ADDRESSING ETHNIC BASED POLITICS IN KENYA: A SOCIO-LEGAL PERSPECTIVE

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DEDICATION

To God Almighty, to my beloved country and to my cherished nephew.

ACKNOWLEDGEMENTS

DECLARATION

I, Njoroge Eunice Wanjiku, do hereby declare that this research is my original work and that to the best of my knowledge and belief, it has not been previously, in its entirety or in part, been submitted to any other university for a degree or diploma. Other works cited or referred to are accordingly acknowledged.

Signed: ....

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This dissertation has been submitted for examination with my approval as University Supervisor.

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ABSTRACT

The political pillar of Kenya's Vision 2030 seeks to achieve the development a political system that is issue-based, people-centered, result-oriented and accountable to the public. Despite these aspirations, politics in Kenya falls short of the ideals and best practices of a democratic political system. The political arena in Kenya is characterised by ethnic based politics, that is, the formation and sustenance of ethnically motivated and ethnically based political parties and coalitions. This research assesses whether the current constitutional efforts and those of the National Cohesion and Integration Commission of Kenya (NCIC) are effective tools to mitigate ethnic-based politics in Kenya. More specifically, the study assesses the role of ethnicity in politics and the degree to which the Constitution of Kenya (2010) and the NCIC have been effective in mitigating this. Finally, the study identifies ways in which these two might be strengthened and recommends what other additional legal solutions might be adopted in order to deal with ethnic-based politics.

The study was conducted through literature review on polarization of ethnicity and the formation of ethnic based political parties and coalitions, and adopted a qualitative analysis. It established that though the law may help to mitigate the ethnicity component of politics in Kenya, the long term goal of the NCIC of promoting and strengthening national social cohesion is the only truly effective remedy for the eradication of ethnic based politics in Kenya. Through a comparative analysis with other jurisdictions the study was able to identify practical measures which can be put in place to promote a national identity and decrease the saliency of ethnic identities in Kenyan politics.

In order to mitigate ethnic based politics in Kenya, the study recommends the strengthening of the NCIC. It also recommends the facilitation of conditions for full social, economic and political participation of all people irrespective of their ethnic identity. Furthermore, it proposes the strengthening of checks on political parties and the promotion of policy-oriented coalitions. In the end, the study makes the conclusion that the current legal framework is still wanting and that the sustained saliency of ethnicity in politics requires further reform of existing frameworks.

LIST OF ABBREVIATIONS

National Cohesion and Integration Commission   NCIC

1.1 Background to the Study

Ethnicity is the fulcrum around which national and local politics in Kenya revolves.[1] Despite the country's goal of achieving a political system that is issue-based, people-centred, result-oriented and accountable to the public,[2] politics in Kenya falls short of the ideals and best practices of a democratic political system. The greatest indicator of this shortfall is the existence of ethnic based political parties which lack core principles and an ideological ethos on which to base the recruitment of members, participation in policies and implementation of their visions and objectives.[3]

The Constitution of Kenya (2010) has made various efforts to find solution for this Gordian Knot. This has been through the move towards inclusiveness, equality and participation with relations to all peoples by devolution of power and resources to the grass roots,[4] prohibition of the formation of ethnic based political parties,[5] and the establishment of national values in promotion of a national identity.[6] The National Cohesion and Integration Commission (**NCIC**) also seeks to remedy the political system for the ills of ethnic based politics by, among other things, analysing the root causes that fuel ethnic disputes and conflicts in Kenya and proposing remedies to the government and other concerned parties.[7]

Notwithstanding this framework, the challenge of ethnic-based politics persists: the 2013 general election for example saw political parties and coalitions organized as they always

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[1] Kanyinga Karuti, *Kenya; Democracy and Political Participation*, Open Society Initiative for Eastern Africa, Nairobi, 2014, 12.

[2] An issue-based system is one in which political differences are about means to meet the widest public interest. "People-centered" goals refer to the system's responsiveness to the needs and rights of citizens, whose participation in all public policies and resource allocation processes is both fully appreciated and facilitated. A result-oriented system is stable, predictable and whose performance is based on measurable outcomes. Finally, an accountable system is one that is open and transparent and one that permits free flow of information.

[3] Khadiagala, Gilbert M, 'Political movements and coalition politics in Kenya: entrenching ethnicity' 17 *South African Journal of International Affairs* (2010), 65.

[4] Chapter 11, *Constitution of Kenya* (2010).

[5] Article 91(2) (a), *Constitution of Kenya* (2010).

[6] Article 10 and Chapter 6, *Constitution of Kenya* (2010).

[7] Section 25 (2) (j), *National Cohesion and Integration Commission Act* (Act No. 12 of 2008).

have been: on ethnic lines.[8] The importance of this issue is paramount; as the 2017 general elections draw near, ethnic based political parties and coalitions are forming, setting Kenya on a path that at worst leads to decimation.

1.2 Statement of Problem

Many authors have identified ethnic politics as a scourge to good governance, true democracy, sound economic and social policy platforms and competitive politics. The current legal framework seems to have failed to combat ethnic based politics and the formation of ethnic-based political parties and coalitions. It is still not clear what laws and institutions can be applied to deal effectively with the problem of ethnic based politics in Kenya. Indeed we can ask: Can the current laws and institutions mitigate the ethnic political tendencies in Kenya? What nature and characteristics would such laws and institutions have in order to be successful in doing this? How have other countries with many ethnic groups managed such ethnic political tendencies?

1.3 Justification of Study

The elimination of ethnic-based politics in Kenya is of great importance. It is likely to reduce ethnic conflict significantly and to promote a higher level of harmony, democracy and equality in the country. Indeed, if ways could be found of using laws to remedy the ills of politicized ethnicity and an adequate legal framework put in place to restrict politicians from conducting ethnic-based campaigns, which by their nature tend to derogate members of other ethnicities, all the citizens of the country would benefit greatly.

1.4 Statement of Objectives

The general objective of this study is to assess whether the current constitutional efforts and those of the NCIC are effective tools to reduce, if not abolish, ethnic-based politics in Kenya. The specific objectives of the study are: 1) to assess the role of ethnicity in politics and the degree to which the Constitution of Kenya 2010 has been effective in mitigating the tendency of ethnic-based politics in Kenya; 2) to analyse the ways in which politicians in Kenya have

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[8]Election data on elections held on 4th March, 2013, as released by the Independent Electoral and Boundaries Commission shows that apart from the congregation of ethnic groups under specific political parties, candidates were elected according to their ethnic affiliation with the voters in that region.

circumvented the Constitution and the efforts of the NCIC; 3) to seek to identify ways in which these two might be strengthened and 4) to study what other additional legal solutions might be adopted in order to deal with ethnic-based politics.

1.5 Hypotheses

The study adopts four main hypotheses:

1) The most salient manifestation of ethnic based politics in Kenya is the formation and sustenance of ethnically motivated and ethnically based political parties and coalitions;

2) Political parties and coalitions in Kenya are primarily motivated by ethnic circumstances and considerations despite there being possible ideologies and principles informing them;

3) The consequences of ethnic-based politics are largely negative;

4) A legal solution to ethnic based politics exists despite the complexities of this socially-rooted phenomenon, though the solution itself cannot be purely legal;

5) The NCIC are the most appropriate mechanism for resolving ethnic based conflict and consequently ethnic based politics.

1.6 Research Questions

1. What is the role and consequence of ethnicity and ethnic identities in politics in Kenya?

2. Does the legal framework in place adequately mitigate the adverse consequences of ethnically-based politics?

3. What solutions, legal or otherwise, can be implemented to more effectively deal with the problems caused by ethnic politics?

1.7 Limitation

This study is limited by its research design and methodology. The method chosen does not incorporate collection of data on the subject matter hence limiting the study to aspects that can only be determined through qualitative analysis.

1.8 Chapter Breakdown

1. Chapter 1: Introduction

   This chapter includes an introduction to the study, the statement of the problem, the literature review, the objectives and research questions, the hypothesis and the research methodology of the study.

2. Chapter 2: Theoretical framework

   This chapter gives a theoretical perspective to the politics of ethnicity, illustrating how and why ethnicity has a colossal impact on politics in Kenya.

3. Chapter 3: Comparative Study

   This chapter looks at the issue of ethnicity in politics in other jurisdictions to see what lessons Kenya can learn. The jurisdictions examined are Switzerland and Tanzania.

4. Chapter 4: Discussion

   This chapter draws from the best practices in Kenya's efforts at fighting ethnic based politics and those of other jurisdictions. It seeks to determine the institutions and framework that would be most suitable in dealing with ethnic based politics in Kenya.

5. Chapter 5: Findings

   This chapter presents the findings from the previous chapters relating to the research questions and objectives.

6. Chapter 6: Conclusions and Recommendations

   This chapter makes the conclusions of the study and comes up with recommendations on measures to reform established institutions in dealing with ethnic based politics. It draws from the findings from Chapter 5.

CHAPTER TWO
THEORETICAL FRAMEWORK

2.1 Introduction

This chapter examines the research design and methodology, together with the theories applicable to understanding ethnicity in politics. It further seeks to explain the politicisation of ethnicity from a theoretical perspective.

2.2 Research Design & Methodology

This study approaches the matter through literature review on ethnic based politics. It describes and conducts qualitative analysis on the subject matter not only in relation to Kenya but also drawing a comparative from two other countries: Switzerland and The United Republic of Tanzania. The Constitution of Kenya 2010, the National Cohesion and Integration Act, and the NCIC policies and directives constitute the primary sources significant for laying down the legal position in relation to the subject matter in Kenya. Further, the study will involve an analysis of statements made by Kenyan politicians who have formed their own ethnic based parties, together with an analysis of how current legislation has successfully or unsuccessfully addressed the issue of ethnic based parties. Books, journal articles, reports, conference papers and online journals comprise the secondary sources.

2.3 Theories

When analysing the role of ethnicity in politics, two theories must first be understood: Perenialism or primordialism and instrumentalism.

2.3.1 Perenialism or primordialism

This theory postulates that ethnic groups are natural phenomena that determine their personal identity and turn into a natural community.[9] It emphasises the idea of ethnic identification as a result of inherent long standing and usually unchanging sets of alliance which often defy rationality and logical explanation. Hence, ethnicity is an ascribed identity or assigned status sustained by lineage and cultural ties. Under this approach, everyone has a deep rooted feeling of belonging making ethnic groups identifications without advantage.[10]

Though it is more or less accepted that persons in a society tend to automatically converge on grounds of ethnicity, it is arguable whether this argument can be used to

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[9] Gary J, Beer F, Berghe P and Rushton J P, 'Kin Selection, Socialization, and Patriotism: An Integrating Theory [with Commentaries] *Politics and the Life Sciences* (1986), 144.
[10] Persons G A, *Race and Ethnicity in Comparative Perspective*, Transaction Publishers, New Jersey, 1999, 25.

hypothesise the inevitability of politicisation of such groups. If possible, ethnic rivalry can be seen to simply spring from differences in inherent ethnic identities and would be inevitable: the common blood shared within the group results in hospitality and cooperation among the members and hostility and conflict against outsiders.[11]

2.3.2 Instrumentalism

This theory applies primarily to individuals within a group. Here identity can be varied to one's benefit.[12] Political or economic reasons, or self-interest can change an individual's reliance on any of his identities to benefit himself. Like other identities therefore, ethnicity is a mere tool for the pursuit the individual's economic, social and political interests. If, for example, ethnic affiliation or identification gives one less advantage economically and politically, the person often opts for another identity to attain his objective. In this case, ethnic conflict does not emerge directly from differences in ethnic identity rather it arises only when ethnic identities are politicized or manipulated to generate political and socio-economic advantages for individuals within an ethnic group at the cost of depriving or neglecting other entities.[13]

Whichever the approach however, ethnic groups in Kenya are in an advantageous strategic position as it is difficult and costly for the state to suppress their customs yet it is these very customs that can readily serve as instruments for the development of a formal or informal political organization. In other words, ethnic groups are a more stable and more effective means of achieving a group's or individual's aims than a formal association in which loyalties derive only from contractual interests.[14]

2.4 Politicisation of ethnicity: a theoretical perspective

Politics is a matter of power. Where the overall well-being and security of the people is not being provided for by the state, independently of one's ethnic affiliations, individuals are forced to rely on ethnic principles of cooperation.[15]The result is the mobilization of ethnic groups where persuasion of political power becomes the main objective of few individuals,

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[11] Esteban J, Mayoral L, and Ray D, 'Ethnicity and Conflict: An Empirical Study' *American Economic Review* (2012), 132.

[12] Bacova V, 'The Construction of National Identity: On Primordalism and Instrumentalism' 1 *Human Affairs* (1998), 33.

[13] Collier P and Hoeffler A, 'Greed and Grievance in Civil War' 56 *Oxford Economic Papers* (2004), 573.

[14] Cohen A, 'Customs and Politics in Urban Africa: A Study of Hausa Migrants in Yoruba Towns' 35 *Bulletin of the School of Oriental and African Studies* (1972), 212.

[15] Orvis S, 'Moral Ethnicity and Political Tribalism in Kenya's Virtual Democracy' 29 *African Issues* (2001), 8.

making ethnic groups political actors seeking political rights,[16] denial of which develops conflict and ultimately the polarisation of ethnic groups.[17] How exactly ethnic based politics emerges is explained below.

2.4.1 Pre-existing conditions

Certain conditions and factors lay a foundation enabling individuals to use ethnicity as an effective tool for political mobilization. One is the lack of initial and subsequent state institutions and democratic norms to deal with pluralism. In Kenya's case, independence was beneficial for the dominant group or for certain powerful individuals and from the beginning, there were only weak institutions with little capacity to address relative deprivation among various ethnic groups.[18]

As the state developed, its inability to recognise the challenge of attaining cooperation from a people who viewed themselves as independent and distinct,[19] coupled with nation-building efforts, which paid little attention to promoting a national identity, resulted in the reliance on ethnic identities as the major tool for ethnic mobilization.[20]   Other conditions include the use of excessive executive power for political patronage; competition amongst different ethnic groups;[21] and the unequal distribution of resources along ethnic lines.[22]

2.4.2 Negative Ethnicity

Ethnicity in itself is never an issue: if applied properly, it can be beneficial for fostering solidarity.[23]However, the existence of the above conditions creates a conducive environment for negative ethnicity. Ethnic groups which lack a representation in politics become dissatisfied with the allocation of resources resulting from inadequate policies and poor implementation of

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[16] Political rights include representation in political and administrative institutions, share and control over local resources etc.

[17] Hashmi S and Majeed G, 'Politics of Ethnicity: A Theoretical Perspective' 30 *Journal of South Asian Studies* (2015), 320.

[18] 'Stephanie Hanson: Understanding Kenyan Politics' *Council on Foreign Relations*, 25 January 2008 https://www.cfr.org/kenya/understanding-kenyas-politics/p15322 on 1 August 2016.

[19] Miguel E, 'Nation Building and Public Goods in Kenya and Tanzania' 56 *World Politics* (2004), 327.

[20] Miguel E, 'Nation Building and Public Goods in Kenya and Tanzania' 357.

[21] Gurr R, 'Peoples against States: Ethnopolitical Conflict and the Changing World System' *International Studies Quarterly* (1994), 377.

[22] Widner J, *The Rise of a Party-State in Kenya: From "Harambee!" to "Nyayo!"*, University of California Press, Berkley, 1992, 5.

[23]Ajulu R, 'Politicised Ethnicity, Competitive Politics and Conflict in Kenya: A Historical Perspective' 61 *African Studies* (2002), 252.

the law.[24] The perception of society being ordered in a manner that allowed for there to exist dominant ethnic groups which hold key economic and political positions breads apprehension and tension amongst ethnic groups.[25]

It is here that a type of 'ethnic political leader' is born and thrives. This is a leader who seeks to ride on ethnicity as their primary vehicle to achieve their own ends. Such a leader may be motivated by various factors. First, the state's failure as evidenced by the pre-existing conditions allows persons to naturally conclude that their interests can only be met if they are involved in the distribution of resources and public goods. Other leaders are simply motivated by greed.[26]

2.4.3 Ethnic based political parties

It is such political leaders who form ethnic based political parties as tools to achieve their objectives and ensure their interests are met. Ideally, political parties are formed to rivet the attention of the voters on important issues, formulate and express public opinion and unify people thereby discouraging sectoral interests.[27] Ethnic based parties are different in that they primarily seek to champion the particular interests of one ethnic category or set of categories.[28] In most cases however, the group's interests are not met as a whole and only few individuals therein truly benefit from such arrangements.

2.3.4 Ethnic mobilization and ethnic favoritism

One of the key functions of ethnic based parties includes ethnic mobilisation. Ethnic mobilisation is the process by which groups organise around some feature of ethnic identity in pursuit of collective ends.[29] Through the reviving and sustaining of ethnic narrative, political elite are able to rally members of their ethnic community to produce political solidarity.[30] The potency of ethnic mobilization is in its ability to create and reinforce ethnic favoritism and is only an effective tool where ethnic appeals resonate with individuals.[31]

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[24] Guibernau M, 'Anthony D Smith on nations and national identity: A Critical Assessment' 10 *Nations and Nationalism* (2004), 133.

[25] www.sociologyguide.com/socia_inequality_exclusion/internal-colonialism.php on 12 December 2016.

[26] Collier P and Hoeffler A, 'Greed and Grievance in Civil War', 573.

[27]Sushil S and Shushil S 'The Role of Political Parties' 11 *The Indian Journal of Political Science* (1950), 23.

[28] Chandra K, 'What is an ethnic party?' 17 *Party Politics* (2011), 155.

[29] Olzak S, 'Contemporary Ethnic Mobilization' 9 *Annual Review of Sociology* (1983), 355.

[30] Hashmi R and Majeed G, 'Politics of Ethnicity: a Theoretical Perspective', 329.

[31]Larson E, 'Political Orientation and the resonance of ethnic mobilization: Understanding the prospects of reducing ethnic politics in Fiji' 14 *Ethnicites* (2014), 228 and 245.

Ethnic favouritism, ultimately involves the exclusion of others from other ethnic groups.[32] This if practised long enough enforces ethnic based politics. A vicious cycle is consequently created. Such ethnic based political parties propagate ethnic based politics, by placing in power political leaders who have as an agenda the development of themselves and their ethnic group as opposed to the country's development as a whole.[33] This state of politics results in weak social and legal institutions, a lack of respect for the rule of law and low quality of political competition. What follows is the formation of more ethnic based political parties and coalitions. Furthermore, the lack of cohesion evidenced by ethnic tensions, the lack of accountability and the intensifying of corruption all fuel the flames of negative ethnicity. To break this cycle, considerable changes and reforms in the existing legal framework may need to be implemented.

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[32] Ethnic favoritism can be described as the practice of giving special treatment to a person or group with whom one share's the same ethnicity.

[33] Lewis I 'Why tribalism survives' Conference on Nationalism, Urbanization and Tribalism in Contemporary Africa, East African Academy, Kampala, September 1966.

CHAPTER THREE
COMPARATIVE STUDY

3.1 Introduction

This chapter examines the political systems of Switzerland and Tanzania and seeks to identify the lessons Kenya can draw from them.

3.2 Switzerland
3.2.1 Introduction

Switzerland is considered to be a well-functioning multi-ethnic nation-state with a highly stable historical legacy.[34] Switzerland is unequally divided into four distinct ethno-linguistic groups each corresponding to a unique ethnic and cultural lineage with deep geo-historical roots.[35] Of the total population, the Swiss-German constitute around 64%, the Swiss-French 20%, the Swiss-Italian 8% and finally the Romansch-Speaking Swiss forming less than 1 %. The Swiss model of nation building can be seen as an ideal model for the establishment of other functioning multi-ethnic, multi-linguistic and multi-religious nation-states.

3.2.2 Factors contributing to the non-polarisation of ethno-linguistic groups in Switzerland

The modern Swiss nation has very distinct groups increasing complexity in administering a functional government and productive economic system and in creating a commonly-shared national identity. [36] Even today, ethnic cleavages still exist- German-speaking cantons have been seen to have an economic pre-dominance over the rest. Despite this there have only been very few and rather short-lived times in Swiss history in which political alliances have become realigned on the basis of ethno-linguistic cleavages.[37] Three factors may be pointed out to have contributed to this.

First is the presence of an overbearing external military threat by a common hereditary enemy. The 'external threat thesis' that external threat along with the consequent elimination of both political autonomy and political freedom results in the transformation of a vague sense of ethnic difference into a crystallised sense of national identity through the solidification of a set

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[34] Kohn H, *Nationalism and Liberty: The Swiss Example*, Ruskin House, 1956, 8.
[35] https://www.bfs.admin.ch/bfs/en/home/statistics/population.gnpdetail.2016-0479.html on 28 November 2016.
[36] Even within the 4 distinct ethno-linguistic groups, there exists sub groups which have their own dialects, significantly different from each other.
[37] The best example of this was the 'Linguistic Trench' that occurred pre-World-War-Two which pitted pro-Axis German-Swiss against neutral-oriented French-Swiss. Wimmer A, *Nationalist Exclusion and Ethnic conflict: Shadows of Modernity*, Cambridge University Press, 2002, 236.

of commonly-shared values that have become a foundation and common belief system for the cantons.[38]

The second factor is elite initiatives. There was a concerted effort by Swiss elite to form and support a common national identity and to cooperate towards this end. This was primarily through ethnic accommodation which is the formation of a special political arrangement in which various ethnically divided groups share political power in accordance to a mutually agreed upon formula or institutional mechanism.[39] In 1938 therefore, the National Council in an attempt to clarify the political idea of Switzerland as one nation, coined the term *Geistige Landesverteidigung* as a national ideology to reduce rising internal ethnic tension catalysed by the war.[40] It is said that without the support and guiding hand of the elite association, it is likely that Switzerland's ethnic divisions would be difficult to navigate and might have engulfed the state years ago.[41]

The final factor is the will of the people to cooperate and participate in nation building.[42] The Swiss maintain a common desire to exist as a unitary yet multi-ethnic nation: it denounced the idea of existing as a culturally homogenous society yet embraced that of existing as one nation-state.

3.2.3 Efforts in avoiding politicisation of ethno-linguistic groups in Switzerland

The specific measures taken to promote a unified Swiss nation and prevent polarisation of ethno-linguistic groups can be summarised into three overlapping and fundamental institutive actions: national building efforts, political integration, and the promotion of direct democracy.[43]

3.2.3.1 National building efforts

The 1848 constitution founded the nation as a political nation as opposed to a cultural one. [44] A political nation is one characterized by constitutional guarantees for equal citizenship

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[38] Preamble, *Federal Constitution of the Swiss Confederation* (1999).

[39] Schmid C, *Conflict and Consensus in Switzerland*, University of California Press, 1981, 12-13.

[40] This term is literally translated to, 'spiritual national defence' and refers to a political-cultural movement active until the 1960s, aimed at strengthening of values and customs perceived to be Swiss and thus create a defence against ideologies that would bread strife for example secessionist ideologies and totalitarian ideologies such as communism and fascism.

[41] Peace Research Institute Frankfurt, *Switzerland- A Model for solving Nationality Conflicts?* PRIF-Report No. 54/2000, 38.

[42] Renan E, 'What is a nation?' in Bhabha H (ed.), *Nation and Narration*, Routledge, 1990, 15.

[43] United Nations Research Institute for Social Development (UNRISD), *Switzerland: Democracy, Governance and Human Rights Programme Paper*, January 2006, 1.

[44] Chapter 2 of Title 2, *Federation Constitution of the Swiss Confederation* (1999).

for all people regardless of their individual language origin or ethnicity.[45] A cultural nation is one based on the hope of integrating a people of a specific origin, history, religion or language. This may be conceivable for a homogenous society but in a multi-cultural society, the idea of mono-culturalism runs the risk of bias and subjugation of cultural minorities.[46]

The inclusion of all languages as national languages promotes equality amongst the different groups, encouraging them to strive towards building the nation. Teaching of tolerance in the different education systems further allows them to appreciate their differences while relishing in their nationhood.[47] Institutional arrangements are also concerned with ensuring the non-discrimination, participation and representation of the different cultural minorities at all levels of the political system, through the promotion of public services as a means to equalization.

3.2.3.2 Political integration[48]
3.2.3.2.1 Federalism
The Swiss society is a product of its political institutions and structures. As a federation, it has a three pronged political structure; the Switzerland federation, 26 cantons and 3,000 communes. As a 'non-centralised' federation there is bottom-up nation building characterised by a vertical division of power leaving utmost autonomy to the smaller units. Only a few responsibilities lie with the federal government.[49] Cantons as per the 1848 constitution retain their statehood, their constitutionally guaranteed political autonomy, and the right to impose taxes.[50]Furthermore, they are responsible for creation of their own education systems[51] over and above having their own constitutions to govern most of their affairs.[52] The communes also have

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[45] Wolf Linder, 'Federalism: The case of Switzerland' in Brillantes A B, Ilago S A, Santiago E B and Esden B P (eds), *Decentralization and Power Shift: An Imperative for Good Governance*, Asian Resource Centre for Decentralization, Quezon City, 2002, 54.

[46] Wolf L, 'Federalism: The case of Switzerland', 55.

[47] Wolf L and Vatter A, 'Institutions and outcomes of Swiss federalism: The role of the Cantons in Swiss politics' 24 *West European Politics* (2001), 84.

[48] The process by which nations, instead of conducting foreign and domestic matters independently, seek to make joint decisions or to delegate the decision making process to new central organs. See Ilievski N, 'The Concept of Political Integration: The Perspectives of Neofunctionalist Theory' 1 *Journal of Liberty and International Affairs* (2015), 6.

[49] The key responsibility of the federal government is national defence and foreign relations. The federal government is, moreover, precluded from acquiring new responsibilities without the consent of the cantons.

[50] Article 3 and Title 3, *Federal constitution of the Swiss Confederation*, (1999).

[51] Article 62, *Federal constitution of the Swiss Confederation*, (1999).

[52] Article 51, *Federal constitution of the Swiss Confederation*, (1999).

a significant degree of autonomy.[53] They have their own political organisations and authorities, can create their own policies on production and distribution of local public goods and maintain autonomy in matters relating to taxation and finance.[54]

Though policies differ within the cantons due to cultural, economic and political differences, cantons actively participate in creation of national policy and decision making such as amending the constitution, developing of national legislation and implementing federal legislation.

3.2.3.2.2 Proportional representation and political participation

This is made possible by a consensus democracy which seeks to integrate minorities through proportional representation and political participation in all branches of the federal government and its institutions.[55] Whereas the converse, majoritarian democracy, is based on the idea of majority decision and a regular change of government in power ultimately supporting the winner takes all ideology, consensus democracy ensures that the majority cannot rule out the minority as the system makes compromise inevitable.

Proportional representation is apparent in the National Council where the number of representatives vary according to the size of the canton. Such proportionality is also reflected in the Federal Court in which the 39 seats must be proportionally allocated to the four ethno-linguistic groups. Moreover, the Federal Council, the executive arm of the federal government, being a collegiate of 7 members is comprised of proportional representatives from the four political parties.

3.2.3.3. Direct democracy

Direct democracy allows a group of citizens to participate in the legislative process. The most significant effect of direct democracy is the element of power sharing through the exercise of veto. The Swiss Federal Council for example was a one-party cabinet. The conservative opposition often used referendums to shoot down important projects originated by the majority, reducing the effectiveness of the Council in decision making and implementation of its policies. As a remedy, the majority sought out proportional representation as a means to include the

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[53] Article 50, *Federal constitution of the Swiss Confederation*, (1999).
[54] Art 128(2) & 129(1), *Federal constitution of the Swiss Confederation*, (1999).
[55] Consensus democracy is the politics of compromise or power-sharing democracy seeks political integration by inhibiting the block majority ensuring power sharing throughout.

minority in its functions. In this case, direct democracy acts as a coercive power forcing the majority to share its power with the minority while on the other hand forcing the minority to cooperate with the majority as they can only gain more through cooperation than through systematic opposition.[56]

3.3 Tanzania

Though the estimates vary, it is commonly claimed that Tanzania has around 120 ethnic groups.[57] Despite such a striking plurality however, Tanzania has never had overt political competition based on ethnic differences. Ethnic politicisation in Tanzania, if any, has never been sufficient enough to stifle inter-ethnic cooperation and nation building. Tanzania can hence be said to be only culturally and socially ethnic. Two factors can be pointed to as contributing to the low saliency levels of ethnicity in politics; the 'ethnic structure', and the sustained enthusiasm for unity and peace, otherwise referred to herein as national building efforts.[58]

3.3.1 The Ethnic structure argument

Countries with fewer and larger ethnic groups are believed to be more ethnically polarised as ethnic groups therein are large enough to form a minimum winning coalition to meet the electorally set threshold for securing political office. In a country like Tanzania, where there are very many small ethnic groups, the size of the majority can barely constitute the minimum for achieving a winning coalition, forcing political parties to reach out to and win votes from as many ethnic groups through national programs. Consequently, lower levels of ethnic politicisation are achieved. The 8 largest ethnic groups in Tanzania for example, form roughly a half of the total population unlike in Kenya where the largest ethnic groups form over 87% of the total population.[59]

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[56] United Nations Research Institute for Social Development, *Switzerland: Democracy, Governance and Human Rights Programme Paper*, 12.

[57] Attaining an accurate figure on the size and geographical distribution of ethnic groups in Tanzania is a challenge as the registration of individuals on the basis of ethnicity or religion is, since 1967, prohibited.

[58] Malipula M, 'Depoliticizing ethnicity in Tanzania: a historical and structural narrative' 27 *Afrika Focus* (2014), 53.

[59] Chege M, 'The Return to Multiparty Politics' in Barkan J (ed) *Beyond Capitalism vs. Socialism in Kenya and Tanzania,* Lynne Rienner Publishers Inc., 1994, 63.

3.3.2 National building efforts

There have been conscious efforts in the establishment of national values, institutions and practices. The general enthusiasm to create and maintain a Tanzanian identity as opposed to the various ethnic identities, developed right from the establishment of the post-colonial state.

The independence government for one, put in place a national language policy which replaced English as the country's official language with Kiswahili in the 1960s. In order to ensure its nation-wide use, the government went ahead and pushed for the total Swahili-sation of the government.[60] The National Swahili Council was also established to promote the use of Kiswahili as the language of choice to be used in all spheres of life. This resulted in the strengthening of national identity among the Tanzanian people through the sense of shared interest and unity resulting from the use of one language even in private life.[61]

The government also sought to use civic education as a tool for nation building. As a matter of emphasis, Tanzanian nationality, values, history and culture are imparted to all students and citizens. Political education, for example was introduced in the curriculum in the late 1960s creating a strong sense of national and Pan-African identity. To further reinforce this, teachers are required to serve in the paramilitary national service organisation to ensure their indoctrination with the values and ideals of the regime.[62]

Elite guidance and political will also serves as an effective tool. Post-independence initiatives involved nation building with the goal of re-making the entire nation into a super-community.[63] A founding principle of the country's first political party was to 'fight tribalism and any other factors which could hinder the development of unity among Africans.'[64] This desire has been sustained and is reflected by present governments which point to national peace, unity and stability as attributes that must continue to be cultivated, nurtured and sustained in Tanzania as important pillars for the realisation of its Vision 2025.[65]

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[60] Barkan J, 'Divergence and Convergence in Kenya and Tanzania: Pressures for Reform,' 18.
[61] Bull F, 'Looking back thirty Years and Forward: The Story of the East African Swahili Committee' *Journal of the Institute of Kiswahili Research* (2005), 232.
[62] Miguel E, 'Tribe or Nation? Nation Building and Public Goods in Kenya versus Tanzania', 336.
[63] Hyden G, 'Top-Down Democratization in Tanzania', *Journal of Democracy* (1993), 155.
[64] Miguel E, 'Tribe or Nation? Nation Building and Public Goods in Kenya versus Tanzania', 337.
[65] Tanzania Planning Commission, *The Tanzania Development Vision 2025*, 3.

The birth and implementation of the Ujamaa concept,[66] is largely recognised as having improved inter-ethnic cooperation.[67] This concept was a political-economic management model that involved; the creation of one national party to solidify cohesion; the institutionalisation of social, economic and political equality; and the creation of Ujamaa villages to collectivise local production.[68] Over the long run the frequent social interactions among members of different ethnic groups within the same village and the more equitable regional distribution of public investment resulted in the formation of a common ideology of unity and cohesion amongst the different ethnic groups in Tanzanian.

These efforts coupled with legislative provisions such as the emphasis on the policy of Socialism and Self-reliance towards building a united republic,[69] the prohibition from forming political parties aimed at promoting the interests of any ethnic group,[70] and the requirements of equality before the law for all citizens, regardless of ethnicity, [71]greatly enforced the national building mechanisms in place. Nevertheless, Tanzania's success in preventing the politicization of ethnicity is largely based on policy decisions made and sustained towards this end as opposed to the use of purely legislative and institutional means.

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[66] Ujamaa which means family hood or brotherhood in Kiswahili was a version of African socialism that promoted the development of the person through working as a people or as a community.

[67] Ibhawoh B and Dibua J, 'Deconstructing Ujamaa: The Legacy of Julius Nyerere in the Quest for Social and Economic Development' 8 *African Journal of Political Science* (2003), 62.

[68] Cranford P, 'Julius Nyerere: Reflections on the Legacy of his Socialism' *Canadian Journal of African Studies* (1999) 147.

[69] Article 9, Constitution of the United Republic of Tanzania (1977).

[70] Article 20(2) (a) (ii), Constitution of the United Republic of Tanzania (1977).

[71] Article 9(g) & Article 13(1) & (5) Constitution of the United Republic of Tanzania (1977).

CHAPTER FOUR
ETHNIC BASED POLITICS IN KENYA: A CONSTITUTIONAL AND INSTITUTIONAL FRAMEWORK

4.1 Introduction

That ethnicity was the salient force behind the post-election violence of 2007-2008 is apparent. Yet the post-election violence only serves as an example of the state of the political system in Kenya. Being a pluralistic society with 42 ethnic groups,[72] politics- all those activities which are directly or indirectly associated with the seizure, consolidation and use of state power[73]- has over time and for various reasons been 'ethnicised.' This chapter looks into the post-independence factors that have contributed to and sustained the polarisation of ethnicity and the consequent imbuing of ethnic based politics as the characteristic feature of the Kenyan political system. Furthermore, the chapter examines the constitutional and institutional measures put in place to resolve this matter.

4.2 Factors contributing to the polarisation of ethnicity in Kenya

In analysing this two main factors, this paper proceeds with the view that in Kenya, though ethnic identities are primordial, ethnic alliances and cleavages are socially constructed and are always shifting, allowing it to be rationally and strategically used by groups and political elite to mobilize citizens for self-interests.[74]

4.2.1 Political parties

Political cohesion among leaders has always been fragile and transient. The overwhelming cooperation of all opposition parties and elites in the 2002 general election to oust a party that had held the reins of power since independence was a demonstration of how ethnic and regional groups could craft a winning coalition for change.[75] It was a short demonstration however, as underlying ethnic tensions were not addressed, creating unstable instruments of political competition: many small political parties, often led by long-standing politicians with loose coalitions of regional and ethnic followings as a means to negotiate entry

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[72] Kenya Bureau of Statistics, *Facts and Figures, 2015*, 2015, 1.

[73] Nnoli O, *Introduction to politics*, Longman Press, 1986, 7.

[74]Holmquist F and Mwangi G, 'The Default Politics of Ethnicity in Kenya'16 *The Brown Journal of World Affairs* (2009), 102.

[75] Khadiagala, Gilbert M, 'Political movements and coalition politics in Kenya: entrenching ethnicity', 65.

into hopefully winning coalitions. The aftermath of the post-election violence also saw power sharing efforts put in place though the ability of the coalition to pursue focused development policy and advance inclusion was greatly undermined.[76]

Prior to the promulgation of the Constitution of Kenya 2010 ruling parties were perceived as a tool for control by the political elite of the centralised executive. This, together with the lack of interest of the political class in redistributive policies outside the divisive ethnic frameworks, drove the formation of ethnic based political parties by politicians and ethnic groups to ensure their access to and benefit from such power. Currently, the trend of multi-ethnic parties may easily deceive one into imagining that ethnic based politics in Kenya is dissipating.[77] Even in such parties, the ability of individual leaders to have influence over party matters depends principally on their ability to cultivate an ethnic or sub-ethnic bloc that they bring to the party. Should one fail to gain entrance in a party through nomination, they are quick to register their own briefcase party as a new vehicle for gaining power.[78]

4.2.2 Lack of national social movements making political claims

Social inclusion and effective democracy requires bridging the gap between the state and the citizens.[79] Doing so requires national popular organisations which unfortunately in Kenya, do not exist save for political parties which themselves lack a national character. Kenya lacks a major vehicle of popular political interest operating at a national level; there is no organised peasant voice that raises the concerns of all Kenyans.[80] Though social movements are non-existent at a national level there is some form of dense interaction between the political class and constituents groups around local and regional concerns. Even then, however, interactions are not effective as local complaints tend to appear at the national level as a divisive regional or

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[76] Holmquist F and Mwangi G, 'The Default Politics of Ethnicity in Kenya', 106

[77] As the country heads towards the 2017 general elections new ethnic based political alliances are being formed. On the one hand is JAP, a newly formed political party formed by 12 affiliated parties which agreed to dissolve and form one political vehicle. This alliance is generally perceived to be a Kikuyu-Kalenjin alliance. On the other hand is NASA, National Super Alliance which is perceived as a tribal outfit for 'opposition ethnic groups'; the Luo, Luhya, Kamba ethnic groups.

[78] Various political parties in Kenya have split with such a dissatisfied member forming their own. Examples include ODM Kenya which split from ODM and New FORD Kenya which split from Ford Kenya.

[79] Mkandawire T, 'Towards a Development, Democratic and Socially Inclusive Africa Once Again,' *CODESRIA Bulletin*, (2005), 34.

[80] Social movements that have been formed in Kenya, to the exclusion of religious movements of which their national political impact is unclear, have been regional hence non-inclusive. An example is the Mungiki whose large numbers are from one ethnic community, the Kikuyu. The Mungiki are known to rival the police as centers of power and authority, thriving as a regional and ethnic-based movement in more class-divided regions of Kenya.

ethnic costume resulting in a deeply divided political class at the national level due to the socio-economic structure of Kenya.

4.3 Existing Remedies
4.3.1 Constitutional mechanisms
4.3.1.1 Nation building

The Constitution of Kenya, 2010 provides a uniting and inclusive framework meant to guide the process of nation building. In its preamble it summarises the basic spirit, philosophy, principles, values and national goals of the people, including a pride for cultural diversity, peace and unity; a commitment to nurturing the well-being of the nation; and the aspiration of all citizens towards equality, democracy, social justice and the rule of law.

In drafting the constitution, there was an acknowledgement of the need to enumerate national values due to the risk posed by poor governance and impunity.[81]Article 10 therefore recognises that Kenya is a sovereign multiparty democratic state founded on national values and principles such as patriotism, national unity, sharing and devolution of power, rule of law, democracy and participation of the people, equality, social justice, non-discrimination, inclusiveness, good governance, transparency and accountability.[82] Specific values have also been set out for public officers to place restrictions on their activities and to ensure that they avoid behaviour that compromises public or official interest in favour of a personal interest.[83] To ensure this, a disciplinary procedure is called for that requires, if necessary, the removal from office or dismissal of such a state officer.[84]

The Bill of Rights also makes a commendable constitutional effort at nation building. First, if provides for equality and freedom from discrimination on any grounds including ethnicity.[85] Secondly, it seeks to protect vulnerable and marginalised groups by requiring state

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[81] Nyanjom O, *Devolution in Kenya's New Constitution*, Regal Press Kenya, 2011, 28.
[82] Art 10(2), *Constitution of Kenya,* (2010).
[83] These guiding principles on leadership and integrity are captured in Article 73 and include: selection based on personal integrity, competence and suitability or election in free and fair elections honesty, objectivity and impartiality in decision making and in ensuring decisions are not influenced by nepotism, favoritism, corruption, other improper motives, selfless service demonstrated by honesty, declaration of conflict of interest, accountability, discipline and commitment in service.
[84] Chapter 6, *Constitution of Kenya*, (2010).
[85] Article 27 (1), *Constitution of Kenya*, (2010).

officers and organs to address the needs of vulnerable groups, [86] and by also requiring affirmative action in all spheres of life to redress disadvantages because of past discrimination.[87]

In placing such measure above, the constitution promotes inclusion, equality, nationalism and equitable distribution of resources, while addressing past imbalances caused by a political culture of patronage on primarily on ethnic lines.

4.3.1.2 Checks on Political Parties

In an effort to moderate political parties in Kenya, the Constitution subjects them to a mandatory standard: every political parties must; have a national character prescribes by an Act of Parliament,[88] promote and uphold national unity, respect the right of all persons to participate in the political process, including minorities and marginalised groups, promote the objects and principles of the constitution and the rule of law.[89] Furthermore, political parties are restricted from being founded on religious, linguistic, racial, ethnic, gender or regional basis or from seeking to advocate hatred on such grounds.[90]

A code of conduct to be set by the Independent Electoral and Boundaries Commission (**IEBC**) must also be followed for a political party to participate in the election process which includes the requirement for party seat lists for the national assembly to reflect the regional and ethnic diversity of the people of Kenya.[91]

4.3.1.3 Decentralisation of power

Devolution is one of the forms of decentralisation based on the principle of subsidiarity which assigns specific functions conducted by the center to the lowest feasible sub-centers on the periphery.[92] Its underlying logic is that it increases subnational participation over decision making and consequently enhances their local relevance and citizen participation in implementation. Additionally, it resolves over-centralised mis-governance or weakens

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[86] Article 20, *Constitution of Kenya*, (2010).
[87] Article 27 (6), 44 (1) and 56, *Constitution of Kenya*, (2010).
[88] The *Political Parties Act* (Act No. 11 of 2011) of was enacted to provide for the registration, regulation and funding of political parties. It sets, as a condition for registration that political parties must reflect regional and ethnic diversity, gender balance and representation of special interest groups (which includes ethnic minorities) within the party and within the party's governing body.
[89] Article 91 (1), *Constitution of Kenya*, (2010).
[90] Article 91 (2) (a), *Constitution of Kenya*, (2010).
[91] Article 84 and 90 (3), *Constitution of Kenya*, (2010).
[92] Ndegwa S 'Decentralization in Africa: A stock-taking survey'40 *Africa Working Paper Series* (2002), 17.

secessionist tendencies resulting to a greater consensus in decisions.[93] There is always a need, however, to attain the most optimal amount of decentralisation lest the measure becomes a means of decentralising inefficiencies.

The Constitution outlines the objects of the devolution of government which include; promoting democratic and accountable exercise of power; to fostering national unity by recognising diversity; enhancing the participation of the people in the exercise of the powers of the State and protecting the interests and rights of minorities and marginalised communities.[94] All this is through the establishment of 47 county governments, distinct and interdependent, with each their own country executive and county assembly.[95] Part 5 of Chapter 11 addresses the functional relationship between the national and county governments while the fourth schedule elaborates the distinction in un-transferable functions to be carried out by either. [96]

4.4 Institutional framework
4.4.1 The National Cohesion and Integration Commission: Powers and Functions

Though many institutions may play a role in one way or another contributing to dealing with ethnic based politics, it falls largely and squarely in the ambit of the National Cohesion and Integration Commission (**NCIC**). NCIC is a statutory body established under the National Cohesion and Integration Act with its purpose being to promote lasting peace, sustainable development and harmonious coexistence among Kenyans through the deliberate, normative and institutional process of constructing nationhood, national cohesion and integration.[97]

The broad powers of the Commission granted by the National Cohesion and Integration Act include:[98] promotion of equality, tolerance, diversity and national cohesion through public education, research, and investigation on matters relating to the Commissions mandate. To facilitate the effective carrying out of its duties, the commission is made independent; not subject to the direction or control of any other person or authority.[99] Over and above its express

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[93] Mwenda A, 'Devolution in Kenya: Prospects, challenges and the future' 24 *Institute of Economic Affairs Research Paper Series*, (2010), 5.
[94] Article 174, *Constitution of Kenya*, (2010).
[95] Article 6, 176 and First Schedule, *Constitution of Kenya*, (2010).
[96] Article 183-187, *Constitution of Kenya*, (2010).
[97] National Cohesion and Integration Commission, *Strategic plan of June 2013-2016, Consolidating the Foundations of a Cohesive Nation with a Devolved System of Governance*, 2013, 2.
[98] Section 25 (2), *National Cohesion and Integration Act* (Act no 12 of 2008).
[99] Section 26 (2) (a), *National Cohesion and Integration Act* (Act no 12 of 2008).

powers, it is granted all powers necessary or expedient for the proper performance of its functions under the Act.[100]

Though limited the Commission has access to some enforcement mechanisms. The Act establishes a complaints mechanism.[101] The Integrated Public Complaints Referral Mechanism (**IPCRM**) was created to enable members of the public to lodge complaints on discrimination, hate speech, corruption, administrative injustice and human rights violations to the NCIC and other IPCRM partners.[102] The commission has the option of referring the matter for conciliation[103] or setting down the matter for hearing where the former is unsuccessful or inappropriate. The Commission is empowered to issues compliance notice where appropriate which requires the person concerned to comply with a duty specified in the notice.[104] The Commission can apply to magistrates Court for the order to be enforced.[105]

4.4.2 NCIC's efforts towards dealing with ethnic based politics
4.4.2.1 Enhancing knowledge on National Reconciliation, Cohesion and Integration
The intended outcome of upscaling awareness on national reconciliation, cohesion and integration is to enhance application of the key tenets of ethnicity, race, religion and social origin to achieve reconciliation, cohesion and integration.[106] This has been through various initiatives.

First, is making the education sector responsive to National cohesion. Education strongly shapes how the society perceives itself. With this in mind the NCIC has worked together with the Kenya Institute of Curriculum Development to build capacity of curriculum developers and experts on opportunities for infusing cohesion, integration and peace building in primary and secondary school education.[107] Furthermore, the Commission has participated in the review of the school syllabus towards the incorporation of lessons on Kenyan history at all levels to

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[100] Section 26 (1), *National Cohesion and Integration Act* (Act no 12 of 2008).

[101] Section 43 (1), *National Cohesion and Integration Act* (Act no 12 of 2008).

[102] Other IPCRM partners include: the Ethics ad Anti-Corruption Commission, Kenya National Commission on Human Rights, Commission on Administrative Justice, National Anti-Corruption Campaign Steering Committee and Transparency International Kenya Chapter.

[103] Section 49. Though in cases where conciliation is considered not reasonably possible, the commission is to notify the complainant on the same and depending on the complainant's response may proceeded directly to setting down the matter for hearing. See section 50, *National Cohesion and Integration Act* (Act no 12 of 2008).

[104] Section 56 and 57, *National Cohesion and Integration Act* (Act no 12 of 2008).

[105] Section 58, *National Cohesion and Integration Act* (Act no 12 of 2008).

[106] Nyanjom O, *Devolution in Kenya's New Constitution,* Society for International Development, 2011, 6.

[107] https://www.cohesion.or.ke/index.php/media-centre/latest-activities on 5 November 2016.

promote shared identity and values.[108] The Commission also spearheaded the talks with the Ministry of Education to remove the quota system of admission to form one which gave students an opportunity to join schools outside their ethnic communities and hence enhance appreciation for ethnic diversity.[109]

Second is through engagement with the media. The Waki Report on Post-Election violence held that some sectors of the media were culpable, through act or omission in fueling ethnic tension by transmitting or engaging in hate speech.[110]Moreover, the Commission in collaboration with media houses came up with Media Guidelines on Hate Speech which consolidate and simplify the laws relating to media, and hate speech prompting various media houses and companies to develop internal policies and systems to ensure that their channels are compliant. Training and capacity building of media practitioners on conflict sensitive reporting has also been initiated by the Commission.

4.4.2.2 Elimination of discrimination

The NCIC initiated an annual ethnic audit of the civil service, public universities and colleges since 2011 that seeks to tackle complaints about skewed ethnic representation in these areas. The audit seeks to determine the ethnic face of the government and public institutions whether there has been breach of the one-third rule.[111] These reports have enabled the Commission to provide the government with authoritative recommendations for raising the standards of representation in the public sector.[112] NCIC also conducts baseline surveys on Ethnic Interaction and Tolerance among Kenyans.

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[108] The Commission also contributed to the Education Bill and Sessional Paper No. 10 of 2012 which sought to realign the education sector to issues of cohesion and integration.

[109] The Commission participated in the 36th Nairobi Conference of the Kenya Secondary Schools Association meeting of 2011 which saw the adoption of the 'Kenya Secondary Schools Head Association 2011 National Conference Resolutions' which made a commitment to support the NCIC programs through the establishment of Amani (peace) clubs in secondary schools.

[110] Kenya National Commission on Human Rights, *On the Brink of the Precipice: A Human Rights Account of Kenya's Post -2007 Election Violence*, 15 August 2008, 22.

[111] Section 7 (2) of the *National Cohesion and Integration Act* (Act no 12 of 2008), requires that no public establishment is to have more than one third of its staff from the same ethnic community.

[112] https://www.cohesion.or.ke/index.php/media-centre/latest-activities on 14 November 2016.

4.4.2.3 Conflict management and resolution

The Commission takes part in research and fieldwork to establish the root causes of ethnic and clan conflicts so as to come up with workable mechanisms to deal with them.[113] This is further coupled with the encouragement of the use of alternative dispute resolution methods by with elders, community social and political leaders in addressing issues. In addition to this, the drafting of the Kenya Ethnic and Race Relations Guidelines which provide a strategic guidance for achieving the vision of positive ethnic and race relations is an effort by the Commission to move Kenya towards building a more socially cohesive, politically and economically prosperous Kenya.

4.4.2.4. Support of devolution

This is largely through county community engagement forums. Since devolution is still relatively new in Kenya, the NCIC has made a deliberate effort to come up with strategies and interventions to engage with communities in promoting and sustaining peaceful coexistence and integration of communities. These community engagement forums are aimed at enhancing citizen engagement with their leaders and provide a platform for discussing matters affecting the county.[114]

Likewise, the Commission supports devolution through the championing of 'negotiated democracy'.[115] Here, leaders agree to share power by allocating party seats before elections. In the 2013 general elections for example, the NCIC made possible the adoption of this approach in Nakuru and Migri counties where leaders agreed to share political seats during the election as a way of reducing political tension and preventing violent conflicts.

4.4.2.5 Operationalisation of laws, policies and practices that counter ethnic, racial and religious tensions

Although the Commission lacks prosecutorial powers under the Act, it has been instrumental in investigation cases and complaints falling under the Act's ambit and handing them over to the Director of Public Prosecution. It therefore works to remove administrative and legal impediments by analysing laws and policies to ensure full realisation of rights by all Kenyans.

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[113] The Commission conducted a study in 2012 to identify ethnic stereotypes and coded language used by communities in Kenya with the goal being to determine how these adversely affect peace and cohesion.

[115] Nyanjom O, *Devolution in Kenya's New Constitution,* 37.

Key activities and outputs here include; the handling and processing of complaints. Before NCIC, Kenya lacked an institution that could receive complaints on ethnic discrimination. Through the NCIC an elaborate complaint handling procedure has been developed; the establishment of a Complaints, Legal and Enforcement Department to investigate relevant cases and to advise the government on legal matters concerning hate speech and discrimination. Additionally, NCIC works on building investigation and prosecution capacities of the Kenya Polices by conducting police trainings on the same to equip them with deeper knowledge of what constitutes offences of discrimination and hate speech under the Act.

4.5 Conclusion

Despite the efforts made by the Constitution of Kenya, 2010 and the NCIC in confronting ethnic based politics in Kenya no immediate solutions are given. Rather, they reflect the aim at creating long term social cohesion as a sustainable foundation for political cohesion.

CHAPTER FIVE
FINDINGS

5.1 Introduction

This chapter outlines and summarizes the findings of the study. The study was undertaken with the intention of investigating and establishing whether the constitutional and institutional framework in place is effectively dealing with ethnic based politics in Kenya.

5.2 Restatement of Research Questions

More specifically, the study sought to understand: 1) the role and consequence of ethnicity and ethnic identities in politics in Kenya; 2) whether the legal framework in place adequately mitigates the adverse consequences of ethnically-based politics; and 3) what solutions, legal or otherwise, might be implemented to more effectively deal with the problems caused by ethnic politics.

5.3 Findings

The findings of the study have allowed us to identify the nature of ethnic politics more deeply and also to understand more precisely the consequences of ethnic politics. In so doing I see that the initial objectives and hypotheses were rather too simplistic. In order to illustrate this point each of these objectives is discussed in the light of what I have discovered.

5.3.1 The Nature of Ethnic based political Parties and Coalitions

The competition for and control over allocation of resources is amongst the greatest contributing factors resulting in the sustained politicisation of ethnicity in Kenya. Moreover, despite constitutional and institutional reforms, the notion of and demand for ethnic favouritism still holds strong in Kenya, contributing to the sustained saliency of ethnicity as a factor influencing the county's social, political and economic life.

With this in mind, I find that my hypothesis that ethnic based politics in Kenya, that is, the formation and sustenance of ethnically motivated and ethnically based political parties and coalitions, is primarily motivated by ethnic circumstances and considerations, is rather too simplistic and only partially correct.

5.3.2 The Consequences of Ethnic-based Politics

Our assumption that all the consequences of ethnic-based politics are negative needs to be reconsidered. Ethnicity may serve as the only compelling motivation for persons to participate in the democratic process where there is a lack of political principles and ideologies. A certain

degree of democracy is indeed witnessed even when persons during elections choose between several persons of the same ethnicity. In this regard, the devolution of functions to Counties and the creation of local County positions of responsibility, have enhanced the practice of democracy at the local ethnic level.[116]

Moreover, evidence shows that locally initiated political parties, comprised initially of persons from one ethnic group, quickly realize that they cannot operate in "ethnic isolation" and so reach out to other ethnic constituencies creating as they do so a broader "ethnic integration". This integration may however remain weak due to the ever shifting political tides calling for the frequent formation of new ethnic alliances and cleavages.

5.3.3 A Legal Solution to Ethnic-based Politics (only partial) and the Role of the National Cohesion and Integration Commission (NCIC)

It is clear the Constitution primarily through devolution help to mitigate the ethnicity component of politics in Kenya by ensuring multiple sites of representation potentially providing alternative checks and balances against individualistic excesses of politicians. This however is only a partial solution. In considering the role of the NCIC, it became clear that their function is arguably more important than the role of law. This is because the stability of democracy in plural societies is generally dependent on the institutional designs of the country. Furthermore, it is clear that the law and institutions are insufficient unless backed with a general will of the people towards unity and cohesion in order for former efforts to be effective. Hence, where the law seeks to control the negative consequences of ethnicity, the long-term goal of the NCIC of promoting and strengthening national social cohesion is the only truly effective remedy for ethnic divisions, political or otherwise.

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[116] Despite this, there exists "sub-ethnic politics" at the County level among different sub ethnic groups. At this level therefore there is also a need to have local County Cohesion and Integration Commissions.

CHAPTER SIX
CONCLUSIONS AND RECOMMENDATIONS

6.1 Introduction

Based on the findings and analysis in Chapter 5, it is clear that there are several ways in which political ethnic integration and harmony might be strengthened both in the short-term and the long-term. Short-term solutions are those that can mitigate the negative consequences of ethnic politics. Solutions that involve building stronger social cohesion between ethnic groups in Kenya will take much longer but only such long-term solutions hold the final answer to present ethnic divisions.

6.2 Recommendations

6.2.1 Facilitation of conditions for full social, economic and political participation of all people irrespective of their ethnic identification

This is through the strengthening and better protect of minority rights in societies, the reduction of economic disparities in the country, and the removal of power imbalances which produce distrust and weak commitment. There is also need to address historical injustices, for example, those related to land, which have cultivated bitterness and deepened ethnic fissures.

6.2.2 Strengthening of NCIC as a long-term Solution

There exists as established in the study, a principle-agent problem in which voters are not motivated enough to invest resources to monitor the behaviour of public officials resulting in inefficiencies in government provision. There is need to strengthen the NCIC to fill this gap. This is through, first, the building of the Commission's capacity by increasing its staff to allow for regional offices that can effectively monitor national cohesion and integration within counties and constituencies. Second is the expansion of the Commission's referral mechanism to allow it to effectively monitor cases it hands over to the DPP and to ensure that recommendations and advisories by the Commission are implemented to the letter.

6.2.3 Promotion of patriotism

To solve sub-national ethnic divisions, the Kenyan Government should engage in promoting the core principle of patriotism, much in the same way as Europe built its own national identities. Civic education may play this role by ensuring that Kenyans understand the content of the constitution to prevent disillusionment. Furthermore, there is a need to mainstream and institutionalize the core national values and principles as outlined in Article 10 (2) (a) of the Constitution of Kenya (2010) in the teaching curricula as a means for developing a common

identity based on shared values. Moreover, the government should make steps towards strengthening civil society by the encouragement of national social movements that address cross-cutting issues of all Kenyans.

6.2.4 Promotion of collaborative governance
As a response to the failure of downstream implementation and high cost and politicisation of regulation, there is need for a governing arrangement in which public agencies directly engage non-state stakeholders in a collective decision making process that is formal, consensus-oriented and deliberative and that aims to make or implement public policy or manage public programs or assets. Collaborative governance is not mere consultation: it implies a two-way communication and influence between agencies and stakeholders and also provides opportunities for stakeholders to talk to each other.

6.2.5 Checks on ethnic political parties and promoting policy-oriented coalitions
There is need to make and enforce stringent rules regarding the registration of political parties and coalitions in Kenya. This could be done by promoting policy-based political parties, which would allow voters to choose among parties based on their ideological proximity, and for parties to choose coalition partners based on policy considerations. An increase of the time period for provisional registration, may also curb the registration of political parties and coalitions as tools for ethnic mobilisation for the sake of winning elections.

6.3 Conclusion
The findings of this study indicate that ethnicity plays an important role in Kenyan politics. Though the Constitution of Kenya, 2010 and the NCIC have made strides dealing with the causes and effects of ethnic politics, the run up to the 2017 general elections is a clear indication of the sustained saliency of ethnicity. There is therefore need to further reform existing frameworks not only for the eradication of ethnic based politics but also to usher in an issue based political system in Kenya.

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