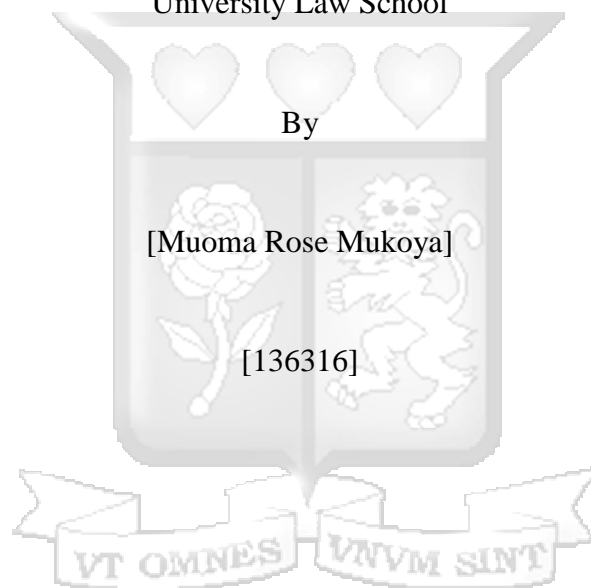

**BRIDGING THE GAP: ACHIEVING EQUAL REPRESENTATION OF THE
DIFFERENT DEMOGRAPHIC GROUPS IN THE KENYAN PARLIAMENT**

Submitted in partial fulfillment of the requirements of the Bachelor of Laws Degree, Strathmore

University Law School



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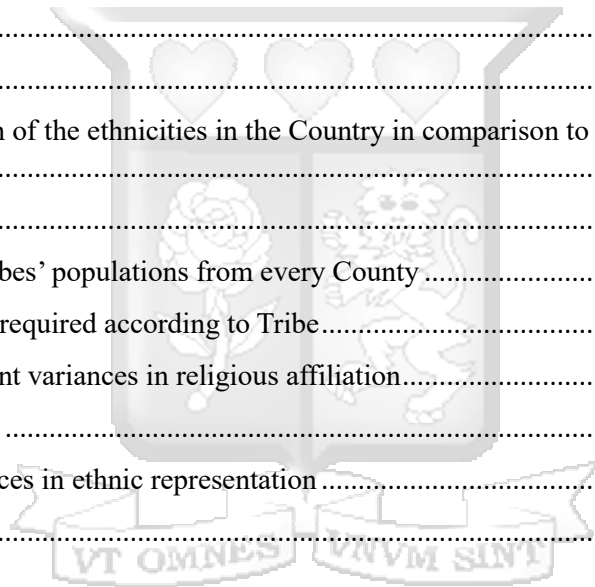
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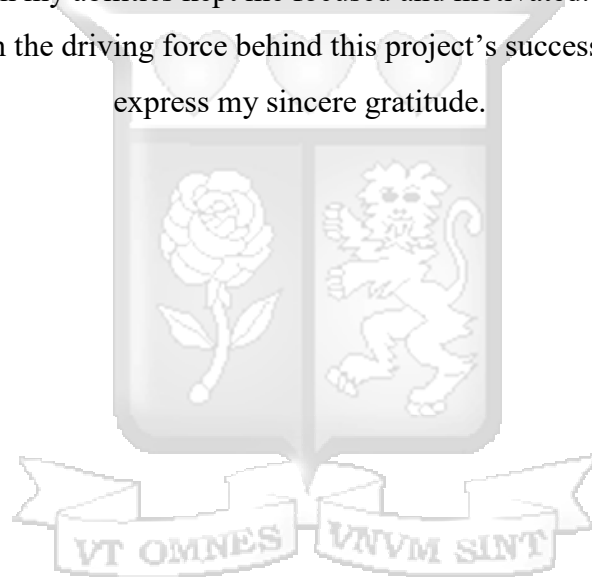
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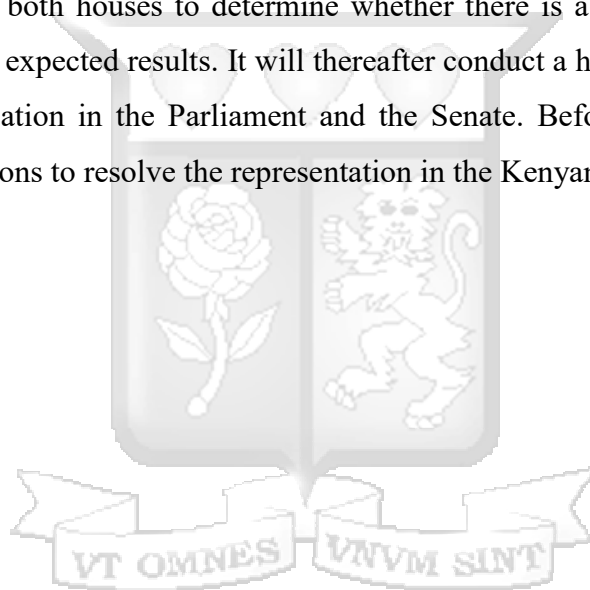
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Abstract

The study's intention is to raise awareness to the general public, researchers and students on the representative situation in Kenya so as to determine whether there is a balance of the religions, genders, counties and ethnicities population in comparison to their representation in the Parliament and Senate. To determine whether the representation in these two houses coincides with the population in Kenya. Before finally establishing the causes of the different variances in population, and arriving at different findings to help solve the representative situation in Kenya. This study, will apply both inductive and deductive reasoning. It will first conduct a quantitative and empirical analysis of the citizens and parliamentarians based on how the demographic groupings have been effectively distributed in both houses to determine whether there is a balance and whether the reality coincides with the expected results. It will thereafter conduct a historical analysis to arrive at the causes of the variation in the Parliament and the Senate. Before finally concluding by arriving at possible solutions to resolve the representation in the Kenyan Parliaments.



ABBREVIATIONS AND ACRONYMS

AU- African Union

AWC- African Women and Child Features Services

e KLR- Kenya Law Reports

IEBC- Independent Electoral and Boundaries Commission

KANU- Kenya African National Union

KADU- Kenya African Democratic Union

LegCo- Legislative Council

MPs- Members of Parliament

NCIC- National Cohesion and Integration Commission

NARC-Kenya- National Rainbow Coalition

UN- United Nations

CASES

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LEGAL INSTRUMENTS

Constitution of Kenya (2010).

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Public Service (Values and Principles), (No 1A of 2015).

The Public Service (Values and Principles) (Amendment) Bill (No 46 of 2022).



CHAPTER 1

1.1. Background

Representation is the act of being represented by another. ¹ Well-represented is the act of a people having good or sufficient representation. ² In the Kenyan government, the citizens are represented by Members of Parliament in the National Assembly and Senators in the Senate. Senators were introduced after the implementation of the 2010 Constitution which led to the creation of devolved governments. The primary responsibility of the parliamentary representatives is to manifest diversity, represent the will of the people and exercise their sovereignty. ³ Additionally, they are tasked with representing the people and their specific interests in the National Assembly, deliberating and resolving issues of concern to the citizens and ensuring active participation of the people. ⁴ On the other hand, the role of the Senators is to represent the various counties and safeguard the interests of their counties. ⁵

A well represented Parliament and Senate are crucial for ensuring diversity in the government; the condition of having a variety of ethnicities, religions, and genders in parliament. ⁶ Diversity is a national value and principle that applies to all members of the public service, the state, its public organs, and individuals. The goal of diversity is to ensure equality; the equal enjoyment of fundamental rights and freedom of everyone in society. This principle should be adhered to during the drafting, application, interpretation, and implementation of laws. ⁷ Some of the protected grounds for diversity are ethnicity; an ascribed identity or assigned status sustained by lineage and

¹ Merriam Webster, 11ed.

² Collins, 14ed.

³ 'How Parliament Works,' *The Clerk of the National Assembly, Parliament of Kenya*, Parliament Buildings, Parliament Road, 2017, 28.

⁴ 'How Parliament Works,' 28.

⁵ Article 96, *Constitution of Kenya*, (2010).

⁶ Merriam Webster, 11ed.

⁷ Article 232(1) (i), *Constitution of Kenya*, (2010).

cultural ties,⁸ religion and sex are also important factors that contribute to diversity.⁹ These three protected grounds shall form the basis of this study. This gives parliamentarians a duty from the start to ensure that every Kenyan is sufficiently represented so that their voices are heard.

Parliamentarians who are experts in the rules and practices of a deliberative assembly serve as the representatives of the people in both the Senate and National Assembly.¹⁰ They are elected through free and fair elections undertaken after every five years by a citizens' exercise of their political rights.¹¹ Hence, formal political representation of the people in the Kenyan government. Therefore, they have a duty to ensure that every Kenyan is adequately represented and their voices heard as a representation of the rule for the people, of the people and by the people. Political representation is to make present again.

Political representation is the process through which leaders make citizens' voices, opinions, and perspectives "present" in the public policy making process.¹² It involves political actors speaking, advocating, symbolising, and acting on behalf of others in the political arena. This signifies a form of political assistance.¹³ The components of political representation include the existence of a party representing, a party being represented, something being represented, a setting within where representation takes place and something being represented.¹⁴

Parliamentarians are granted special privileges and advantages in comparison to other entities or individuals. These privileges are designed to facilitate their work and enable them to overcome any obstacles they may encounter in the course of their work.¹⁵ As a result, there is a need to have

⁸ Njoroge E, 'Addressing Ethnic based Politics in Kenya: A Socio-Legal Perspective, Published LLB Dissertation, Strathmore University Law School, Kenya, 2017,5.

⁹ Article 27(4), *Constitution of Kenya*, (2010).

¹⁰ Merriam Webster, 11ed.

¹¹ Article 73(2), *Constitution of Kenya*, (2010).

¹² Stanford Encyclopedia of Philosophy, 2nd ed.

¹³ Stanford Encyclopedia of Philosophy, 2nd ed.

¹⁴ Stanford Encyclopedia of Philosophy, 2nd ed.

¹⁵ 'Powers, Privileges and Immunities of Parliament,' *The Clerk of the National Assembly, Parliament of Kenya*, Parliament Buildings, Parliament Road, 2022,6.

an adequate number of parliamentarians to represent the interests of the public and ensure parliamentary autonomy.¹⁶

Parliamentary autonomy presents itself in various forms: institutional autonomy, procedural autonomy, budgetary autonomy and administrative autonomy. These forms include institutional autonomy which grants them the freedom to call for regular or extraordinary sessions, to elect its own bodies, to make and amend legislation, oversee the work of the executive and establish their own rules.¹⁷ Procedural autonomy is another aspect encompassing their rights, immunities and mandates.¹⁸ This includes the right to resign, immunity from prosecution when passing legislation, the presence of a majority and minority group forming the opposition (commonly referred to as “the watchdog”), and their responsibility to ensure government accountability by having full access to parliamentary resources, including infrastructure, staff, funding for political groups and research activities.¹⁹ Budgetary autonomy is the third form which grants it the power to determine and approve its own budget, finances and resources for every fiscal year.²⁰ Lastly, administrative autonomy allows for the effective functioning and election of an independent parliamentary administration overseen by a non-partisan Secretary General or general services office.²¹

In addition to these forms of autonomy, parliamentarians also enjoy individual rights, immunities and benefits. They include the freedom of speech during plenary and committee sittings, freedom from arrest in civil actions and exemptions from court summons.²² As a collective they are accorded the power to regulate their own internal affairs including the power to punish for contempt, which is inherent in the sovereign authority of the House and the Senate, and the exclusive right to govern their own internal proceedings.²³

¹⁶ ‘Powers, Privileges and Immunities of Parliament,’6.

¹⁷ <<https://www.parliamentaryindicators.org/>> on 27 January 2024.

¹⁸ <<https://www.parliamentaryindicators.org/>> on 27 January 2024.

¹⁹ <<https://www.parliamentaryindicators.org/>> on 27 January 2024.

²⁰ <<https://www.parliamentaryindicators.org/>> on 27 January 2024

²¹ <<https://www.parliamentaryindicators.org/>> on 27 January 2024.

²² ‘Powers, Privileges and Immunities of Parliament,’6.

²³ ‘Powers, Privileges and Immunities of Parliament,’6.

Through achieving its set goals, it effectively prevents the repetition of historical events. This is primarily due to the persistent biases experienced by individuals belonging to certain marginalised or minority groups. The term “minority group” refers to those who share and seek to preserve their culture, traditions, religions, and language²⁴ based on an objective criterion.²⁵ On the other hand, a “marginalised group” refers to a disadvantaged group based on the grounds highlighted in Article 27(4) of the constitution.²⁶ These groups often come from sparsely populated areas; areas with very few people, and have indigenous backgrounds because of being natives, which hinders their ability to participate in Kenya’s social and economic life. This is because these communities have mostly been under-represented because of how few they are within a region, and how disadvantaged they are. A situation that makes it quite difficult for them to rise above the ranks and compete for these seats with the other dominant groups in the country. For this reason, their main aim becomes to preserve their hunting and gathering culture and traditional lifestyle.²⁷ Throughout history these groups have been victimised by various regimes through actions and policies that undermine social justice and equality.²⁸ For instance, during Moi’s era as the study shall demonstrate, under-representation ran across the three demographic groups. For example, the Kalenjin community had a higher probability of securing jobs and representation due to the then co-ethnics presidency,²⁹ as compared to other communities. The Arab Muslims had to align themselves with his agenda to have their rights protected.³⁰ Lastly, women had to fight their way through for them to be granted an equal forum just like men’s.³¹ Similarly, prior to 2007, power

²⁴ Article 27, *International Covenant on Civil and Political Rights*, 16th December 1966, General Assembly resolution 2200 A(XXI).

²⁵ UN Human Rights Committee, Comment No. 23, 50th Session, 1994, para 5.2.

²⁶ Article 260, *Constitution of Kenya*, (2010).

²⁷ Article 260, *Constitution of Kenya*, (2010).

²⁸ ‘Ricee S, ‘Inclusivity Definitions: What is Inclusive Education? What is Inclusive Design? What is Inclusive Language? Inclusive Leadership Defined,’ *Diversity Resources*, 2017, -< [What is Inclusivity? \[2023\] | Diversity for Social Impact](#)> on 28 February 2017.

²⁹ Simson R, ‘Ethnic (in)equality in the public services of Kenya and Uganda’ 118, (470), *Royal African Societies*, 2019, 75–100.

³⁰ Bjorn M, ‘Political Islam in Kenya’ *ECONSTAR*, DIIS 22, 2006, 12-14<<https://www.econstar.eu/handle/10419/84626>> on 26 February 2024.

³¹ African Women and Child Features Service, ‘Kenya Beyond Numbers Study’ *Beyond Numbers Narrating the Impact of Women’s Leadership in Eastern Africa*, AWC Feature Service, Nairobi, 2010, 71-87.

was predominantly held by two tribes.³² This are just some of the issues picked out that the research shall be discussing in the subsequent chapters. Therefore, finding a solution to the under-representation of some religions, genders, counties, and ethnicities would be of great value to the under-represented in Kenya.

In order to achieve social justice, modern societies are currently trying to redress their predecessors' wrongs. This can only be ensured through the implementation of various measures, such as promoting inclusivity. Internationally, the Office of the High Commissioner for Human Rights has established a law that acts as a guide for developing comprehensive anti-discrimination laws.³³ This law aims to recognize the rights of marginalised and minority groups and provide them with protection.³⁴ Furthermore, it seeks to protect their right to access, equal participation, their enjoyment of their own culture, their right to profess and practise their own religion or use their own language.³⁵ At the national level, inclusiveness is one of the fundamental national principles and values enshrined in the constitution.³⁶ It is to be applied equally, to ensure representation of the country's diverse ethnicities, religion and genders in the public sphere,³⁷ and social life in which something approaching public opinion can be formed to attain democracy,³⁸ including Parliament and the Senate.

With the implementation of the constitution, affirmative action was introduced.^{39,40} Okiya Omtata believes that this concept is best implemented when the playing field is levelled, through equal

³² Omtatah O, 'The Affirmative Action Debate: Developing Winning Strategies,'6th ed, *Perspectives on Gender Discourse, Enhancing Women's Political Participation*, Heinrich Boll Stiftung, East and Horn of Africa Office, Forest Road, Nairobi, 2008, 6/08.

³³ UNS, *Minority Rights, Equality and Anti-Discrimination Law*, OHCHR 1996-2023.

³⁴ UNGA, *Declaration on the Rights of National or Ethnic, Religious and Linguistic Minorities*.

³⁵ UNGA, *International Covenant on Civil and Political Rights*, (A/RES/2200A(XXI) 16 December 1966.

³⁶ Article 10, *Constitution of Kenya* (2010).

³⁷ Article 232(1), *Constitution of Kenya* (2010).

³⁸ Habermas J, 'The Public Sphere: An Encyclopedia Article (1964),'*New German Critique*, 3rd ed, Duke University Press, 1974, 49-55.

³⁹ Article 56, *Constitution of Kenya* (2010).

⁴⁰ Simson R, 'Ethnic (in)equality in the public services of Kenya and Uganda', 75-100,

preparation, and a focus on political philosophy and public policy.⁴¹ By doing so, individuals can be familiar with the issues faced by the people.⁴² This approach allows for winning strategies that can outwit the opponents.⁴³ Okiya Omtata emphasizes the need for strategy in overcoming biases, drawing upon reference to the hare and tortoise trickster narrative. He concludes, by stating that for one to win they must change the rules of the game, conquer fear and helplessness and tap to their hidden potential. This will ultimately lead to the realisation of the greater truth; that everyone is equal and has the right to represent their people in all arms of government, thus fostering development.⁴⁴

In conclusion, by incorporating anti-discrimination laws into the existing legal framework,⁴⁵ establishing of service commissions; for the national and county governments⁴⁶ to handle citizen's complaints regarding non-compliance with national values and principles⁴⁷ and having the Kenya National Human Rights and Equality Commission to safeguard citizen's equality and human rights.⁴⁸ Additionally, relaying issues affecting Kenyans to their leaders and implementing a quota system⁴⁹ limiting the number of leaders from certain groups has proven successful in countries like New Zealand, Romania, Niger, Taiwan, Afghanistan, Jordan, and Norway.⁵⁰

The implementation of these drastic actions to guarantee fair representation has faced certain obstacles from the onset. These obstacles involve the challenge of distributing the four remaining seats to the minority and marginalised groups after allocating eight seats to the youth and disabled.

⁴¹ Omtatah O, 'The Affirmative Action Debate: Developing Winning Strategies,6/08.

⁴² Omtatah O, 'The Affirmative Action Debate: Developing Winning Strategies,6/08.

⁴³ Omtatah O, 'The Affirmative Action Debate: Developing Winning Strategies,6/08.

⁴⁴ Omtatah O, 'The Affirmative Action Debate: Developing Winning Strategies,6/08.

⁴⁵ Kivoi D PhD, Yogo K, Luseno S and Malicha W, 'Negative Ethnicity, Identity and Political Corruption: A Kenyan Perspective, 4147362.

⁴⁶ Section 2, Public Service (Values and Principles), (No 1A of 2015).

⁴⁷ Section 13, Public Service (Values and Principles), (No 1A of 2015).

⁴⁸ Article 59, *Constitution of Kenya* (2010).

⁴⁹ Article 90 (2) (c), *Constitution of Kenya* (2010).

⁵⁰ National Gender and Equality Commission, Final Draft, 2017,25-27.

⁵¹ As a result, making it difficult to eradicate discriminatory practices. In addition to that there is a difficulty in enforcing equitable representation measures for all citizens, considering Kenya's democratic nature. Consequently, the establishment of the NCIC aims to foster peace, sustainable development, and harmonious living through a purposeful approach aimed towards nation-hood, national cohesion, and integration. ⁵²

1.2. Problem Statement

Well-representation of citizens in the Parliament and Senate as well as the distribution of leadership positions, is a fundamental value and principle in Kenya. It was a matter of concern during the colonial times and still is a matter of concern now. The aim in relation to this dissertation was to ensure that all religions, genders, counties, and ethnicities are well-represented in both houses. The 2010 constitution has tried to maintain this by making sure that Kenya retains its status as a secular state, ⁵³ by allowing for everyone to enjoy their freedom to exercise their religion, ⁵⁴ it creates the two-third gender rule and ensure that its implemented and effected into the public sector, ⁵⁵ ⁵⁶ ensure that the delimitation of boundaries is done fairly all factors considered to ensure equal distribution of resources, ⁵⁷ and ensure that the representation in Parliament signifies Kenya's diversity. ⁵⁸From the different steps taken to include the under-represented, it was envisioned that enough number of seats would be created for all religions, genders, counties, and ethnicities to adequately occupy them and balance the representative scales between the actual populace, the existing representative positions in Parliaments, and the number of representatives in Parliaments. However, till now the population's representation of all religions, genders, counties, and ethnicities

⁵¹ Article 97, *Constitution of Kenya* (2010).

⁵² Njoroge E, 'Addressing Ethnic based Politics in Kenya: a Socio-Legal Perspective, Published LLB Dissertation, Strathmore University Law School, Kenya, 2017,5.

⁵³ Article 8, *Constitution of Kenya* (2010).

⁵⁴ Article 32, *Constitution of Kenya* (2010).

⁵⁵ Article 27(8), *Constitution of Kenya* (2010).

⁵⁶ Article 81(b), *Constitution of Kenya* (2010).

⁵⁷ Article 89, *Constitution of Kenya* (2010).

⁵⁸ Article 232, *Constitution of Kenya* (2010).

does not seem to coincide with the Parliament's and Senate's representation of religions, genders, counties, and ethnicities hence not a clear representation of the one man one vote requirement in society. With their being no laws to compel the government that a statistical illustration of all religions, genders, counties, and ethnicities in Parliaments is published, and there being so little data to conduct this kind of statistics. For, this study this information was very relevant to arrive at whether all religions, genders, counties, and ethnicities have been well-represented and if not then establish the causes and reasons why this is the case, before arriving at possible solutions to resolve the situation. This dissertation aims to study the balance between the representative situation of all religions, genders, counties, and ethnicities in the country in comparison to the representation in the Parliament and the Senate to determine whether they coincide and if they not, then establish the causes of the difference in variances before arriving at possible solutions to resolve the situation. The aim is to ensure that every community, religion and sex is adequately represented in both houses, allowing their voices to be heard. For failure to do so is a violation of Article 27(4)⁵⁹ so as to attain inclusiveness in accordance to Article 10⁶⁰ as read with Article 232⁶¹ of the Constitution of Kenya.

1.3. Research Objectives

1.3.1 To determine whether based on the statistics there is a balance between the different religions, genders, counties, and ethnicities in the Parliament and Senate in comparison to the data in the country.

1.3.2 To determine whether the statistics in reality coincide with the expected statistics of representatives in Parliament.

1.3.3 To determine the causes behind the variances in representation

1.3.4 To determine the findings to the different variances in representation.

⁵⁹ Article 27(4), *Constitution of Kenya* (2010).

⁶⁰ Article 10, *Constitution of Kenya* (2010).

⁶¹ Article 232, *Constitution of Kenya* (2010).

1.4. Research Questions

1.4.1 Is there a balance of the different religions, genders, counties, and ethnicities population in comparison to its representation in the Parliament and the Senate?

1.4.2 Does the representation of the Parliament and Senate coincide with the population in Kenya.

1.4.3. What are the causes of the variances in representation?

1.4.4 What are the findings to the different variances in representation?

1.5. Hypothesis

If there is an under-representation of these religions, genders, counties, and ethnicities, then the under-representation of these religions, genders, counties, and ethnicities that will be expressed in the various chapters below will result in a deterioration of rights, a series of suffering being faced by these groups of people and maybe their possible extinction in the Parliament and Senate if the problem is not addressed. As such if the representative situation is resolved in Kenya, a balance arrived at between the religions, genders, counties, and ethnicities by assessing whether they coincide in the both Kenya and the Parliament, and its causes arrived at with the help of this study. This study will come up with possible solutions to resolve the under-representation of the under-represented genders, religions, ethnicities and counties in both the Parliament and Senate.

1.6. Justification

Under-representation continues to be a prevalent issue in the Kenyan Parliament. Despite Kenya's 2010 constitution trying to ensure equal diversity is attained in Parliament starting from the party level even before the elections are set, under-representation still persists. Under-representation leads to a disregard of set laws. This study will now try to dive into the root cause of the problem, by assessing the current state of representation in Kenya. It will first try to determine what is fair or good representation, based on the current situation in Kenya, by determining whether there is well-representation. If there is a lack of adequate representation, establish the reason as to why this is the case then try to come up with what best suits Kenya, what needs to be improved to solve the

shortcomings of the electoral system. This study will be useful to lawmakers, law enforcers, researchers, and other students as it will act as a guide on the data of Kenya's representation in Parliament and Senate and it will be more effective to ensure effective representation of citizen's Parliamentarians as compared to before.

1.7. Theoretical Framework

The achievement of a well-represented state is accomplished by a politically representative parliament that shall encompass the diverse composition of the citizens and operate with utmost regard for the multitude of individuals.⁶² Its objective is to guarantee that every citizen is sufficiently represented to ensure that the individuals they govern are guaranteed equitable opportunities and resources. This signifies that behind the agenda to attain well-representation, lies a humanitarian aspiration to provide equal access to opportunities, resources, and benefits to all, thereby promoting equality.

The egalitarian theory is a theory that aims to attain equality through well-representation. Dworkin proposes the inclusion of "resources", the handicaps, and talents in the pursuit of valuable outcomes while Cohen's theory emphasises on, "access to advantage".⁶³ Both theories advocate for equal opportunities for all citizens. The objective of these authors is to seek indemnification for people against unfavourable outcomes caused by external factors, except for those factors within their control.⁶⁴ In this case, well-representation entails the responsibility of ensuring that leaders from diverse ethnic, gender and religious backgrounds are elected. Leaders who should possess the ability to effectively articulate and advocate for the needs of their constituents and counties, thereby ensuring effective representation in parliament.

Dworkin argues that the realm of personal responsibility encompasses "preferences" that individuals can control because of their relation with them; and "resources" that are beyond their control making it the most ethical policy for equalising opportunities. Whereas for Cohen, "access

⁶² 'Procedural guidelines on the rights and responsibility of the opposition in a democratic parliament,' 1601.

⁶³ Roemer J, *'A Pragmatic Theory of Responsibility for the Egalitarian Planner,'* Philosophy and Public Affairs Spring, 22, Wiley, 1993,146-166.

⁶⁴ Roemer J, *'A Pragmatic Theory of Responsibility for the Egalitarian Planner,'* 1993,146-166.

to advantage” or “access to opportunity” is perfected to excellence when it aims to eliminate disadvantages that the sufferer cannot be held responsible for, as these disadvantages do not reflect their choices. ⁶⁵This approach provides individuals with a fair opportunity to overcome circumstances beyond their control by placing them on an equal footing with the rest.

According to Dworkin and Cohen, choice and power, tastes and preferences, and circumstances do play a major role in attaining equality. By ensuring equal access to opportunities, resources, and advantage every member of society will have the ability to attain the desired level of equality and effective representation. ⁶⁶

These perspectives of the egalitarian theory, as presented by Dworkin and Cohen will assist in highlighting the importance of providing access to opportunities, resources, and advantages for all communities, genders and religious affiliations in Kenya. This will be accomplished through a statistical assessment of seat distribution in the Parliament and Senate.

1.8. Limitations

This study will be limited to a desk study analysis. It will determine the concept of fair representation by use of quantitative evidence, supported by primary and secondary sources of data. The study will adopt a deductive approach with the first chapter setting up a premise in a logical manner, and the subsequent chapters all setting up premises for their chapters by use of a table from which the main claim will be derived. This study will then use the above information to help the research draw out the causes and thereafter come up with the most suitable solutions to help deal with the shortcomings Kenya faces in attaining fair representation.

⁶⁵ Roemer J, ‘*A Pragmatic Theory of Responsibility for the Egalitarian Planner*,’1993,146-166.

⁶⁶ Roemer J, ‘*A Pragmatic Theory of Responsibility for the Egalitarian Planner*,’1993,146-166.

1.9. Chapter Breakdown

Chapter one will form the first chapter of this study. It details, *inter alia*, the research objectives, theoretical framework, and the justification of the study, thus setting the foundation for the subsequent chapters. From there on subsequent chapters; chapters two, three, four and five will all take an almost similar pattern. The subsequent chapters will thereafter based on the statistics try to establish whether there is a balance between the different religions, genders, counties, and ethnicities in Parliament and Senate in comparison to the national demographic distribution. It will thereafter ascertain whether the statistics coincide with the expected statistics of representatives in Parliament, and in the existence of a variance determine what are the causes behind the variances in variables, before concluding by arriving at possible findings to the variances in representation and thereafter solutions to the representative situation in Kenyan Parliaments.



CHAPTER 2

2.1. Introduction

This chapter of the study will do an assessment of the gender distribution in Kenya by use of the Parliament's, the Senate's and the country's statistical data. It will do a comparison of the data acquired, and determine whether the data coincide with the population in Kenya. Using the compared data, it shall arrive at a conclusion which shall determine the representation status of men and women in the Parliaments, explain the causes behind the variation, before arriving at possible solutions to resolve the situation.

2.2. Statistical illustration of the different genders in the Country in Comparison to that of Parliament and the Senate

2.2.1. Gender

The Table below is an illustration of the genders in the Parliament, Senate and Country. The table has made an assessment of the gender distribution in reality in relation to the existing numbers from the two houses and the country, to arrive at the most ideal numbers required in both the Parliament and the Senate before subsequently finding the difference between the existing numbers in comparison to the required numbers so as to determine whether the two coincide.

Total	In parliament 350		in Senate 67		People in 53,010,000 Kenya	
	Total men	women	Total men	women	Total men	women
Sex (real)	285	65	46	21	26,280,000	26,730,000
real %	81.43	18.57	66.67	30.43	49.58	50.42

Ideal %	49.58	50.42	49.58	50.42	%
gap in %	31.85	-31.85	19.08	-19.08	%

Using the above variable, based on the percentages women are under-represented in both the Kenyan Parliament and the Senate with a societal disparity of -31.85% and -19.08% respectively. In comparison to the Kenyan religions, an evaluation this study shall undertake in the next chapter and establish that Christians and Other religious groupings have been under-represented, the under-representation of women as assessed in the above table from both houses is quite significant. For this reason, this research shall delve into historical factors that have contributed to women’s under-representation in Parliament and offer some remedies in order to offer possible solutions to solve the problem.

2.3. Causes of the different variances in gender distribution

The under-representation of women in society according to Kabira, has been linked to various factors, societal factors mainly based on culture and gender norms’⁶⁷ economic factors according to Nyambura influences their financial capabilities; and political factors that influence their status before, during, and after elections.⁶⁸

2.3.1. Societal and Cultural Factors

Their position within society has an impact on their place in society and the political arena. Based on the patriarchal African culture, according to Bouka there were gender roles allocated to both

⁶⁷ Kabira W, ‘The Historical Journey of Women’s Leadership in Kenya’ 3(6) *Scholar link Research Institute Journals* 2141, 2012, 842-849.

⁶⁸ Nyambura G, ‘The Political Participation of Women in Kenya’ 25, *Journal of International Women’s Studies*, 2, 2023, 1-14.

men and women.⁶⁹ Due to prejudice against women's ability to run the home, men were traditionally seen as having the primary responsibility to manage the home,⁷⁰ leaving women at home to take care of the household. Women were seen to be men's subordinates meant to take care of household chores and procreate.⁷¹ They were rarely taken to school as compared to men. Men were mostly prioritised in families and taken to school more often than not in comparison to women.⁷² Take for example, Julia Odhiambo, like her female peers she could have been forced to stay at home, if her father did not care about educating all his children equally.⁷³ Lastly, positive qualities were allocated to men since African societal norms looked into empowering men believing that they were the strongest and aggressive in society with the capability of being good in politics.⁷⁴ Whereas women on the other hand were disregarded and seen as weak, and peaceful with no strive to become leaders.⁷⁵ This made it difficult for women to equally compete with men in society therefore making women to have to conform to the patterns of the society.

As a result of women's under-representation in society, women are faced with various challenges emanating from their existence in society. They have been faced with gender violence, both physically and verbally. Verbally, women have had gendered and dismissive language directed towards them most especially during electoral cycles and even while in office.⁷⁶ Chauvinistic and insulting utterances have been directed to women whereas men have received commendatory and honorific remarks,⁷⁷ with the perpetrators not being held liable for their actions. For some, their marital status has been the target of perceived attacks aimed at discrediting their reputation among the general public, while in contrast men get a different kind of treatment for they are not

⁶⁹ Bouka Y, 'Women's political inclusion in Kenya's Devolved Political System' 13 *Research Gate* 461, 2019, 1-21.

⁷⁰ Bouka Y, 'Women's political inclusion in Kenya's Devolved Political System' 1-21.

⁷¹ Bouka Y, 'Women's political inclusion in Kenya's Devolved Political System' 1-21.

⁷² African Women and Child Features Service, 'Kenya Beyond Numbers Study' 71-87.

⁷³ African Women and Child Features Service, 'Kenya Beyond Numbers Study' 71-87.

⁷⁴ Bouka Y, 'Women's political inclusion in Kenya's Devolved Political System' 1-21.

⁷⁵ Bouka Y, 'Women's political inclusion in Kenya's Devolved Political System' 1-21.

⁷⁶ 'Women candidates in Kenyan elections face abuse and attacks' AL JAZEERA, 1 August 2022

<<https://www.aljazeera.com/features/2022/8/1/women-candidates-in-kenyan-elections-endure-abuse-and-attacks>> on 27 February 2024.

⁷⁷ Bouka Y, 'Women's political inclusion in Kenya's Devolved Political System' 1-21.

condemned when they act in a similar kind of fashion. This may be based on the assumption that men are polygamous or potentially polygamous allowing them to act as they feel like.

This dishonour by society makes the society see them as unfit to run for political elections just like men. For example, when the media started delving into Martha Karua's private life and marital status ⁷⁸ when she was vying for the presidential and deputy presidential seats, notwithstanding her capabilities to effectively run the government. Threats have been directed to their families and physical attacks have been directed towards women for instance, the attacks directed to the Kirinyaga Women Representative Jane Maina during her inspection in Kerugoya. ⁷⁹ All these actions have not only been directed to politicians but also women in particular who due to lack of sufficient representation lack women to voice out their concerns and fight for their rights. They have been faced with numerous murders and derogatory acts such as being undressed in public for being accused of allegedly dressing indecently in public. This means that in order for women to be able to fight for their rights, they require sufficient representation in both houses.

2.3.2. Financial Factors

Financially, women are seen to find it quite difficult to acquire funds to help women vie for posts in leadership. This is because finance is still a hurdle for women regardless of their fees being subsidised when compared to men. For instance, generally, candidates are to pay Kshs. 200, 000 whereas the youth, women and disabled candidates are to pay Kshs. 100, 000. ⁸⁰ This is just but the Independent and Electoral Boundaries Commission's requirement because political parties also have their set fees to be paid. For instance, a presidential candidate is required to pay a non-negotiable nomination fee of Kshs. 1,000,000 regardless of gender, a county governor's nomination fee of Kshs. 500,000 for male candidates and Kshs. 250,000 for female and youthful

⁷⁸ 'Martha Karua Biography: Lifestyle, Politics, Education, Husband' Life of Who, <<https://lifeofwho.com/martha-karua/>> on 27 February 2024.

⁷⁹ NTV Team, 'MPs unite to condemn attack on Kirinyaga Woman Rep Jane Maina NTV Kenya, 22 August 2023. <<https://ntvkenya.co.ke/news/mps-unite-to-condemn-attack-on-kirinyaga-woman-rep-jane-maina/>> on 27 February 2024.

⁸⁰ 'Requirements for Elective Post', Independent Electoral Boundaries Commission <<https://www.iebc.or.ke/registration/?aspirant>> on 11 February 2024.

candidates, a senator's, women's representatives and member of parliament's nomination fee of Kshs. 250,000 for male candidates and Kshs. 125,000 for female and youthful candidates and a Member of County Assembly's nomination fee of Kshs. 50,000 for male candidates and Kshs. 25,000 for female and youthful candidates.⁸¹ This should serve as a wake-up call to both the society and its leaders as a whole, to help solve the competitiveness experienced by women and reduce the control bestowed upon those with money.

In addition to political funding according to Nyambura, other financial struggles women face is because of issues in electoral financing because of less funds being allocated to women.⁸² The reasons for these are the lack of avenues to properly claim for the money entitled to women because of insufficient representation in parliament, staking of too much money by men in comparison to women.⁸³

Politically, according to Nyambura women face lack of funds and support for their small political parties.⁸⁴ With the ever increasing costs and financial constraints they find it difficult to choose whether they should be working to keep their parties afloat or prioritise to fend for their families.⁸⁵ This forces women to settle for what they have; the special seats set out for women and the peanuts they get, which leaves their performance at the grass root level.⁸⁶ Therefore, it is imperative that a nation practice political goodwill, support gender parity and fully enforce the laws and policies put in place.⁸⁷

With all these constraints combined, women are held back from achieving their full potential and are forced to stay back and settle for what they are offered instead.

⁸¹ Osanya C, 'UDA announces nomination fees of up to Kshs. 1M fees for President, favours youth, women' People Daily, 1 February 2022 <<https://www.pd.co.ke/inside-politics/uda-announces-nomination-fees-of-up-to-ksh1m-fees-for-president-favours-youth-women-111913/>> on 17 February 2024.

⁸² Nyambura G, 'The Political Participation of Women in Kenya' 1-14.

⁸³ African Women and Child Features Service, 'Kenya Beyond Numbers Study' 71-87.

⁸⁴ Nyambura G, 'The Political Participation of Women in Kenya' 1-14.

⁸⁵ Nyambura G, 'The Political Participation of Women in Kenya' 1-14.

⁸⁶ Nyambura G, 'The Political Participation of Women in Kenya' 1-14.

⁸⁷ Nyambura G, 'The Political Participation of Women in Kenya' 1-14.

2.3.3. Political Factors

During the existence of Kenya's first Parliament, The LegCo Kenya's first Parliament following the promulgation of the East African Order-in-Council,⁸⁸ women were seen to lack representatives in Parliament. Since its establishment and throughout its advancements, from being one body to two legislative organs established to protect the interests of the districts up until it was unified, leadership considerations were only given to the representation of other races other than whites.⁸⁹ The races considered were Europeans, Asians, Arabs and Africans to ensure inclusivity.⁹⁰ This was up until the two chambers of Parliament reverted back to being a unicameral system of Parliament. For the first time in history Kenya saw the election of female leaders into Parliament, with Honourable Grace Onyango as the first elected woman representative in the year 1970.⁹¹ In the year 1974, an additional two more women were elected into Parliament. Honourable Dr. Julia Auma Ojiambo minister for Busia Central and Honourable Philomena Chelagat Mutai minister for Eldoret North.⁹² These three women paved the way for women's representation in Parliament.

With the advent of multi-partyism in 1991, women participation in politics now became a matter of concern.⁹³ The National Women's Convention took place in 1992.⁹⁴ According to Kabira it led to the formation of an organised front where women could unite and fight for greater representation in the democratic sphere.⁹⁵ Several women spearheaded the campaign.⁹⁶ In the 1970s and 1980s Julia Ojiambo advocated for the inclusion of the rural women from her community in Funyula.⁹⁷

⁸⁸ National Assembly of Kenya, 'History of the Parliament of Kenya' 19 *National Assembly of Kenya 2*, 2022, 8-13.

⁸⁹ National Assembly of Kenya, 'History of the Parliament of Kenya' 8-13.

⁹⁰ National Assembly of Kenya, 'History of the Parliament of Kenya' 8-13.

⁹¹ National Assembly of Kenya, 'History of the Parliament of Kenya' 8-13.

⁹² National Assembly of Kenya, 'History of the Parliament of Kenya' 8-13.

⁹³ National Assembly of Kenya, 'History of the Parliament of Kenya' 8-13.

⁹⁴ Nyambura G, 'The Political Participation of Women in Kenya' 1-14.

⁹⁵ Kabira W, 'The Historical Journey of Women's Leadership in Kenya' 3(6) *Scholar link Research Institute Journals* 2141, 2012, 842-849.

⁹⁶ Nyambura G, 'The Political Participation of Women in Kenya' 1-14.

⁹⁷ African Women and Child Features Service, 'Kenya Beyond Numbers Study' 71-87.

She successfully pushed and arranged for Kenya to host the third women's conference in 1985.⁹⁸ In addition, she also advocated for the family planning bill despite its contentious nature with the hope that it would lead to a reduction in maternal deaths and improvement of the health of lactating mothers.⁹⁹ Last but not least, she founded the Labour Party, which allied with NARC-Kenya to be a women's political party.¹⁰⁰ She saw to effect the introduction of women's plights in Parliament. Some were done away with because of their nature and her single-handedly advocating for it, but still made known.

According to Kabira, the numbers were certainly not yet enough and in 1997, Honorable Phoebe Asiyu, sponsored the affirmative action motion, with the objective of having a minimum of eighteen seats allocated to women.¹⁰¹ President Moi opposed the motion on grounds that women ought to be elected equally just like men, based on merit and not favouritism.¹⁰² This just shows the inattention leaders had to the nature of representation in Kenya. In 1999, the Ministry of Home Affairs responded to the Beijing and New York Gender Conference by supporting the equality bill that demanded equal treatment.¹⁰³ In June 2000, Moi did it again. He withdrew his support from the bill, as an indication of his lack of support for the bill.¹⁰⁴ In 2000, Honourable Beth Mugo sponsored a motion that promoted women's involvement in the constitutional process.¹⁰⁵ Sadly, both motions failed,¹⁰⁶ a sign of how important political support from state representatives is to the cause of gender parity. During Moi's era from the above he lacked concern for women's needs. Tendencies that flawed down to the other leaders in government.

⁹⁸ African Women and Child Features Service, 'Kenya Beyond Numbers Study' 71-87.

⁹⁹ African Women and Child Features Service, 'Kenya Beyond Numbers Study' 71-87.

¹⁰⁰ African Women and Child Features Service, 'Kenya Beyond Numbers Study' 71-87.

¹⁰¹ Kabira W, 'The Historical Journey of Women's Leadership in Kenya' 3(6) *Scholar link Research Institute Journals* 2141, 2012, 842-849.

¹⁰² African Women and Child Features Service, 'Kenya Beyond Numbers Study' 71-87.

¹⁰³ African Women and Child Features Service, 'Kenya Beyond Numbers Study' 71-87.

¹⁰⁴ African Women and Child Features Service, 'Kenya Beyond Numbers Study' 71-87.

¹⁰⁵ African Women and Child Features Service, 'Kenya Beyond Numbers Study' 71-87.

¹⁰⁶ African Women and Child Features Service, 'Kenya Beyond Numbers Study' 71-87.

It did not just stop with Moi's government for in 2002-2007, during Kibaki's first term Honourable Njoki Ndung'u requested that the Sexual Offences Bill be discussed in 2005.¹⁰⁷ The bill was opposed by Male MPs and only supported by a few after its contextualisation.¹⁰⁸ It received support or subsequent debates from others.¹⁰⁹ For example, it was backed by the then Prime Minister, Honourable Uhuru Kenyatta who spoke out against sex tourism.¹¹⁰ The first successful thing that happened after these recurring failures was in 2007, when the number of women Members of Parliament increased to twenty-one with fifteen elected and six nominated women members,¹¹¹ increasing the number of leaders in Parliament.

2.3.4. Legal Factors

After years of indifference by men when it came to female political leaders, the 2010 Kenyan constitution called for gender parity at every level of governance. It was one of the brilliant concepts that awaited execution as the main legislation, in conjunction with policies, commissions and committees to ensure redress for women as a disadvantaged¹¹² and marginalised group¹¹³ in society. It was an addition to the various laws implemented to ensure that this idea was realised. The 2010 Constitution according to the Kenya Women Political Caucus introduced Sectoral Reforms at the county level with the development of devolution.¹¹⁴ It became an entry point for women in leadership. As an illustration, consider the creation of the forty seven women representative seats at the county level, the mandatory requirement that at least two women should

¹⁰⁷ African Women and Child Features Service, 'Kenya Beyond Numbers Study' 71-87.

¹⁰⁸ African Women and Child Features Service, 'Kenya Beyond Numbers Study' 71-87.

¹⁰⁹ African Women and Child Features Service, 'Kenya Beyond Numbers Study' 71-87.

¹¹⁰ African Women and Child Features Service, 'Kenya Beyond Numbers Study' 71-87.

¹¹¹ African Women and Child Features Service, 'Kenya Beyond Numbers Study' 71-87.

¹¹² Article 27(6), *Constitution of Kenya*, (2010).

¹¹³ Article 100, *Constitution of Kenya*, (2010).

¹¹⁴ African Women and Child Features Service, 'Kenya Beyond Numbers Study' 71-87.

seat at the Constituency Development Fund Board,¹¹⁵ and the creation of sixteen seats for parliamentary women nominees.¹¹⁶

According to Nyambura, the 2010 Constitution and the Gender Parity Women's Political Participation within the devolution context, created a basis for women to claim for more seats at the county level through the one-third gender rule that outlined their democratic scope of participation in politics and advocated for the inclusion of provisions providing for supportive action for women in government.¹¹⁷ The constitution of Kenya under Article 27 provides for the overarching law against discrimination. The article calls for freedom of equality and freedom from discrimination of all demographic groups in the country.¹¹⁸ However, for parliament as stated under article 27(8) as read with Article 81(b) of the constitution, the state is called out to ensure that no more than two-thirds of the members of an elective or appointive body or public body shall come from one gender.¹¹⁹ This move is beyond a quota and its intention is to minimise government control by one gender. However, no legislation has been enacted to effect the same by either houses considering that the Public Service Values and Principles Amendment Bill is yet to be passed.¹²⁰

Nevertheless, it has been recorded that in the years 2017 and 2013, after the passing of the new constitution, Kenya recorded the greatest proportion of women in the legislature showing the effectiveness of the 2010 Constitution.¹²¹ The percentage of women in the 2013 and 2017 Parliaments increased from 9.8% to 21% and 23% percent respectively. Although the percentages recorded were greater than 2007, they did not attain the two-third gender criterion.¹²² At the county level, in the two years the Kenyan Parliament recorded six women leaders in the gubernatorial and senatorial level, with thirty- three legislators being appointed which was more than half of the

¹¹⁵ African Women and Child Features Service, 'Kenya Beyond Numbers Study' 71-87.

¹¹⁶ Article 98, *Constitution of Kenya*, (2010).

¹¹⁷ Nyambura G, 'The Political Participation of Women in Kenya' 1-14.

¹¹⁸ Article 27, *Constitution of Kenya*, (2010).

¹¹⁹ Article 27(8), *Constitution of Kenya*, (2010).

¹²⁰ The Public Service (Values and Principles) (Amendment) Bill (No 46 of 2022).

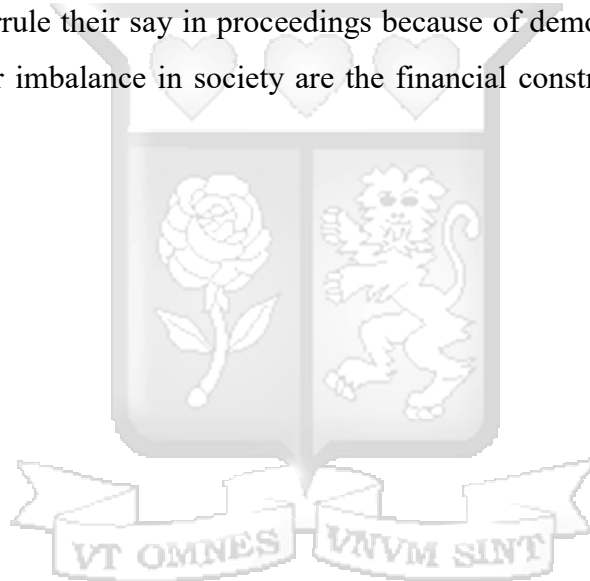
¹²¹ Nyambura G, 'The Political Participation of Women in Kenya' 1-14.

¹²² Nyambura G, 'The Political Participation of Women in Kenya' 1-14.

legislators at that time. ¹²³ In comparison to voting, the two years indicated that appointment was an easier way for women to obtain seats in government. ¹²⁴ This merely shows how effective affirmative action and with the support from their counterparts is in ensuring inclusivity of women in society.

2.4. Conclusion

From the illustrations above on the different causes of under-representation of women in leadership. What the study realises is that the non-compliance of the laws by male politicians that is seen when they fail to advocate for the inclusion of their female counterparts in politics is one of the main reasons behind the under-representation of women in Parliament. Since they are the majority no one can overrule their say in proceedings because of democracy. The last identified reason behind the gender imbalance in society are the financial constraints faced by women in society.



¹²³ Nyambura G, 'The Political Participation of Women in Kenya' 1-14.

¹²⁴ Nyambura G, 'The Political Participation of Women in Kenya' 1-14.

CHAPTER 3

3.1. Introduction

Kenya religious affiliation is divided into four main religions; Christianity, Islam, Hinduism and other religions. In this chapter of the study the study will look at religion as the first category of the demographic groups in Kenya. The research shall compare the country's religious affiliation with the Parliament's and Senate's religious affiliation using statistical data to establish whether the legislator's religious distribution coincides with the population in Kenya. It shall thereafter arrive at a conclusion as to whether there is an under-representation of the religious groups in both houses, the reason as to why this is the case, before arriving at possible solutions to resolve the situation.

3.2. Statistical illustration of the different religious groups in the Country in comparison to that of Parliament and the Senate

3.2.1. Religion

The Table below is divided among the different religions in both Parliaments; Christianity, Islam, Hinduism and Other religions. The data from the different religious groups has been assessed in Parliament, the Senate and in the country at large. It has tried to evaluate the distribution in reality in relation to the existing numbers in Parliament and Senate, to arrive at the most ideal numbers required in both houses and thereafter find the difference between the reality in comparison to what is required so as to determine whether the two coincide.

Total in Parliament 350					Total in Senate 67				Total in the Country 53,010,000			
Total	Christians	Muslims	Hindus	Others	Christians	Muslims	Hindus	Others	Christians	Muslims	Hindus	Others
Religion in the Legislature	291	35	7	18	57	7	1	2	45,058,500	530,100	68,913	2,051,487
(%)	83.14	10.00	2.00	5.14	82.61	10.14	1.45	2.90	82.61	10.14	1.45	2.90
% Total in the Country	85.00	1.00	0.13	3.87	85.00	1.00	0.13	3.87	%			
Gap%	-1.86	9.00	1.87	1.27	-2.39	9.14	1.32	-0.97	%			

From the table above, we can see that there is an under-representation of Christians in both houses. An under-representation of Christians with a marginal difference of -1.86% in the Parliament and -2.39% in the Senate. In addition to the under-representation of Christians, the Other religions are also under-represented in the Senate leaving a margin of -1.12% from the required. The majority of the under-represented are Christians which is quite unexpected since they are the largest religious group in the nation. This deviates significantly from historical expectations as the study will observe, highlight and emphasize in the subsections below.

There were difficulties in gathering the data needed for the analysis of this dissertation in order to compute the aforementioned statistics. The unavailability of data was the reason behind this setback. This was a significant obstacle to the collection of the data, necessitating the use of artificial intelligence specifically, Gemini, in the study in addition to scholarly research using fragments of data.

3.3. Causes of the different variances in religious affiliation

3.3.1. Emergence of new religions in Kenya

According to Ndeda, traditional religious traditions were disregarded as new faith emerged. For example, the Mau Mau fighters practised the indigenous Agikuyu religion, despite their significant contribution towards the struggle for Kenya's independence.¹²⁵ While religious freedom was being ingrained in society, other African cultures were being watered down, marginalised and being replaced with Western religions.¹²⁶ The absence of sources to educate them on matters of constitutionalism and human rights, made them an easy target for manipulation.¹²⁷ They were sidelined and their lack of educated leaders made it harder to fight for their course.¹²⁸

3.3.2. Unfair treatment by colonialists

According to Ouma, during colonial times, Kenya was seen to embrace religious diversity in the nation regardless of their being a hierarchy during colonial times with Europeans as the supreme race, followed by Indians, Arabs, Asians and finally Africans.¹²⁹ Therefore, as a sign of respect for the Muslim religion and to avoid interference with their way of living, the Kadhis court was established to deal with their matters of personal and family law. Furthermore, the Arab-Muslims were allowed to hold madrasa classes to teach on Islamic doctrine.¹³⁰ According to Ndzovu, the rift that arose was caused by the belief among colonialists that Arab-Muslims were more superior than the non-Arab and African Muslims.¹³¹ This preferential treatment towards the Arab-Muslims

¹²⁵ Ndeda M, 'The Struggle for Space Minority Religious Identities in Post-Independence Kenya' *Open Edition Journals* , 2009, 117-195 <<https://journals.openedition.org/eastafrica/586>> on 26 February 2024.

¹²⁶ Ndeda M, 'The Struggle for Space Minority Religious Identities in Post-Independence Kenya' 117-195.

¹²⁷ Ndeda M, 'The Struggle for Space Minority Religious Identities in Post-Independence Kenya' 117-195.

¹²⁸ Ndeda M, 'The Struggle for Space Minority Religious Identities in Post-Independence Kenya' 117-195.

¹²⁹ Ouma M, 'The Role of Religion in Politics and Governance in Kenya' published, University of Nairobi, Nairobi, 2014,27-46.

¹³⁰ *Jesee Kamau et al v Attorney General* (2010) eKLR.

¹³¹ Ndzovu H 'Muslims and Party Politics and Electoral Campaigns in Kenya' The Roberta Buffet Centre for International and Comparative Studies Northwestern University, Institute for the Islamic Thought in Africa 9, 2009,2-8 <https://arch.library.northwestern.edu/concern/generic_works/ws859f82q> on 26 February 2024.

in seclusion of the other religions led to a sequence of injustices towards the other Islamic minorities; the Arab-Muslims and Asian Muslims and the Christians.

The preferential treatment was directed towards the Arab-Muslims because of various reasons. First, it became a matter of serious concern because religion in Kenya has always been seen as a medium for expressing grievances, and racial and ethnic identities undercut the power of a united Muslim's voice in matters affecting them. For instance, according to Bjorn, African nationalism was seen as a threat to the Arab-Muslim's privileged position in society hence their threats to secede and join Zanzibar.¹³² According to Ouma, their threat was not taken lightly for many opposed their intentions claiming that the coastal region was not only a home to Arab-Muslims but also other Kenyan ethnicities who should not be subjected to Arab rule.¹³³ What calmed their horses and dissuaded them from wanting to secede, was the creation of a federal system of governance with one central government and six regional governments.¹³⁴ The coastal strip was turned over to the Kenyan government and Kenya became a sovereign nation with one central government until the promulgation of the 2010 constitution that led to the creation of forty-seven county governments.¹³⁵

Two, according to Bjorn, it pioneered other communities such as the Kenyan Somalis at the Eastern border to desire to secede.¹³⁶ The British Colonialists held an internal referendum where the majority chose to secede and join Somali. This resulted in the shifta wars which lasted for five years from 1963 to 1968.¹³⁷ According to Ouma, the Kenyan security did not stay put but instead sent out their troops to protect the region, a move that lasted for three long decades.¹³⁸ This is just

¹³² Bjorn M, 'Political Islam in Kenya' 12-14.

¹³³ Ouma M, 'The Role of Religion in Politics and Governance in Kenya' published, University of Nairobi, Nairobi, 2014,27-46.

¹³⁴ Ouma M, 'The Role of Religion in Politics and Governance in Kenya' published, University of Nairobi, Nairobi, 2014,27-46.

¹³⁵ Ouma M, 'The Role of Religion in Politics and Governance in Kenya' published, University of Nairobi, Nairobi, 2014,27-46.

¹³⁶ Bjorn M, 'Political Islam in Kenya' 12-14.

¹³⁷ Bjorn M, 'Political Islam in Kenya' 12-14.

¹³⁸ Ouma M, 'The Role of Religion in Politics and Governance in Kenya' published, University of Nairobi, Nairobi, 2014,27-46.

the first of the protection initiative steps taken by Kenya before the Linda Kenya initiative to ensure protection of the Kenya-Somalia border.

According to Ndzovu, three colonialists at the coast did not remedy the situation; instead they were seen to express their concern for the Arab-Muslims and not Indian and African Muslims by accepting the Coast Arabs Association request to be allocated seats in the administration and parliament.¹³⁹ According to Bjorn, they not only allocated two seats at the Legislative Council to them but also seats at the executive and the administration.¹⁴⁰ According to Ouma these were seats the Arab-Muslims guarded jealously from Swahili Muslims until 1952 when the Swahili were considered Arabs allowing them to register as Arabs for the 1957 and 1961 general elections.¹⁴¹

Four, according to Bjorn, the disregard of African Muslims requests to have leadership in Parliament. In 1958, African-Muslims made an almost similar petition to the then Governor Sir. Evelyn Bering.¹⁴² Their petition was dismissed on grounds that unlike them, Arab and Asian Muslims were considered minorities considering that they had an opportunity to acquire posts at the constituency level.¹⁴³ This was a disregard to their pleas, making them join the Kenya African National Union and the Kenya African Democratic Union to fight for the few seats available.¹⁴⁴ The African-Muslims desired a unitary government because of the freedom allocated to all religions by the Sultan of Zanzibar considering that the coast and northeastern parts were occupied by Muslims leaving the other regions predominantly to Christians.¹⁴⁵ His goal was to maintain peace amongst all religions.

¹³⁹ Ndzovu H 'Muslims and Party Politics and Electoral Campaigns in Kenya' 2-8.

¹⁴⁰ Bjorn M, 'Political Islam in Kenya' 12-14.

¹⁴¹ Ouma M, 'The Role of Religion in Politics and Governance in Kenya' published, University of Nairobi, Nairobi, 2014,27-46.

¹⁴² Bjorn M, 'Political Islam in Kenya' 12-14.

¹⁴³ Bjorn M, 'Political Islam in Kenya' 12-14.

¹⁴⁴ Bjorn M, 'Political Islam in Kenya' 12-14.

¹⁴⁵ Bjorn M, 'Political Islam in Kenya' 12-14.

3.3.3. Societal Reasons

After the attacks on different parts of the country, attacks linked to the Al-Shabaab, an alleged Islamic militia group, backlash from the society led to the discrimination of the Muslims in Kenya. This discriminatory treatment was particularly prevalent in the Eastleigh neighbourhood of Nairobi and the coastal regions,¹⁴⁶ following the initiation of the government's antiterrorism activities in Kenya and its borders with Somalia; after incessant attacks and kidnapping of civilians by Al-Shabaab militants within its borders. The attacks later led to the deployment of the Kenyan army to join the UN Security Council in Amisom to protect Kenyan borders.¹⁴⁷ Amisom later downed its tools and handed it to Atis; an AU mission led by Kenya, Uganda, Ethiopia, Burundi and Djibouti to proceed from where Amisom left off, who have now recently handed over to the Somali National Security forces¹⁴⁸ to protect its citizens and ensure peace along its borders. The discriminatory practices exacerbated even more when they were now being merged to injustices that were seen to only be directed towards the Islamic community, with the backing and suppression of its leaders due to the under-representation they faced in the community.¹⁴⁹

These problems encompassed a range of injustices which included; alleged marginalisation, abuse of human rights and usurping of land by Christians as claimed by the Al-Shabaab hence their continuous attacks directed towards Kenya.¹⁵⁰ Extra judicial killings, enforced disappearances, torture, harassment, ill-treatment and arbitrary arrest as was experienced in Mombasa where 250 youths were arrested with no form of reform since even leaders such as the then Deputy President William Ruto warned them against showing sympathy against them for any form of sympathy

¹⁴⁶ Office of International Religious Freedom, *2022 Report on International Religious*, US Department of State, 27 January 2024.

¹⁴⁷ Business Daily, 'Refund for Kenya troops in Somalia up 93pc to \$48m' *The East African*, 30 August 2023. <<https://www.theeastafrican.co.ke/tea/business/refunds-for-kenya-troops-in-somalia-up-93pc-to-48m-4352592>> 27 January 2024.

¹⁴⁸ Business Daily, 'Refund for Kenya troops in Somalia up 93pc to \$48m' *The East African*, 30 August 2023. <<https://www.theeastafrican.co.ke/tea/business/refunds-for-kenya-troops-in-somalia-up-93pc-to-48m-4352592>> 27 January 2024.

¹⁴⁹ Office of International Religious Freedom, *2022 Report on International Religious*, US Department of State, 27 January 2024.

¹⁵⁰ Office of International Religious Freedom, *2022 Report on International Religious*, US Department of State, 27 January 2024.

would be regarded to as religious extremism, putting their leaders at a very difficult place hence a lack of representation for the Muslims.¹⁵¹ Abduction by suspected government officials, detention, extortion, religious profiling and physical abuses, delays in resolving Muslim cases by public prosecutors, eviction of Nubian Muslims, delays in obtaining of identification cards required for voting for Muslims residing along the border of Somalia and Lamu caused by fear of them being linked to the Al-Shabaab and false accusations linking Muslims to the Al-Shabaab.¹⁵² This made the Muslims veer away from any interaction with the state in Kenya, hence the move towards secession along with the mantra, ‘Pwani si Kenya.’

3.3.4. Legal Reasons

As a result of the under-representation or need to have a multi-religious nation, the 1963 Independence Constitution allowed for freedom of religion whereas the 2010 Constitution declares that Kenya has no state religion¹⁵³ making it a liberal secular state because of the major role religion plays in politics.¹⁵⁴ The 2010 Constitution has also allowed incorporation of International laws into the constitution of Kenya¹⁵⁵ and among them are laws governing religious interactions globally that are directly linked to Article 32 of the constitution that calls for freedom of conscience, religion, belief and religion.¹⁵⁶ Hence, the various proceedings in Parliament advocating for religious rights of different religions. For instance, the proceedings lodged by Honourable Aden Duale before the legislature supporting the formation of the Waqf a donating kitty¹⁵⁷ and the Kadhis courts, a court of the same stature as the High Court in the constitution to

¹⁵¹ Office of International Religious Freedom, *2022 Report on International Religious*, US Department of State, 27 January 2024.

¹⁵² Office of International Religious Freedom, *2022 Report on International Religious*, US Department of State, 27 January 2024.

¹⁵³ Article 8, *Constitution of Kenya*, (2010).

¹⁵⁴ Ouma M, ‘The Role of Religion in Politics and Governance in Kenya’ published, University of Nairobi, Nairobi, 2014,27-46.

¹⁵⁵ Article 2(5), *Constitution of Kenya*, (2010).

¹⁵⁶ Article 32, *Constitution of Kenya*, (2010).

¹⁵⁷ Parliament Hansard Report, 3 August 2021, 10.

hear matters surrounding Muslim's personal law. ¹⁵⁸ This paved the way for Muslims to fight for their rights with the mobilisation from the few leaders they have in Parliament.

According to Ouma, this good gesture by the legal craftsmen led to the Islamic community being supported in the political arena. For instance, in the general political arena, it has resulted in multi-partism introducing Muslim candidates into the ballot, political leaders attending Eid celebrations to mark the conclusion of Ramadhan as a sign of their support for the Muslim community. ¹⁵⁹ This has been seen to motivate them to support other Islamic nations such as Iraq and Afghanistan because of the guaranteed backing they have from the government. ¹⁶⁰ Their support stems from their sense of belonging to the Muslim Umma. ¹⁶¹

3.3.5. Political Reasons

Following colonialism, Kenyatta's, Moi's and Kibaki's regimes were seen to advocate for a multiethnic, multi-religious Kenya with an aim of preserving the status quo. ¹⁶² This was with the belief that the church would fight for the country's best interests, and democracy but instead the leaders were seen to be divided according to their ethnic lines and only seen to condemn governments for their own financial gain. ¹⁶³ This beat its purpose as the body overseeing the government's functions.

Kenyatta's regime was not quite in touch with religion, with religion playing an indifferent role in the development of Kenyan politics. ¹⁶⁴ During Moi's time Pentecostal churches affiliated with the

¹⁵⁸ Article 170, *Constitution of Kenya*, (2010).

¹⁵⁹ Ouma M, 'The Role of Religion in Politics and Governance in Kenya' published, University of Nairobi, Nairobi, 2014,27-46.

¹⁶⁰ Ouma M, 'The Role of Religion in Politics and Governance in Kenya' published, University of Nairobi, Nairobi, 2014,27-46.

¹⁶¹ Ouma M, 'The Role of Religion in Politics and Governance in Kenya' published, University of Nairobi, Nairobi, 2014,27-46.

¹⁶² Ouma M, 'The Role of Religion in Politics and Governance in Kenya' published, University of Nairobi, Nairobi, 2014,27-46.

¹⁶³ Ouma M, 'The Role of Religion in Politics and Governance in Kenya' published, University of Nairobi, Nairobi, 2014,27-46.

¹⁶⁴ Ouma M, 'The Role of Religion in Politics and Governance in Kenya' published, University of Nairobi, Nairobi, 2014,27-46.

United Evangelical Churches of Kenya opposed multi-partism and supported authoritarianism.¹⁶⁵ This marked the beginning of the church's involvement in the development of Kenyan policies and programs.¹⁶⁶ With Moi's backing; religious organisations, professional bodies and the opposition all took up the initiative to act as the government's watchdog and denounce all of its unethical practices.¹⁶⁷ This was a sign of them reverting back to their role in government. For this reason, causing an improvement of the Christian's interaction in politics.

According to Bjorn, when it came to Muslims, Moi was against the, Islamic Party of Kenya, based on the grounds that it was a political party founded by Arabs.¹⁶⁸ According to Bjorn, he did this by engineering the creation of the United Muslims of Africa which he advocated for and referred to as an all-inclusive so as to have them support his one party system and stop advocating for an open democratic system.¹⁶⁹ Moi was seen to be against any opposition directed towards his government and the disbandment of parties was just one of the many steps he took to ensure that the Arab-Muslims who opposed him were maimed.

Besides rallying for their inclusion Moi passed a concession amendment to the Succession Act excluding them from being governed by the Act.¹⁷⁰ In addition to the exclusion from being bound by the Succession Act, Moi also excluded Kenyan Somalis from identification screening in an effort to placate the Muslim community, four months before the 2002 elections.¹⁷¹ Moi's interaction with religion was to ensure that they all supported him with no hesitation. He had no concern about championing for their inclusion in government.

¹⁶⁵ Ouma M, 'The Role of Religion in Politics and Governance in Kenya' published, University of Nairobi, Nairobi, 2014,27-46.

¹⁶⁶ Ouma M, 'The Role of Religion in Politics and Governance in Kenya' published, University of Nairobi, Nairobi, 2014,27-46.

¹⁶⁷ Ouma M, 'The Role of Religion in Politics and Governance in Kenya' published, University of Nairobi, Nairobi, 2014,27-46.

¹⁶⁸ Bjorn M, 'Political Islam in Kenya' 12-14.

¹⁶⁹ Bjorn M, 'Political Islam in Kenya' 12-14.

¹⁷⁰ Ouma M, 'The Role of Religion in Politics and Governance in Kenya' published, University of Nairobi, Nairobi, 2014,27-46.

¹⁷¹ Ouma M, 'The Role of Religion in Politics and Governance in Kenya' published, University of Nairobi, Nairobi, 2014,27-46.

Kibaki received a different setting in his journey to government. Before and after the elections, he received support from Christian leaders who remained silent after election when he did not act on his promises.¹⁷² In subsequent years, with multi-partism came multi-religious ballots.¹⁷³ Christian leaders were also seen to offer politicians chances to address congregations during services. By the time it got to the 2007-2008 post-election violence citizens had lost trust in the churches for they believed that churches did not have their best interests at heart.¹⁷⁴ However, after the ceasing of the violence a national, interdenominational prayer rally was held to pray for Kenya.¹⁷⁵ According to Ouma, not only did churches involve themselves in political matters but also mobilised the populace against constitutional amendments during the 2005, 2010 referendums.¹⁷⁶ They opposed the referendums on grounds that they advocated for abortion and establishment of the Kadhis courts because they believed that it would lead to Kenya's conversion into a state being ruled by sharia law.¹⁷⁷ However, with 67% of voters voting for it the constitution was passed.¹⁷⁸ From the information above on Kibaki's government with the Christian faith being the majority in the country, the country was more inclined to use them to mobilise the masses and have their support at the expense of the other religions. For example, they disregarded the interests of the Islamic community and this was seen when the Christian believers were championing for the removal of the Kadhis court, showing disregard on matters affecting the Islamic community.

When Uhuru Kenyatta was president his support was seen to cut across the board. He encouraged the participation of the church in politics. He referred to the church as the conscience of the state

¹⁷² Ouma M, 'The Role of Religion in Politics and Governance in Kenya' published, University of Nairobi, Nairobi, 2014,27-46.

¹⁷³ Ouma M, 'The Role of Religion in Politics and Governance in Kenya' published, University of Nairobi, Nairobi, 2014,27-46.

¹⁷⁴ Ouma M, 'The Role of Religion in Politics and Governance in Kenya' published, University of Nairobi, Nairobi, 2014,27-46.

¹⁷⁵ Ouma M, 'The Role of Religion in Politics and Governance in Kenya' published, University of Nairobi, Nairobi, 2014,27-46.

¹⁷⁶ Ouma M, 'The Role of Religion in Politics and Governance in Kenya' published, University of Nairobi, Nairobi, 2014,27-46.

¹⁷⁷ Ouma M, 'The Role of Religion in Politics and Governance in Kenya' published, University of Nairobi, Nairobi, 2014,27-46.

¹⁷⁸ Ouma M, 'The Role of Religion in Politics and Governance in Kenya' published, University of Nairobi, Nairobi, 2014,27-46.

bestowing a role unto them to ensure that the government administers its duties to the Kenyan citizens.¹⁷⁹ He was only seen to disagree with them when he passed the law that restricted gatherings during the Covid-19 pandemic.¹⁸⁰ However, he ensured inclusivity of all religious groups when he held prayer meetings and invited all religious leaders from the different religions. Their representation did not change the dynamics in the Parliaments but instead championed for religious interactions when it came to political matters.

According to Mungai, President Ruto on the other hand has been seen to have so many interactions with the church during and after the campaigns.¹⁸¹ Him and his Deputy President Rigathi Gachagua, have been seen leading church services around counties,¹⁸² funding church projects and even going ahead to build a church at his Karen home.¹⁸³ He has been seen to promise the church so many things,¹⁸⁴ showing his inclination towards the Christian community thus violating the constitution.

¹⁷⁹ Maombo S, 'Uhuru calls for continued partnership between state and church' The Star, 1 November 2009

<<https://www.the-star.co.ke/news/2020-11-01-uhuru-calls-for-continued-partnership-between-state-and-church/>> on 26 February 2024.

¹⁸⁰ Nation Media Group, 'Covid-19: Opposition after Uhuru's tough rules for reopening churches' Nation, 8 July 2020

<<https://nation.africa/kenya/news/covid-19-opposition-after-uhuru-s-tough-rules-for-reopening-churches-1446308>> on 26 February 2024.

¹⁸¹ Mungai A, 'Debate rages over Ruto ties with the church' The Standard

<<https://www.standardmedia.co.ke/health/politics/article/2001467448/debate-rages-over-ruto-ties-with-the-church>> on 26 February 2024.

¹⁸² Ayega D, 'President Ruto, Gachagua to Lead Church Service in Separate Counties' Capital News, 19 November 2023

<<https://www.capitalfm.co.ke/news/2023/11/president-ruto-gachagua-to-lead-church-service-in-separate-counties/>> on 26 February 2024.

¹⁸³ Kejitan V, 'DP-Ruto builds church at his Karen home' The Standard

<<https://www.standardmedia.co.ke/article/2001336303/dp-ruto-builds-church-at-his-karen-home>> on 26 February 2024.

¹⁸⁴ Obadha V, 'The Church Prayed for Ruto's Presidency Now The Clergy's Tired of All The Unmet Promises'

<<https://www.citizen.digital/news/the-church-prayed-for-rutos-presidency-now-the-clergys-tired-of-all-the-unmet-promises-n328603>> on 26 February 2024.

3.4. Results of the variances in religion

From the analysis of the different reactions by presidents, Presidents' inclination towards a certain religion was based on the benefits they could accrue from the religion with the Muslims, Hindus and other religions mostly being put at a disadvantage because of Kenya having a history of Christian leaders.

According to Ouma, when Moi was the president of Kenya the church was seen as an opponent of corruption, negative ethnicity, confined political space and abolition of the secret ballot.¹⁸⁵ This was a sign of their displeasement with Moi's authoritarian regime.¹⁸⁶ This interaction with politics was quite similar to Moi's time where he was seen to foster for the abolition of the Islamic Party just because it advocated for the abolition of his one party state system. To silence them, Moi banned open air meetings and prayers without permits and pressured them to either resign or refrain from politics.¹⁸⁷ The church in this situation was seen to use its ability to rally for a cause in conjunction with the Law Society of Kenya and advocate for the people's rights.¹⁸⁸ This move was a detour from the norm where the leaders in Parliament did all the talking.

The Islamic community after the exiting of the Sultan of Zanzibar have been faced with various dilemmas caused by their under-representation in government. According to Bjorn, when Moi was the incumbent president, Islamic political parties were denied registration and considered illegal and if it were not one single individual from the Islamic community, the then Sheikh Balala, their grievances would not have been aired.¹⁸⁹ This was evident when Moi realised that having them as his allies would get him more votes.¹⁹⁰ He therefore advocated for the formation of United

¹⁸⁵ Ouma M, 'The Role of Religion in Politics and Governance in Kenya' published, University of Nairobi, Nairobi, 2014,27-46.

¹⁸⁶ Ouma M, 'The Role of Religion in Politics and Governance in Kenya' published, University of Nairobi, Nairobi, 2014,27-46.

¹⁸⁷ Ouma M, 'The Role of Religion in Politics and Governance in Kenya' published, University of Nairobi, Nairobi, 2014,27-46.

¹⁸⁸ Ouma M, 'The Role of Religion in Politics and Governance in Kenya' published, University of Nairobi, Nairobi, 2014,27-46.

¹⁸⁹ Bjorn M, 'Political Islam in Kenya' 12-14.

¹⁹⁰ Bjorn M, 'Political Islam in Kenya' 12-14.

Muslims of Africa an African-Muslim political party that would allow for the inclusion of all.¹⁹¹ In the absence of strong leaders, Muslim political parties would not have been able to make their voices heard and would have been compelled to incite violent upheaval, much like what happened in 1992, after the arrest of its activists and seven Imams,¹⁹² where several were killed and injured in Mombasa.¹⁹³

However, as experienced recently in addition to the aforementioned discrimination practices directed towards Muslims, other religious groupings have also experienced delays in registering their religious organisations at certain points in history.¹⁹⁴ These delays commenced in 2014, pending the revision of religious societies rules.¹⁹⁵ Lastly, amidst the Covid-19 pandemic biases were seen on how regulations were enforced. Politicians as compared to other random citizens disregarded political rallies regulations and no actions were taken against them.¹⁹⁶ These acts made it seem that they were superior and above the law thus created need for the creation and implementation of more stringent laws to govern such situations.

Finally, according to Ouma, the non-existence of leaders to advocate for religious groups' rights, politicians have been seen to take advantage of the situation by practising divide and rule when it came to religion. For example, as was seen in 1997 when there was widespread violence at the coast, politicians put the religious groups against each other when the violence ensued.¹⁹⁷ Violence suspected to have been instigated by the then-ruling KANU regime, which had the support of security and militant forces.¹⁹⁸ KANU's actions were believed to compel the coastal people to

¹⁹¹ Bjorn M, 'Political Islam in Kenya' 12-14.

¹⁹² Bjorn M, 'Political Islam in Kenya' 12-14.

¹⁹³ Bjorn M, 'Political Islam in Kenya' 12-14.

¹⁹⁴ Office of International Religious Freedom, *2022 Report on International Religious*, US Department of State, 27 January 2024.

¹⁹⁵ Office of International Religious Freedom, *2022 Report on International Religious*, US Department of State, 27 January 2024.

¹⁹⁶ Office of International Religious Freedom, *2022 Report on International Religious*, US Department of State, 27 January 2024.

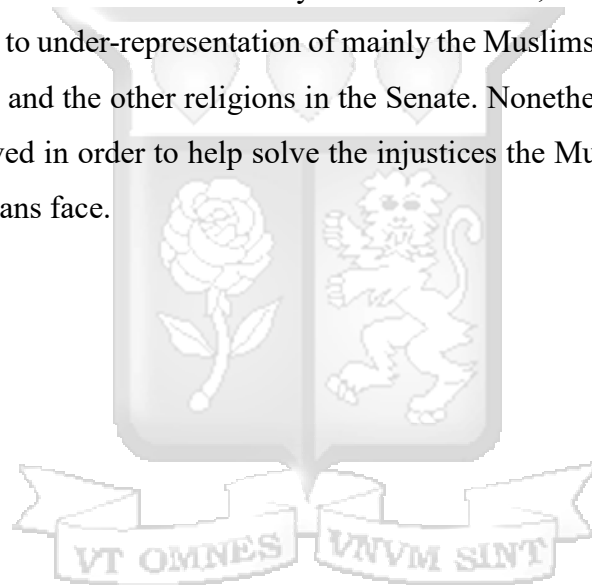
¹⁹⁷ Ouma M, 'The Role of Religion in Politics and Governance in Kenya' published, University of Nairobi, Nairobi, 2014,27-46.

¹⁹⁸ Ouma M, 'The Role of Religion in Politics and Governance in Kenya' published, University of Nairobi, Nairobi, 2014,27-46.

support KANU and no other political party.¹⁹⁹ These actions led to the deaths of around one hundred people and the displacement of one hundred thousand innocent people in Mombasa.²⁰⁰ If the religious groups had leaders, then the system of checks and balances would have been put into effect. This could have been done by leaders who could have stepped forward to call the leaders who instigated the violence out and in turn compel them to stop the violence.

3.5. Conclusion

From the above information violence is mainly instigated by the top leaders in government. Due to the lack of sufficient representation from the religious groups then these leaders take advantage of the situation and fuel the violence that may ensue. However, these actions seem to have subsequently not resulted to under-representation of mainly the Muslims in the Parliaments but the Christians in both houses and the other religions in the Senate. Nonetheless, to balance the scales a solution should be arrived in order to help solve the injustices the Muslims face and the under-representation the Christians face.



¹⁹⁹ Ouma M, 'The Role of Religion in Politics and Governance in Kenya' published, University of Nairobi, Nairobi, 2014,27-46.

²⁰⁰ Ouma M, 'The Role of Religion in Politics and Governance in Kenya' published, University of Nairobi, Nairobi, 2014,27-46.

CHAPTER 4

4.1. Introduction

Kenya is divided into forty-seven counties. This chapter shall look at constituencies in each county as the third category of groups in Kenya. It shall compare the county's population with the Parliament's constituencies distribution to determine how many votes each parliamentarian requires to be elected into Parliament using statistical data to establish whether the legislator's distribution according to counties coincides with the population in Kenya. It shall thereafter arrive at a conclusion as to whether there is an under-representation based of counties in both houses, the reason as to why this is the case, before arriving at possible solutions to resolve the situation.

4.2. Statistical illustration of the different counties in the Country in comparison to that of Parliament and the Senate

4.2.1. Counties

The Table below is divided among the different counties. The data from the different counties has been assessed in conjunction with the number of Member of Parliament's from each and every county. It has tried to evaluate the county distribution in reality in relation to the existing numbers of members of parliament, to arrive at the most ideal number of votes a Member of Parliament requires and thereafter find the difference between what's actually in existence as compared to what is required so as to determine whether the two coincide.

The study will sort the table below according to hierarchy, depending on the number of votes one deputy needs from each and every county.

County	Population	Parliament Members of Parliament	1 Deputy needs #Votes in County
Nakuru	421,844	11	38,349
Lamu	143,920	2	71,960
Garissa	623,060	6	103,843

Tana River	315,943	3	105,314
Baringo	666,763	6	111,127
Elgeyo Marakwet	454,480	4	113,620
Marsabit	459,785	4	114,946
Vihiga	612,000	5	122,400
Nyeri	759,164	6	126,527
Nyandarua	638,289	5	127,658
Busia	893,681	7	127,669
Wajir	781,263	6	130,211
Tharaka Nithi	393,177	3	131,059
Isiolo	268,002	2	134,001
Migori	1,116,436	8	139,555
Kisii	1,266,860	9	140,762
Homabay	1,131,950	8	141,494
Kitui	1,136,187	8	142,023
Taita Taveta	284,657	2	142,329
Mandera	867,457	6	144,576
Nandi	885,711	6	147,619
Kericho	901,777	6	150,296
Murang'a	1,056,640	7	150,949
Nyamira	605,576	4	151,394
Embu	608,599	4	152,150
Kirinyaga	610,411	4	152,150
Turkana	926,976	6	152,603
Samburu	310,327	2	154,496
West Pokot	621,241	4	155,164
Kakamega	1,867,579	12	155,310
Mombasa	939,370	6	155,632
Kwale	649,931	4	156,562
Makueni	987,653	6	162,483

Siaya	993,183	6	164,609
Laikipia	518,560	3	165,531
Bomet	875,689	5	172,853
Machakos	1,421,932	8	175,138
Bungoma	1,670,570	9	177,742
Meru	1,710,973	9	185,619
Kisumu	1,155,574	6	190,108
Uasin Gishu	1,163,186	6	192,596
Trans Nzoia	990,341	5	193,864
Kiambu	2,417,735	12	198,068
Kajiado	1,117,840	5	223,568
Nairobi	5,325,160	17	313,245

Using the above variables, the analysis indicates that the representatives in Parliament per county are not proportionate to the population in the county's and for this reason the population and its representation does not adequately represent the one man-one vote requirement in democracy. This is because of the inadequacy in proportions when it comes to the number of votes a Parliamentarian requires to be elected. For example, in Nakuru one vote in Nakuru equates to eight votes in Nairobi County, regardless of the relatively high number of seats acquired by both counties in Parliament. This is because from the statistics above, a representative from Nairobi has to work eight times as much than a representative in Nakuru, to garner seats from Nairobi County. The difference is substantially great, for this reason the study shall delve into the causes of the difference in variables and thereafter come up with possible solutions to the problem.

We are unable to evaluate the same when it comes to Senators in the Senate because a Senator is a counties' representative. For this reason, the research alludes to the fact that the number of votes a Senator requires depends on the county's population.

This table shall transcend to ethnicity data and our representatives according to tribes table where we shall see Dasenach, Dorobo, Ilchamus, Konso and Makonde lacking representation, Samia being under-represented and the Europeans being over-represented, hence drawing a connection between a county's under-representation and its people's under-representation.

4.3. Causes of the different boundary lines

4.3.1. Legal Reasons

The delimitation of boundaries according to constituencies and wards that reason as to why different counties have different number of Members of Parliament in Kenya is mainly governed by Article 89 of the Constitution of Kenya.²⁰¹ The Constitution sets out the IEBC as the commission in charge of the delimitation with the periodic timeline being at an interval of eight years to ten years so long as it's done at least twelve months before a general election.²⁰² Viewed as whole it also sets out the criterion to be adhered to by the IEBC when delimitating the boundaries and the allowance permitted when creating the boundaries. Lastly, it creates a link between the creation of boundaries and the need for a referendum after the boundaries have been created. This is because with the creation of new boundaries comes a change in numbers of constituencies and wards in the country.²⁰³ This is the reason as to why there is a huge time allowance given to the commission to undertake this task of delimitation. To avoid there being a clash between the conducting of a referendum and the conducting of an election.

The second legislation governing the delimitation of boundaries is the Independent and Boundaries Commission Act. This act basically reiterates the IEBC's administration role which is to delimitate the constituencies and wards within counties in accordance to the Constitution.²⁰⁴ Lastly, the Elections Act also links the delimitation of boundaries to the IEBC's role of conducting a fresh registration process at an interval of not less than eight years and not more than twelve years. This is because of the fact that with a change of names, numbers and population of a county comes a distortion of the people to fit the newly created counties to ensure that there is effective utilization of resources. Hence need for a fresh voter registration to be undertaken after.²⁰⁵

4.3.2. Independent and Electoral and Boundaries Commission

²⁰¹ Article 89, *Constitution of Kenya* (2010).

²⁰² Article 89(2), *Constitution of Kenya* (2010).

²⁰³ Article 89(1), *Constitution of Kenya* (2010).

²⁰⁴ Section 4(c), *Elections Act*, (No 2 of 2022).

²⁰⁵ Section 8, *Elections Act*, (No 2 of 2022).

The Independent and Boundaries Commission is the commission put in place to review the names and boundaries of constituencies according to their specific geographic and demographic details, before publishing them in the Kenyan Gazette.²⁰⁶

According to Ndegwa, the Commission is meant to closely keep in touch with the statistics' updates published by the Kenya National Bureau of Statistics after every census is conducted. This is to help them keep up with the population growth of the region so as to ensure that each region is fairly distributed, and equally and fairly represented.²⁰⁷

In the last elections held in 2022, the Kenya National Bureau of Statistics failed to publish the fifth volume of the statistics required for the delimitation of the new boundaries.²⁰⁸ This plus the fact the IEBC was not prompt to undertake its task of creating the new boundaries led to the retention of counties on a transitional clause.²⁰⁹ This is because 27 counties were to be abolished but were not abolished thus being spared from losing their jobs.²¹⁰

In addition, to the lack of updates the IEBC this year, was not trusted by the people hence the vote of no confidence by the vast majority of citizens.²¹¹ This is because of its inclination towards an unpopular government.²¹²

4.3.3. Population Quota

²⁰⁶ Article 89(9), *Constitution of Kenya* (2010).

²⁰⁷ Ndegwa A, 'Storm brewing over review of constituency boundaries' Nation, 22 February 2023 <https://nation.africa/kenya/news/politics/storm-brewing-over-review-of-constituency-boundaries-4132614> on 2 March 2024.

²⁰⁸ Ndegwa A, 'Storm brewing over review of constituency boundaries' Nation, 22 February 2023 <https://nation.africa/kenya/news/politics/storm-brewing-over-review-of-constituency-boundaries-4132614> on 2 March 2024.

²⁰⁹ Ndegwa A, 'Storm brewing over review of constituency boundaries' Nation, 22 February 2023 <https://nation.africa/kenya/news/politics/storm-brewing-over-review-of-constituency-boundaries-4132614> on 2 March 2024.

²¹⁰ Ndegwa A, 'Storm brewing over review of constituency boundaries' Nation, 22 February 2023 <https://nation.africa/kenya/news/politics/storm-brewing-over-review-of-constituency-boundaries-4132614> on 2 March 2024.

²¹¹ Ndegwa A, 'Storm brewing over review of constituency boundaries' Nation, 22 February 2023 <https://nation.africa/kenya/news/politics/storm-brewing-over-review-of-constituency-boundaries-4132614> on 2 March 2024.

²¹² Ndegwa A, 'Storm brewing over review of constituency boundaries' Nation, 22 February 2023 <https://nation.africa/kenya/news/politics/storm-brewing-over-review-of-constituency-boundaries-4132614> on 2 March 2024.

The population quota of Kenya is attained by calculating the number of inhabitants of Kenya by 290 constituencies and 1450 wards. The population quota affects the boundaries. This is because the population in a constituency ought to be equal to the population quota with a permitted allowance of forty percent for cities and sparsely populated areas, and thirty percent for other areas.²¹³ According to Grignon, it takes account of various factors in the community which include; the geographical features and urban centers, community of interest, its historical, economic and cultural ties and the means of communication available within the area.²¹⁴

In the 2022 elections, the Kenya National Bureau Statistics failed to publish the fifth volume of the 2019 census which acted as a setback to the Independent Electoral and Boundaries Commission not delimitating the boundaries in preparation for the elections. Two, the other setback that resulted to the IEBC not mapping out the data as required was because of the unresolved boundary conflicts among the communities.²¹⁵ For this reason, they had to forgo the process in preparation of the elections.

4.4. Results of the variation in Counties

According to Ndegwa, as a result, the people and their leaders state that the lack of delimitation causes an under-representation of their vote rich areas.²¹⁶ This is because of its effect to the one man one-shilling campaign by leaders from populous regions.²¹⁷ Two, it undermines resource allocations to their regions for the grass root levels.²¹⁸ For example, funds including bursaries.²¹⁹

²¹³ Article 89(6), *Constitution of Kenya* (2010).

²¹⁴ Grignon K, 'Reconstitute the IEBC to allow constituency boundaries review' *The Standard*, < <https://www.standardmedia.co.ke/article/2001481651/reconstitute-the-iebc-to-allow-constituency-boundaries-review>> on 2 March 2024.

²¹⁵ Ndegwa A, 'Storm brewing over review of constituency boundaries' *Nation*, 22 February 2023 <https://nation.africa/kenya/news/politics/storm-brewing-over-review-of-constituency-boundaries-4132614> on 2 March 2024.

²¹⁶ Ndegwa A, 'Storm brewing over review of constituency boundaries' *Nation*, 22 February 2023 <https://nation.africa/kenya/news/politics/storm-brewing-over-review-of-constituency-boundaries-4132614> on 2 March 2024.

²¹⁷ Ndegwa A, 'Storm brewing over review of constituency boundaries' *Nation*, 22 February 2023 <https://nation.africa/kenya/news/politics/storm-brewing-over-review-of-constituency-boundaries-4132614> on 2 March 2024.

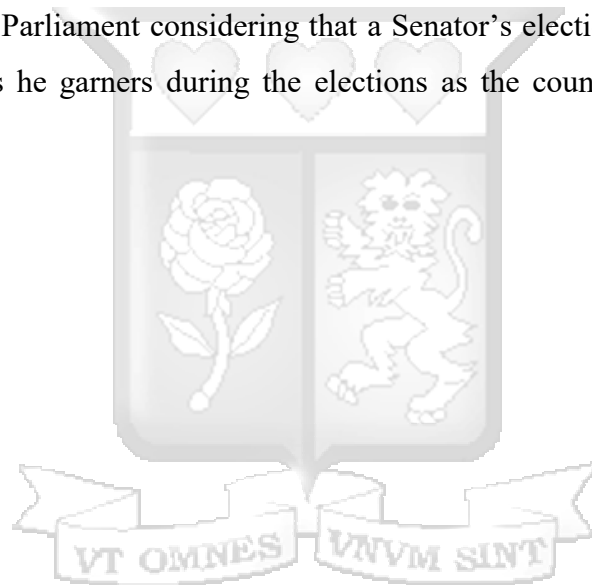
²¹⁸ Ndegwa A, 'Storm brewing over review of constituency boundaries' *Nation*, 22 February 2023 <https://nation.africa/kenya/news/politics/storm-brewing-over-review-of-constituency-boundaries-4132614> on 2 March 2024.

²¹⁹ Ndegwa A, 'Storm brewing over review of constituency boundaries' *Nation*, 22 February 2023 <https://nation.africa/kenya/news/politics/storm-brewing-over-review-of-constituency-boundaries-4132614> on 2 March 2024.

This is because of the competitiveness that will occur due to there being limited resources, requiring distribution among a large number of people. Finally, as established from the statistics it results to a very strenuous political campaign on an individual trying to garner votes from a county.

4.5. Conclusion

From the above authors, the reason behind the under-representation is the link between the different government departments, the Kenya National Bureau of Statistics and the IEBC results to excuses upon non-performance by either parties. Two, the link between the delimitation of boundaries, amendments and elections makes it a very expensive and tedious process to follow through. For this reason, the close connection causes a problem to attaining proper representation of people in the Kenyan Parliament considering that a Senator's election is based on a county's population and the votes he garners during the elections as the county's representative in the Senate.



CHAPTER 5

5.1. Introduction

Kenya has a total of forty-two tribes from the Bantu, Nilotic and Cushitic origin. This chapter shall continue with the study, it shall look at tribes as the third demographic group in Kenya. It shall compare the predominant tribe's population in comparison to the elected Members of Parliament from every county. It shall subsequently determine the number of votes one Member of Parliament requires from each and every predominant tribe in the county and thereafter establish whether the tribal distribution in counties coincides with the population in Kenya. It shall thereafter conclude by determining the representation of the ethnicities in Parliament, the reason behind the representation, before arriving at possible solutions to the representation situation in Parliament.

5.2. Statistical illustration of the ethnicities in the Country in comparison to that of Parliament and the Senate

The Table below is divided among the different ethnicities in Parliament. The data from the different ethnicities has been assessed in Parliament, the Senate and in the country at large. It has tried to evaluate the distribution in reality in relation to the existing numbers in Parliament and Senate, to arrive at the ideal numbers required in both houses and thereafter find the difference between what's actually in existence as compared to what is required so as to determine whether the two coincide.

From the table below we will see that they do not coincide making the study take a long route to undertake the study. The reason behind the long routed analysis is the dearth of easily accessible information on the Members of Parliament's ethnicities. This served as a shortcoming to this study. It compelled the study to be conducted with the help of computer systems in addition to academic work and statistical data. For instance, gathering numerical data on the majority tribe size in a certain region despite the reluctance to call them dominant because of it being perceived as a deficiency instead choosing to refer to them as populous. As a result, it used the deductive approach when calculating the population based on the available data or employment data of different tribes from different counties in the public sector. This becomes a setback in the research due to the lack

of easily available data, making it quite difficult to right wrongs without knowing how they were distributed.

5.2.1. Ethnicity data

County	Tribes	Predominant Tribe Name %		Parliament Member of Parliament	County population in the country	1 Member of Parliament needs # Votes	Numbers by Tribe in the County	Required Members of Parliament by Main Tribe in County
Embu	Aembu	Aembu	60%	4	608,599	152,150	365,159	2.4
	Mbeere		13%	4	608,599	152,150	81,147	
	Kamba		13%	4	608,599	152,150	81,147	
	Kikuyu		13%	4	608,599	152,150	81,147	
Machakos	Akamba	Akamba	100%	8	1,421,932	177,742	1,421,932	8
Makueni	Akamba	Akamba	100%	6	987,653	164,609	987,653	6
Meru	Ameru	Ameru	85%	9	1,710,973	190,108	1,454,327	7.65
	Kikuyu		5%	9	1,710,973	190,108	85,549	
	Kamba		5%	9	1,710,973	190,108	85,549	
	Embu		5%	9	1,710,973	190,108	85,549	
Lamu	Bajuni	Bajuni	46%	2	393,177	71,960	66,203	0.92
	Sanye		18%	2	393,177	71,960	25,906	
	Aweer		18%	2	393,177	71,960	25,906	
	Orma		18%	2	393,177	71,960	25,906	
Isiolo	Borana	Borana	92%	2	268,002	134,001	246,562	1.84
	Ameru		2%	2	268,002	134,001	4,288	
	Samburu		2%	2	268,002	134,001	4,288	
	Rendile		2%	2	268,002	134,001	4,288	
	Turkana		2%	2	268,002	134,001	4,288	
	Somali		2%	2	268,002	134,001	4,288	
Marsabit	Borana	Borana	33%	4	459,785	114,946	151,729	1.32
	Rendille		17%	4	459,785	114,946	77,014	
	Gabbra		17%	4	459,785	114,946	77,014	
	Samburu		17%	4	459,785	114,946	77,014	
	Turkana		17%	4	459,785	114,946	77,014	

Bungoma	Bukusu	Bukusu	100%	9	1,670,570	185,619	1,670,570	9
Busia	Iteso	Iteso	100%	7	893,681	127,669	893,681	7
Uasin Gishu	Kalenjin	Kalenjin	97%	6	1,163,186	193,864	1,128,290	5.82
	Kikuyu		1%	6	1,163,186	193,864	6,979	
	Luhya		1%	6	1,163,186	193,864	6,979	
	Luo		1%	6	1,163,186	193,864	6,979	
	Kamba		1%	6	1,163,186	193,864	6,979	
	Kisii		1%	6	1,163,186	193,864	6,979	
Elgeyo Marakwet	Kalenjin	Kalenjin	26%	4	454,480	113,620	119,983	1.056
	Kikuyu		15%	4	454,480	113,620	67,263	
	Pokomo		15%	4	454,480	113,620	67,263	
	Sabaot		15%	4	454,480	113,620	67,263	
	Tugen		15%	4	454,480	113,620	67,263	
	Nandi		15%	4	454,480	113,620	67,263	
Kitui	Akamba	Akamba	81%	8	1,136,187	142,023	915,767	6.448
	Ameru		4%	8	1,136,187	142,023	44,084	
	Tharaka		4%	8	1,136,187	142,023	44,084	
	Aembu		4%	8	1,136,187	142,023	44,084	
	Kikuyu		4%	8	1,136,187	142,023	44,084	
	Somali		4%	8	1,136,187	142,023	44,084	
Nairobi	Kikuyu	Kikuyu	20%	17	5,325,160	313,245	1,065,032	3.4
	Luo		13%	17	5,325,160	313,245	709,844	
	Luhya		13%	17	5,325,160	313,245	709,844	
	Kamba		13%	17	5,325,160	313,245	709,844	
	Asians		13%	17	5,325,160	313,245	709,844	
	Europeans		13%	17	5,325,160	313,245	709,844	
	Somalis		13%	17	5,325,160	313,245	709,844	
Nyandarua	Kikuyu	Kikuyu	96%	5	638,289	127,658	612,119	4.795
	Luo		1%	5	638,289	127,658	6,542	
	Luhya		1%	5	638,289	127,658	6,542	
	Kamba		1%	5	638,289	127,658	6,542	
	Kisii		1%	5	638,289	127,658	6,542	
Nyeri	Kikuyu	Kikuyu	100%	6	759,164	126,527	759,164	6
Kirinyaga	Kikuyu	Kikuyu	100%	4	610,411	152,603	610,411	4

Murang'a	Kikuyu	Kikuyu	93%	7	1,056,640	150,949	986,902	6.538
	Kamba		1%	7	1,056,640	150,949	13,948	
	Meru		1%	7	1,056,640	150,949	13,948	
	Luhya		1%	7	1,056,640	150,949	13,948	
	Indians		1%	7	1,056,640	150,949	13,948	
	Embu		1%	7	1,056,640	150,949	13,948	
Kiambu	Kikuyu	Kikuyu	100%	12	2,417,735	201,478	2,417,735	12
Laikipia	Kikuyu	Kikuyu	60%	3	518,560	172,853	311,136	1.8
	Samburu		40%	3	518,560	172,853	207,424	
Nakuru	Kikuyu Kalenjin	Kikuyu and Kalenjin	70%	11	421,844	172,853	295,291	7.7
	Maasai		30%	11	421,844		126,553	
Kericho	Kipsigis	Kipsigis	100%	6	901,777	150,296	901,777	6
Bomet	Kipsigis	Kipsigis	100%	5	875,689	175,138	875,689	5
Kisii	Kisii	Kisii	90%	9	1,266,860	140,762	1,138,907	8.091
	Kikuyu		3%	9	1,266,860	140,762	42,693	
	Kamba		3%	9	1,266,860	140,762	42,693	
	Luo		3%	9	1,266,860	140,762	42,693	
Nyamira	Kisii	Kisii	100%	4	605,576	151,394	605,576	4
Migori	Kuria	Kuria	27%	8	1,116,436	139,555	305,903	2.192
	Luo's		9%	8	1,116,436	139,555	101,317	
	Kisii		9%	8	1,116,436	139,555	101,317	
	Luhya		9%	8	1,116,436	139,555	101,317	
	Luo's		9%	8	1,116,436	139,555	101,317	
	Somalis		9%	8	1,116,436	139,555	101,317	
	Indians		9%	8	1,116,436	139,555	101,317	
	Arabs		9%	8	1,116,436	139,555	101,317	
	Nubians		9%	8	1,116,436	139,555	101,317	
Transzoia	Luhya	Luhya	99%	5	990,341	198,068	980,438	4.95
	Kalenjin		1%	5	990,341		9,903	
Kakamega	Luhya	Luhya	100%	12	1,867,579	155,632	1,867,579	12
Vihiga	Luhya (Maragoli Tiriki Idaho Banyore)	Luhya	100%	5	993,183	122,400	612,000	5
Siaya	Luo	Luo	100%	6	1,155,574	165,531	993,183	6
Kisumu	Luo	Luo	100%	6	1,131,950	192,596	1,155,574	6

Homa bay	Luo and Abasuba	Luo and Abasuba	95%	8	1,867,579	141,494	1,075,353	7.6
	Kisii		2%	8	1,867,579	141,494	18,904	
	Teso		2%	8	1,867,579	141,494	18,904	
	Luhya		2%	8	1,867,579	141,494	18,904	
Kajiado	Maasai	Maasai	36%	5	1,117,840	223,568	402,981	1.8025
	Kuria		6%	5	1,117,840	223,568	64,947	
	Mijikenda		6%	5	1,117,840	223,568	64,947	
	Taita		6%	5	1,117,840	223,568	64,947	
	Somali		6%	5	1,117,840	223,568	64,947	
	Ameru		6%	5	1,117,840	223,568	64,947	
	Kalenjin		6%	5	1,117,840	223,568	64,947	
	Luhya		6%	5	1,117,840	223,568	64,947	
	Luo		6%	5	1,117,840	223,568	64,947	
	Kisii		6%	5	1,117,840	223,568	64,947	
	Kamba		6%	5	1,117,840	223,568	64,947	
	Kikuyu		6%	5	1,117,840	223,568	64,947	
Mombasa	Mijikenda	Mijikenda	35%	6	939,370	223,568	328,780	2.1
	Kamba		22%	6	939,370	156,562	203,561	
	Arabs		22%	6	939,370	156,562	203,561	
	Swahili		22%	6	939,370	156,562	203,561	
Kwale	Mijikenda (Digo Duruma)	Mijikenda	64%	4	649,931	162,483	416,606	2.564
	Kamba		12%	4	649,931	162,483	77,797	
	Arabs		12%	4	649,931	162,483	77,797	
	Indians		12%	4	649,931	162,483	77,797	
Nandi	Nandi	Nandi	100%	6	885,711	147,619	885,711	6
Tana River	Pokomo and Orma	Pokomo and Orma	76%	3	315,943	105,314	239,990	2.2788
	Sanye		5%	3	315,943	105,314	12,660	
	Dahalo		5%	3	315,943	105,314	12,660	
	Munyo-Yaya		5%	3	315,943	105,314	12,660	
	Wardei		5%	3	315,943	105,314	12,660	
	Malakote		5%	3	315,943	105,314	12,660	
	Somalis		5%	3	315,943	105,314	12,660	
West Pokot	Pokot	Pokot	100%	4	621,241	155,310	621,241	4
Samburu	Samburu	Samburu	100%	2	310,327	155,164	310,327	2
Garissa	Somalis	Somalis	100%	6	623,060	103,843	623,060	6

Wajir	Somalis	Somalis	100%	6	781,263	130,211	781,263	6
Mandera	Somalis	Somalis	100%	6	867,457	144,576	867,457	6
Taita Taveta	Taita	Taita	53%	2	284,657	142,329	152,007	1.068
	Taveta		16%	2	284,657	142,329	44,207	
	Sagala		16%	2	284,657	142,329	44,207	
	Wadawida		16%	2	284,657	142,329	44,207	
Tharaka Nithi	Tharaka	Tharaka	75%	3	284,657	131,059	293,703	2.241
	Ameru		4%	3	284,657	131,059	16,580	
	Kikuyu		4%	3	284,657	131,059	16,580	
	Kamba		4%	3	284,657	131,059	16,580	
	Embu		4%	3	284,657	131,059	16,580	
	Borana		4%	3	284,657	131,059	16,580	
	Somali		4%	3	284,657	131,059	16,580	
Baringo	Tugen	Tugen	82%	3	666,763	111,127	543,412	4.89
	Pokot		3%	6	666,763	111,127	17,623	
	Turkana		3%	6	666,763	111,127	17,623	
	Kikuyu		3%	6	666,763	111,127	17,623	
	Meru		3%	6	666,763	111,127	17,623	
	Luhya		3%	6	666,763	111,127	17,623	
	Kamba		3%	6	666,763	111,127	17,623	
	Luo		3%	6	666,763	111,127	17,623	
Turkana	Turkana	Turkana	67%	6	926,976	154,496	623,855	4.038
	Pokot		17%	6	926,976	154,496	151,561	
	Samburu		17%	6	926,976	154,496	151,561	

The table above is divided into counties, tribes' distribution in the counties and country, the predominant tribe's population in percentage and highlighted in black with the other tribes' population calculated based on the percentage difference with each tribe being allocated an equal number in percentage. The seats acquired from the different constituencies in parliament from every county, the counties populations before arriving at the required number of votes a leader needs from the predominant tribes to be elected into Parliament. This calculation is arrived at by dividing the tribes' populations in the country with their real populations from the counties.

5.2.2. Predominant Tribes' populations from every County

Tribes	Predominant Tribe		Parliament Members of Parliament	County Population by predominant tribe	1 Member of Parliament needs # votes in county	Tribe population in the county
	Name	%				
Abasuba	Luo Abasuba	47.50%	8	1,131,950	141,494	537,676
Aembu	Aembu	60.00%	4	608,599	152,150	365,159
Aembu		3.80%	8	1,136,187	142,023	43,175
Aembu		5.00%	9	1,710,973	190,108	1,447,484
Aembu		1.40%	7	1,056,640	150,949	14,793
Aembu		4.17%	3	393,177	131,059	16,384
Akamba		3.33%	9	1,266,860	140,762	42,186
Akamba	Akamba	100.00%	6	987,653	164,609	987,653
Akamba	Akamba	100.00%	8	1,421,932	177,742	1,421,932
Ameru		1.60%	2	268,002	134,001	4,288
Ameru		3.80%	8	1,136,187	142,023	43,175
Ameru	Ameru	84.60%	9	1,710,973	190,108	1,447,484
Ameru		2.57%	6	666,763	111,127	17,136
Ameru		1.40%	7	1,056,640	150,949	14,793
Ameru		5.80%	5	1,117,840	223,568	64,835
Ameru		4.17%	3	393,177	131,059	16,384
Arabs		12.00%	4	649,931	162,483	77,992
Arabs		10.42%	8	1,116,436	139,555	116,333
Arabs		21.67%	6	939,370	156,562	203,561
Asians		11.43%	17	5,325,160	313,245	608,666
Aweer		18.00%	2	143,920	71,960	25,906
Bajuni	Bajuni	46.00%	2	143,920	71,960	66,203
Banyore		1.00%	8	1,131,950	141,494	11,320

Banyore		20.00%	6	1,163,186	193,864	232,637
Borana	Borana	91.71%	2	268,002	134,001	245,785
Borana		4.17%	3	393,177	131,059	16,384
Borana	Borana	33.41%	4	459,785	114,946	153,614
Bukusu	Bukusu	100.00%	9	1,670,570	185,619	1,670,570
Bukusu		1.00%	8	1,131,950	141,494	11,320
Dahalo		4.00%	3	315,943	105,314	12,638
Europeans		11.43%	17	5,325,160	313,245	608,666
Gabbra		16.75%	4	459,785	114,946	77,014
Indians		12.00%	4	649,931	162,483	77,992
Indians		10.42%	8	1,116,436	139,555	116,333
Indians		1.40%	7	1,056,640	150,949	14,793
Iteso	Iteso	100.00%	7	893,681	127,669	893,681
Iteso		1.00%	8	1,131,950	141,494	11,320
Kalenjin		5.80%	5	1,117,840	223,568	64,835
Kalenjin		35.00%	11	421,844	38,349	295,291
Kalenjin		1.00%	5	990,341	198,068	9,903
Kalenjin	Kalenjin	26.40%	4	454,480	113,620	119,983
Kalenjin	Kalenjin	97.00%	6	1,163,186	193,864	1,128,290
Kamba		2.57%	6	666,763	111,127	17,136
Kamba		13.33%	4	608,599	152,150	81,126
Kamba		5.80%	5	1,117,840	223,568	64,835
Kamba		12.00%	4	649,931	162,483	77,992
Kamba		5.00%	9	1,710,973	190,108	1,447,484
Kamba		21.67%	6	939,370	156,562	203,561
Kamba		1.40%	7	1,056,640	150,949	14,793
Kamba		11.43%	17	5,325,160	313,245	608,666
Kamba		1.00%	5	638,289	127,658	6,383
Kamba		4.17%	3	393,177	131,059	16,384
Kamba		0.60%	6	1,163,186	193,864	6,979

Kamba	Kamba	80.60%	8	1,136,187	142,023	915,767
Kikuyu		2.57%	6	666,763	111,127	17,136
Kikuyu		14.80%	4	454,480	113,620	67,263
Kikuyu		13.33%	4	608,599	152,150	81,126
Kikuyu		5.80%	5	1,117,840	223,568	64,835
Kikuyu	Kikuyu	100.00%	4	610,411	152,603	610,411
Kikuyu		3.33%	9	1,266,860	140,762	42,186
Kikuyu		3.80%	8	1,136,187	142,023	43,175
Kikuyu		5.00%	9	1,710,973	190,108	1,447,484
Kikuyu		11.43%	17	5,325,160	313,245	608,666
Kikuyu	Kikuyu and Kalenjin	35.00%	11	421,844	38,349	295,291
Kikuyu	Kikuyu	100.00%	6	759,164	126,527	759,164
Kikuyu		4.17%	3	393,177	131,059	16,384
Kikuyu		0.60%	6	1,163,186	193,864	6,979
Kikuyu	Kikuyu	100.00%	12	2,417,735	201,478	2,417,735
Kikuyu	Kikuyu	93.40%	7	1,056,640	150,949	986,902
Kikuyu	Kikuyu	20.00%	17	5,325,160	313,245	1,065,032
Kikuyu	Kikuyu	95.90%	5	638,289	127,658	612,119
Kipsigis	Kipsigis	100.00%	5	875,689	175,138	875,689
Kipsigis	Kipsigis	100.00%	6	901,777	150,296	901,777
Kisii		1.00%	8	1,131,950	141,494	11,320
Kisii		5.80%	5	1,117,840	223,568	64,835
Kisii		10.42%	8	1,116,436	139,555	116,333
Kisii	Kisii	100.00%	4	605,576	151,394	605,576
Kisii		1.00%	5	638,289	127,658	6,383
Kisii		0.60%	6	1,163,186	193,864	6,979
Kisii	Kisii	89.90%	9	1,266,860	140,762	1,138,907
Kuria		5.80%	5	1,117,840	223,568	64,835
Kuria	Kuria	27.40%	8	1,116,436	139,555	305,903

Luhya		2.57%	6	666,763	111,127	17,136
Luhya		5.80%	5	1,117,840	223,568	64,835
Luhya		10.42%	8	1,116,436	139,555	116,333
Luhya		1.40%	7	1,056,640	150,949	14,793
Luhya		11.43%	17	5,325,160	313,245	608,666
Luhya		1.00%	5	638,289	127,658	6,383
Luhya	Luhya	99.00%	5	990,341	198,068	980,438
Luhya		0.60%	6	1,163,186	193,864	6,979
Luhya	Luhya	100.00%	12	1,867,579	155,632	1,867,579
Luhya (Maragoli Tiriki Idakho Banyore)	Luhya	80.00%	5	612,000	122,400	612,000
Luo		2.57%	6	666,763	111,127	17,136
Luo	Luo Abasuba	47.50%	8	1,131,950	141,494	1,075,353
Luo		5.80%	5	1,117,840	223,568	64,835
Luo		3.33%	9	1,266,860	140,762	42,186
Luo	Luo	100.00%	6	1,155,574	192,596	1,155,574
Luo		10.42%	8	1,116,436	139,555	116,333
Luo		11.43%	17	5,325,160	313,245	608,666
Luo		1.00%	5	638,289	127,658	6,383
Luo	Luo	100.00%	6	993,183	165,531	993,183
Luo		0.60%	6	1,163,186	193,864	6,979
Maasai		30.00%	11	421,844	38,349	126,553
Maasai	Maasai	36.05%	5	1,117,840	223,568	402,981
Malakote		4.00%	3	315,943	105,314	12,638
Mbeere		13.33%	4	608,599	152,150	81,126
Mijikenda		5.80%	5	1,117,840	223,568	64,835
Mijikenda	Mijikenda	35.00%	6	939,370	156,562	328,780
Mijikenda		21.67%	6	939,370	156,562	203,561

Mijikenda (Digo Duruma)	Mijikenda	64.10%	4	649,931	162,483	416,606
Munyo-Yaya		4.00%	3	315,943	105,314	12,638
Nandi		14.80%	4	454,480	113,620	67,263
Nandi	Nandi	100.00%	6	885,711	147,619	885,711
Nubians		10.42%	8	1,116,436	139,555	116,333
Orma		18.00%	2	143,920	71,960	25,906
Orma	Pokomo Orma	22.98%	3	315,943	105,314	72,604
Pokomo		14.80%	4	454,480	113,620	67,263
Pokomo	Pokomo Orma	22.98%	3	315,943	105,314	239,990
Pokot		2.57%	6	666,763	111,127	17,136
Pokot		16.30%	6	926,976	154,496	151,097
Pokot	Pokot	100.00%	4	621,241	155,310	621,241
Rendile		16.75%	4	459,785	114,946	77,014
Rendile		1.60%	2	268,002	134,001	4,288
Sabaot		14.80%	4	454,480	113,620	67,263
Sagala		15.67%	2	284,657	142,329	44,606
Samburu		1.60%	2	268,002	134,001	4,288
Samburu		40.00%	3	518,560	172,853	207,424
Samburu		16.75%	4	459,785	114,946	77,014
Samburu	Samburu	100.00%	2	310,327	155,164	310,327
Samburu		16.30%	6	926,976	154,496	151,097
Samburu	Kikuyu	60.00%	3	518,560	172,853	311,136
Samia		1.00%	8	1,131,950	141,494	11,320
Sanye		18.00%	2	143,920	71,960	25,906
Sanye		4.00%	3	315,943	105,314	12,638
Somali		1.60%	2	268,002	134,001	4,288
Somali		5.80%	5	1,117,840	223,568	64,835

Somali		3.80%	8	1,136,187	142,023	43,175
Somali		4.17%	3	393,177	131,059	16,384
Somalis	Somalis	100.00%	6	623,060	103,843	623,060
Somalis	Somalis	100.00%	6	867,457	144,576	867,457
Somalis		10.42%	8	1,116,436	139,555	116,333
Somalis		11.43%	17	5,325,160	313,245	608,666
Somalis		4.00%	3	315,943	105,314	12,638
Somalis	Somalis	100.00%	6	781,263	130,211	781,263
Taita		5.80%	5	1,117,840	223,568	64,835
Taita	Taita	53.40%	2	284,657	142,329	152,007
Taveta		15.67%	2	284,657	142,329	44,606
Tharaka		3.80%	8	1,136,187	142,023	43,175
Tharaka	Tharaka	74.70%	3	393,177	131,059	293,703
Tugen		14.80%	4	454,480	113,620	67,263
Tugen	Tugen	81.50%	6	666,763	111,127	543,412
Turkana		2.57%	6	666,763	111,127	17,136
Turkana		1.60%	2	268,002	134,001	4,288
Turkana		16.75%	4	459,785	114,946	77,014
Turkana	Turkana	67.30%	6	926,976	154,496	623,855
Wadawida		15.67%	2	284,657	142,329	44,606
Wardei		4.00%	3	315,943	105,314	12,638

The above table is a representation of the major tribes in counties, the most probable number of representatives each tribe has acquired and the number of votes each and every one of the representative has acquired in proportion to the county's and tribe's population in the county. With their absolute dominance in certain counties being represented in bold.

The data is based on the counties' population and the predominant tribes' populations and percentages arrived at in the previous table, table 5.2.1. This is to help determine how many votes one representative requires to be elected from each and every main tribe in the counties. It shows

a variation of the different counties' populations and the number of supporters an aspirant need. In some counties, one major tribe is under-represented whereas in other it is over-represented. For, example the Aembus, are under-represented in Embu county with four representatives in this county, and nine representatives in Meru county hence their over-representation in one county and not the other. This causes a need to fully re-assess the representative situation and ensure that the population re-aligns with the tribes' population. Hence, the subsequent studies of the causes behind the tribes' under-representation to help arrive at possible solutions to resolve this situation.

For this reason, we shall proceed to the next table that shall bring out the representatives required from each and every predominant tribe, based on their population to ensure that they dominating tribe is fairly represented in Parliament.

5.2.3. Representatives required according to Tribe

Tribe	Population in the Country as of 2020 ²²⁰	Members of Parliament	Required Numbers
Kenyan Europeans	1,738	1.94	895.88
Dahalo	575	0.12	4,791.67
Asians	42,972	1.94	22,150.52
Kenyan Arabs	59,021	2.61	22,613.41
Tugen	197,556	5.48	36,050.36
Embu	404,801	10.5	38,552.48
Pokomo	112,075	2.87	39,050.52
Samburu	333,471	6.68	49,920.81
Aweer	20,103	0.36	55,841.67
Iteso	417,670	7.08	58,992.94
Borana	276,236	3.3	83,707.88
Taveta	26,590	0.31	85,774.19
Tharaka	220,015	2.55	86,280.39
Bajuni	91,422	0.92	99,371.74

²²⁰ Hillary Orinde, Census Report: Kenya's Biggest Ethnic Communities Listed, 2020. <<https://www.standardmedia.co.ke/kenya/article/2001361344/kenyas-biggest-ethnic-communities-listed>> on 27 February 2024.

Banyore	154,553	1.28	120,744.53
Muto-Yaya	15,024	0.12	125,200.00
Kuria	313,854	2.48	126,554.03
Kenyan Somali	2,780,502	21.65	128,429.65
Bukusu	1,188,963	9.08	130,943.06
Rendile	96,313	0.7	137,590.00
Kamba	4,663,910	33.37	139,763.56
Nandi	937,884	6.59	142,319.27
Kikuyu	8,148,668	56.32	144,685.16
Orma	158,993	1.05	151,421.90
Pokot	778,408	5.13	151,736.45
Kipsigis	1,905,983	11	173,271.18
Malakote	21,774	0.12	181,450.00
Kisii	2,703,235	13.38	202,035.50
Turkana	1,016,174	4.89	207,806.54
Gabbara	141,200	0.67	210,746.27
Luo	5,066,966	23.21	218,309.61
Meru	1,975,869	8.62	229,219.14
Maasai	1,189,522	5.1	233,239.61
Taita	344,415	1.36	253,246.32
Luhya	6,823,842	25.35	269,185.09
Mbeere	195,250	0.53	368,396.23
Mijikenda	2,488,691	6.25	398,190.56
Kalenjin	6,358,113	14.92	426,146.98
Sabaot	296,374	0.59	502,328.81
Wardei	65,975	0.12	549,791.67
Samia	84,828	0.08	1,060,350.00
Dasenach	19,337	0	
Dorobo	23,171	0	
Ilchamus	32,949	0	

Konso	13	0	
Makonde	3,764	0	
Non-Kenyans	463,562	0	

The above table, is arranged in chronological order based on the number of votes a representative requires from every community as highlighted in the last column. The conclusion based on the table, is that the tribes’ representative situation is indicates that the Dasenach, Dorobo, Ilchamus, Konso, Makonde and Non-Kenyans lack representation in Parliament. Whereas the Samia are the most under-represented in the country considering that they have no representative in Parliament in addition to the fact that for a representative to be elected into Parliament he is expected to convince over one million people to vote for him whereas a European vying only has to convince around eight hundred and ninety-five people to vote for him. Thus showing an imbalance in representation based on the statistics above.

On the other hand, the Europeans are over-represented with them having a representative in Parliament out of the seventeen Members of Parliament in Nairobi County as highlighted in table 5.2.1., in contrast to the supporters a leader needs to be elected in Parliament. Hence, a more likelihood for the Europeans to acquire seats in Parliament faster when contrasted to the Samia community.

This demonstrates the unequal distribution of seats among all tribes in order to guarantee that every community is fairly represented. Hence, an ineffective representation of the one man one vote representative situation. In addition to that the above calculations also makes us conclude to their being an error in the representative situation as expressed by the table in Kenya. This is because as expressed in the table Kenyan Europeans have a representation of around two people, whereas there are no white parliamentarians in Parliament. This makes us conclude that tribes with less than two parliamentarians, the Samia, Wardei and Sabaot are not very accurate as compared to those with more than two parliamentarians. Therefore, it may be concluded that the more parliamentarians a community is assigned based on the table, the more accurate their representation is. For this reason, making the chapter conclude that the Parliamentarians numbers does not coincide with the number of votes required to place each and every one of them in Parliament.

5.3. Causes of the different variances in religious affiliation

5.3.1. Political Factors

5.3.1.1. Inaccessibility

According to Balinski and Young, fair representation of the various tribes has been an issue in various countries. This is because of the inability to simply implement the one man one vote into society, because of the indivisibility of seats.²²¹ The rationale for the need to attain fair representation, stems from the need to address the various difficulties encountered by minority groups due to their exclusion and discrimination, despite ongoing efforts to improve their representation over time.

Ethnic under-representation has given rise to several challenges including, marginalisation and excessive control which prevent these communities from effectively voicing out the issues they face. These challenges encompass high levels of poverty in comparison to the dominant ethnic groups, disadvantaged experiences in the labour market, lower educational attainment and inadequate access to healthcare facilities in comparison to the ethnic majority.²²² Consequently, their independence has been compromised leading to their classification as the opposition and the subsequent acquisition of a range of rights.

5.3.1.2. Political Affiliation

According to Githinji, over the years since independence an unjust disparity in representation with a certain majority of people, depending on the regime ruling over and over again regardless of change in state officials, hence the unfair variation in representation.²²³ According to Grigorescu, as a result this leads to a mismatch in accountability, most especially vertical accountability which calls for a national constituency.²²⁴ A constituency where everyone lives together as a unit with

²²¹ Balinski M and Young H, *Fair Representation, Meeting the Ideal of One Man One Vote*, 2ed, Brookings Institutional Press, Washington D.C, 2001, ix.

²²² 'Indigenous peoples and ethnic minorities,' *The Report on the World Social Situation Library*, 2018, 97-108.

²²³ Githinji M, 'Reform and Political Impunity in Kenya' 55, *Cambridge University Press* 1, 2012, 53-74.

²²⁴ Grigorescu A, 'Horizontal Accountability in Intergovernmental Organisations' 22 *Cambridge University Press* 3, 2011, 285-308.

equal allocation and concern of each sect without divide or bias of either sect.²²⁵ In this kind of constituency, the president ought to act in the best interests of his people or risk losing his job.²²⁶ According to Githinji, this was to ensure that he worked in accordance with his obligation to the people and the law's horizontal accountability; a system of checks and balances was put into play.²²⁷

Nonetheless the above systems of accountability failed to achieve their intended goals in Kenya. This can be attributed to the lack of or the existence of minimal accountability and widespread corruption caused by popular marginalisation.²²⁸ Following the departure of the colonialists, a significant rate of social inequality occurred when the African elites took over the whites' roles in farms, administration and business.²²⁹ Their primary objective in doing this was to amass the white's wealth, match them, and retain it for themselves at the top disregarding the country's initiative to grow together. Initially, this was not a problem since the national elite was vastly represented. Hence, it seemed like a decision that many could work with and were okay with.

5.3.1.3. Ethnicity

According to Branch, after Kenya became a republic, enacted a new constitution it now created a government after being a state with the late President Jomo Kenyatta as president. After his entry a shift occurred, for with him being Kikuyu, the government was now an ethnically dominated elite with the Agikiyu community holding the highest positions of political and economic powers.²³⁰ According to Brown, following the death of Kenyatta, Moi succeeded him and was faced with frequent opposition from the Kikuyu dominated government for not being from the same ethnic lines.²³¹ Moi was faced with additional challenges which included being from a relatively small

²²⁵ Grigorescu A, 'Horizontal Accountability in Intergovernmental Organisations' 285-308.

²²⁶ Githinji M, 'Reform and Political Impunity in Kenya' 53-74.

²²⁷ Githinji M, 'Reform and Political Impunity in Kenya' 53-74.

²²⁸ Githinji M, 'Reform and Political Impunity in Kenya' 53-74.

²²⁹ Githinji M, 'Reform and Political Impunity in Kenya' 53-74.

²³⁰ Branch D, 'Defeating Mau Mau, Creating Kenya: Counterinsurgency Civil War and Decolonization' 1ed, *Cambridge University Press*, 2009, 1-17.

²³¹ Brown S, 'Authoritarian leaders and multiparty elections in Africa: how foreign donors help to keep Kenya's Daniel arap Moi in power' 22 *Third World Quarterly* 5, 2001, 725-739.

and economically disadvantaged sub-ethnic group, the Kalenjin, specifically the Tugen,²³² a community that could be perceived as a minority among the Kalenjins in comparison to the rest. Besides not being popular among his own people because of being perceived to be more inclined to the Agikuyu.²³³

According to Githinji, no matter how hard he tried to curb the ethnic situation by appointing Mwai Kibaki as his vice president, Charles Njonjo, and G.G. Kariuki as his close advisors,²³⁴ so as to have Kikuyu's backing. According to Ogendo, his tactic did not last long for he still was not among the considered economic elites since independence; the Kenyan Asians, foreigners and Africans particularly the Agikuyu.²³⁵ According to Githinji, in addition to the above, his regime also faced some faults. His regime was faced with oil shocks; the Iranian revolution of 1979 and the Iran-Iraq war which resulted in significant increase in oil prices and additional period of stagflation.²³⁶ All these led to the over-centralization of power by Moi which resulted in the Moi dictatorship in 1981.²³⁷ That led to a compromise of transparency and accountability.²³⁸ This is because Moi resulted to usurping Gikuyu authority by revolving power around the Kalenjin community.²³⁹

According to Brown, he was faced with opposition, he established an authoritarian regime, draconian security, a compliant court, and massive money printing to finance his presidential bid for re-election, a move that caused inflation throughout the country.²⁴⁰ According to Nyabira, at

²³² Brown S, 'Authoritarian leaders and multiparty elections in Africa: how foreign donors help to keep Kenya's Daniel arap Moi in power' 725-739.

²³³ Brown S, 'Authoritarian leaders and multiparty elections in Africa: how foreign donors help to keep Kenya's Daniel arap Moi in power' 725-739.

²³⁴ Githinji M, 'Reform and Political Impunity in Kenya' 53-74.

²³⁵ Ogendo O, 'The Politics of Constitutional Change in Kenya since Independence 1963-69' 71, *Oxford University Press*, 282, 1972, 9-34.

²³⁶ Githinji M, 'Reform and Political Impunity in Kenya' 53-74.

²³⁷ Githinji M, 'Reform and Political Impunity in Kenya' 53-74.

²³⁸ Githinji M, 'Reform and Political Impunity in Kenya' 53-74.

²³⁹ Githinji M, 'Reform and Political Impunity in Kenya' 53-74.

²⁴⁰ Brown S, 'Authoritarian leaders and multiparty elections in Africa: how foreign donors help to keep Kenya's Daniel arap Moi in power' 725-739.

most, ten of the forty-seven ethnic groups were represented in government.²⁴¹ According to Githinji, nothing changed during Kibaki's time except for the dominant community because the government reverted back to a Kikuyu dominated government from a Kalenjin dominated government.²⁴² According to Ochieng, President Uhuru's government was not overrepresented by the general populace but his deputy's the Kalenjins, and the Somali people;²⁴³ who they seemed to have forgotten at times. According to Mohamud and Mosley, this is because of the amount of conflict that would be seen to arise in the area and the lack of concern that was being displayed by the government.²⁴⁴ For example, the Inter-ethnic clashes over resources among the Degodia and Gare, the ethnic clashes in Marsabit prior to the 2013 elections, and in Turkana County where there was a conflict between Tullow Oil and the local communities.²⁴⁵ The leaders' focus at that time seemed to have been more inclined towards politics and not the factors that affected the conflict.

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Uhuru's government seems to have been the last government that was predominantly known for its ethnic inclination towards certain tribes. For President Ruto's government concerns revolve around gaining support from the leaders in government thus allocating to them seats, and ethnicity considering the number of seats obtained by people from their ethnic communities.

According to Ochieng, President Ruto's government is first seen to be a government dominated by his allies. A development that his deputy Rigathi Gachagua referred to as legitimate since it is

²⁴¹ Nyabira B, 'The State of Political Inclusion of Ethnic Communities under Kenya's Devolved System' 20 *SciELO* 2022-4907, 2016.

²⁴² Githinji M, 'Reform and Political Impunity in Kenya' 53-74.

²⁴³ Ochieng O, 'The Drums of Politics of Exclusion and Ethnicity are Beating Loudly in Kenya' *Democracy in Africa*, <<http://democracyinfrica.org/the-drums-of-politics-of-exclusion-and-ethnicity-are-beating-loudly-in-kenya/>> 27 January 2024.

²⁴⁴ Mohamud N and Mosley J, 'Insecurity in northern Kenya: is the government losing its grip?' *African Arguments*, 2014, <<https://africanarguments.org/2014/01/insecurity-in-northern-kenya-is-the-government-losing-its-grip-by-nuur-mohamud-sheekh-and-jason-mosley/>> on 10 February 2024.

²⁴⁵ Mohamud N and Mosley J, 'Insecurity in northern Kenya: is the government losing its grip?' *African Arguments*, 2014, <<https://africanarguments.org/2014/01/insecurity-in-northern-kenya-is-the-government-losing-its-grip-by-nuur-mohamud-sheekh-and-jason-mosley/>> on 10 February 2024.

²⁴⁶ Mohamud N and Mosley J, 'Insecurity in northern Kenya: is the government losing its grip?' *African Arguments*, 2014, <<https://africanarguments.org/2014/01/insecurity-in-northern-kenya-is-the-government-losing-its-grip-by-nuur-mohamud-sheekh-and-jason-mosley/>> on 10 February 2024.

according to him a countermeasure to patronage and clientelism.²⁴⁷ Two, a government created along ethnic lines with the appointment of fifty percent Principal Secretaries from the Kikuyu and Kalenjin community.²⁴⁸ This act is a violation of the constitution, since it lacks a reflection of the country's regional and ethnic diversity. According to Stewart, this act that is quite prevalent in almost all regimes, results in horizontal inequality whose essence is to mobilise an ethnic community to compete with other ethnic groups.²⁴⁹ Thus causing the general public to suffer in the process due to the observable widened citizen rift caused by the diligently operated ethnically political, and discriminating regimes, hence a dire need for all discriminated groups to be sufficiently included into the public sector.

The preceding paragraphs have evaluated the different kinds of governments in order to conclude where Kenya lies. It has done this by looking at the various regimes since independence. Kenya's history has painted a picture of unfair representation. This is because of the leaders' selfish interests and drastic steps to ensure that they retain power, warping the system, leaving citizens yearning for fair representation, therefore having a negative impact to the society's structure and to its people. This is a drastic shift from its intended purpose which was to become a democratic country. Therefore, came the new constitution whose intention was to solve the issues of the past. For this reason, I shall delve into the legislation to shed light on the legal reasons behind the variation in representation in government.

5.3.1.4. Legal Reasons

According to Nyabira, under-representation was a problem particularly experienced by members from the small communities who had slim opportunities to obtain these seats. In order to address this issue, the 2010 constitution introduced devolution through the creation of counties and

²⁴⁷ Ochieng O, 'The Drums of Politics of Exclusion and Ethnicity are Beating Loudly in Kenya' Democracy in Africa, <<http://democracyinafrica.org/the-drums-of-politics-of-exclusion-and-ethnicity-are-beating-loudly-in-kenya/>> 27 January 2024.

²⁴⁸ Ochieng O, 'The Drums of Politics of Exclusion and Ethnicity are Beating Loudly in Kenya' Democracy in Africa, <<http://democracyinafrica.org/the-drums-of-politics-of-exclusion-and-ethnicity-are-beating-loudly-in-kenya/>> 27 January 2024.

²⁴⁹ Stewart F, 'Horizontal Inequality a Neglected Dimension of Development' Centre for Research on Inequality, Human Security and Ethnicity, CRISE, CRISE Working Paper 1, 1 <<https://assets.publishing.service.gov.uk/media/57a08cba40f0b652dd0014fa/wp1.pdf>> on 12 February 2024.

devolved governments.²⁵⁰ The aim behind the inculcated governments was to give room for the underrepresented members to ascend to leadership roles.²⁵¹ This objective is to be implemented through the creation of county leadership and county executive positions for the community members to take up.²⁵² With these different levels of government, the law maker's intention was to create more forums for people to compete on.

After the 2013 elections, it became obvious that many of these posts were seen to be held by the well-known major political parties.²⁵³ As a result, forcing anyone vying in their county to have to align themselves with one of these parties, in turn increasing the amount of ethnic representation at the county level.²⁵⁴ The probable election of a governor from the majority and deputy from the minority is seen to be a step towards the right direction.²⁵⁵ Even though this might be considered a strategic move on the part of the political parties to gain support, this has resulted in the ethnic inclusion of the minority groups because the political parties have to not only please the communities but also adhere to the laws of the land.²⁵⁶ This has resulted in some progress because their voices have been heard, institutions to support them have been formed and laws like the Public Service Values and Principles Amendment Bill are being considered.²⁵⁷ Nevertheless, the imbalance that may resonate to violence or suits still persists. This is because of the county governments' non-compliance to the set rules and regulations seen in some counties highlighted below.

Some counties fail to follow through with the laws regardless of other counties' attempts to do so. Take for example Nakuru, Laikipia, Tana River and Bungoma county. The executive of Nakuru county is composed of four Kikuyus, three Kalenjins and one representative from each of the

²⁵⁰ Nyabira B, 'The State of Political Inclusion of Ethnic Communities under Kenya's devolved system' 20, Scielo, 1028-1053, 2016.

²⁵¹ Nyabira B, 'The State of Political Inclusion of Ethnic Communities under Kenya's devolved system'.

²⁵² Nyabira B, 'The State of Political Inclusion of Ethnic Communities under Kenya's devolved system'.

²⁵³ Nyabira B, 'The State of Political Inclusion of Ethnic Communities under Kenya's devolved system'.

²⁵⁴ Nyabira B, 'The State of Political Inclusion of Ethnic Communities under Kenya's devolved system'.

²⁵⁵ Nyabira B, 'The State of Political Inclusion of Ethnic Communities under Kenya's devolved system'.

²⁵⁶ Nyabira B, 'The State of Political Inclusion of Ethnic Communities under Kenya's devolved system'.

²⁵⁷ The Public Service (Values and Principles) (Amendment) Bill (No 46 of 2022).

following communities: Luo, Kisii and Meru. Leaving the rest to fend for themselves by challenging the appointment of the leaders. For the Laikipia County administration, the executive was made up of four Kikuyu representatives and one representative from each of the other communities: The Samburu, Maasai, Turkana and Kalenjin. The inclusivity in Laikipia became a litigation matter in the case of *Mathew Lempurkel v Joshua Wakahora Irungu County Governor, Laikipia County & 2 others*, because of its ineffectiveness in adequate representations of the Samburu people. This underrepresentation was deemed a violation of Section 35(1) of the County Government Act and Article 10 and 232 of the Constitution of Kenya due to their lack of compliance with the above laws when nominating members of the county executive committee,²⁵⁸ a public entity.²⁵⁹ This is as a result of its lack of diversity²⁶⁰ and its failure to put affirmative action policies into practice.²⁶¹

Tana River county was also faced with a lawsuit from a resident for its exclusive appointment of nine members of its executive from the Pokomo, Orma, and Wardei communities, while leaving out the remaining six communities. Therefore, as a result, the case of *Republic v Tana River County Assembly & 2 others* was lodged. The court deemed this action by the executive a violation of inclusivity and diversity.²⁶² Furthermore, contradicting the purpose of devolution which is the promotion, protection and recognition of the minority groups.²⁶³ Additionally, Section 35 of the County Government Act was prompted by affirmative action to ensure diversity in representation of all groups.^{264 265}

A similar situation occurred in Bungoma County when the case of *John Mining Temoi & another v Governor of Bungoma County & 17 others* arose. This was because of the Bongomek

²⁵⁸ Section 35(1), *County Governments Act*, (No 17 of 2012).

²⁵⁹ Article 10, *Constitution of Kenya*, (2010).

²⁶⁰ Article 232, *Constitution of Kenya*, (2010).

²⁶¹ *Mathew Lempurkel v Joshua Wakahora Irungu County Governor, Laikipia County & 2 others*, [2013] eKLR.

²⁶² Article 10, *Constitution of Kenya*, (2010).

²⁶³ Article 174, *Constitution of Kenya*, (2010).

²⁶⁴ Article 56, *Constitution of Kenya*, (2010).

²⁶⁵ *Republic v Tana River County Assembly & 2 others*, [2014] eKLR.

Community being under-represented in the appointment of County Chief Officers from the six ethnic communities in the County.²⁶⁶ Finally, according to Mohamud and Mosley, in Marsabit where no case was filed but instead conflict arose due to inadequate inclusion of communities in the allocation of the ten county executive seats.²⁶⁷

5.4. Results of the variances in ethnic representation

To understand where the above kind of representation is taking us as a nation a connection must be made to what kind of government it results to, its effect on the governance as a state and to the governed citizens. This is because a government is the body of persons that constitutes the governing authority of a political unit,²⁶⁸ in this case the Kenyan government. The government's role is to establish and enforce the rules of society pertaining to defence, foreign affairs, the economy, and public services.²⁶⁹ With distinct duties and obligations assigned to the different arms of the government. For the Kenyan government there is the executive whose role is to implement policies, the national assembly whose role is to make and amend laws and the judiciary whose role is to interpret policies. Since, the legislature's role is to legislate on behalf of the people, for the people and by the people.

From this evaluation of the situation in Kenya, it is safe to say that Kenya has had numerous shifts from being a blend of both democracies. According to Masakhalia, it was initially considered as a blend of both democracies because of the elected representatives in the county and national executive and legislature make it an indirect democracy but when public opinion is sought, and gathered for a certain course of action; it becomes a direct democracy, which is advocated for more because of the fact that it will lead to a more unified country, shattering the power imbalance that favours the political class and alienates the citizens.²⁷⁰ To an aristocratic type of government

²⁶⁶ *John Mining Temoi & another v Governor of Bungoma County & 17 others*, [2014] eKLR.

²⁶⁷ Mohamud N and Mosley J, 'Insecurity in northern Kenya: is the government losing its grip?' *African Arguments*, 2014, <<https://africanarguments.org/2014/01/insecurity-in-northern-kenya-is-the-government-losing-its-grip-by-nuur-mohamud-sheekh-and-jason-mosley/>> on 10 February 2024.

²⁶⁸ Merriam Webster, 11ed.

²⁶⁹ 'Social Studies, Civics, Economics,' *Forms of Government* National Geographic headquarters 1145 17th Street NW Washington DC 20036, 27 January 2024.

²⁷⁰ Masakhalia A, 'Direct Democracy in Kenya a case to be made' *Open Democracy*, 3 November 2011 <<https://www.opendemocracy.net/en/direct-democracy-in-kenya-case-to-be-made/>> on 12 February 2024.

²⁷¹ with power constantly revolving around the small group of elites at the top who hold greater sway and enjoy more opportunities than the rest.

5.5. Conclusion

First the influence exerted by leaders is the main reason as to why no ethnic group gets an equal share of the pie. For example, the elites in power are the ones who make it difficult for non-elites to rise into positions of authority, who give the impression that they are above the law and who subtly force people to support them out of fear of being kicked out. For this reason, there need to be a solution to help everyone rise above the ranks.

In conclusion, this study evaluates Kenya's representative situation in Kenya, to see whether there is a balance of the different religions, genders and ethnicities in Kenya, in comparison to their representation in both houses. To see whether the representation in the Parliament and Senate, coincide with the population. So as to determine the causes behind the variation before arriving at possible solutions to deal with the representation in Kenya. From the above according to various authors and legislations the main reasons behind under-representation of some ethnicities, women, Christians, other religions and counties in Parliament as established from the previous chapters is because of political, financial, legal and societal reasons. For ethnicities their under-representation is not quite obvious with the margins in some being quite big for example the Samia's, and small in others as was seen with the Europeans, whereas communities such as the Dasenach, Dorobo, Ilchamus, Konso, Makonde and Non-Kenyans are completely not being represented. Regardless of the Non-Kenyans being quite a number in the country.

Kenyan Europeans are both Kenyans by dual citizenship and birth. For this reason, they were most likely Non-Kenyans at one point or another. As expressed in the table Kenyan Europeans have around two representatives in Parliament whereas Non-Kenyans have zero. This therefore makes us conclude that, tribes with less than two Parliamentarians such as the Wardeji, Samia and Sabaot are not quite accurate in comparison to those with more than two parliamentarians. Consequently, makes the research conclude that the higher the number of representatives accorded to them in

²⁷¹ Aristocracy Definition History & Examples' *study.com* <[73](https://study.com/academy/lesson/aristocracy-definition-lesson-quiz.html#:~:text=An%20aristocracy%20is%20a%20form.%2C%20Baron%2C%20Baroness%2C%20etc.> on 28 January 2024.</p></div><div data-bbox=)

table 5.2.1, the greater the probability that their figures are correct. All these show a need for great scrutiny and attention into the representative situation in Kenya so as to attain fair representation.

5.6. Recommendation

The following recommendations are based on each sub chapter with recommendations being associated with each demographic group depending on the specific problems they face.

For gender to resolve the male dominance in Parliament and the financial constraints faced by women the research suggests that a caveat meant to ensure that a certain number of bills affecting a certain group of special persons needs to be put in place to ensure that a consecutive series of bills affecting a certain group are not all done away with, but are instead modified to resolve any nuances they may have that causes it to be passed for it to meet the threshold required. Two, when it comes to financial constraints faced by women, the research suggests that a fund is created to cater for the needs of the women's needs in times of elections. Finally, to resolve the societal views upon women that are mainly based on culture. This research suggests that besides educating the public to ensure that they move from these archaic beliefs, it suggests that strict penalties should be imposed upon any male leader who may seem to want to overshadow his female colleagues.

When it comes to religion, to help resolve the injustices the Muslims face and the under-representation the Christians face, first, just like the media which is regarded as the fourth arm of government, the churches should be given a forum where they can be able to condemn and call out misbehaving governments when need arises. Two, the government can reduce the stringency in laws that govern religious organisations thus creating room for the believers and organisations to carry out their functions freely. Lastly, the solution may lay behind intensifying the system of checks and balances and ensuring that it is fully implemented when it comes to the churches and its believers, and the churches and the state. This will reduce the abuse of power and misuse of resources that has been experienced over the years.

In the delimitation of boundaries, the slacking by the Kenya National Bureau of Statistics and the IEBC acts as an excuse behind their non-performance. Therefore, as a solution the study does propose that the bodies that do not perform when required should be held accountable and its leaders reprimanded for not performing their duties. Since, a change in boundaries will require an

amendment in the constitution is a long and unnecessary process. For this reason, the research does suggest that the article to be amended is one, hence no need for a large sum of money to be invested into the process. It therefore suggests that a slight alteration to the article in itself is more than enough so as to avoid going into the long and tedious process of a referendum.

Finally, when it comes to ensuring inclusivity of all ethnicities into government by regulating the elites power. This study's proposition is to usurp the authority that some of these elites possess by establishing a non-political, mixed race body that would allow them to be called out without the fear of being dismissed from their jobs. These individuals would function in a similar fashion like the independent personalities during elections consisting of international and church observers, who oversee, offer views, and issue directions post-election. This will level the playing field and give everyone an opportunity to rise above the ranks in government.

