total	1	1	7	17	26	100.0

The commissioners are also representative with the four commissioners being distributed across four ethnic communities.

Table 30: Ethnic balancing among commissioners at KNCHR

	Ethnic Group	Number	Percentage
1.	Meru	1	25
2.	Kisii	1	25
3.	Luhya	1	25
4.	Kikuyu	1	25
	Total	4	100

5.2.8 Public Service Commission

The Public Service Commission is established by the Constitution of Kenya 2010 and by the Public Service Commission Act No. 13 of 2012. It has the power to hire and fire senior personnel in the public service and structure it. The functions and powers of the PSC are stipulated under article 234 of the Constitution of Kenya 2010. They include inter alia:- development of human resources in the public service, ensuring efficient and effective public service, exercise of disciplinary control over its personnel and determination of appeals in respect of county governments' public service.

Public Service Commission is chaired by Prof. Margaret Kobia, has eight commissioners and 225 staff members. The Public Service Commission has complied with section 7(2) of the NCI Act since the largest ethnic community is Kikuyu at 24% of the workforce.

Table 31: Ethnic Composition of Employees at the Public Service Commission

	Ethnic Group	Number	Percentage
1.	Kikuyu	54	24.0
2.	Luhya	35	15.6
3.	Luo	26	11.6
4.	Kamba	25	11.1
5.	Kisii	20	8.9
6.	Kalenjin	19	8.4
7.	Meru	10	4.4
8.	Embu	6	2.7
9.	Maasai	6	2.7
10.	Mijikenda	5	2.2
11.	Samburu	3	1.3
12.	Taita	3	1.3
13.	Kuria	2	0.9
14.	Mbeere	2	0.9
15.	Other Kenyan	2	0.9

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16.	Teso	2	0.9
17.	Turkana	2	0.9
18.	Somali	2	0.9
19.	Rendille	1	0.4
	Total	225	100

The senior management of the commission is also below the required threshold with most of the staff belonging to the Kikuyu community forming 24.1%.

Table 32: The Ethnic proportionalities among Senior Staff at the Public Service Commission

Ethnic group	Grade 6	Grade 7	Grade 8	Grade 9	Total	Percentage
Kikuyu	5	6	2		13	24.1
Luo	4	3	3	1	11	20.4
Luhya	2	5	1		8	14.8
Kalenjin	2	2	1		5	9.3
Kamba	2	2			4	7.4
Kisii	2	2			4	7.4
Maasai	1	1			2	3.7
Embu	1				1	1.9
Mbeere	1				1	1.9
Meru	1				1	1.9
Samburu	1				1	1.9
Somali	1				1	1.9
Taita		1			1	1.9
Teso		1			1	1.9
Total	23	23	7	1	54	100.0

The commissioners are also representative with the nine commissioners distributed across nine ethnic groups

Table 33: Ethnic Composition among Commissioners in the Public Service Commission

	Ethnic Group	Number	Percentage
1.	Mijikenda	1	11.1
2.	Kalenjin	1	11.1
3.	Kamba	1	11.1
4.	Kikuyu	1	11.1
5.	Kisii	1	11.1
6.	Maasai	1	11.1
7.	Luhya	1	11.1
8.	Meru	1	11.1
9.	Turkana	1	11.1
	Total	9	100.0

5.2.9 National Police Service Commission

The National Police Service Commission of Kenya is an Independent government Commission established under the Constitution of Kenya to ensure smooth functioning of the National Police Service of Kenya. The commission's roles include:

- Recruitment and appointment of persons to hold or act in offices in the service, confirm appointments, and determine promotions and transfers within the National Police Service.
- Observing due process, exercise disciplinary control over and remove persons holding or acting in offices within the Service

The national police service commission is chaired by Johnston Kavuludi and comprises 8 commissioners and 73 employees. The National Police Service Commission complies with section 7(2) of the NCI Act as the largest ethnic community is Kikuyu at 23.3% of the workforce.

Table 34: Ethnic profiling among general staff at NPSC

	Ethnic Group	Number	Percentage
1.	Kikuyu	17	23.3
2.	Luhya	14	19.2
3.	Meru	13	17.8
4.	Luo	10	13.7
5.	Kamba	9	12.3
6.	Maasai	3	4.1
7.	Embu	3	4.1
8.	Kisii	1	1.4
9.	Teso	1	1.4
10.	Nubi	1	1.4
11.	Borana	1	1.4
	Total	73	100.0

The senior management is also representative with Luo as the largest ethnic community at 23%.

Table 35: Ethnic profiling among senior management at NPSC

Ethnic group	Grade 6	Grade 7	Grade 8	Total	Percentage
Luo	2		1	3	23.0
Kamba	1	1		2	15.4
Luhya		1	1	2	15.4
Meru	1		1	2	15.4
Kikuyu	1	1		2	15.4
Embu	1			1	7.7
Kisii	1			1	7.7
Total	7	3	3	13	100.0

The commissioners of the commission are also representative with the Luhya being the largest ethnic group at 33.2%

Table 36: Ethnic profiling among commissioners at NPSC

	Ethnic Group	Number	Percentage
1.	Luhya	2	33.2
2.	Luo	1	16.7
3.	Swahili	1	16.7
4.	Kamba	1	16.7
5.	Maasai	1	16.7
	Total	6	100.0

5.2.10 The National Gender and Equality Commission

The National Gender and Equality Commission in Kenya was formed in 2011 in accordance With the Constitution. The overall mandate of the Commission is the promotion of gender equality and freedom from discrimination in accordance with Article 27 of the Constitution. In addition, the Commission is mandated to promote integration of the principles of equality and freedom from discrimination in National and County policies, laws and administrative regulations.

The National Gender and Equality Commission has complied with section 7(2) of the NCI Act with the largest ethnic community is Kikuyu at 23.5% of the workforce.

Table 37: Ethnic composition of general staff at NGEC

	Ethnic Group	Number	Percentage
1.	Kikuyu	12	23.5
2.	Luhya	11	21.6
3.	Luo	9	17.6
4.	Kamba	7	13.7
5.	Borana	3	5.9
6.	Kisii	3	5.9
7.	Meru	3	5.9
8.	Gabbara	1	2.0
9.	Kalenjin	1	2.0
10.	Taita	1	2.0
	Total	51	100.0

The senior management of the commission has exceeded the required threshold with Kikuyu community at 31.6%.

Table 38: Senior management composition by ethnic group

Ethnic Group	Grade 1	Grade 4	Grade 5	Total	Percentage
Kikuyu	1		5	6	31.6
Luhya			5	5	26.3

Kamba		1	2	3	15.8
Borana			1	1	5.3
Gabbara			1	1	5.3
Kisii			1	1	5.3
Luo			1	1	5.3
Meru			1	1	5.3
Total	1	1	17	19	100.0

There are four Commissioners at NGEK. Each one of them belongs to a different ethnic group. NGEK has included a commissioner from the minority ethnic group of Gabbara.

Table 39: Ethnic profiling among commissioners at NGEK

	Ethnic Group	Number	Percentage
1.	Luhya	1	25
2.	Meru	1	25
3.	Gabbara	1	25
4.	Kikuyu	1	25
	Total	4	100

5.2.11 Parliamentary Service Commission

The Parliamentary Service Commission of Kenya is an Independent government Commission established under the Constitution of Kenya to ensure smooth functioning of the Parliament of Kenya. It commenced on 29th December, 2000. The Commission is responsible for constituting offices in the parliamentary service, appointing and supervising office holders as well as performing other functions necessary for the well-being of the members and staff of Parliament. The Commission consists of the Speaker of the National Assembly, as the Chairperson, seven Members appointed by Parliament and one Woman and one Man appointed by Parliament from persons who are experienced in Public affairs but are not Members of Parliament. The Clerk of the Senate is the Secretary to the Commission.

The Parliamentary Service Commission complies with the 7(2) of the NCI act as the largest ethnic community is Kikuyu at 20% of the workforce.

Table 40: Ethnic composition of general staff at Parliamentary Service Commission

	Ethnicity	Number	Percentage
1.	Kikuyu	154	20
2.	Luhya	108	14.2
3.	Kalenjin	86	11.3
4.	Luo	85	11.1
5.	Kamba	83	10.9
6.	Kisii	51	6.7

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7.	Somali	40	5.1
8.	Meru	33	4.2
9.	Maasai	26	3.3
10.	Turkana	15	2
11.	Mijikenda	15	2
12.	Samburu	14	1.8
13.	Taita	12	1.6
14.	Borana	9	1.2
15.	Swahili	7	0.9
16.	Rendille	6	0.8
17.	Mbeere	5	0.7
18.	Suba	4	0.5
19.	Embu	2	0.3
20.	Gabbra	2	0.3
21.	Teso	2	0.3
22.	Tharaka	2	0.3
23.	Kenyan Arab	1	0.1
24.	Burji	1	0.1
25.	Kuria	1	0.1
26.	Swahili	1	0.1
27.	Taveta	1	0.1
	Total	765	100

The senior management is also representative with Luhya as the largest ethnic community at 23.2%.

Table 41: Ethnic profiling among senior management at parliamentary service commission

Ethnic Group	Grade11	Grade12	Grade13	Grade14	Grade15	Grade16	Grade17	Total	Percentage
Kikuyu	8	7	3	6	5	2		31	23.2
Luhya	9	2	3	1	3		1	19	14.3
Kamba		9	2	3	1	1		16	12.1
Luo	3	2	2	4	3			14	10.5
Kisii		4	4			1		12	9.0
Kalenjin	2	3	1	2	1	1		10	7.6
Meru	3	2	4				1	10	7.6
Maasai	3	2						5	3.8
Somali	2				1			3	2.2
Taita	2	1						3	2.2
Swahili	1		1					2	1.5
Samburu			2					2	1.5
Suba	1							1	0.7
Borana	1							1	0.7
Embu			1					1	0.7
Mijikenda		2						2	1.5
Turkana			1					1	0.7
Total	38	34	24	17	14	5	2	134	100.0

The Parliamentary Service Commission has ten commissioners. The composition of these commissioners is in compliance with the threshold set out in the NCI Act.

Table 42: Ethnic composition of Commissioners at Parliamentary Service Commission

Ethnic Group	Number	Percentage
Somali	2	20.0
Luhya	1	10.0
Meru	1	10.0
Kikuyu	1	10.0
Kisii	1	10.0
Kamba	1	10.0
Samburu	1	10.0
Luo	1	10.0
Kalenjin	1	10.0
Total	10	100.0

5.2.12 Teachers Service Commission

The Teaching Service Commission was established under the Teaching Service Commission Act No.1 of 1975 dated February 07, 1975. The functions of the commission as defined in the constitution are to:

- Register trained teachers.
- Recruit and employ registered teachers
- Assign teachers employed by the Commission for service in any public school or institution.
- Promote and transfer teachers.
- Exercise disciplinary control over teachers.
- Terminate the employment of teachers.

The Teacher’s Service Commission is chaired by Dr. Lydia Nzomo. It has four commissioners and 2,902 employees. The Teachers Service Commission complies with section 7(2) of the NCI Act having the Kikuyu as the largest community at 24.4% of the workforce. TSC has also included some minority groups with its employees distributed across the 28 ethnic groups.

Table 43: Ethnic composition of general staff at Teachers Service Commission

	Ethnic Group	Number	Percentage
1.	Kikuyu	707	24.4
2.	Kalenjin	403	13.8
3.	Kamba	361	12.4
4.	Luhya	246	8.5
5.	Kisii	227	7.8
6.	Meru	227	7.8

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7.	Luo	205	7.1
8.	Samburu	108	3.7
9.	Taita	81	2.8
10.	Embu	65	2.2
11.	Borana	56	1.9
12.	Maasai	46	1.6
13.	Somali	57	2
14.	Mijikenda	30	1.1
15.	Turkana	16	0.6
16.	Gabbra	12	0.4
17.	Other Kenyan	10	0.3
18.	Kuria	9	0.3
19.	Mbeere	7	0.2
20.	Rendille	6	0.2
21.	Teso	5	0.2
22.	Tharaka	5	0.2
23.	Burji	5	0.2
24.	Taveta	4	0.1
25.	Swahili	3	0.1
26.	Njemps	1	0.1
	Total	2902	100

The TSC senior management comprises of the following job groups Q, R, S and T. The senior management is also representative with the largest percentage being Kalenjin at 16%.

Table 44: Ethnic profiling of TSC senior staff

Ethnic group	Q	R	S	T	U	Total	Percentage
Kalenjin	6	5	1			12	16.0
Kamba	6	2	2			10	13.3
Luhya	3	7				10	13.3
Luo	7	3				10	13.3
Kikuyu	5	3	1			9	12.0
Meru	6	1				7	9.3
Kisii	2	2				4	5.3
Embu	2					2	2.7
Taita	2					2	2.7
Samburu	1				1	2	2.7
Somali	2	1				3	3.9
Njemps	1					1	1.3
Masai		1				1	1.3
Mijikenda		1				1	1.3
Other	1					1	1.3
Total	44	26	4		1	75	100.0

TSC has four commissioners who are from different ethnic communities.

Table 45: Ethnic profiling of TSC Commissioners

	Ethnic group	Number	Percentage
1.	Meru	1	25
2.	Kikuyu	1	25
3.	Kalenjin	1	25
4.	Borana	1	25
	Total	4	100

5.2.13 The Commission for the Implementation of the Constitution (CIC)

The Commission for the Implementation of the Constitution (CIC) is established under Section 5 (6) of the Sixth schedule of the Constitution. The functions of CIC are to monitor, facilitate and oversee the development of legislation and administrative procedures required to implement this Constitution; Co-ordinate with the Attorney-General and the Kenya Law Reform Commission in preparing for tabling in Parliament, the legislation required to implement this Constitution; and work with each Constitutional Commission to ensure that the letter and spirit of this Constitution is respected among others.

The CIC is chaired by Charles Nyachae and it has 59 employees and 9 commissioners.

The Commission for the Implementation of the Constitution complies with section 7(2) of the NCI Act having the highest number of its employees from Luo community constituting 25.4% of the workforce.

Table 46: Ethnic Composition of General Staff at CIC

	Ethnic group	Number	Percentage
1.	Luo	15	25.4
2.	Kikuyu	13	22.0
3.	Luhya	8	13.6
4.	Kamba	5	8.5
5.	Kalenjin	4	6.8
6.	Kisii	3	5.1
7.	Kuria	2	3.4
8.	Maasai	2	3.4
9.	Meru	2	3.4
10.	Taita	2	3.4
11.	Mijikenda	1	1.7
12.	Njemps	1	1.7
13.	Somali	1	1.7
	Total	59	100

The senior management at CIC comprises of job groups P, Q, R, S and T. An analysis of the senior staff reveals that the senior management has the Luo community as the largest group at 33.3%.

Table 47: Ethnic Profiling of senior management at CIC

Ethnic Group	Grade P	Grade Q	Grade R	Grade S	Grade T	Total	Percentage
Luo	5	1		1	1	8	33.3
Kikuyu	4		1			5	20.8
Luhya	2	2				4	16.7
Kamba	1		1			2	8.3
Kuria		1	1			2	8.3
Kalenjin	1					1	4.2
Kisii	1					1	4.2
Taita				1		1	4.2
Total	14	4	3	2	1	24	100

CIC has nine commissioners. Two of the nine belong to the Kisii community. As a result, they form 22.1% of the Commissioners.

Table 48: Ethnic balancing among Commissioners at CIC

	Ethnic group	Number	Percentage
1.	Kisii	2	22.1
2.	Kamba	1	11.1
3.	Luo	1	11.1
4.	Kikuyu	1	11.1
5.	Somali	1	11.1
6.	Luhya	1	11.1
7.	Meru	1	11.1
8.	Taita	1	11.1
	TOTAL	9	100

5.2.14 The Salaries and Remuneration Commission

The Salaries and Remuneration Commission (SRC) is a Kenya Government Commission established under the Salaries & Remuneration Commission Act, 2011.

The functions of the commission are:

- Inquire into and determine the salaries and remuneration to be paid out of public funds to State officers and other public officers
- Keep under review all matters relating to the salaries and remuneration of public officers.

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- Advise the national and County Governments on the harmonization, equity and fairness of remuneration for the attraction and retention of requisite skills in the public sector
- Conduct comparative surveys on the labour markets and trends in remuneration to determine the monetary worth of the jobs of public offices.
- Determine the cycle of salaries and remuneration review upon which Parliament may allocate adequate funds for implementation
- Make recommendations on matters relating to the salary and remuneration of a particular State or public officer
- Make recommendations on the review of pensions payable to holders of public offices

SRC is chaired by Sarah Serem, and has 65 members of staff and 11 commissioners.

The Salary and Remuneration Commission complies with section 7(2) of the NCI Act as the largest ethnic community is Kikuyu at only 24.6% of the workforce.

Table 49: Ethnic composition of general staff at the Salary and Remuneration Commission

	Ethnic Group	Number	Percentage
1.	Kikuyu	16	24.6
2.	Luhya	12	18.5
3.	Kalenjin	12	18.5
4.	Kisii	8	12.3
5.	Luo	8	12.3
6.	Kamba	4	6.2
7.	Meru	2	3.1
8.	Embu	1	1.5
9.	Taita	1	1.5
10.	Teso	1	1.5
	Total	65	100

The senior management is also representative with the Kikuyu community as the largest ethnic community at 20.8%.

Table 50: Ethnic profiling among SRC Senior Staff

Ethnic group	SRC2	SRC3	SRC4	SRC5	Number	Percentage
Kikuyu			3	2	5	20.8
Kisii			3	2	5	20.8
Kalenjin		1	3	1	5	20.8
Luo		1	1	2	4	16.7
Kamba				2	2	8.3
Luhya		1		1	2	8.3
Embu	1				1	4.2
Total	1	3	10	10	24	100

SRC has 11 commissioners and three representatives of Treasury, the Ministry of Devolution and the Solicitor General. Four of the eleven commissioners appointed by the President belong to the Luo community and three from the Kikuyu community.

Table 51: Ethnic composition of SRC Commissioners

	Ethnic Group	Number	Percentage
1.	Luo	4	36.4
2.	Kikuyu	3	27.3
3.	Kalenjin	1	9.1
4.	Kamba	1	9.1
5.	Meru	1	9.1
6.	Luhya	1	9.1
	Total	11	100.0

5.3 COMMISSIONS THAT FLOUT THE NCI ACT

5.3.1 Judicial Service Commission

The Judicial Service Commission (JSC) of Kenya is established under Article 171 of the Constitution of Kenya, 2010. JSC is chaired by the CJ who is also the President of the Supreme Court. It is responsible for ensuring that the Judiciary has adequate and motivated staff for efficient service delivery. JSC is expected to handle all matters relating to human resource management and development.

The JSC comprises of 23 employees and 11 commissioners.

The Judicial Service Commission has contravened section 7(2) of the NCI act as it has the largest ethnic group being Kikuyu at 39.1% of the work force against the required 33.3%.

Table 52: Ethnic Composition of Judicial Service Commission General Staff

	Ethnic group	Number	Percentage
1.	Kikuyu	9	39.1
2.	Kisii	4	17.4
3.	Luo	3	13.0
4.	Kamba	2	8.7
5.	Kalenjin	2	8.7
6.	Luhya	1	4.3
7.	Meru	1	4.3
8.	Njemps	1	4.3
	TOTAL	23	100

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The senior staff comprises of the following job groups PLS13, PLS14, PLS16, PLS17 and the CEO as illustrated in the table below. The senior management is not representative since the Luo community being the largest ethnic group at 50%.

Table 53: Ethnic Profiling among JSC senior staff

Ethnic group	PLS13	PLS14	PLS16	PLS17	TOTAL	Percentage
Luo	2	1			3	50.0
Kisii				1	1	16.7
Ilchamus			1		1	16.7
Luhya		1			1	16.7
Total	2	2	1	1	6	100

Nevertheless, the commissioners are representative with the largest four ethnic groups (Kamba, Kikuyu, Luo and Luhya) tying at 18.2%.

Table 54: Ethnic balancing among Commissioners at JSC

	Ethnic Group	Number	Percentage
1.	Kamba	2	18.2
2.	Kikuyu	2	18.2
3.	Luhya	2	18.2
4.	Luo	2	18.2
5.	Kalenjin	1	9.1
6.	Meru	1	9.1
7.	Somali	1	9.1
	Total	11	100

CHAPTER

6

CONCLUSIONS AND RECOMMENDATIONS

6.1 Introduction

This section provides conclusions on possible scenarios to ethnic representation at three levels;

- a) The Commissioners who are primarily the policy making organ of an institution;
- b) The senior staff, whose decisions and influence is limited to the departments they are related to; and
- c) The general staff who combine senior staff and employees of other lower cadres.

6.2 Conclusion

This study concludes that Commissions are the most compliant institutions compared to public universities and parastatals given that only one of the fifteen commissions contravenes the Act. Nevertheless, it is emerging that compliance is not synonymous to diversity. For instance, despite the fact that the Judicial Service Commission has contravened the NCI Act, it has a higher evenness of diversity established by a lower mean compared to other commissions.

However, just as state corporations, majority of the staff of most commissions belong to the Kikuyu community. This is due to the fact that they are the biggest ethnic group in national population among other factors.

A notable concern is the non-representation of the Dasenach, Galla, Konso, Waat, Galjeel, Isaak, Leysan and Gosha ethnic groups, to which this research refers to as the “forgotten” ethnic groups.

6.3 Recommendations

The President and Parliament

The President and the parliament should include at least one person from the minority communities in each appointment to a commission. Further, they should make reference to the status of ethnic composition among commissioners every time they are about to effect an appointment.

The study recommends that the President and the parliament should include at least one person from the minority communities in each appointment to a commission. Further, there is need for parliament to review Article 250(4) of the Constitution – the law forming all commissions – to have appointments accommodate all ethnic groups as opposed to reflecting regional balance.

Parliament

The Joint Parliamentary Committee on National Cohesion and Equal Opportunities should support NCIC in the development of policies that will enhance the

participation of ethnic minority and marginalized groups in the general labour market and specifically in public service employment.

There is also need to make commissions grassroots oriented not only to improve service delivery but also to strengthen diversity in employment. It would be an opportunity to strategically tap into areas where minority groups have a say, away from the competitive nature of national exposure.

Commissions

Each Commission should seek to include at least one percent of their employees from ethnic minority and/or marginalized groups.

Secondly, the advertisement for job vacancies should be deliberately made to reach out to the grassroots by use of innovative means beyond the two dailies approach.

NCIC

The Commission should undertake a study that seeks to establish the ethnic minority and marginalized groups in Kenya.

There must be a deliberate and progressive formula to create a balance of the “seemingly minorities against the perceptive majority.” Quota systems are an effective way of ensuring inclusion of excluded groups into employment opportunities and political institutions. Therefore, NCIC should create expanded room for inclusion of ‘forgotten’ communities through a quota system.

The Commission should develop minimum standards of recruitment for Commissions to ensure inclusive and fair processes that can enhance representation of diversity in public employment.

Additionally, the Commission should undertake massive training of staff of all Commissions on these minimum standards of recruitment.

Finally, further research should be done in regard to the significance of inclusion in improving service delivery and how inclusion affects perceptions of societal harmony and unity among others.

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