

# Ethnic Inequality, Institutions and Governance Trajectory in Kenya

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## 1.0 Introduction

Ethnicity is quite often underestimated or outright overlooked in correcting profound anomalies that arise and hinder the deliverance of better governance. The manipulation and piracy of ethnicity by the state apparatus involving politicians, business cliques, civilians, foreigners and the likes for ulterior motives and selfish personal gains often weaken institutions and worsen endeavors for better governance. These compromised institutions and the resulting ethnic inequality are obstacles to the necessary socioeconomic fabric that allow anchoring better governance and development.

This paper focuses on indigenous power-sharing *consociational* governance advocating for term limits of all elected and appointed public officials. This can demystify their political bias restricting them to a fixed one-term participatory position minus terminal benefits. This study also endeavors to show Kenya's position on relevant reforms to accommodate challenges from ethnic inequality, institutions and governance trajectory by making a situational analysis of Kenya as it relates to ethnicity and governance. It also aims to describe multi-ethnicity, discuss ethnic inequality and politics by explaining political manipulations and practices leading to ethnic domination or politicized ethnicity. It recommends the operationalization of "indigenous power sharing in a *consociational* governance system as an ultimate solution. *Consociational governance* is defined as a set of non-majoritarian, elite-level formal and informal arrangements that limit threats to democratic stability in societies where ethnic or other societal cleavages are politicized.<sup>1</sup> Democratic nation-state building has to be shielded from *negative ethnicity*-defined as *ethnic hatred and bias*,<sup>2</sup> bad institutions and poor governance. When democracy is under siege it should be anchored to reduce conflicts and violence by embracing the best practices like

the Swiss experience.

This study also endeavors to inspire various stake-holders, learners and scholars on this theme. It adopts both quantitative and qualitative methodology using both hard and soft data in books and journals available online embracing power-sharing in a *consociational*<sup>3</sup> discourse plus representative fieldwork narratives. This can neutralize ethnic inequality, violence and conflicts and boost better governance outcomes in multi-ethnic societies embedded in empowered institutions.

This paper covers types of governance and its institutions in Kenya highlighting on their compositions. It also covers term limits, elections and electoral reforms. Ethnic inequality in Kenya is also covered with analysis on political parties, democracy and horizontal inequalities. Consociational power-sharing governance can create cohesion and peace. Moreover, it also endeavors to offer solutions to politics of exclusion that accompany corruption and impunity. The paper concludes by suggesting recommendations and solutions to problems with bad leaders.

## 2.0 Types of Governance

*Good governance*<sup>4</sup> is a generic term and a prominent theme in development forums of state governments, national governments, regional institutions and international organizations indispensable for development. It refers to the manner in which organizations interact with their key stakeholder groups to achieve their goals. This entails certain principles of decision-making and conduct of public affairs such as transparency, efficiency and accountability that apply to all the processes that constitute public sector operations and interactions with stakeholders. Static democracy is also a source of political decay.<sup>5</sup> Examples of governance in practice include network, interactive, multi-level, open and customary.

Network governance is inter-firm coordination characterized by organic or informal social system. It differs from bureaucratic structures within firms and formal contractual relationships between them.<sup>6</sup> The concepts of privatization, public private partnership and contracting are defined in this context.

Network governance therefore constitutes a distinct form of coordinating economic activity contrasting and competing with markets and hierarchies.<sup>7</sup>

*These contracts are socially unbinding legally hence governance networks distinguish themselves from the hierarchical control of the state and the competitive regulation of the market.*<sup>8</sup> This mode is most commonly associated with the concept of governance in which autonomous stakeholders work together to achieve common goals.<sup>9</sup>

Governance in its broad sense suggests that the state, the market and the civil society have prominent roles in the governing of modern societies, from local to international levels. Assessments of such governability are approached by recognizing this whole to consist of three coherent analytical components: the system-to-be-governed, its governing system and their governance interactions. Distinguishing and conceptualizing these components forms a step in the process that allows assessing the governability of societal systems.<sup>10</sup>

In many developing countries, organizational structures copied from the east or the west, differ from the stark reality on the ground.

Multi-level/layer governance is an approach in political science and public administration theory that originated from European integration studies associated with political scientists Liesbet Hooghe and Garry Marks. They developed the concept of multi-level governance in the 1990s and still relevant today.<sup>11</sup>

Multilevel governance in the European Union is understood as respecting competences, sharing responsibilities and cooperating between the various levels of governance within and among member states. Therefore, multi-level governance refers to the principle of subsidiarity, which places decisions as close as possible to the citizens and ensures that Union level action is justified in the light of the possibilities available at national, regional or local level.<sup>12</sup>

The Organization of Economic Cooperation and Development (OECD) define open government as a culture of governance based on innovative and sustainable public policies and practices. These are inspired by principles of transparency, accountability and participation, which foster democracy and inclusive growth.<sup>13</sup>

Customary governance is the administration of a local unit or a village by an appointee of the immediate authority. This leadership is responsible for upholding justice in all aspects of life within that local domain with land ownership and arbitration taking the center stage. It has its own local council of elders to help manage affairs of the unit.

The main pillars of good governance that are widely accepted across the ethnic divide are openness, transparency and accountability. This involves fairness and equality in dealings with citizens that include mechanism for consultation and participation, efficient and effective services; clear transparent and applicable laws and regulations; consistency and coherence in policy formation; respect for the rule of law and high standards of ethical behavior. These principles represent the basis upon which to build open government - one that is more accessible, responsive and transparent in its operation.<sup>14</sup> These forms of governance when well engaged ensure efficiency in managing state affairs with a sense of belonging by the varied power stakeholders sharing the reigns of governance nurturing strong institutions for better governance.

Kenya should walk its governance endeavors along most of these devolved power-sharing networks to arrive at the acceptable platform for its multi-ethnic society steering towards an all-inclusive cohesive national development.

## 2.1 Governance and Institutions in Kenya

Kenya's current Constitution was enacted on 27<sup>th</sup> August 2010. This replaced the previous independence (1963) Constitution. It provides the structure of the Government of Kenya to consist of the Executive, the Legislature, the Judiciary and the Devolved County Governments.<sup>15</sup> The manipulation of labor distribution by the political elites and allies has influenced labor force composition in these three institutions to reflect ethnic inequality.

The 2010 Constitution is a direct outcome of the 2007 election revolts. It discarded the imperial presidency allowing for a devolved regional government with an independent Senate and Supreme Court at the national level. These reforms have bolstered the Constitution to safeguard the nation-state from local coopted predators arising from these cartels which have just regrouped and are still hell bent.

The Parliament, civilians and the civil society are cautioned to be on alert to safeguard and protect the Constitution from errand members wishing to defile it for their hidden selfish interest. The position of Prime Minister recreated in 2008, was part of the Grand Coalition Agreement to end post-election violence. This was merely an administrative role and entrusted with authority to coordinate and supervise the execution of the functions and affairs of the

Government of Kenya and its Ministries. The New Constitution in 2013 abolished this post when negotiated *consociational* power-sharing coalition ended.

This all-inclusive arrangement for the first time fostered an element of trust, integrity, cohesion and coexistence in Kenya as a modern united nation. However, political manipulations watered down the New Constitution opening the Pandora box of mistrust and conflicts between and among ethnic groups. Kenya experienced open governance and contestability in a Grand Coalition government with two centers of power - the President and the Prime Minister as checks and balances.

This was a working indigenous consociational power sharing governance which lasted until the 2013 elections. However the elites decamped and rebranded to exclude opposing cartels in a winner takes it all election outcomes.

## 2.2 The Executive

The President, the Deputy President, and the cabinet constitute the executive arm of the Kenya Government. The President is the head of state and Government, Commander-in-Chief of the Kenya Defense Forces, and the chairperson of the National Security Council. The President is elected directly by all registered voters for a five-year term. To win the presidential election, the candidate(s) must receive 50 per cent plus one of the total votes cast, plus at least 25 per cent of the votes cast in more than a half of the 47 counties.

The Deputy President is the President's principal assistant. During the presidential election, each presidential candidate nominates a running mate. Upon elections, the running mate becomes the Deputy President. The cabinet comprises of the President, the Deputy President, the Attorney General, and 14-22 cabinet secretaries.

The President appoints the cabinet secretaries upon approval by the National Assembly. Kenya has 21 cabinet secretaries as of April 2016, appointed from outside parliament. The President and the Deputy President are no longer Members of Parliament.<sup>16</sup>

## 2.3 National Assembly and Senate

Article 93 of the 2010 Constitution stipulates that the Parliament consists of the National Assembly (350) and Senate (68) including the speakers of the two Houses. Article 97 of the Constitution of Kenya provides for membership of the National Assembly comprising of the elected and nominated members. Free and fair elections can boost democracy, strengthen institutions and preserve integrity. Politicization of ethnicity captures governance and promotes political impunity and corruption.

## 2.4 The Judiciary

The constitution created an independent judiciary consisting of the courts of law and tribunals with the Chief Justice as the head of the judiciary, appointed by the President on the recommendation of the Judicial Service Commission subject to the approval of the National Assembly.

The Supreme Court is the highest court in Kenya with the Chief Justice as its President. An independent Supreme Court should be empowered to guard its independence to ensure that justice is always done and sustained.

## 2.5 Terms of Office Limits, Elections and Electoral Reforms

The independence Constitution adopted a majoritarian multi-party democracy. The 2010 Constitution allows for two consecutive five years terms for the President if reelected. It also requires the incumbent to relinquish power if defeated in the election. The euphoria of independence denied the setting of term limits. It also failed on how to deal with unexpected scenarios before the era of life presidents and coups became the currency of governance. Young democracies have to design checks and balances on power to minimize its abuse. The founding fathers and their sponsors' were hell bent on establishing hereditary ethnic based domination. Kenya holds elections once every five years.

Gross impunity and corruption found a home in Kenya. This was an era of political manipulations and marginalization. Integrity and openness associated with better governance are sacrificed when institutions decay. Moreover, this

two-term regime is a big liability supporting the status quo of established despots.

Elections in Africa give the incumbent immense influence on the electorate. Other countries like Uganda, Rwanda, Burundi and elsewhere with presidential terms have colluded and coopted with Parliament to remove term and age limits creating dictatorship status quo for continuity and power hoarding. Kenya stands out in this region for following the Constitution with respect to Presidential terms.

General elections in Kenya reflect the British system as a Westminster Majoritarian democracy where the winner takes it all.<sup>17</sup> Flawed elections promote impunity and affect delivery of public goods. The unilateral monopolization of power in plural societies divides the electorate into winners and losers. This weakens institutions and breeds impunity from the tyranny of numbers. Table 2.1 shows the chronology of Kenya's Presidential elections from 1997 to 2017.

Table: 2.1 Kenya's Presidential Elections 1997 - 2017

Candidates	Parties	Votes	Percentages (%)	Total Votes	Turn-out (%)	Date
Daniel arap Moi	KANU	2,500,856	40.6	9,063,390	65.43	29 Dec 1997
Mwai Kibaki	Democratic	1,911,743	31.0			
Mwai Kibaki	NARC	3,647,277	61.3	10,498,122	57.2	27 Dec 2002
Uhuru Kenyatta	KANU	1,835,890	30.2			
Mwai Kibaki	PNU	4,584,721	46.42	14,296,180	91.6	27 Dec 2007
Raila Odinga	ODM / CORD	4,352,993	44.07			
Uhuru Kenyatta	TNA / JUBILEE	6,173,433	50.07	14,352,533	85.91	4 Mar 2013
Raila Odinga	ODM / CORD	5,340,546	43.7			
Uhuru Kenyatta	JUBILEE	8,203,290	54.27	19,611,423	75.51	8 Aug 2017*
Raila Odinga	ODM / NASA	6,762,224	44.74			
Uhuru Kenyatta	JUBILEE	7,483,895	98.3	10,498,122	57.2	26 Oct 2017**
Raila Odinga	ODM / NASA	73,228	1.0			

\*Supreme Court cancelled Presidential Election.

\*\*Raila Odinga's ODM/NASA boycotted this Presidential re-election citing uncorrected irreducible minimum flaws.

Sources: Election Commission of Kenya (ECK) 1997, 2002, 2007 and the Independent Electoral and Boundaries Commission of Kenya (IEBC) 2013 and 2017.

In the 2013 Presidential Election's Final Results,<sup>18</sup> Uhuru Kenyatta and William Ruto (Jubilee Alliance/TNA Coalition Party) received 6,173,433 votes which was equivalent to 50.07 percent. Raila Odinga and Kalonzo Musyoka (Coalition for Reforms and Democracy/ODM) garnered 5,340,546 votes which is equivalent to 43.7 percent. The total number of valid votes was 14,352,533 (85.91 percent). Again, the tyranny of numbers (less than one percent) enabled the winners to exclude the losers from the national government for five years!

The August 2017 Presidential election was riddled with irregularities. The incumbent Uhuru got 8,203,290 votes (54.27 percent) and Odinga received 6,762,224 votes (44.74 percent). The Supreme Court cancelled the results for a rerun after sixty days. Odinga boycotted it citing a lopsided playing ground. Uhuru went ahead and won the Presidency unilaterally on 26<sup>th</sup> October 2017 with 7,483,895 votes (98.3 percent). This was a turnout of about 57.2 percent.<sup>19</sup>

This exclusion builds frustration and mistrust, leads to ethnic conflicts and violence. It also destroys national cohesion and promotes struggles towards self-determination for neglected and marginalized regions.

*Why are these percentages this low?* This also illustrates the status quo manipulative power plays. Therefore, a flimsy majority is enough to exclude outsiders and establish political dynasties and monopolies. Political manipulations are responsible for creating negative ethnicity (*ethnic hatred and bias*). It is then used as a weapon to instill fear and mistrust in inter-ethnic relations which destroys the social fabric for political mileage. Consensus power sharing governance discourse must be geared to integrity to build trust for open government and better governance.

Negative ethnicity and tribalism together with multiple political parties play the ethnic card and trigger ethnic civil strife and violence especially during and after the elections.<sup>20</sup> This paper argues for one term limit for the President as well as public officials elected or appointed. This is a point of deviation with past and contemporary studies as there is need to create a marking scheme that can anchor democracy and integrity in Africa. Politics should not be an occupation but a call of national participative duty. And it must not be a monopoly of a few co-ethnic elites with their alliances and bargains.

*How do we get out of this bottomless pit?* Going the Swiss way could be the silver bullet. Demanding a lifetime single one-year term for the President and his Deputy with no reelection option can stem the rot in African democracy to

anchor indigenous power-sharing consensus coalitions.

Democracy should pave way for meritocracy to eliminate costly elections in multiethnic societies in Africa and beyond. To reign in conflicting interests; spouses, siblings, family and relatives must also be legally banned from appointive and electable positions. These can assist check the wanton abuse of power associated with impunity and corruptive tendencies. African leaders need to be constantly challenged and prosecuted for their abuses and failures.

Prosecuting errant presidents in and out of office the Korean style is the golden bullet. Ossome argues that ethnicization of state's bureaucratic apparatuses and the civil society minimizes the liberal state's ability to stabilize society. Her study illustrates that the politicization of ethnicity is a central locus of political expression in Kenya's trajectory of democratization.<sup>21</sup>

There is a need to anchor and deepen the acceptance of consensus democracy. A search for holistic local hybrid solutions to ethnic inequality in Kenya must continue to delegate and share power across the multiple stakeholders, build trust networks and nurture open government for better governance outcomes.

Electoral reforms are necessary to protect the fragile democracy in Kenya. *How do we do this?* Limit the term public leaders stay in office. A one-year fixed term and you ship out can be the savior. Electoral reforms are necessary to legalize and constitutionalize it. This should change the requirement that civil servants resign before seeking electable posts. This creates inequality and breeds conflict, bitterness and vengeance in the event of flawed election defeat. The solution is to allow losers to resume their previous jobs for stability and reconciliation.

Winners and losers should embrace each other as participants in the national development. Once this becomes a noble call of duty and service to the nation, it will be the ultimate goal to achieve sustainable national cohesion.

Kenya needs Parliamentary Prime Minister System for fair proportional representation but must deal with corruption with a death penalty.<sup>22</sup> This narrative reflects strong sentiments of an abused citizenry frustrated with institutionalized impunity and disregard of integrity. Kenya has tried both systems with mixed outcomes. I strongly think that Kenya needs a new hybrid governance system with independent checks and balances on the status quo. This can mitigate state capture and decay. There is need for selfless leaders and a culture to support a new value system.

In the Swiss consensus democracy model, the President goes back to his/her old job after his/her one-year term expires. This is practical and guaranteed. *What is holding Kenya back?*

These challenges are correctable through open and fair democratic elections on the way to an indigenous consensus democracy. Once institutions mature and are professionally administered then democratic elections can be a good remedy for hybrid net-works and multi-level better governance. Pronounced disruptive political manipulation fuels lopsided and polarized institutions beckoning the questions - *Why do we need elections anyway? Who do they serve? Why not institutionalize meritocracy?*

This paper argues that institutions comprising of the Judiciary, Parliament and Presidency where public officials are elected, appointed or otherwise from a favored or preferred ethnicity are compromised. This is flawed since it breeds ethnic hatred and violence. These coalitions strive for permanency in sustaining their tight-knit closed elitist status quo which capture, divert and control public resources as their cash cows. Continuous electoral reforms to embrace these changes are indispensable to find a common ground for sustainable integrity. Moreover, this will open new avenues for future research.

### 3.0 Ethnic Inequality in Kenya

Kenya has about 42 ethnic groups. Ethnic conflicts and tensions in the making and sharing of the national cake are also prevalent. The most important dimension of Kenyan society particularly relevant to ethnic inequality is ethnic identification. Kenya is a *multi-ethnic*<sup>23</sup> society with a diverse mix of ethnicities without a dominant group. Kikuyu (22) is the largest, Luhya (14), Luo (13), Kalenjin (12), Kamba (11), Kisii and Meru (both 6), other African (15) and Non-African (1) out of 100 per cent.<sup>24</sup> A decade later these figures are still slightly the same.<sup>25</sup>

These groups used to raid and counter raid each other in territorial resources accumulations and expansions. Colonialism made them one basket case thereby exploiting these trade-offs to support colonial consolidation and expansion. The legacy of this ethnic inequality is reflected in ethnic violence and political manipulative marginalization policies adopted and sustained by independent Kenya to impoverish opposition strongholds. Despite, the relative equality of the

five main groups as seen above, only the Kikuyu and Kalenjin have made winning coalitions.<sup>26</sup>

These political dynamics have produced fluctuating and uneven outcomes in Kenya's public sector governance. It is also important to note that this winning combination is also what causes ethnic conflicts and violence. The first President Jomo Kenyatta's reign (1963-78) dominated the public sector by the Gikuyu Embu Meru Alliance (GEMA).

Daniel arap Moi as the second President (1979-2002) made the Kalenjin (fourth largest ethnic group) dominant. Mwai Kibaki, also a Kikuyu took the reign for a controversial decade thereafter. Between 1963 and 1978, 29 percent of the cabinet posts were Kikuyu who are only 21 percent of the population. These fluctuating inequalities were observed in the civil service too.

The Kalenjin dominance under Moi, accounted for 21.6 percent and increased to 30 percent during multiparty rule (1994-2001). The share of the Kikuyu dropped to 20 percent and it was only 10 per cent between 1994 and 2001. Data on ambassadorial postings also indicate Kikuyu and Kalenjin dominance with a change in the presidency.

*Afrobarometer*<sup>27</sup> survey data also shows that there is a high perception of unfair treatment and mistrust among and within ethnic communities.

Kenya comprises of three cases of concentrated multi-ethnic settings allowing for some strategic coalitions which lock out losers. Five groups are relatively equal in size and constitute an overwhelming majority of the population. Elite cartels in each group collude to govern by constructing selective coalitions. Electoral rules of first-past-the-post (FPTP) and the presidential system of government have reinforced such choices.<sup>28</sup>

This is where manipulative politics use or play the ethnic card to entrench the status quo leveraging on their ethnic numbers. The history of Kenya shows adverse effects of weak cohesion and integration on socio-economic development. Pre-colonial migrations of ethnic groups were often as a result of a search for improved livelihoods leading to inter-ethnic conflicts and collaborations.

The British colonists capitalized on these conflicts as tools to acquire land for their settlement in return for protection from other ethnic groups. Native reserves created by the colonists prevented inter-country movement of the indigenous population. This resulted into ethnic enclaves as illustrated by Mwangi Kimenyi which shows that the Kikuyu account for 91.8 percent of their

ancestral Central Kenya and the Luhya with 84 per cent of their Western Kenya homeland.<sup>29</sup>

The colony depended on the settler agriculture and the Ugandan railway line as its flagship project. The expropriated medium to high potential land monopolized the extensive colonial infrastructure investment neglecting the rest of the country which had low economic potential.

At independence in 1963, wide socio-economic inequalities were evident favoring the higher agriculture potential areas with most of the social and physical infrastructure. Ethnic groups in its proximity as inheritors had a head start on development than the rest of other Kenyans.

Therefore, the independence development blue-print known as the *Republic of Kenya Sessional Paper No. 10 of 1965*,<sup>30</sup> asserted that the government would concentrate scarce resources in areas with the highest absorptive capacity. This became a recipe for further balkanization of Kenya into developing and overlooked areas, without adequate framework for the redistribution previously proposed by the Sessional Paper.

The World Bank aptly refers these dimensions as 'leading' and 'lagging' areas respectively.<sup>31</sup> Hence, Kenyans in arid and semi-arid lands (ASAL) are confined to be nomadic or pastoralists and not rangers despite any market economy endeavors in the highlands or lowlands.

This also worsened as independent Kenya came to be known as a class country with '*ten millionaires and ten million beggars*'. This statement gained currency by then populist Kenyan politician, the late J.M. Karuiki, whose assassination was linked by a parliamentary commission of inquiry to key national security officers in March 1975.<sup>32</sup>

These are illustrative cases of governance failures, embedded in ethnic enclaves presiding over flawed elections and failed institutions.

### 3.1 Multiparty Politics

Kenya's independence multiparty state had become a de facto single party state by 1965 after the opposition party Kenya African Democratic Union (KADU) willingly joined the ruling party for national political cohesion. However, elite disunity emerged with Kenya People's Union (KPU) opposition party in 1966 and was banned in 1969 due to growing political intolerance.<sup>33</sup>

Successive de facto single party repressive governments firmly muted struggles against increasing socio-economic inequalities.

The change of guard at State House failed to remedy this situation culminating in the attempted 1982 coup that increased repression from the four-year old Moi regime. The erratic mid-1980s espousal structural adjustment programs (SAPs) systematically worsened ethnic inequality as liberalization undermined access to basic public services, such as free or subsidized public health care, education and water. *Sessional Paper No. 10* was biased towards areas with high absorptive capacity.

The evolution of a constitutionally imperial presidency was accompanied by weak scrutiny of public finances. Public audit arrears increased while inhibiting Parliament's watchdog role over public spending. These shortfalls polarized the demand for and allocation of cabinet positions and other senior public offices as complete misappropriation of budgeted funds, and their diversion to preferred illegal spending areas remained unpunished.

Table 3.1, shows how the ethnicity of the President has influenced the composition of Kenya's independence era cabinet supporting *Wrong's* position '*it's our turn to eat*'.<sup>34</sup> This stems from the fact that cabinet ministers now called secretaries could only be appointed from serving Members of Parliament belonging to the ruling party.

Thus the one-party rule of Kenyatta and Moi eras enabled them to appoint from all ethnic groups; but the 1991 return of multi-party rule led to exclusion of prominent Kikuyus in Moi's KANU in 2001. Kenyatta's cabinet had disproportionate share of the Kikuyus repeated in subsequent governments with succeeding Presidents' ethnic groups dominating ministerial positions and

Table 3.1: Ethnic percentage shares of Kenyan cabinet positions

Ethnicity	Kenyatta I (Kikuyu)		Moi (Kalenjin)		Kibaki (Kikuyu)		Kenyatta II (Kikuyu)	
	1966	1978	1979	2001	2003	2005	2011	2017
Kikuyu	28.6	28.6	30	4	16	18.1	19.5	33
Luhya	9.5	4.8	11	14	16	21.2	17.1	9.5
Luo	14.3	14.3	11	7	16	3.1	12.2	4.8
Kalenjin	4.8	4.8	11	17	7	6.1	9.8	9.5
Total	21	21	26	28	25	33	42	21

Source: Stewart (2010) plus author's updates

across the entire public service, foreign service and especially in state corporations.

Incumbent President's ethnic group controls the presidency, finance, internal security, energy, state corporations and agencies. They anchor and monopolize the 'eating' business, cultivating mistrust and hatred. These systematic ethnic blunders are governance failures undermining integrity and development.

There is a pattern where powerful ministries like finance, defense, internal security, foreign affairs are a monopoly of the ruling parties. They penalize and marginalize the opposition parties in a winner's Lion's share spoils.

### 3.2 Political Parties and Democracy

The first 40 years since independence, Kenya was a single party state ruled by Kenya African National Union (KANU) with President Jomo Kenyatta and vice president Daniel arap Moi respectively. The first elections considered democratic by global standards took place in 2002. This saw a peaceful power transfer from KANU to National Rainbow Coalition (NARC).

Mwai Kibaki won the elections on pledges of economic growth, curbing corruption, improving education and rewriting the Constitution. Kibaki met most of these goals given an impressive economic growth. He sought re-election against Raila Odinga (Prime Minister) in 2007 elections which were termed flawed by global standards: Odinga declared himself "people's president", but Kibaki claimed a last-minute victory positing that his stronghold votes came in late. Kibaki's mandate confirmation escalated ethnic violence between Kibaki's tribe Kikuyu and minor tribes, which killed about 1000 and displaced 600,000.<sup>35</sup>

The late former UN Secretary General Kofi Annan's mediation culminated in the formation of a Grand Coalition, with Odinga as ad hoc post of Prime Minister and Odinga's Orange Democratic Movement (ODM) party and Kibaki's Party of National Unity (PNU), equally sharing power at 20 ministers each.

The approval of the new constitution in 2010 was big gain. It eliminated the post of the Prime Minister, reduced Presidential powers, enhanced decentralization via devolved county governments and instituted a Bill of Rights.

Political tensions are fueled by ethnic salience when an incumbent president is contesting. Former Prime Minister Odinga's Coalition for Reform and Democracy (CORD) contested the election of Uhuru Kenyatta in 2013, resulting

in renewed fresh ethnic violence. He contested again in August 2017. The Supreme Court of Kenya citing electoral irregularities cancelled the Presidential elections. He also boycotted the re-elections in October because of lack of transparency.

The flagship ruling Jubilee Alliance Party has a big following in President Kenyatta's Central County (Kikuyu) and in Deputy President Ruto's Rift Valley County (Kalenjin) respectively, with some scattered allies countrywide. The same applies to the National Super Alliance (NASA) and its affiliated parties of the leading Opposition Party main contenders of Odinga (Nyanza) and his running mate Musyoka (Eastern).

Weak leadership also impedes accountability and capacity of the state on service provision. *The 2004 Peace Nobel Laureate* Professor Wangari Maathai pointed out that leaders worsen when they "get trapped"<sup>36</sup> in office for too long. *Maathai* observes that ethnicity is either a factor or non-factor in good governance in Kenya. She noted that the Kibaki government was fine in its first term (2002-7) but accusation of corruption and bad governance haunted his second term.<sup>37</sup> This is supportive to political decay predicament as observed by Samuel Huntington in 1965.<sup>38</sup>

Professor Calestous Juma argues that "Africa needs more, not fewer, governance prizes".<sup>39</sup> He is critical of Mo Ibrahim's Foundation on Governance and tacitly states that much of the debate has focused on the relevance of rewarding Presidents with funds they probably do not need. Africa could benefit from a new generation of prizes that celebrate, reward and inspire ministers, governors, and mayors. Recognizing young leaders who demonstrate integrity in public governance would play an important role in creating a culture of excellence.

It is hard for leaders to deviate from the social norms from which they emerged. Good governance is not a single act. This is a cultural expression acquired through long periods of political education. The lack of recent awardees identifies a scarcity of good leaders.<sup>40</sup> *Why have titles?* Perhaps, naming and shaming bad performers can be a better alternative.

Methew (2018) points out in a recent narrative that there are deeper issues affecting Kenyans that are in the Truth Justice and Reconciliation Commission Reports (TJRC) that can cause conflicts if not resolved well.<sup>41</sup> Human rights abuses increase with bad governance.

*The 1979, Nobel Economics Prize Laureate William Arthur Lewis* argued back in 1965 that absolutely fair elections cannot be held in West Africa.<sup>42</sup> This is also applicable to East Africa as well. There is always some element of intimidation, especially in rural areas. The electoral machinery is also imperfect and lack of consensus limits willingness to accept results when the contest is a close call or flawed if not rigged.

### 3.3 Horizontal Inequalities and Population

*Horizontal inequalities* are disparities across groups in at least four aspects which encompass economic, social, political and cultural dimensions.<sup>43</sup> There is a strong correlation linking horizontal inequalities positively with ethnic tensions and social upheavals.<sup>44</sup> However, the mechanisms through which group inequalities cause conflicts remain unclear. *Hino et al* conclude that: “Ethnic diversity itself does not appear to be correlated with instability. Rather, it is the degree of inequality among ethnic groups (horizontal inequality) that is closely correlated with instability.”<sup>45</sup>

The significance of these public positions for horizontal inequality is that the decline of public scrutiny into the 1970s consigned social infrastructure investment to community-dependent *Harambee*; a self-help fund raising, which favored areas with politically connected elites.<sup>46</sup> This made the provisioning of, and access to, basic needs like health care, education and safe water, as well as physical infrastructure conditioned on political linkages and not comparative need.

Table 3.2 shows the relative population share of the main ethnic groups in Kenya. The Kikuyu ethnic group is still the leading group but with no outright majority status. They are concentrated in Central Kenya but also spread elsewhere given the patronage of their co-ethnic first, third and fourth presidents. This strategy perpetuates the hierarchical vertical inequality across individuals while also creating horizontal inequality across regions and groups of individuals.<sup>47</sup>

Kikuyu domination is evident in Kenya. This can be neutralized through indigenous power sharing consociational democracy as the ultimate solution. Power sharing can boost governance by empowering institutions to check and balance the waste generated by an artificial state monopoly of the public sector.

Table 3.2 Relative Population percentages of the Main Ethnic Groups in Kenya

Ethnicity	Group population as a percentage of national population					
	1962	1969	1979	1989	1999	2009
Kikuyu	19	20.1	20.9	20.8	18.5	22
Luhya	12.6	13.3	13.8	14.4	14.2	14
Luo	13.3	13.9	12.8	12.4	10.8	13
Kamba	10.8	10.9	11.3	11.4	10.3	6
Kalenjin	10.5	10.9	10.8	11.5	12.1	12
5 groups	66.2	69.1	69.6	70.4	65.9	67
Kisii	6.2	6.4	6.2	6.2	7.2	6
Meru	5.1	5.1	5.5	5.1	—	6
Mijikenda	4.8	4.8	4.8	4.7	7.2	6
3 groups	16.1	16.3	16.5	15.9	—	18
8 groups	82.3	85.4	86.1	86.3	—	85
32 groups	17.7	14.6	13.9	13.7	—	—

Sources: Republic of Kenya - Kenya Population Census 1962 - 2009

### 3.4 Vision 2030

Vision 2030 aims to transform Kenya into a newly industrializing middle-income country providing high quality life to all its citizens by the year 2030. Thus, maintain a sustained economic growth of 10 per cent per annum and provide a cohesive society enjoying equitable social development in a clean and secure environment. An issue-based people-centered, results-oriented and accountable political system is a necessity<sup>48</sup>. Power sharing can boost equitable development when contestability is well anchored in the governance discourse.

### 4.0 Zero-sum Equation

One consequences of the politicization of ethnicity is its 'zero-sum' character: *winner*s exclude *loser*s<sup>49</sup> from state power, generally seen as a 'field of accumulation'. Ethnic coalitions appear and disappear based on elite cartels calculations of gains and losses in interactions with other groups. If losers can legally resume their old jobs, their fear of losing or being rigged can be minimized.

Election is a process which must be free and fair and once it is over life must move on peacefully. Voters across the ethnic and political divide are and will

still be Kenyans at the end of the day. Hence, it is important step to stem and check the politicization of ethnicity and promulgation of the culture of impunity accompanied by *political decay*.<sup>50</sup>

## 4.1 Corruption and Impunity

Corruption and nepotism pose great challenge to good governance. Corruption harms the accountability power that citizens are able to exercise on the state and other providers of goods and services. Kenya is ranked 139<sup>th</sup> by Transparency International (TA) scoring 27 per cent (0 as the most corrupt). Tanzania, Uganda and Ethiopia perform better than Kenya in this respect. Kenya is particularly weak in punishing corrupt individuals given her frail impunity infested institutions. Bureaucracy destroys accountability that the state exercises on service providers.

Horowitz provides an in-depth analysis of ethnicity and institutions in a wide range of countries and singles out ethnicity as important institution that is responsible for many outcomes observed in those societies.<sup>51</sup> Ethnically diverse societies are prone to corruption and poor governance, conflict and slow economic growth.

The sub-Saharan Africa (SSA) is home to multiple distinct ethnic groups with multiple languages, cultures and traditions. Recognizing heterogeneity in Africa is a positive step to celebrate its diversity.

Impunity in Kenya relates to corruption.<sup>52</sup> Kenya has made a tradition to investigate corruption through expensive public inquiry commissions whose findings never see the light. The Kenya Human Rights Commission (KHRC) concludes that ... “most of these ‘truth seeking’ mechanisms in Kenya have produced reports which are either not fully acted upon (if implemented at all) or are never made public”.<sup>53</sup> They therefore become the conduits for cover-up and entrenchment of the culture of impunity.

The failure to prosecute past impunity has repeatedly denied the country a deterrent against future corruption. While the New Constitutional order provides vast opportunities against impunity and corruption, success against abuse of power and corruption requires that statutory order be aligned with Constitution’s values and principles; an imperative recognized by those resisting the (timely) implementation of the Constitution and related reforms.<sup>54</sup>

The persistence of impunity and corruption worsens inequalities.<sup>55</sup> Luis Franceschi argues that impunity is under siege in Kenya and accountability will ultimately win. The more Kenyan leaders focus on ethnicity, the slower social change will come and the more its democracy will suffer. Hence, negative ethnicity is not the way, no matter how appealing it may look at first sight.<sup>56</sup>

Extractive institutions make nations fail economically which ensure that these countries remain poor and prevent them from embarking on a path towards economic growth. They persist because of a vicious circle that victimizes their citizens despite disparities in their intensity.<sup>57</sup>

Ednette notes that colonialism created unfair distribution of resources, divide and rule policy which bred un-tolerant political culture in post-independence Kenya.<sup>58</sup> However, Kenya as an independent country exploited and failed to correct that anomaly.

## 5.0 Summary and Conclusion

Colonial era ethnic inequality in Kenya arose from land displacements, neglect and preferences in where infrastructure was developed or modified. These inequalities still persist on five decades later. Better governance outcomes flourish when constitutional culture takes root and there is a consensus on issues of national unity like elections, administration and provision of public goods. Kenya started well fighting ignorance disease and poverty but elite cartels have captured the whole mechanism adding one more *challenge* - the culture of impunity.

A solution to this predicament requires a holistic indigenous power sharing in a consociational governance discourse embedded in empowered institutions. These can defuse conflicts in a multi-ethnic society. The first-past-the-post (FPTP) system of democracy in Kenya is flawed and needs to be replaced with a workable alternative. Electoral reforms could be the way to go. Amending the Constitution to further clip Presidential powers or abolishing that office outright is indispensable for better governance.

Co-ethnic Kenyans associate the Presidency with possession or property. The President and his Deputy should be elected fairly for a single term of one year and return to civilian life without terminal benefits given their rampant abuse of power. With time this will create a new African consensus meritocracy. The

Parliament and other arms of the executive acting as checks and controls can safeguard and protect civil liberties with a social contract.

Switzerland is one of the few multilingual countries in Europe without political difficulties with its linguistic minorities. Modern Switzerland is not one, homogeneous ethnic nation but a creation by different ethnic groups speaking different languages and following different religions. It has had its share of societal conflicts as elsewhere but has been fortunate over the past one and a half century, in finding political ways of achieving multicultural understanding based on two concepts.

First, Switzerland renounced the idea of creating a culturally homogeneous nation-state, embracing an 'artificial' multicultural nation. Second, is its success with creating a type of democracy, which favor and enforces power sharing between the different cultural groups. This has led to social and political integration, peaceful conflict-resolution by negotiation, and national consensus among a once fragmented and heterogeneous population.<sup>59</sup> Switzerland exemplifies the so-called consensus democracy, which is based on integration of minorities through proportionate representation and political participation. Politics is characterized by compromise among over-sized coalition.

There is a vertical division of power through federalism, with devolved autonomy to smaller units 'consociational' or 'power-sharing' model of democracy.<sup>60</sup> Kenya can learn from this Swiss model and localize it to suit her plural interests.

The current Presidential candidate's minimum of 50.01 percent to carry the day must be raised to over 80 per cent requiring a winner to share power with losers in proportion to their margins. This consociation must be inclusive because leaders need to be continuously challenged and reminded when their '*eating time*' is over.

One-term limit should be applied uniformly to all appointed and elective public positions and once it takes root, a win and win environment for all parties involved will be a reality. The colonialists ignored African potentials for solving conflicts.<sup>61</sup> Local issues can be resolved with the best practices from our diverse backgrounds as long as we agree to disagree over salient aspects of our shared heritage. Independent African leaders too have also ignored these African potentials with flamboyant impunity. A constitutional single one year term limit will eliminate the impunity to steal elections.

Leaders worsen in power and must never be allowed to be trapped and decay in leadership, which promotes impunity and hinders better governance delivery. The task of creating a New Kenyan Identity with new value systems and institutions is huge and the sustainable capacity to ensure open governance is enormous but must start now. Kenya needs to discard parts of its cultures not in sync with modernity to bridge the ethnic imbalances preventing this transition. Transcending into separate but equal entities amicably can also be a peaceful option.

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List of Representative Fieldwork Narratives (First names used for privacy)

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2. Ednette        Nairobi, August 2018.
3. Mathew        Nairobi, August 2018.
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**Abstract**

# Ethnic Inequality, Institutions and Governance Trajectory in Kenya

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This paper focuses on ethnic inequality, institutions and governance trajectory in Kenya. Governance in Kenya and its public institutions have deteriorated. Checks and balances against impunity have also been eroded significantly since independence in 1963. Cartels of political elites play the ethnic card in politicizing ethnicity to serve their own myopic selfish interests. An absence of sustainable and inclusive power-sharing mechanism is a recipe for political decay and violence. Ethnicity also shapes and determines social outcomes in a multi-ethnic society like Kenya. The status quo creates inequalities and bad governance to sustain its alliances, monopoly on power and authority. Most developing countries perform badly as a result of poor institutions nurtured to exploit and benefit from manipulative negative ethnicity. Rules of the game have to change to enable respect for the rights of the citizenry. This paper advocates an inclusive indigenous power-sharing, a form of consociational governance in Kenya, with corresponding institutions, which can nurture and redistribute national gains and burdens across the ethnic divide inclusively and proportionately.

**Key words**

Consociation, decay, democracy, ethnicity, governance, inequality, institutions, Kenya and violence

