

Participation of ethnic minorities

and marginalized communities in political and other
governance processes: realities and approaches

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About the book

This book is intended to breathe life into an idea that Kenyans would all say they recognize as a national issue: that there are many people in the country who find themselves particularly excluded from the mainstream of national life. The Constitution speaks of the marginalized.

The marginalized are not an idea – they are real people. The main part of this study is based on research that was conducted by Katiba Institute in 16 counties and in a total of 50 areas within those counties. It involved focus group discussions in each of the areas where the research took place; administering of a total of 665 questionnaires in each of the areas; and face to face interviews in some of the areas.

The study was based on the assumption that even if people think of themselves as being marginalized in terms of water, work, education, access to markets – as you will see, as you read, many of them do – to ensure that they cease to be marginalized they need to be involved in political action and governance. Otherwise they would be dependent on charity – the kindness of other to solve their problems. But not being marginalized is a right. You do not achieve your rights by begging for charity – you do it by demanding your rights and by playing your part in political life. But politics are not just about who gets into public office, but includes how the people influence the work of those in public office, through public participation and other ways.

The aim of the research was therefore to help contribute to understanding of ethnic minorities and marginalized ethnic communities in Kenya, understand peoples' ethnic marginalization claims; and available platforms for their participation in political and other governance processes. But it was not just to document exclusion.

Understanding exclusion is a first step towards ending it. So, the book also aims to inspire ideas for relevant state and non-state actors on effective approaches to programmes and activities aimed at enhancing participation of ethnic minorities and marginalised communities in political and other governance processes.

The book starts with definitions and conceptions of marginalisation and how the people would recognise marginalisation. It then discusses the constitutional provisions on inclusion of ethnic minorities and marginalised communities; then proceeds to identify ethnic minorities and marginalised communities and their whereabouts in Kenya. Then it discusses the findings from the study which are from the focus group discussions, the questionnaires and from the face to face interviews. The finding sections starts with establishing the ethnic marginalisation claims of the people; then the persons and/or institutions that have been useful to promoting their participation.

Finally, the book concludes with ideas for “demarginalizing” the peoples of Kenya. First are recommendations of the people on what and how they think can be done to address their claims. Then follow the authors' suggestions, based on the identified claims, on what can be done to promote the participation of ethnic minorities and marginalised communities in Kenya.

The book should be of interest to everyone – even the marginalized, because not everyone is marginalized in the same way. People who want to understand what the Constitution means when it speaks of marginalization will - we hope - find it illuminating.

And those who want to move toward “demarginalization” will also perhaps find some ideas – or at least starting points for action. At Katiba Institute our motto is: “The Constitution, an Instrument for Change”. An instrument is to be used. This book is just a small contribution to a user manual for that instrument



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1.0 Introduction

The systemic exclusion of certain ethnic groups and communities from participating in political and other governance processes in Kenya is an issue of major concern. Such exclusion is first a severe injustice to the disadvantaged groups, denying them opportunities available to others, and violating their dignity. It is a clear violation of the Constitution especially Article 27 on equality and non-discrimination. Second, an unjust society is fragile in terms of pursuit of national unity, sustainable peace and development. It is, therefore, in the interest of any State to pursue policies that involve all sections of the society and where some sections may have been left behind, for various reasons, to adopt policies that will enhance their inclusion in political and other governance processes in a way that alleviates the disadvantage.

The Constitution of Kenya sets a framework for an inclusive Government and it contains special or affirmative measures aimed at correcting past injustices. Particularly relevant are Article 27 itself, which allows, even mandates, affirmative action to redress disadvantage resulting from past discrimination, and Article 56, which requires that affirmative action be designed to ensure that minorities and marginalized groups are both participate and are represented in “governance and other spheres of life”. Specific measures aimed at addressing past injustices and preventing future wrongs in the Constitution itself include special representation in national and county legislative structures, dedicated funds, services and resources targeting marginalized areas and persons, and reserved proportions in public service.

This study seeks to help address the problem of exclusion of various ethnic communities and ethnic groups from political and other governance processes. It identifies some of the ethnic minorities and marginalized communities in Kenya and their claims of exclusion. It looks at available platforms for their participation; and effective approaches to programmes and activities for non-state actors and community representatives to enhance their participation in political and other governance processes. It considers what actually happens, and what might happen.

2.0 What it means to be marginalised

If you have less access than others - whom you can see or know about - to various resources and your adversity can be associated to your belonging to or association with a certain group, then your group can be termed “marginalized”. It may, for example, be because of your gender, race, age, geographical location, religion, or ethnic community among others, that you have less access to a certain resource. We are not imply talking about being poor, or even being poorer than others. In most countries, even in nominally socialist ones, some people will be poorer than others, sometimes many times poorer. And even within communities



– ethnic, religious, or geographical – some people will be poorer than others. Traditional societies were often much more equal – disparities of wealth and differences of life-style were limited.

Does it make any difference if your suffering is the result of membership of a community or not? A modern society should be concerned about poverty, but our focus here is about the marginalisation of people because of their membership of a group or community. Having just less access to certain resources therefore, for example, is not enough to conclude indicate that a person or a person's group is marginalized. And the solutions to deprivation may be different if deprivation is an individual, or even family, matter, rather than a community matter.

Membership of a group that translates to marginalization is generally something that has not involved your explicit choice. Sometimes people try to escape from groups in order to escape from marginalization. An example is people who are able to move from rural communities and shed their identity as members of a group that suffers discrimination, perhaps by changing their names. Unless everyone can do this, the issue of marginalisation is not solved, and even those who move may carry the scars of marginalisation with them in terms of lack of education, past malnutrition, or psychological wounds, to give a few examples. People should not have to give up their identities in order to avoid being marginalised. Is marginalisation a matter of awareness only? The answer must be “No”. The most marginalised communities may be unaware of the realities of their situation. If they lack education and communication, and their lives follow the same paths as their ancestors, they may not be aware that for other lives are very different.

2.1 Lived experience

The study that forms the main part of this book shows how people in Kenya from groups and communities that are not in a dominant position in society perceive and experience marginalization.

Marginalisation and exclusion are the same idea, and people from many communities in Kenya speak of a sense of being excluded. The exclusion may be political: no member of their community stands any chance of being elected to Parliament or a county assembly. Or if, unusually, someone is elected they are unable to make any headway in pushing the community's agenda.

Similarly people feel excluded from any chance of appointment to public office, even if election is not involved. This often extends to less exalted work: when jobs are being filled, they are omitted from consideration at both national and county level.

One of the reasons for setting up the system of county government was to improve service delivery. Yet marginalisation often shows itself in lack of services,



especially compared with other communities. Education (including the infamous laptops for primary school children), clinics, water supplies and roads are often sadly lacking in the perception of minority groups.

Marginalisation can extend to feeling unrecognised as Kenyans. Indeed it may mean not being able to obtain that crucial document that establishes one's Kenyanness: a national Identity Card (ID). It is this issue that underlay the demand of the Makonde to be recognised as a Kenyan "tribe". Whether in a practical sense it makes a difference is another question. The continuing sense of injustice about the Wagalla massacre in Garissa in 1984 is inseparable from the sense of not really being treated as Kenyan by the government.

2.2 Causes of marginalisation

"[O]ur area has a small population- so maybe we don't contribute as much voting power as other regions", commented someone in Turkana, trying to explain why his community lacked electricity. Other explanations may be remoteness, belonging to a different community - using a different language - from the majority, being "outsiders" to the county, historic hostility between communities, especially where there is competition for resources such as pasture.

2.3 Exclusion and inclusion

The very idea of exclusion or marginalisation implies a comparison: some are included (or not on the margins) while others are excluded. But suppose the underlying cause is not so much different treatment of different groups but a failure on the part of government to do anything very much for anyone? This is not a less serious problem, nor does it mean everyone should give up trying to get better treatment. But it does call for different approaches.

If you are, for example, poorer than others in your county or even country, you may want to check the possible causes of the poverty. If, for example, you think you would do better if you belonged to a different group within the county or country then you may be belonging to a marginalized group. In the case of poverty, it may, for example, be that a certain group resides in an area within the country that is less productive and the government, for more than half a century after independence, has not done much to help alleviate the problem. If the unproductivity is as a result of lack of rain and the Government has not facilitated the groups residing in that area to employ irrigation in their production or by supporting other productive means, then the groups are marginalized. It does not mean that the individuals within the marginalized groups cannot do anything to address their problem. Primarily they should either as individuals or as a community/group work to change their situation but when they are in one economic system with other groups that have many production advantages over them, they may need the support of the State to enable them have comparable powers like the groups that are doing better.



You may be among the fewer of you, mostly from your group, that lack decent housing compared to others in the county or the country. This too may be an indication of marginalization. It means that for some reason the people from the group that you may be associated with cannot afford better houses. That though may be different in the case where the reason for the state of the houses is culture and as such the group concerned considers their houses to be descent even though many other people would think otherwise. Marginalization in terms of access to decent housing maybe as a result of inequitable distribution of government houses to people belonging to various groups or as a result of, for some reason, less financial power for people of certain groups hence they are unable to afford better houses.

Further, your children may be having a lower chance to go to school than other children in the county or country. This too may be an indication of marginalization unless it is because of culture that some children from your group don't attend school. Lack of education would mean lack of very many other opportunities in an ever more integrated economy. The government has a responsibility to ensure that culture is not used as an excuse to deny children access to education which is their human right. But the right to education means a right to education that is not just available, and accessible (physically and financially) but is also adaptable (that means it must be capable of being changed to suit the need of different communities and students) and acceptable (which means for example that its design must take into account cultural issues). Both the styles and the content of education might be inappropriate for some communities and thus exclusionary.

Some people may have a life expectancy that is much lower than others in the county or the country. Others may have a maternal mortality rate that is much higher than others in the county or the country. A lower life expectancy means that the affected people lack essential amenities thus negatively affecting their health. It could be that they don't get sufficient medical attention whenever they feel sick which may be contributed by, among other factors, the accessibility of the health facilities, affordability, or the quality of the services in those facilities. On the accessibility of the health facilities, maybe far fewer of you have a health facility within five kilometres than others in your county or country. On affordability, for example, if the health services are very expensive for some people, those people will be compelled to ignore seeking medical attention and in so doing, will further weaken their immune system and end up dying at a younger age than they would, had they managed to seek medical attention. Also, if the health facilities are very far and thus not easily accessible or the doctors are very few hence it would take too long to get medical attention or when being attended to, there is no sufficient time given to you because the same doctor needs to attend to other patients, that would affect the extent to which people seek medical attention. Further, the quality of medical services available may also be low partly because of limited medical technology capable of adequately diagnosing various conditions to determine the



exact problem that a patient has and thus respond to the exact problem instead of treating patients through trial and error. The same factors apply to people's maternal mortality. Many other factors can affect the ability of people to access the medical attention that they require. Therefore, if you and people from a group that you may be associated with tend to have less economic resources such that they cannot afford relevant medical care that they may need while people from other groups in a given county or country can afford such services, then you may be marginalized. In some cases, the marginalization is as a result of less medical facilities in the geographical areas of marginalized groups; less doctors or poorer technology in the medical facilities in the areas where your community resides compared to other areas, can serve as evidence that you are marginalized. The Constitution does say that everyone has the right to the highest attainable standard of health, and you are marginalized if your community is less able to access medical care than others. But you should also understand what is required to be done about this to achieve your right is "progressive realisation", not an instant miracle. However, progressive realisation is not an excuse for government postponing doing anything.

It could also be that far fewer of you in your community have access to clean and safe drinking water compared to others in the county or country. Maybe you have to walk several kilometres to access water thus wasting time that you would use doing other productive activities. Some of you may be getting their water from crocodile infested waters which may be hard for members of the family. Some of you could be getting water from a point where you have to compete with others which wastes so much of your time and sometimes may cause conflicts. In contrast, others within your county or in the country have water flowing in their taps in their houses. With less clean and safe water, your community is exposed to other problems such as diseases which can lead to diseases and divert more of your already constrained funds to paying for medical bills and would also take away from the money to support education for your family and the circle continues. Marginalization in access to clean and safe water therefore, can reinforce other aspects of marginalization. If, therefore, you don't have good access to clean and safe water, but other groups in your county or country have better access, then you are marginalized.

Further, if some areas within your county are consistently getting more allocation than your area without any good reason, then you may be marginalized. Conversely, if your area is getting more allocation than other areas, then you could be contributing to the marginalization of others. The more budget some areas receive the more they have the potential to improve their infrastructure and other common amenities like provision of health and water. But more budget alone does not indicate marginalisation of others, because it might be justified - maybe by population difference. And the need for affirmative action for areas that have suffered disadvantage in the past might be the reason for a higher budget.



Apart from being marginalized in socio-economic terms, marginalization can also be about the extent of participation in political processes. If, for example, fewer of you register to vote than others in the county or in the country, then you are in practical terms marginalized. The reason may be that not so many of you register to vote because you never get information about the registration exercise because of poor communication network in your area as opposed to other areas; it could be because the people in your area don't experience the benefit of participating in elections because you don't feel that the government is working for you and as such you decide not to even register. In addition, it could be that you feel that the government does not work for you but think that your vote would not make a difference in any case, in which case it would also mean that you are also marginalized.

Voting is a choice – it is not compulsory. But that must be a free choice not one compelled by others, or by poverty, ignorance, or serious logistical (transport and communication) difficulties.

Aside from registering to vote, it could also be that many of you in the group that you are associated with do not actually vote. That too can be a sign of marginalization. It can, for example, be that because of the small number of your group, you get intimidated to express free will in the election especially when the will of majority of the people of the group you may be associated with maybe against the will of the majority in an electoral area. Another reason could be that though registered you do not have candidates that you feel represent you. The reasons may include the way the electoral units are demarcated: they have not taken into account your distinctiveness from other groups which may be a reason to design an electoral unit for you especially in the context where people tend to vote only for the people that belong or are associated to their groups. As such, no matter how you vote you do not feel that any of the candidates represents your interests. Without representation, however, some of the marginalization that would otherwise be addressed through the political process gets worse. Sometimes adjustment of boundaries unites members of a small community previously split between electoral districts (constituencies or wards) so that they can have an impact in a single electoral district.

Furthermore, it could be that candidates do not even concern themselves about whether you vote for them, as opposed to others in the county or the country as the case may be, or not. This may be because of your small numbers which in the calculation of the candidates would not make much difference in helping them win an election. They, therefore, do not really consider you to be very important in the electoral process. Once in office, they also do not feel accountable to you because they do not think you have powers to vote them out once their term ends. Because of your small numbers, they also in their estimate think that you are also



incapable of mobilizing the public to stop supporting them which would have an effect of making them lose their legitimacy. Moreover, they did not even campaign in your area and as such did not promise to do anything significant in your area. While the law requires that all regions should be developed equitably, the limited nature of resources mean that some areas would need to be prioritized before others. This, unfortunately, however, becomes a loophole to the decision makers who include the Members of Parliament and Members of the County Assembly to prioritize areas and projects that would make them more popular in order to win the next elections. If, therefore, a group that you may be associated with does not have a representation, in this context persons that may identify themselves to belong to that group, in political leadership that may be evidence that you may be marginalized.

You probably also know that the Constitution now makes it mandatory that government decision making processes and implementation includes the participation of the public. If you and other people that belong to a group that you are associated with are less involved in public participation about decision making as compared with others in the county or the country, which translates to marginalization (whether there is any deliberate intention to exclude you or not). By being left out in the decision making process, you remain at the mercy of the people in Government leadership and the majority groups in determining what needs to be done and what not. It also means that as a group, you end up being isolated and feeling out of place and it may invite a feeling of oppression which erodes people's dignity and humanity. It, therefore matters whether the people in authority care about giving you an opportunity, which in any case is your right, to participate in governance process.

In addition, if you have a feeling that you and the people that belong to a group associated with you are generally not well respected by other communities in the county or the country, then you may be marginalized. The cause of the disrespect may be that the rest of the groups either feel that the group that they associate you with does not belong there; that you are favoured in some way and as such they unite against you or that they associate members of your group to some bad actions and as such they do not like the members of your group.

It may also be that members of the group that you are associated with is subject to violence such as cattle raiding from others in the county or from neighbouring counties than experienced by others. In the case of raiding cattle from the people associated with your group, it could be that there is no enough security provided to members of your groups by the government and as a result, criminal elements take advantage of that to raid your areas than they do in other areas. It could be that the persons that engage in criminal activities get accommodation in other groups who do not feel obliged to stop them since they are not targeting them but another group and because they do not care about your group for some reason. The lack of care by other groups towards you and the absence of government in the midst of your predicaments would mean that you are indeed marginalized.

Furthermore, if you reside in a remote area in the sense that you have no good roads or transport or communication then you are marginalized. A section of a county or country can have bad roads, transport or communication system because of many reasons mostly indicating negligent of that section of the government. A section can be neglected by the government by not constructing roads in that area or by not building the communication system. This may be in contrast to other areas in other parts of the county or country. Many times, excuses tend to be given that the government is prioritizing the most productive areas but that alone cannot be the criteria of development. The government interventions need to be felt equitable. This means that even where some areas may be classified to be of less potential, they still have to be attended to by the government so that such areas do not become marginalized. It means that if, for example, you live at a rural place that is impassable during the rainy season and when you go to other rural areas within the county for example, the roads are passable, then you are marginalized. This would be the case with where the national government develops other areas than others.

In addition, it could be that when you look at the people who get job opportunities at the county or the national government level you hardly see people from a group that you are associated with or that you are, relative to your group's population proportion, underrepresented. This may also extend to the extent to which people from a group that you may be associated with get job opportunities in certain key positions or sectors of the government. Does a person from the group that you are associated with, for example, have a chance of becoming the president of your country? How about becoming a Governor of your county or any representation for that matter? In a country where some public services tend to be biased to who someone knows within the system; how you look like or what language you speak; in addition to who gets to benefit from a Government job and the benefits that come with it, it does matter who is in the office to serve you.

If it is about getting employed in a system that has favouritism based on how someone looks like or hails from, then a group that is less represented will be disadvantaged. If it is a public office, for example a county government, where officers speak in using the dominant non-official language, there is a likelihood that a person that speaks a different language may get an inferior services or generally feel out of place even if it is within their own county. If it is an important government ministry that is mandated with developing government policies in key areas such as in the agricultural sector, having people hailing from just one area may limit their diversity of ideas and possibly the quality of the policies that they propose. This may also limit the extent to which the policies may benefit various diverse groups. These are just but a few examples of how disparity in access to public jobs by various groups is in itself marginalization and can also lead to further marginalization.



These few examples show what it feels like to be marginalized. The examples also show that one form of marginalization can cause multiple marginalization. It means, therefore, that any action that causes marginalization of a group or sections of a country causes much more marginalization than just the immediate marginalization.

3.0 Understanding the constitutional priorities and their background

3.1 Who are the marginalized and ethnic minorities?

The Constitution of Kenya 2010 gives special recognition to minorities and marginalized communities (and groups). While the words minority and marginalization have been used in the constitution twelve (12) and eighteen (18) times respectively, it is often not very easy to determine their exact meaning and application. First we ask who – under the Constitution – they are, and then what the Constitution offers to them.

Marginalised communities

The Constitution has defined marginalized communities to mean

- (a) A community that, because of its **relatively small population** (i) or for any **other reason** (ii), has been **unable** (iii) to **fully participate** (iv) in the integrated **social and economic life** (v) of Kenya as a whole;
- (b) A **traditional community** (vi) that, out of a **need or desire** (vii) to **preserve its unique culture and identity** (viii) from assimilation, has **remained outside** (ix) the integrated social and economic life of Kenya as a whole;
- (c) An **indigenous** (x) community that has retained and **maintained a traditional lifestyle** (xi) and livelihood based on a **hunter or gatherer** (xii) economy; or
- (d) **Pastoral** (xiii) persons and communities, whether they are—
 - (i) **Nomadic** (xiv); or
 - (ii) a settled community that, because of its relative geographic isolation (xv), has experienced only marginal participation in the integrated social and economic life of Kenya as a whole;



The definition of marginalized communities in the constitution lays emphasis on exclusion (iii), for various reasons, of communities from participating in economic and social life (iv). A number of specific possible causes of such exclusion are identified: one is because of small population (i), but any other reason may be enough explanation (ii). For these no other specific quality of the affected community is required. In fact you might say that this makes the other situations unnecessary. The other situations are however probably included to reassure the particular types of community. The first is a community that is both traditional (vi) and has kept itself apart to keep its culture and identity (viii) (whether it really wished to do this or not) (vii). The second type is a community that is both indigenous (x) and either a hunter or gatherer community (xii) that has kept a traditional life style (xi). Finally are pastoral communities (xiii) whether still nomadic (xiv) or now settled but still largely excluded because of geographic isolation (xv).

It is important to note that features in some other agencies' descriptions of marginalised communities are not necessarily in our Constitution. A USAID definition includes features such as: deviating from the norm, lacking desirable traits which then cause exclusion and ostracisation from privileges enjoyed by the wider society. On its part, UNESCO introduces an element of disadvantage that is acute and systematic and that results from social inequalities. The UK Department of International Development (DFID) definition also uses the words systemic exclusion based on various social identities including race, religion, gender, caste, and disability. The World Bank says that marginalization can take four forms: political, economic, cultural and social life, which together create a vicious cycle and its features include: lack of basic infrastructure, lack of identity documents, lack of education, and lack of access to employment opportunities. Though these may help to understand the concept, they should not be used to limit what the Constitution of Kenya says. Particularly the Constitution does not require that a community should have been discriminated against before they can claim to be marginalized. It is the reality that matters not the cause – unless it is their own choice. Disadvantage may be a requirement, but not necessarily “ostracization”, which implies deliberate exclusion. Indeed, even for when the Constitution recognises the human right of equality and not to be discriminated against, it says that “indirect” discrimination is equally forbidden – and indirect discrimination means a situation in which a person or group is treated differently (and negatively) in effect without that being the intention.

The next question is exclusion, from what? In order to fit within the constitutional definition of a marginalised community, the element of exclusion from “economic and social life” must be present. However, the Constitution also says that law must provide for the promotion of representation of marginalised communities in Parliament (Article 100), and of course, discrimination (indirect or intended) on any ground including that of ethnicity and culture is forbidden. In practice, exclusion from political life will not generally be found to be divorced from exclusion from “economic and social life”. Therefore any community excluded from national or



county life, should be able to claim to be marginalised.

Can a community claim to be “marginalized” if in some respects it is integrated? Again this is not very likely. But it is possible for a group to be economically but not socially integrated, for example. But thought this is theoretically possible, such a group would probably be outside the realistic scope of this study, which is focussed on the significantly marginalised.

3.2 Are marginalized communities necessarily ethnic communities?

The constitutional definition says that a marginalized community can be a traditional community; an indigenous community; pastoral persons or communities; or any other community. They qualify as marginalized because they are excluded from participation in the integrated social and economic life of Kenya as a whole. True, pastoral groups, hunter or gatherer groups and probably traditional communities will be ethnically homogeneous. But it is not inevitable that a “community” excluded “for any other reason” need necessarily have a particular ethnic identity. (Just as “community land” is not defined inevitably by reference to one ethnicity (Article 63(1)). A possibility is a village of people from various communities who have lived together as a community. Article 100 seems to consider that “marginalized community” is not the same as persons of the same gender, persons with disability, or ethnic or other minorities”. While the USAID describes the marginalized as a “class of people” - which means that they don’t have to be an ethnic community – the Constitution of Kenya speaks of the “marginalized community”. Boundaries between ethnic groups are fluid, and indeed largely unscientific. It would clearly be contrary to the Constitution to argue of a particular group that claimed to be marginalised by virtue of its lifestyle (e.g. as hunter/gatherer) that it was not a community envisaged by the Constitution because it was not ethnically distinct from other groups not living the same life-style.

In Kenya, since most marginalization, particularly marginalization in political and in other governance processes, tends to be as a result of ethnicity (tribe), the primary focus of this study will be on ethnic communities. The study may also focus on other notable sub-ethnic communities that may also be experiencing a special marginalization.

Ethnic minorities

While the Constitution of Kenya 2010 does define “marginalised community” and thus its use should not be confined by others’ definitions, it has not defined “ethnic minorities”. The United Nations has also not conclusively defined it, for what it says are reasons that no single definition can adequately capture the realities of all the diverse communities and groups. In its definition, the United Nations has taken into account an objective and subjective criteria as a basis for recognition of minority status. The objective criteria engage aspects such as non-dominance in



terms of numbers and/or political power and possessing distinct ethnic, cultural, religious or linguistic characteristics. The subjective criteria is based on self-definition, that is, a will on the part of the members of the group in question to preserve these distinct characteristics.

“Ethnic” is problematic, as pointed out earlier. So indeed is “minority”. There is no single ethnic minority in Kenya, no group now estimated to be larger than 17% of the population. Nationally, therefore, everyone is a minority. But while nationally a group might be not only a minority but also marginalised, within a county they might be dominant. And a dominant community at the national level might be a minority in a particular county.

Persons with disability, women and sexual minorities, and any other class that has suffered discrimination is a “marginalized group” under the Constitution. This study is not focussed on women, the elderly, youth or persons with disability. This is not because these are unimportant or that they are not, at least in some circumstances, marginalized. It is because ethnic, religious and cultural groups, or similar, present issues that may usefully be dealt with together, whereas these other groups may present very different issues and probably different solutions. Such classes are among those that the Constitution envisages receiving, indeed ought to receive, the benefit of affirmative action programmes because they have suffered from discrimination (Article 27(6)).

3.3 Concrete provisions for marginalized and ethnic minority communities in the Constitution

Apart from the general prohibition of discrimination on the basis of any personal or group characteristic (Article 27), there are a number of other constitutional provisions requiring action to remedy past discrimination or disadvantage.

Article 27 itself requires affirmative action to remedy past discrimination (Article 27(6)). This is unusual – many constitutions allow affirmative action, few mandate it. It does not say what type of affirmative action. Sometimes what is often called “positive discrimination” might be appropriate – offering appointment, education opportunities with some preference to those belonging to disadvantaged groups. But extra resources, capacity building, encouragement might also be appropriate. It is important to note that Article 27(7) says that affirmative action benefits must be on the basis of need. This was to avoid the situation that benefits to a disadvantaged group might actually go to those members of the group who do not need it. In India this is often called the “creamy layer” – already risen to the top of the groups and no longer in need of special treatment.

There is a specific Article (56) on “minorities and marginalised groups – rather than communities. It provides that the State must create affirmative action programmes to ensure that they



- participate and are represented in governance and other spheres of life;
- have special opportunities in educational and economic fields;
- have special opportunities for access to employment;
- can develop their cultural values, languages and practices; and
- have reasonable access to water, health services and infrastructure.

Concrete special treatment in the political sphere is given by “list members”. In the National Assembly 12 members enter through party lists (Article 97). They are to represent “special interests” which could include marginalised and minority community members. Similarly in county assemblies there are to be list members from groups including “marginalised groups” (Article 177). The Elections Act provides that this means every county assembly must have four list members with priority to a person with disability, the youth and any other candidate representing a marginalized group (s. 36). Minorities and marginalized communities are not specifically mentioned but might benefit from these provisions.

List member appear as candidates on lists published before the election. They are allocated on the basis of the number of seats a party wins (Article 90). Party lists must “reflect the regional and ethnic diversity of the people of Kenya (Article 90(2)(c)).

Other electoral measures that might be relevant are the requirement in Article 100 of laws to promote the representations of certain groups including ethnic minorities and members of marginalised communities. The meaning of “promote’ is not entirely clear. It presumably does not mean guarantee, but refers to measures like education and incentives, though in the gender case the Supreme Court took Article 100 as requiring not more than two-thirds of either gender (by 2016). In public office more widely diversity is supposed to be respected including in the makeup of the national cabinet (Article 132) and in that of the county executive (Article 197).

Various other provisions may enhance the chances of the marginalised and minorities to get employment. A county must not employ more than 70% of its staff from the dominant ethnic community in the county. Recruitment to the security services must reflect the diversity of the Kenyan people in “equitable proportions” (Article 238(2)(d)).

For really small communities these provisions are unlikely to have much if an impact. If you form 5% of a county’s population and the county has 10 executive members, a proportionate presence would be only half an executive member. There is a duty in the state to “promote and protect the diversity of language of the people of Kenya; and promote the development and use of indigenous languages “ (Article 7(3)). Properly observed this should increase the participation of minorities in public life.



There are provisions designed to ensure that money is available to benefit those who have suffered past marginalisation. The need for affirmative action for disadvantaged areas and groups is a factor in the allocation of money raised at the national level to counties (Article 203(1)(h)). More directly, 0.5% of the national collected revenue must go into the Equalisation Fund that is to go to marginalised areas (“marginalised communities” is also used) (Article 204). The Commission on Revenue Allocation is responsible for developing a formula for this purpose.

4.0 Marginalized ethnic communities in Kenya and their whereabouts

4.1 Introduction

The next step is to identify the ethnic communities in Kenya that may fall within the category of marginalized. Identifying the communities puts to test the criteria of identifying marginalized communities in terms of its usefulness to the policy makers and others to determine the actual communities that can be classified as marginalized, particularly since the status of such communities may vary with time. By identifying the people, it also becomes easier to determine their specific claims in relation to participation in political and other governance processes and developing a strategy to address the claims. In addition, it also helps the people that are marginalized to more specifically recognize their current status and take more targeted steps to help address or agitate for their greater involvement to help address the disadvantages that they could be suffering.

4.2 Ethnic communities in Kenya and their whereabouts

Traditionally there have been said to be 42 ethnic communities in Kenya. The ethnic communities are: 1. Suba 2. Embu 3. Kamba 4. Kikuyu 5. Kisii 6. Kuria 7. Luo 8. Maasai 9. Mbeere 10. Meru 11. Nubi 12. Samburu 13. Taita 14. Taveta 15. Teso 16. Turkana 17. Tharaka 18. Luhya (so stated), 19. Kalenjin (so stated), 20. Mijikenda, 21. Swahili, 22. Kenyan Somali, 23. Ilchamus 24. Njemps 25. Borana 26. Burji 27. Dasanech 28. Gabra 29. Galla 30. Gosha 31. Konso 32. Orma 33. Rendille 34. Sakuye, 35. Waat 36. Galjeel 37. Kenyan Arabs 38. Kenyan Asians 39. Kenyan Europeans 40. Kenyan Americans 41. Isaak, 42. Leysan. In 2017 two other communities were recognised as “tribes”: 43. Makonde and 44. “Indians”. There is divided opinion on whether the State has the power to declare a group an ethnic community and whether it is necessary or useful. And while the Makonde welcomed this move because they felt it might help them achieve recognition as Kenyans, the “Indian community” was more ambivalent, indeed divided. In addition, many of the ethnic communities also have several sub-ethnic communities which may be marginalized differently and some of whom may consider themselves different from the community that they may be associated with. Indeed, the 2009 census permitted respondents to self-identify.



The Luhya, for example, have up to eighteen sub-communities which are: Luhya (so stated), Bakhayo, Banyala, Banyore, Batsotso, Bukusu, Idakho, Isukha, Kabras, Kisa, Marachi, Maragoli, Marama, Samia, Tachoni, Tiriki, Tura and Wanga. The Kalenjin include twenty sub-ethnic communities. They include the Kalenjin (so stated), Arror, Bung'omek, Cherangany, Dorobo, El molo, Endo, Keiyo, Kipsigis, Marakwet, Nandi, Ogiek, Sabout, Samor, Senger, Sengwer, Terik, Tugen, Pokot, and Endorois. Also, the Mijikenda have several sub-groups which include: Mijikenda (so stated), Boni, Chonyi, Dahalo, Digo, Duruma, Giriama, Jibana, Kambe, Kauma, Pokomo, Rabai, Ribe, and Waata. Further, the Swahili also have several sub-communities which are: the Swahili (so stated), Amu, Bajuni, Chitundi, Jomvu, Munyoyaya, Mvita, Ngare, Pate, Siu, Vumba, Wachangamwe, Wafaza, Wakatwa, Wakilifi, Wakilindini, Wamtwapa, Washaka, Watangana, and Watikuu. In addition, the Kenya Somali have the following sub-communities: Somali (so stated), Ajuran, Degodia, Gurreh, Hawiyah, Murile, and Ogaden. Some of the listed sub-communities are in some contexts called clans. Several other ethnic communities also have several sub-ethnic communities and/or clans all of which may be experiencing different status in terms of inclusion in political and other governance processes.

The people who may identify themselves with the forty-four ethnic communities and their respective sub-ethnic communities and clans are spread in various parts of the country but most of them tend to reside in a particular geographical area. This makes people from such communities the majority in areas that such communities are known to hail from. County boundaries are based on those of the colonial districts which were demarcated along ethnic lines. Indeed that demarcation and other colonial actions if they did not create ethnic divisions certainly changed and concretised them. It means, therefore, that almost all counties tend to have one dominant ethnic community then usually one or numerical minority from other ethnic communities. It also means that some communities will predominantly be found in areas that may have been neglected in the past by the government in terms of development and as such the people are disadvantaged, indeed marginalised. Some of the areas got less government attention on the basis that they were considered areas of low potential and as such they were not prioritized for government investment. This was particularly the case after the adoption of the Sessional Paper number 10 of 1965. Other areas were also neglected by the government because they did not support the government of the day, among other reasons, and remain marginalized.

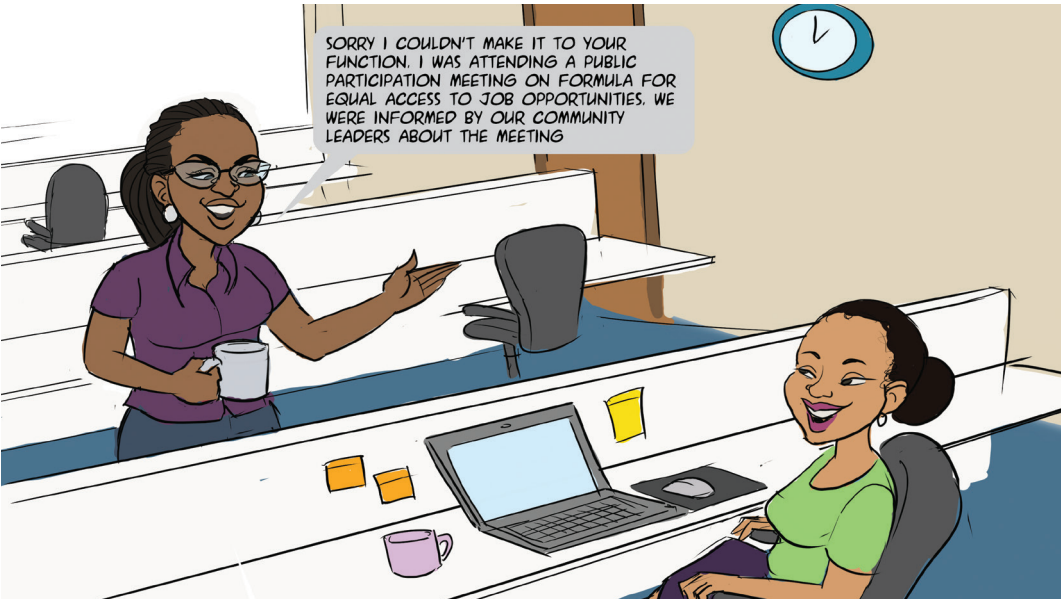
Even though the county boundaries followed the colonial district boundaries that were demarcated along ethnic lines, not all ethnic communities got a district (nor therefore a county). This means that, in addition to having some counties and the people living in it are generally marginalized, the people in many of those counties are not from one ethnic community even though in most cases there will be one dominant community then smaller ethnic communities. In addition, some peo-



ple have also migrated from counties that traditionally would be referred as their ‘home county’ and now they reside in other counties where they form the minority in terms of numbers. The people that are fewer in number in certain areas may be marginalized politically and also in other governance processes. In fact, only sixteen (15) ethnic communities form the majority in at least one county. The rest, 29 ethnic communities, do not form the majority in any county. The table below shows the ethnic communities that form majority (more than 50%) of the population in various counties in Kenya.

Table 1:
Counties where various ethnic communities form the majority

Ethnic communities	Counties
Kalenjin	Uasin Gishu, Kericho, Bomet, Nandi, Baringo, Elgeyo Marakwet, West Pokot (7)
Kikuyu	Kiambu, Muranga, Nyandarua, Nyeri, Kirinyaga, Nakuru, Laikipia (7)
Luo	Siaya, Kisumu, Migori, Homa-Bay (4)
Luhya	Kakamega, Vihiga, Bungoma, Busia, Trans-Nzoia (5)
Kamba	Makueni, Machakos, Kitui (3)
Kisii	Kisii, Nyamira (2)
Meru	Meru, Tharaka-Nithi (2)
Embu	Embu (1)



Ethnic communities	Counties
Maasai	Narok, Kajiado (2)
Somali	Garissa, Wajir, Mandera (3)
Turkana	Turkana (1)
Borana	Marsabit, Isiolo (2)
Waswahili, Boni, Digo, Giriama Durma, Rabai,	Mombasa (1)
Mijikenda	Kwale, Kilifi, Tana River, Lamu (4)
Taita	Taita Taveta (1)
Samburu	Samburu (1)
Mixed	Nairobi

Source: Ministry of State for Planning, National Development and Vision 2030 (2010)

The counties where various ethnic communities form the majority are mainly the areas where majority of those communities reside. The Kikuyu and the Kalenjin are the majority in 7 counties each; the Luhya in 5 counties; the Mijikenda and Luo in 4 counties each; the Kamba, and the Somali in 3 counties each; the Maasai, Kisii, Meru, and Borana in 2 counties each; and the Turkana, Taita, Samburu and Embu one each. Nairobi, and Mombasa counties do not have one ethnic community that can be said to have more than 50% people from one community. The rest of the ethnic communities are not dominant in any county and thus are vulnerable to exclusion politically within the county level and for that matter even nationally.

4.3 Marginalized ethnic communities and their whereabouts

The starting point in terms of identifying the marginalized ethnic communities in Kenya is by looking at the counties and identifying the most marginalized ones. Using the counties, one can then identify the ethnic communities that reside in those counties. Since every county has people from many ethnic communities in Kenya, it will be difficult to establish all the groups that are marginalized within various counties, partly because there are no good records of the same and it would be a very tedious exercise and beyond the scope of this study. However, the criteria of identifying the counties first then as many groups in those counties as possible can help get views that can largely represent the claims of other groups

with similar marginalization. The study, having established that there are no good records of the classifications of people, in terms of their ethnic affiliations, that reside in various counties, has utilized primary research to, in addition to collecting the claims of the people relating to marginalization politically and in other governance processes, and approaches to addressing them, has also identified the ethnic groups that reside in the counties that will be studied and perhaps also their settlement patterns.

Several studies have looked into the issue of marginalization in Kenya and identified various counties as the most marginalized in the country. The Commission on Revenue Allocation (CRA), for example, records that in 1989, the University of Nairobi sub-committee on disadvantaged districts identified 19 counties as the most disadvantaged based on the opportunity index. The identified counties are: Marsabit, Turkana, Mandera, Wajir, Tana River, Garissa, Samburu, West Pokot, Narok, Isiolo, Laikipia, Baringo, Elgeyo Marakwet, Taita Taveta, Kwale, Kilifi, Lamu, Kitui, and Kajiado. The opportunity index criteria that was used to identify the districts was derived from the wage earners per capita, earnings per capita, primary and secondary schools enrolment per capita and population density.

The Joint Admissions Board, also in 2001, developed a policy that was intended to address gender disparity in students from disadvantaged districts. The policy relied on the poverty index, the primary and secondary schools dropout rate, student/teacher ratio, and the sex ratio of the primary and secondary school enrolment to identify the disadvantaged districts. The following districts were identified: Marsabit, Wajir, Mandera, Garissa, Isiolo, Turkana, Samburu, Baringo, West Pokot, Elgeyo Marakwet, Tana River, Lamu, Kajiado, and Narok.

Further, in a national survey that was done by the CRA in 2012 to identify marginalized counties, all the 47 counties were ranked from the most marginalized to the least marginalized. The CRA used several parameters to identify the marginalized counties, namely: level of education, road infrastructure, unemployment level, poverty, food insecurity, health facilities, insecurity, historical injustices, level of economic activities, access to water, survey, climatic conditions, land aridity, access to housing, population, natural resources, culture/diversity, land resources, landlessness, ICT infrastructure, industries, land terrain, vulnerable groups, gender disparity, access to electricity, generation gaps, remoteness, access to government funds, business opportunities, total county revenue, human resource development, access to financial services, access to justice, constitutional disaster, slums, number of constituencies, sanitation, level of sanitation, hardship areas, and drug abuse. Using the above criteria, the extent that counties are marginalized in Kenya was ranked as shown in table 2 below starting with the most marginalized.



Table 2:
Rank of counties in terms of marginalization in Kenya

No.	County	No.	County	No.	County
1.	Turkana	17.	Nairobi City	33.	Kisii
2.	Marsabit	18.	Mombasa	34.	Nyandarua
3.	Mandera	19.	Elgeyo Marakwet	35.	Nyeri
4.	Lamu	20.	Kajiado	36.	Vihiga
5.	Wajir	21.	Laikipia	37.	Nyamira
6.	Samburu	22.	Tharaka Nithi	38.	Muranga
7.	Isiolo	23.	Machakos	39.	Bomet
8.	Tana River	24.	Busia	40.	Nakuru
9.	West Pokot	25.	Kakamega	41.	Kiambu
10.	Garissa	26.	Makueni	42.	Embu
11.	Kilifi	27.	Bungoma	43.	Nandi
12.	Kwale	28.	Migori	44.	Uasin Gishu
13.	Kitui	29.	Siaya	45.	Kericho
14.	Taita Taveta	30.	Homa Bay	46.	Meru
15.	Baringo	31.	Kisumu	47.	Kirinyaga
16.	Narok	32.	Trans Nzoia		

Source: Commission on Revenue Allocation (CRA)

Further, the survey also assessed the people's views on whether there are marginalized areas in the respective counties. The results were that 75% of the people said that there were marginalized areas within the counties; 11% said that there were none, and the rest either said that they did not know or did not respond.

Furthermore, the CRA did other studies to determine the marginalized communities in Kenya. In 2013, the CRA did a study that informed a policy on the criteria for identifying marginalized areas and sharing of the equalization fund. The study relied on three criterion to identify the most marginalized counties in Kenya. The primary one was the County Development Index (CDI) which is a composite index of four indicators: health, infrastructure, education and poverty in a county. The indicators for health were: immunization, sanitation, and deliveries in health facilities; for education were: literacy and secondary education; for infrastructure: roads, electricity and water; and for poverty the indicator was just poverty. The other two are expert analysis on historical and legislative discrimination and a marginalization survey. Based on the criterion, the following counties were identi-



fied as the most marginalized: Turkana, Mandera, Wajir, Marsabit, Samburu, West Pokot, Tana River, Narok, Kwale, Garissa, Kilifi, Taita Taveta, Isiolo and Lamu. Based on this study, the all the seven counties identified earlier appear once again among the most marginalized.

Furthermore, in bid to establish the most marginalized counties, and in extension communities in Kenya, a study that was done by the National Gender and Equality Commission (NGEC), ranked counties in terms of those with individuals that slept hungry for at least one day for the last 7 days. The study established that, Turkana, Kisumu, Mandera, Mombasa, Nyamira, Vihiga Migori, Kilifi, Makueni, Laikipia, Wajir, Isiolo, Kwale, Kisii and Tana River counties ranked among the fifteen most marginalized counties in Kenya. It can be argued that the higher the percentage of the number of people that sleep hungry, the more marginalized a county is nationally. Using this criterion, therefore, Turkana county would be classified as the most marginalized.

A comparison of the NGEC study with the CRA one indicates seven common counties in the list of 15 most marginalized counties. The seven counties are: Turkana, Mandera, Kilifi, Wajir, Isiolo, Kwale and Tana River.

The National Gender and Equality Commission 2016 reported more information on the marginalized areas in Kenya. It provides an index of counties based on labour participation; social justice and civic participation; education; health; development; and percentages of youths with ID cards. Below are the findings of the study with a focus on the 16 most marginalized in each category.

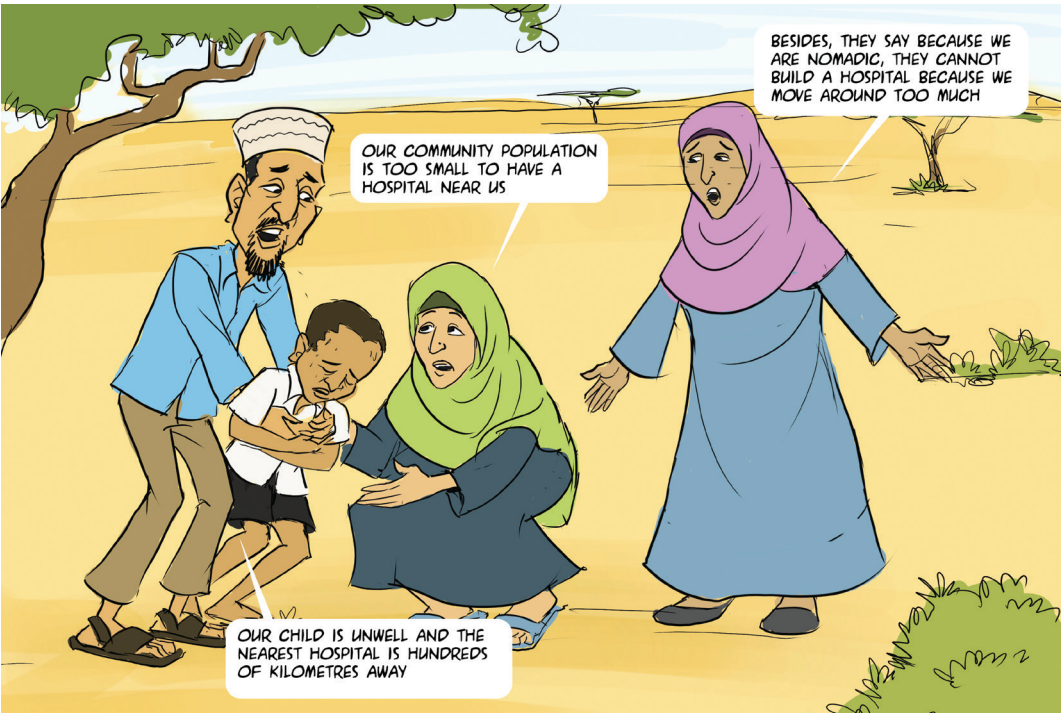


Table 4:
Ranking of 16 most marginalized counties starting with the most under each criterion

No.	Equality & inclusion	Labor participation (pp)	social justice & civic pp	Education	Health	Development	Youths with ID cards
1.	Turkana	Turkana	Kwale	Mandera	Turkana	Turkana	Turkana
2.	Wajir	West Pokot	Turkana	Garissa	Tana River	Wajir	Kwale
3.	Tana River	Wajir	Nandi	Tana River	Samburu	Mandera	W. Pokot
4.	Marsabit	Mandera	Kakamega	Wajir	W. Pokot	Tana River	Narok
5.	Mandera	Marsabit	Mombasa	Samburu	Wajir	Marsabit	E. Marakwet
6.	W. Pokot	Migori	Trans Nzoia	W. Pokot	Mandera	W. Pokot	Mandera
7.	Samburu	Samburu	Marsabit	Marsabit	Marsabit	Samburu	Vihiga
8.	Kwale	Busia	Kilifi	Turkana	Bomet	Kitui	Busia
9.	Migori	Bungoma	W. Pokot	Narok	Bungoma	Kwale	Siaya
10.	Garissa	Kisii	Wajir	Isiolo	Vihiga	Busia	Kitui
11.	Kakamega	Nyamira	Tana River	Kwale	Kakamega	Makueni	Migori
12.	Nandi	Narok	Kisii	Kajiado	Kitui	Bomet	Homa Bay
13.	Isiolo	Tana River	Makueni	Kilifi	Laikipia	Kakamega	Nyamira
14.	Bomet	Homa Bay	Bomet	Mombasa	Trans Nzoia	Bungoma	Samburu
15.	Bungoma	Garissa	Kajiado	Lamu	Nandi	Isiolo	Trans Nzoia
16.	Kilifi	E. Maraket	Nyamira	Kitui	Kwale	Migori	Kisumu

The following 20 counties appear three or more times across the categories: Turkana, Wajir, Tana River, Marsabit, Mandera, West Pokot, Samburu, Kwale, Migori, Kakamega, Bomet, Bungoma, Garissa, Nandi, Isiolo, Kilifi, Busia, Nyamira, Narok, and Tranzoia and are, therefore, based on the study, are the most marginalized countrywide.

Most of these 20 counties are from the former North Eastern Province (Mandera, Wajir, Garissa), Eastern Province (Marsabit and Isiolo), Coast (Tana River, Kwale, Lamu and Kilifi), Rift Valley (Turkana, Samburu, West Pokot, Trans Nzoia, Bomet, Nandi and Narok) Nyanza (Migori, Nyamira) and Western (Kakamega, Bungoma, Busia). There is no single county from the former Central province, and Nairobi is not in the category.

The current study focusses on marginalized counties from different parts of the country. The study by the NGEK relied on seven parameters thus making it the favourite to rely on. In addition to choosing counties that are most marginalized based on the criteria of the study, since the study is about marginalized ethnic communities, marginalized diverse counties will be prioritized. Other criteria that will be relied on include availability of known indigenous groups in the marginalized counties and a possibility of learning good practices of inclusion from a given county.

In Western province the study ranks Kakamega, Bungoma and Busia to be among the most marginalized. Comparing the three, Bungoma and Busia are considered more diverse than Kakamega county. In addition, Bungoma has an indigenous community that reside in Mount Elgon forest and Busia has a Governor from a minority ethnic community which makes it a good case study. In Nyanza province, the most marginalized are: Migori, and Nyamira. Comparing the two, Migori is more diverse because of the Abakuria ethnic community that occupies part of the county while the Luo occupy most of it. In Rift-Valley, Turkana has been ranked by almost all studies to be the most marginalized county in Kenya. On this basis, it is the first county to be considered. Then the other most marginalized counties, according to the NGECC study, are Samburu, West Pokot, Trans Nzoia, Bomet, Nandi, and Narok. Other counties from the former Rift Valley province that have been mentioned by other studies to be among the most marginalized are Elgeyo Marakwet and Baringo counties. These two have indigenous communities that lead a traditional lifestyle hence would automatically qualify as marginalized communities if they are excluded from Kenya's economic and social life. The study, therefore, prioritized the latter two counties.

Further, one of the other communities that are known to be marginalized in Kenya is the Maasai community, for among other reasons, losing a lot of their ancestral land to other communities and the government, Nairobi area included. The community is, therefore, a good potential case study of claims of marginalization. The Maasai community is mainly found in Narok, Kajiado, and parts of Samburu county. Based on the most marginalized county criteria and the county where the Maasai have dominance, Narok county stands out. It was, therefore, picked for study. Then, in the case of the former Coast Province, Lamu, Tana River, Kwale and Kilifi have been listed by most studies among the most marginalized. Lamu and Kwale were picked on the basis that they have indigenous and/or special groups (Makonde) communities in addition to being diverse; and Tana River was picked for also being ethnically diverse compared to Kilifi. In the former North Eastern province, all the three counties were classified to be among the most marginalized in Kenya. All of them, however, are dominated by one ethnic community hence the picking of them would have represented the rest. The most ethnically diverse is Garissa county hence it was picked for the study. In the former Eastern province, Marsabit and Isiolo are the most mentioned most marginalized counties and because Isiolo is more ethnically diverse, it was preferred to Marsabit. In addition, Makueni county was picked on the basis that it is generally considered to be among the good case studies on how devolution works. Other counties that were picked are Nakuru on the basis that it has the Ogiek indigenous community and Laikipia county on the basis that it is very close to Central Province, it is diverse and its dominant ethnic community is like the dominant ethnic community in the former Central province. It was, therefore, determined that it would form a better case study than any of the counties in the former Central Province. Lastly, Nairobi was chosen in order to obtain mainly the claims of the Nubian community



which has had a problem with obtaining national identity cards, and land for the community among other claims.

Thus the following 16 counties were chosen for the study: Garissa, Isiolo, Makueni, Turkana, Elgeyo Marakwet, Baringo, Narok, Tana River, Kwale, Lamu; Bungoma, Busia; Laikipia, Nakuru, Migori and Nairobi.

5.0 Findings from the field study on claims, existing/current and potential platforms and approaches to addressing the claims

5.1 Introduction

The field study was conducted between December 2018 and July 2019. The field visits included a team of between two and four Katiba Institute staff and interns. The team spent an average of two days per county and moved from one areas within a county to another. A maximum of five areas in a county were visited. The areas were chosen based on the various ethnic dynamics of a county and so they were always strategic locations in terms of accessibility by the participants and to facilitate getting the right people for the sessions.

The team relied on local facilitators to mobilise the participants. The facilitators were involved in mapping the ethnic dynamics of the county, in addition to Katiba Institute's desktop research of the counties. Following the mapping, the facilitators were asked to mobilise diverse people in terms of ethnic communities, age, gender, persons with disabilities, religion, profession and any other diversity that they thought was relevant. In most cases, the facilitators managed to achieve the desired diversity. The meeting points were, mainly, free venues that were identified by the local facilitators. The venues included, churches, community halls, county offices, national government offices, under trees, among others. The facilitators were mostly a combination of Uraia coordinators at the counties and the Katiba Institute partners at the various counties.

The sessions had between 10 and 30 people depending on the number of sessions in a county and the diversity of the people. The study involved an average of 50 participants per county. In total, the team held 50 sessions across the 16 counties. In each of the sessions, the study included a focus group discussion session and filling of questionnaires by the participants. In some areas, the team managed to conduct face to face interviews with some experienced members of the community. The questionnaires were administered to some participants and others were able to complete them on their own.



5.2 Marginalisation claims by ethnic minorities and marginalized ethnic communities

5.2.1 Introduction

One of the main objectives of the study was to establish claims by the ethnic minorities and marginalized communities in the 50 areas of the 16 counties where the study took place. Claims help to point out where the problem might be, and, by understanding the claims, form the first step to addressing the problems that ethnic minorities and marginalized communities are facing. Communities can propose solutions to the claims but also third parties can rely on the claims to design appropriate solutions.

In the definitions section, this study established from the various definitions characteristics that both make groups vulnerable to marginalization and are, at the same time, indicators of marginalization. The identified characteristics include: lack of basic infrastructure, lack of identity documents, lack of education, lack of access to employment opportunities, small population, keeping unique culture, indigenous community with a traditional lifestyle, geographical location, lacking desirable traits, being not part of the norm, social inequality, race, religion, gender, and disability.

Claims as used in this study refer to the reasons that the various ethnic communities gave as the basis for perceiving themselves as marginalized. In all the study areas, the participants were asked whether they viewed themselves as marginalized and the claims they have in that respect. They were also asked what they thought could be done to help address the challenges that they faced.

5.2.2 Lack of or very remote chance to get elected because of one's ethnic community

Members of a minority ethnic community would, for example, say that they feel marginalized because they don't have even a single member of the community in the county assembly and they may attribute that to their relatively small population compared to others. In such an explanation, there can be many problems that may be contributing to such a complaint. It can, for example, be a problem with an electoral system that does not take into account the ethnic voting patterns and thus provide for a formula for ensuring that they have a chance of getting elected. The problem can also be with the citizens who vote on ethnic lines thus distorting the rule of a democracy. Where people vote along ethnic lines in an ethnically diverse society, the first past the post system becomes unfair to smaller groups especially considering that they may indefinitely not realistically have control over



their numbers. Another point can be that people may not care who gets a certain leadership position but because those that have the positions discriminate against them then they are forced to demand one of their own in such positions. In such a scenario, it would mean that democracy is facilitating marginalization of smaller communities. The question is what in this scenario is the claim? The argument is that people tend to notice claims in terms of fair or not fair. In this scenario, perhaps the people would say that it is not fair that only people from certain ethnic communities stand a chance of getting elected to the county assembly. The claim would, therefore, be the lack of a chance for members of the community to get elected. Others may present the claim simply as the lack of representation of one of their own. This study will present the claims in terms of where the fairness element lies.

If a person feels that they don't stand a chance of getting elected because of the community that they hail from then they can claim marginalization on that basis. The study revealed many such situations across the 16 counties that the field study covered.

In Lake Bogoria session, for example, the participants felt that people from the Endorois community have almost no chance of getting elected to political leadership in the county. Similar claims were made in Eldama Ravine where a participant gave an example of a candidate from a small community that contested for an MCA position but only managed very few votes.

Further, the Ogiek in Nakuru county observed that they are split between in three wards but because the Kipsigis and the Tugen look similar to them and exceed them in number, the Ogiek minorities have not been able to garner enough votes in the electoral process to get an elected representative.

In Garissa, for example, it was said that people from small ethnic communities rarely ran for political positions because they had a very slim chance of getting votes. In Nakuru, Makueni, Garissa, Lamu, Kwale and Nairobi, the pattern is similar. The big ethnic communities are dominant over the smaller ones. The Nubians in Nairobi said that they lack representation at the county government and the Ogiek in Nakuru said that they do not have enough representation in the political space which leads to poor development in terms of road networks.

Small ethnic communities in Garissa County said that the only way for a non-local to get to the leadership of the County was to be nominated. The Ogiek further said that the community has only two nominated MCAs in Nakuru who don't help them much and are considered state agents and their interests are not those of the people they should serve. They further stated that the nominated actors had no power in the county assembly as they are not, in their judgment, as powerful as elected MCAs, of which the community has no representatives. Of course, the system of



“nominated members” in county assemblies was precisely to deal with the situation where communities’ chances of seeing “their” preferred candidate elected. But this suggests that the system is not understood or not serving its purpose. In a democracy, the government belongs to the people by virtue that they decide who gets elected and how the decisions in that government are made. In a situation, however, where some citizens may not have that real power to influence decisions, the citizens can cite marginalisation by the system of government or by the government itself. In Tana River, for example, participants in most of the areas we visited said that the Council of elders decided on elective positions beforehand. That the elders usually come up with a line-up of politicians for which they ask the people to vote for. They said that small ethnic communities are usually promised nomination positions if they vote in certain politicians. The exception to the latter was in 2017 where one of the small communities, Wailwana, managed to build an alliance with a big ethnic community and managed to win several elective seats: Deputy Governor, Women Representative, and two MCAs. Normally, however, the participants said that the result of the elders deciding for the rest of the citizens the persons to be elected is an indication of how they don’t influence the outcome and thus marginalized.

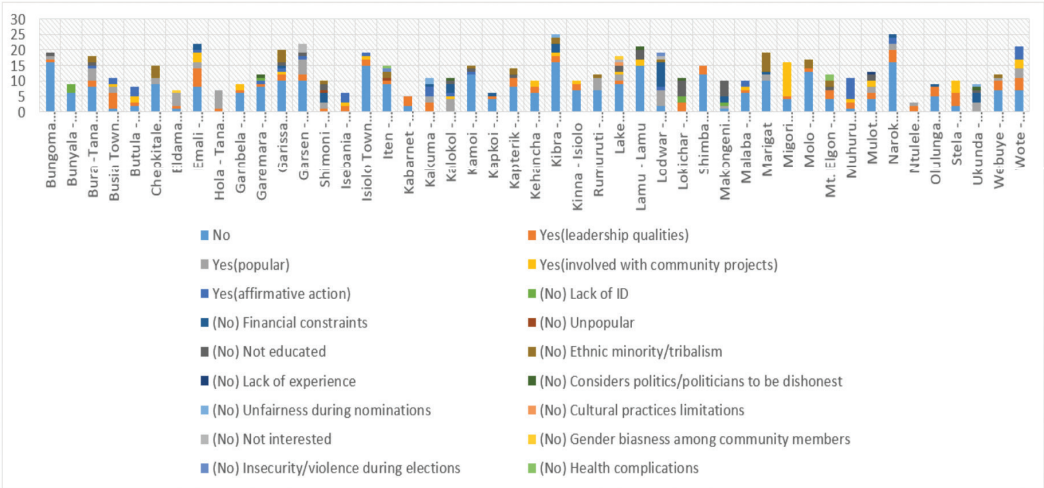
In Kibra it was also reported that people vote for candidates who give them hand-outs. One participant said that they feel like animals due to how politicians treat them. This, of course is not restricted to minorities or marginalised groups, though it is possible that a politician is likely to give bribes to members of smaller groups who do not have their own candidates but whose votes might tilt the result in the politician’s favour.

The graph below shows the peoples’ views on their chances of getting elected if they made a decision to contest. The results show that most of the participants said that they would not be elected if they decided to contest. The reasons for saying no include that their communities are too small to raise enough votes to get them elected; they do not have enough finances to use during campaigns, gender biasness against women and that there is unfairness during nominations. The people that said yes to the question gave reasons such as: they are popular among the community members; get involved with community projects; and they have leadership qualities.



Shimba Hills, Kwale County

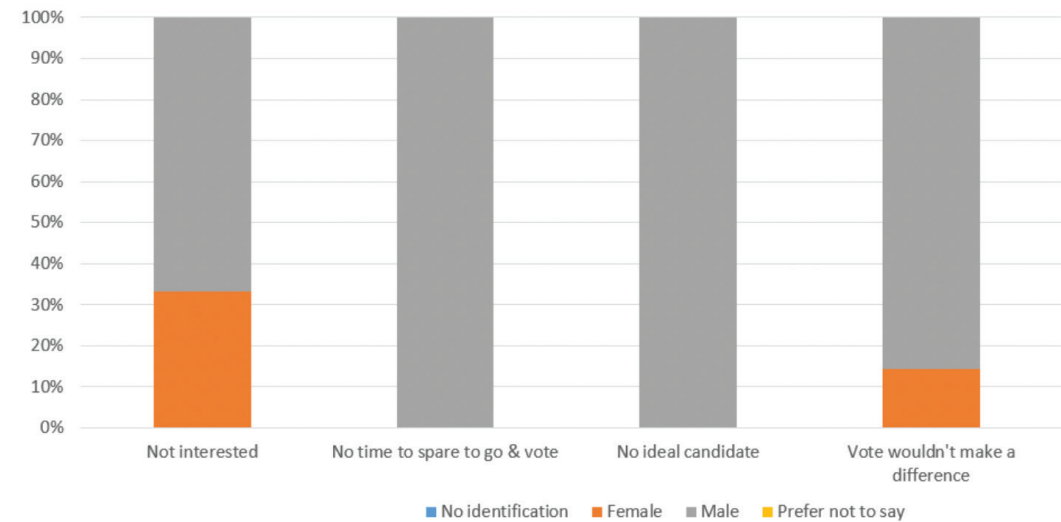
Chances of getting elected



Gender

In terms of gender and why each gender would not vote, the men gave reasons such as: lack of the interest, no time to spare to go and vote, no ideal candidate, votes would not make a difference and they did not have national identity card which is a requirement to vote. On the other hand, the women gave reasons such as: not interested, vote would not make a difference, and they did not have national identity card which is a requirement to vote.

Reasons for not voting



5.2.3 Dominance of one or a few ethnic communities in political positions and the public service

It is possible that only people from certain ethnic communities tend to dominate in public positions, whether elective or the public service. Such a situation can elicit a feeling of marginalization by the people that hail from other ethnic communities. The study also came across such incidents. In Marigat, Baringo County, for example, a participant said that the largest ethnic community in the county occupies most political and public service positions in the county. It was said that their dominance ranges from the MP, MCA, Women Representative and even the Baringo County Public Service Board (CPSB). In Kabarnet Town, a Nubian participant explained that thanks to their small numbers, they hardly have access to government opportunities such as employment in the county.

In fact, it seems that sometimes the information can be confusing. The research team discovered that, in Baringo County, the people that are from the ethnic communities that may not be considered locals in the county would say that most job opportunities in the county are given to the Tugen, Pokot and the Endorois while the Endorois, the smallest of the three, will say that they are in fact not getting the job opportunities. A similar pattern was observed in Elgeyo Marakwet County where the communities that may not be considered local would claim that most job opportunities go to the Marakwet, Keiyo and the Cherangany/Sengwer but the Cherangany/Sengwer, again the smallest of the three, would claim that they are part of the communities that don't receive adequate job opportunities. Perceptions and reality may diverge.

The general pattern in all the counties is that the dominant ethnic community takes most opportunities. The only contested county is Teso where it is believed that the Luhya community is the largest but the Governor is from the Teso community which is said to be second largest after the Luhya. Despite that, there are still complaints of some communities dominating over others. In Butula, for example, the smaller ethnic communities claimed that the Luhya are dominant in public jobs. In Malaba, Busia county, people claimed that the Teso are taking advantage of their leadership positions to dominate in the county government job opportunities. It was, for example, said that majority of the people that work in the Governor's office are from the Governor's ethnic community; that six of the ten CECs, for example, are from the Governors' ethnic community. In Migori county, the Suba that reside in Muhuru Bay part of Nyatike constituency feel that they have been politically dominated by the Luo who are many in number. Similarly, in Isebania and Stella, people complained that the people that are related to the Governor tend to be favored in securing county government jobs. In Tana River, it was reported that only one elective seat is held by a person from a small ethnic community, the Deputy Governor position. The rest are said to be held by either the Pokomo or the Orma. Also that the largest community, the Pokomo, had an



upper hand to secure jobs even when they may be less qualified. The dominance of one or a few big ethnic communities in leadership is made worse by reports that each one of the leaders prioritises their families, friends and ethnic community.

In Isiolo, the participants said that the discrimination was not on the basis of ethnicity but clan and families. They said that the principle is called 'BAMATO' which stands for 'baba', 'mama', na 'watoto' – which is Kiswahili for father, mother and children. The small communities, however, continued complaining that the dominant community was taking almost all job and tender opportunities. In addition, in Isiolo, in what may be an indication of how the participants define marginalization, one of the participants said that the leaders from Isiolo counties that lost in the previous elections had not been given other jobs in the national Government like is the case with leaders from several other counties that lost in the general elections. Others said that people of Isiolo generally do not have access to job opportunities at the national level. The participants in Kalokol Town in Turkana county also cited their being fewer in number as the reason they don't have representation at the senior political positions at the county level. The Kalokol example, however, is also a lesson that the marginalization applies beyond different ethnic communities to whenever it is politically convenient to do so since the whole of Turkana county is largely ethnically homogenous.

Similarly, in Bungoma county, the participants from Cheptais (majorly from Sabaot Community) noted that the dominant Community in the county (Bukusu) benefited more in accessing opportunities including employment at the County and other institutions -They cited Kibabii University which is said to be dominated by people from the dominant Community (Bukusu). Also that minority communities are disadvantaged when there are boundary dispute- the dominant Community is always favoured.

The national government is also not immune from the claims. Participants in Baringo county said that people from the largest ethnic community tend to take most security officers positions. One participant said that only three Ilchamus have been recruited into the forces since 2015 to the time of the study (2019).

5.2.4 Neglect and/or unequal access to services in areas where ethnic minorities and marginalized communities reside

Virtually all participants in all the counties where the field study took place complained of neglect by the government because of the community they hail from. Most of the participants attributed the neglect to the small number of their community. In Baringo County, for example, health facilities in Sirata, Ngarwa, and Margat were said to be ill-equipped; a sub-county hospital is far from Marigat; poor road network in Marigat Ward compared to the rest of the county; and that there are no public schools in Lake Bogoria area. Similarly, in Migori county, it was said that



there are no tarmac roads in Nyatike constituency including the bad road to Muhuru Bay, and Stella area; and that there is no clean and safe water in Kehancha, Isebania and Muhuru Bay. Lack of electricity in many parts was also cited and that the Mabera livestock market lacked adequate facilities such as a slaughterhouse and toilets. Others complained about lack of stationery and teachers in schools and lack of drugs in hospitals. In Baringo county, the participants also complained about the stalled development projects such as the Perkerra Irrigation Scheme which has been forgotten by the National Government as it is no longer functional.

Further, neglect of some sectors such as the fishing, tobacco and mining sectors were cited as evidence of marginalization. The participants also said that despite Migori being a major source of tobacco and fish, the processing industries are not located in Migori county which limits the benefits that the farmers can accrue from the sectors. In Bura and Kipini both in Tana River county, participants complained about the lack of roads, drainage system, electricity, phone, radio and TV networks. They said that the county government was only constructing roads next to the governor's offices in Hola. In Bura, despite being a home to a major irrigation scheme in the country (Bura Irrigation scheme), and being next to river Tana, residents do not have clean water. In Narok county, participants said that the distance to access water and health facilities was long, and that healthcare personnel are concentrating a lot to their private clinics as opposed to the public jobs that they are employed to do. In Mulot, it was reported that a water pump that was installed by a charitable organization is hardly maintained by the county government. Also that many road projects had stalled and that the bridge connecting Bomet and Narok remains unfinished posing great danger to the locals.

Similar concerns were raised in Isiolo county. In Kina, Isiolo Town, Ngaremara and Gambela- all parts of Isiolo county, the participants complained about neglect by both the national and the county governments in service delivery and development initiatives. They complained about the bad state of healthcare including lack of doctors and ambulances, lack of public schools while those that are available are in bad state, lack of clean water, poor roads, and no bridges. In Kina for example, it was reported that a public school that has been in existence for six years and that is up to class six, has only three teachers. Some participants also mentioned that the Schools in Kina did not receive the government laptops that were given to some class one pupils in Kenya. In Ngaremara, there is no bridge across a river that crosses their area and that in the period preceding the study, two school children died trying to cross the river. They also said that the river had been diverted in the Meru county part of the river which has blocked them from receiving sufficient water during the dry season.

In Turkana, Laikipia, Bungoma, Makueni, Garissa, Kwale, Nakuru, Elgeyo Marakwet and Nairobi county, participants complained about neglect in service delivery and development initiatives such as roads, water, education, health, poor services



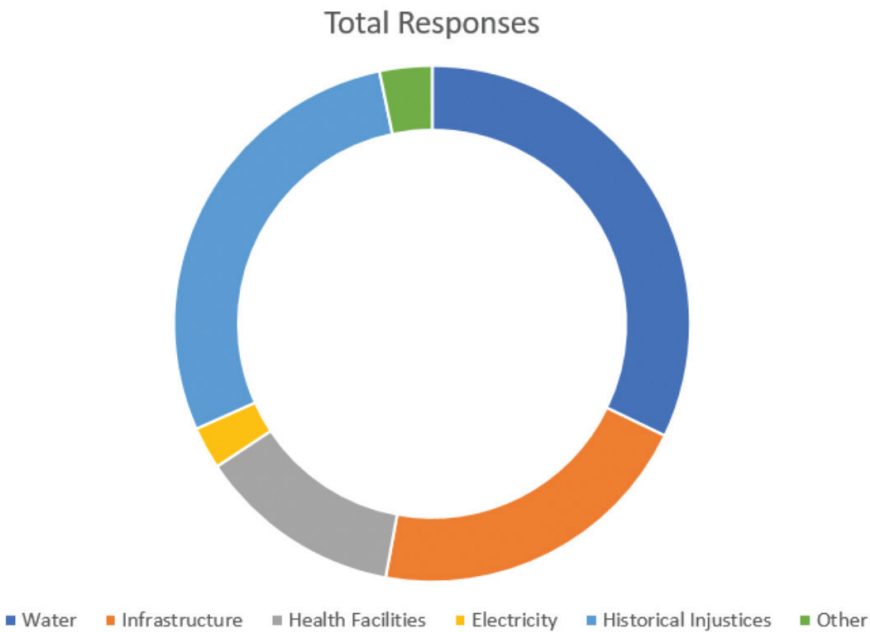
in public offices, lack of electricity among others. Lack of electricity particularly stood out in Kalokol part of Turkana, which is a town at the shores of Lake Turkana; “I think this was done intentionally since our area has a small population- so maybe we don’t contribute as much voting power as other regions”, lamented a participant. The road to Chepkitala in Bungoma county that is still in bad condition (although the first county government had tried to repair it after long neglect), and bad road between Hola and Emali, the road between Ukunda and Shimba Hills also in a very bad condition all stood out as cases of neglect.

In Laikipia county, a participant claimed that elections also cause marginalization. They said that when an area does not vote for a particular candidate and he/she goes ahead to win, it is extremely difficult to get services from them. A participant from the Luo Community, an intra-county minority group, stated that owing to the small number of people from the Luo community in Laikipia, he may not access a wider number of resources and privileges. He added that leaders in Kenya concentrate heavily on the interests of their own ethnic groups and leave out the ethnic minorities.

Findings from the questionnaires

In looking at the claim of neglect in relation to services, the study asked people about things that make them perceive themselves to be marginalized. The result was as in the chat below.

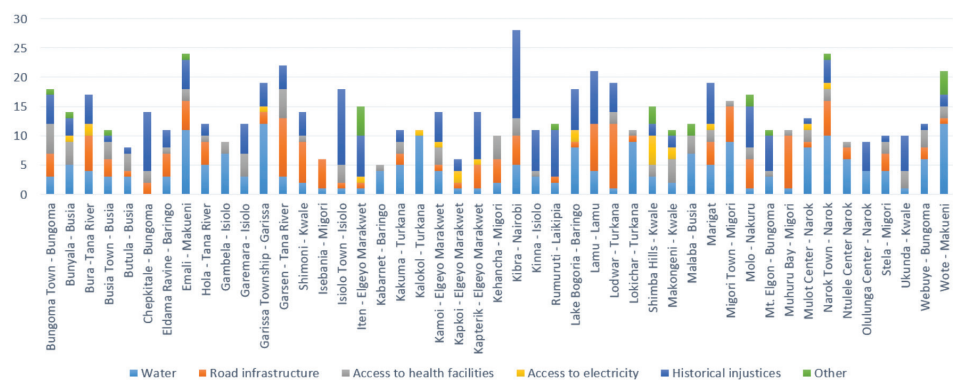
Parameters that define Marginalisation



Participants were given options from which they were asked to rank issues that make them perceive themselves as marginalized. Out of the 666 people that filled the questionnaires, 32% claimed that they are marginalized because they did not have good access to water; 28% because of unaddressed historical injustices; 21% infrastructure; 3% electricity; and the other 3% on aspects such as health and education.

The graph below shows how the participants in various parts where the study took place said with regard to their perception of being marginalized.

Parameters that define Marginalisation



The graph shows that water claims were highest in Butula and Malaba both in Busia County; Emali and Wote both in Makueni County; Hola- Tana River County, Gambela – Isiolo county; Garissa Township; Kabarnet and Lake Bogoria both in Baringo county; Kakuma, Lokichar, and Kalokol all in Turkana county; Migori Town and Stella in Migori; Mulot Centre, Narok Town, Ntulele Centre and Olulunga centre all in Narok county; and Webuye in Bungoma Town.

People in the following areas prioritized road problem as the main basis for their marginalization. The counties are: Bura, Garsen, Shimoni, Isebania, Kehancha, Lamu, Lodwar, and Muhuru Bay.

People in the following areas prominently prioritized health as the main basis they would claim marginalization: Bungoma Town, Bunyala, Busia Town, Butula, Ngaremara, Kehancha, Makongeni, and Ukunda.

The areas that prioritized access to electricity are in Kapkoi, Shimba Hills. It is interesting to note that the people of Kalokol prioritized water even though they also do not have electricity.

Those that prioritized historical injustices are: Chepkitale, Isiolo Town, Iten, Kapterik, Kibra, Kinna, Laikipia, Lake Bogoria, Lamu, Marigat, Marishoni in Molo constituency in Nakuru county, Cheptais, Mt Elgon area of Bungoma county, Olulunga centre and Ukunda.

Lastly, the counties where other issues are prominent are: Iten, Lunga Lunga, and Wote.

5.2.5 Neglect of communities living at various county-to-county borders; crime and insecurity

In cases where there have been continuous inter-county border disputes that has led to intercommunal violence, it can be argued that the lack of swift action by the government amounts to neglect of the affected communities and thus marginalization. Several cases of inter-county boundary disputes were reported for which the participants claimed marginalization on basis of the insecurity and other effects of the disputes such as inability to concentrate on private development.

In the boundary of Isiolo and Meru counties, there were numerous claims that the government had neglected the people of Isiolo county. The problem was mentioned in all the four areas that were visited by the research team. The problem includes dispute over which county the Isiolo International Airport falls in. It was reported that there even had been attempts to rename the airport. In the Ward where Ngaremara area falls in, it was reported that the area was contested by the two counties. That the dispute had led to frequent violence in the area where many people had lost their lives. Also that, due to the dispute and the violence, the people there live in a no-man's land hence they rarely get services or any other development initiative from either of the county governments. The area in Gambela is also in dispute between the two counties. Interestingly, while the rest of the areas, the people seemed to agree that they prefer to be in Isiolo county, the residents in Gambela had mixed views on the location of that area; some said Isiolo and others Meru. In general, the participants placed the blame on the government for failing to address the problem. Some even accused the government of favouring the Meru county government in the dispute.

In Marigat and Lake Bogoria, Baringo county, the participants also claimed that the government had neglected them in terms of ensuring that they are secure from violence. Both areas experience cattle raids from some of their neighbouring counties and many people have lost their lives as a result. They reported that many people live in fear of similar attacks and the government had not guaranteed their security. In Lake Bogoria, a participant also complained about the wildlife from the game reserve that destroy their crops but the KWS delays or fails to compensate them.



In Turkana county, many participants talked about the problem of security. They said that the Government does not take the issue seriously and that they are not impartial in the conflict. One participant said, “I think the Government favours the Pokot all the time”. In Lamu, it was reported that some schools and hospital infrastructures are not operational because of insecurity. The school and hospital infrastructures are now used as camping areas for the military personnel thus the education for their children has come to a halt. The issue of insecurity was also mentioned in Busia for which that the police have used as an excuse to shoot innocent young people; in Nyatike which the participants said was responsible for chasing away investors and in Garissa county. In Kipini Tana River, a participant decried that they were at the border of Lamu County and Tana River County and were most times neglected by their own County because it was said that their votes belonged to Lamu County.

5.2.6 Discrimination in access to public information

If the people are not accessing information about their government, then it means that their government does not care about them. It does not care that they deserve to know; about what they think, and about the contribution that they can make. When people deserve to know something but they are denied that opportunity, they are marginalized. In Tana River county, the participants said that nepotism was highly practiced and access to vital information was made difficult for the minorities. They, for example, said that tender and employment opportunities were sometimes not communicated to them. They said that they wanted to know how tenders were awarded and how much government contractors were paid. The participants in Isiolo also complained that they are not aware of what, and whether, the county Government is doing to help address their problems. Also, that they do not know the amount of money that their county receives from the national treasury nor from its own revenue and that they did not even know what has been budgeted for by the county and when. Furthermore, the participants said that the leaders knew about their plight but they do not know what they are planning to do about it.

Similarly, in Ngaremara part of Isiolo county, people complained that information rarely gets to the people of Ngaremara which compromises their ability to effectively participate in public affairs. They said that that the lack of public participation is partly the reason they have not been able to achieve many necessities in their area. A participant in Gambela said that in 2013, they knew of the budget plans but as of December 2018, they were not getting that information.

In Laikipia county, a participant noted that some communities are marginalized because they do not understand the Constitution and live far from urban centers. As a result, they do not have access to information provided by politicians, Non-Governmental organizations, and Civil Society Organizations amongst oth-



ers. For lack of information and awareness, the Turkana do not have significant political representation in the county Government.

In Bungoma, the Nubians claimed that they do not get information about public meetings and that they are generally not aware of what is happening in the county. Similarly, in Makueni county, participants said that while they were invited to give their views in public meetings, their opinions were never really taken into account during the actualization stage. Once, residents advocated for the construction of roads and provision of water while the decision-makers implemented something entirely different. Moreover, information about the public meetings was not properly disseminated which saw a large group of the residents missing out on crucial communication.

There were also similar views from Kwale county where a participant said that they have never attended any public barazas not because they do not want to but because they have never heard of it being announced. They feel the Government should create channels for providing information for example notice boards in market areas or through radio stations.

5.2.7 Participation

In Olulunga, Narok county, a participant said that women are hardly listened to in public functions and this perpetuates their marginalization even further. In addition, in Isiolo, people said that the leaders usually invite their friends to public participation meetings with pre-planned agenda to rubber stamp their plans. As a result, people’s views do not matter; the leaders end up making the decisions.

Furthermore, in Kibra participants that were mostly from the small Nubian community said that they are not invited to public participation meetings and that when invited, their voice is not taken seriously. They attributed the lack of taking them seriously to the fact that they come from a small ethnic community.

5.2.8 Access to and involvement in the national government projects

Participants in Isiolo county had many complaints about access and involvement in national government projects. In Kina, they claimed that the public schools there did not receive the laptops that the government was giving to standard one pupils. They also claimed that the LAPSET pipeline was manly being constructed by people from outside the county despite passing through Kina area.

Other engagements of the people with the national government and in which they have claims, includes the observation that the leaders from Isiolo county that had lost in the last General elections had not been given other state jobs unlike the

those from other counties such as Meru. They said that Isiolo county generally has relatively fewer people employed by the national government compared to people from other counties. Other complaints are that they have not been compensated for the LAPSSET acquiring of land and yet people in several other places along the corridor had been compensated.

The participants in Isiolo, Elgeyo Marakwet (Cherangany/Sengwer) and Baringo complained that the Kenya Defence Forces (KDF) recruitment is unfair. The Cherangany/Sengwer said that they were overlooked in the process. The Ilchamus of Baringo county also complained that they were not getting enough slots.

Other claims against the national government included complaints that the people in Isiolo that fought for the government of Kenya during the Shifta war have not been compensated. Also, claims that the national government has been unable to solve the Isiolo-Meru county disputes, Turkana-Pokot counties borders disputes among others. All these claims make the people in the said counties perceive themselves as marginalized, and they attribute the marginalization to the ethnic groups that they belong to. They believe that the same government may react more swiftly if it had been a different ethnic community involved in the insecurity.

5.2.9 Gender-based discrimination

The gender angle is also cited as a basis for marginalization. It can be expected that the discrimination can be more if it is directed at a woman or women and that they are from a marginalized community. In Isiolo county, it was reported that women are sometimes considered immature and thus that their views are less important. In Kina, the participants said that the environment where the women are brought up in makes the situation worse as the schools do not do enough to build their confidence.

In Muhuru Bay, Migori county, the participants said that the patriarchal nature of the Luo society had further marginalized women. They said that the National Assembly should pass the Gender Bill so that women can be politically more represented. In Olulunga -Narok county, a participant said that women are hardly listened to in public functions and this perpetuates their marginalization even further.

5.2.10 Recognition as full citizens

Recognition is a process through which the State accepts all its plurality and takes steps to ensure that they benefit from the state processes like every other citizen. In Laikipia, pastoralists said that they are often seen as backward, uncivilized, and less deserving of rights. The participants said that part of the reason that there are very many fatalities from the police shooting of the pastoralists on the pretext that they are attacking settler farms is that they do not consider them human enough.



They said that many people that practice pastoralism have been shot dead but not reported.

A member of the Pemba community in Shimoni, Kwale county, for example, said that acquiring national identification cards from the Government is difficult. He added that the Pemba community has never been recognized by the Government and their children also find it hard to acquire birth certificates. The Ogiek in Bungoma and Nakuru also demanded recognition by the State, among what they called the 44 ethnic communities in Kenya, and also in getting first priority in Government positions and jobs so that they can empower themselves.

The Nubians found in many parts of Kenya also demanded recognition. They said that it is because they have not been recognized that they still have to go through a long and tiresome process to get an identity card, representation, among other opportunities. In Busia Town, a participant from the Nubian Community noted that Nubians lack recognition and representation. He added that Nubians go through a long and tedious process to get the national Identity Card. The Nubians in Nairobi also felt that they were marginalized in the acquisition of Identity Cards. They claimed that they had to go through a difficult process for them to get the document. Consequently, they end up missing out on vital services such as voting and access to public services.

In Bunyala, Busia county, for example, a Ugandan living in Kenya stated that attaining a Kenyan national identity card (I.D) was difficult. That she had tried for years without success. A Muslim participant said he faced difficulties in getting the ID due to discrimination on the basis of religion. He said being Muslim is directly linked to terrorism. They said that Muslim families are forced to give their children names of local communities such as Luhya and Luo in order to enable them get IDs without too much vetting. In Butula, participants shared that the process of I.D registration is quite tedious due to the mlango section of the form whereby residents are required to trace their origin beyond clan. In Malaba, a Somali- Muslim participant explained that when it comes to registration of IDs, the process is very long, discriminatory and tedious. Some are even asked to bring title deeds to prove that they are from the area.

The process of getting IDs and passports is similar in Isiolo town. They said that they are required to undergo lengthy interviews which is not done to other Kenyans. Others said that the lack of schools, roads and water in Isiolo was a clear indicator that they are marginalized. The difficult in getting IDs is not just about a long vetting process for some people but also the distance that others cover to apply for the document.

In Cheptais for instance, the process of applying for an identification card and birth certificate is not easy, one has to go to Kapsokwony to access those services which



is a very long distance with the readily available mode of transport being a motorbike. Another form of recognition was stressed by the Sengwer, who want to be recognized as Cherangany, not Sengwer. They believe that such a recognition would enable them to reclaim or get compensation for the land that was taken from them at the Cherangany Hills then given to people from other ethnic communities who subsequently named it.

The availability or lack of title deeds normally given by the national government was cited as a major issue. A participant in Kina said that they did not have title deeds over their parcels of land. In Isiolo Town, people said that the people from other counties that reside in the county had title deeds while the locals did not have thus citing marginalization of the locals in addition to deprivation of opportunities that come with possession of title deeds. The title deeds problem was also mentioned in Gambela and Kipini. In Kipini, the participants said that the people in the area were not provided with title deeds despite owning the land they lived in. She added that the commissions established in the constitution were not performing their duties as they should.

Other elements of recognition in the participants' claims include the demand, in Gambela, Isiolo, for Administrators such as Chief and Assistant Chiefs that are from among them, not from outside their area.

5.2.11 Too much expectation on leaders from smaller ethnic communities

Other observations from the study include that the people from smaller ethnic communities that may end up getting leadership positions in areas where their community is in minority are generally expected to do more in relation to delivering their mandate than is the case for persons with similar positions but from the dominant ethnic communities. This was the case in Bungoma where the Chief that is from the small Bungomek ethnic community is expected to be available at every call as was explained in one of the sessions in Bungoma Town. The same was said about the aspirants from smaller ethnic communities that expect to get votes from people from the dominant ethnic community. An aspirant in Bungoma Town for an MCA position explained how he had to do more effort in the campaign than other aspirants from the dominant community. In the end, he did not win.

Then, in the county assemblies, for example, the representatives from the smaller ethnic communities will usually be expected to deliver more than the MCAs from the dominant communities since some of their views will be less popular.

In Ngaremarara, for example, the area MCA in 2013 was from the Turkana community. In what would show how leaders from small communities are usually expected to do more, the participants, from the Turkana community, said that the MCA



asked them to let him develop other areas in his first term then he would focus on Ngaremara after he secures re-election- the idea being to first appease the people that are not from his ethnic community so that they can vote for him a second time. He unfortunately lost in his re-election bid in 2017.

5.2.12 Historical injustices

An elderly man stated that Garissa County experienced historical injustices referring to the Wagalla massacre (1984) where there was a mass execution of Kenyan Somalis by security forces. He stated that their attempt to get justice has been crippled by the Indemnity Act which bars residents from that region from testifying against the security officers before the Truth, Justice and Reconciliation Commission (TJRC).

In Msambweni, the Makonde community participants said that they are being denied basic services, suffer historical injustices and lack representation. They believe lack of education has over the years placed them at a disadvantaged position. In addition, they claim that they were at the risk of being evicted from the land that they currently live on. Ramisi Sugar Company claims that the land is theirs. The Ogiek community in Nakuru county said that they do not have enough representation in the political space which leads to poor development in terms of road networks. This extends to jobs in the county Government as they have historically been marginalized.

The Cherangany Community voiced concerns over historical injustices as they believe that they were forcefully evicted from Cherangany Hills which is in Trans Nzoia County and they have not been compensated to date. They said that they have explored different options to find a viable solution to the issue without success and their reports had been changed from the identity of Cherangany to Sengwer to deny them ownership claims to their lands in Cherangany hills. One of the Community members present mentioned that there is a young generation which has been impersonating them and using the Cherangany tribe name for personal benefit. The Community members also claimed that their ancestral land that is in Kapterik was sold to other tribes and subsequently named after those tribes leaving the Cherangany community without land.

5.2.13 Other potential claims observed by the research team

1. Difficulties in accessing national identity cards which have ended up affecting even their children even though their children are born in Kenya. The problem creates a vicious cycle: Bunyala, Elgeyo Marakwet, Lamu, Isiolo
2. The inter-county boundary disputes require urgent and sustainable solution. The suffering experienced by communities living in those areas



seems dire. The areas include the Isiolo-Meru counties bioundaries; The Turkana-Pokot county boundaries; and the intra-county boundary pitting different ethnic communities

3. The issue with some communities feeling that they would more at home in another county if boundaries were shifted was also experienced. An example is among the Sabout of Bungoma county that prefer being part of Trans Nzoia county on account that they are more closely related to Trans Nzoia County and some people in the disputed areas in Isiolo and Meru counties.
4. The issue of land title deeds was also prominent in many parts where the study took place. The coastal and North Eastern counties are particularly the most affected. This includes the Makonde whose current land is claimed by Ramisi Sugar factory
5. In addition, on the issues of title deeds, many people, especially in coastal counties, Kwale included, complained about the non-locals getting title deeds while the locals don't and thus feel discriminated against.
6. There was also a great sense of dissatisfaction by communities neighbouring game reserves regarding the revenue accruing from the facilities. They mostly felt that they were not getting a fair deal. This was the case in Narok county in relation to the Maasai Mara Game Reserve and the Lake Bogoria Game Reserve
7. People in most areas of study also said that the 70% - 30% rule for job opportunities is unfair because some of the intra-county minorities have their counties elsewhere – referring to people from ethnic communities that form majority ethnic community in other counties
8. In Garissa, people blamed the Devonshire white paper for the rule about keeping 3 miles from the river which they said applies only to the Garissa side and not the Tana River county side of the Tana River
9. In Garissa people complained that the Indemnity Act should be repealed as it only affects the North Eastern region
10. In Garissa, people also complained that the compulsory compensation of land only applies to trust land which is mostly only in the former North Eastern province
11. In Bura, Tana River county, the team was astonished at how dilapidated the town was (in most part). There was no piped water – people get their water mainly from the irrigation canals (the Bura Irrigation Scheme) and no drainage system.
12. In Migori county, getting to Muhuru Bay is a big challenge as the road is in bad condition. The irony is that beside the road are several gold mining points. The roads to Chepkitala in Mt Elgon, and to Kipini in Tana River county also particularly stood out due to their bad condition
13. Further, the beach in Muhuru Bay is utterly neglected. In contrast, the beach in Bunyala in Busia county was more decent



14. There was also a point that was raised in one of the counties on whether the secrecy that comes with some rites e.g. circumcision ceremonies can be partly major contributors to ethnic political mobilisation during elections

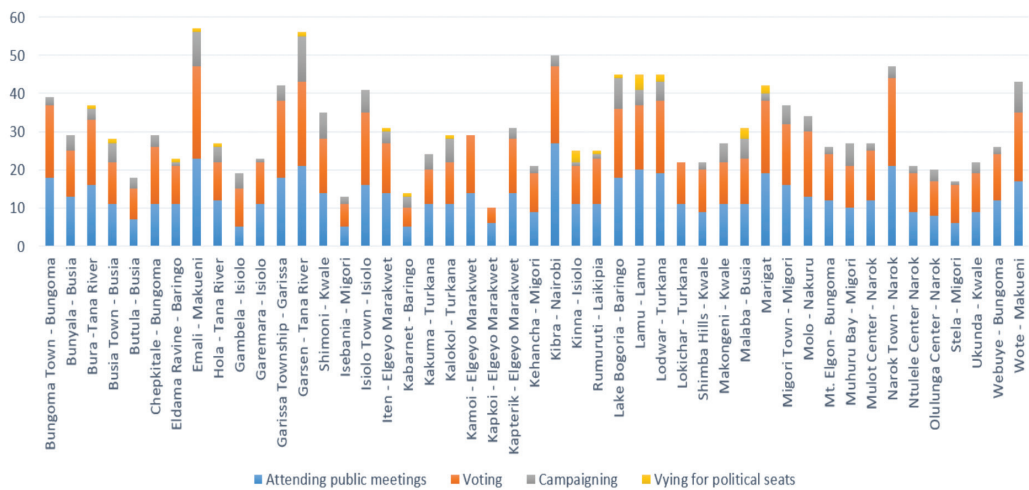
6.0 How people participate and get support

The participants were asked to state the extent that they have been involved in the political processes and the manner in which they have been involved; the extent that they have been involved; and the institutions and persons that have been useful to the people in promoting their participation.

6.1 Ways in which the people participate

The participants were asked about how they get involved in political processes. This ranged from attending meetings, voting, campaigning, and vying for political seats. The graph below shows the various forms through which people in the areas we visited participate.

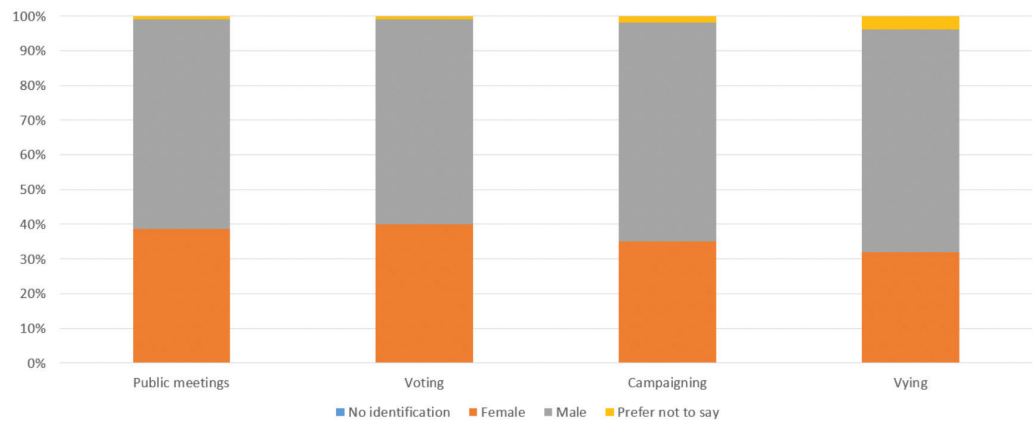
Forms of public participation



Based on the findings, most people participate through attending meetings and through voting. A few through campaigning and vying for political seats.



Forms of public participation

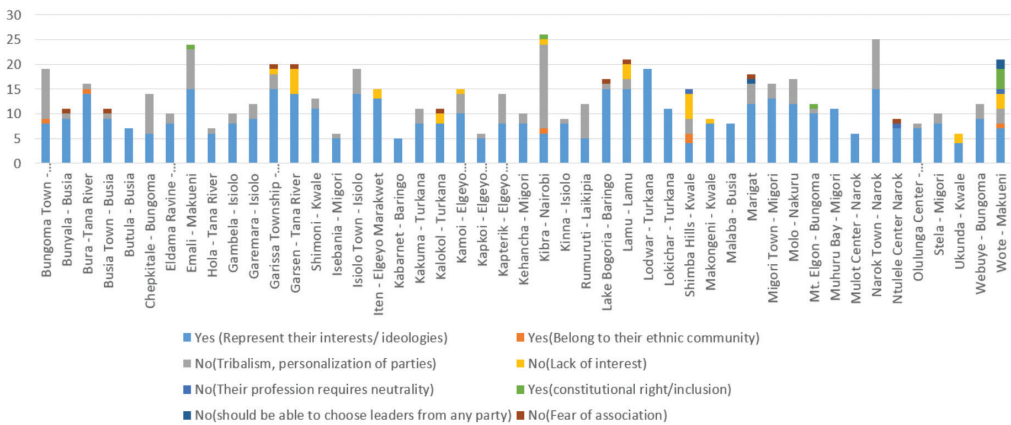


In terms of gender and political participation, the study showed that more men than women attend public meetings, vote, campaign and vie for political seats. However, relatively more women vote than attend public meetings. Further, fewer women participate in political campaigns and vie for political seats than attend political meetings and vote.

6.2 How people engage with political parties

Participants were also asked to state how they engage with political parties. This is because political parties are a major platform through which people can participate in a democracy. The graph below shows the findings:

Engagement with Political Parties



Most people said that they are affiliated to a political party in various ways. All participants, for example, indicated that their party affiliation represents their interests /ideologies.

In terms of specific areas, majority of the people said that they are affiliated to a political party because they feel the parties meet their interests. The areas are: Bunyala, Bura, Busia Town, Butula, Eldama Ravine, Emali, Hola, Gambela, Ngare-mara, Garrissa, Shimoni, Isebania, Isiolo Town, Iten, and Kakuma. In terms of people that said that they are not affiliated to a political party, over 50% in Bungoma Town, Chepkitala, Kibra and Laikipia said that the reason that was before that parties were highly tribal and individualized.

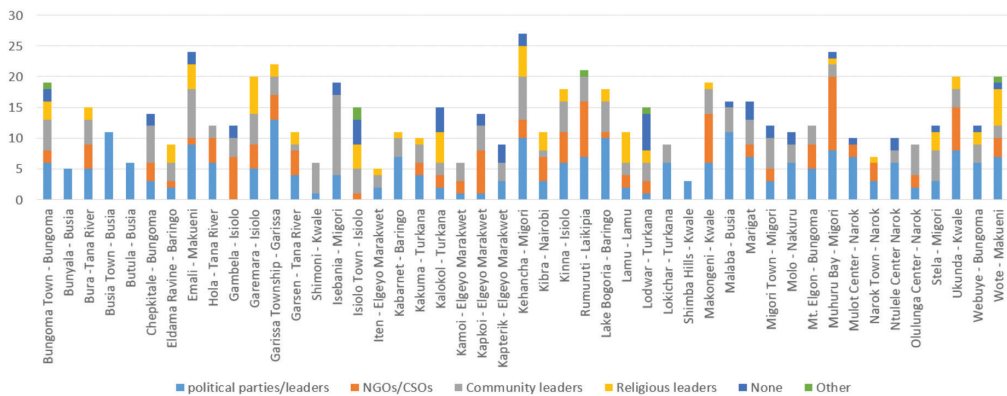
Further, other said that they are not affiliated because of fear of being associated to a political party. The areas are: Ntulele, Marigat, Lamu, Lake Bogoria, and Kalokol.

Furthermore, others said that they are not affiliated to a political because they lack interest in political parties. The affected areas are: Iten, Kalokol, Kamoi, Lamu, Ukunda, Garsen, and Makongeni

6.3. Institutions and persons that have been useful to peoples’ participation

Participants were asked to cite persons or institutions that have been useful to enhancing their participation. The graph below contains information on how they responded to the question. Their response included who has supported them and how. The options given to them included political parties, NGOs and CBOs, religious leaders, elders and other community leaders, chiefs and assistant chiefs. The findings are as shown in the graph below:

Institutions that advocate for public participation



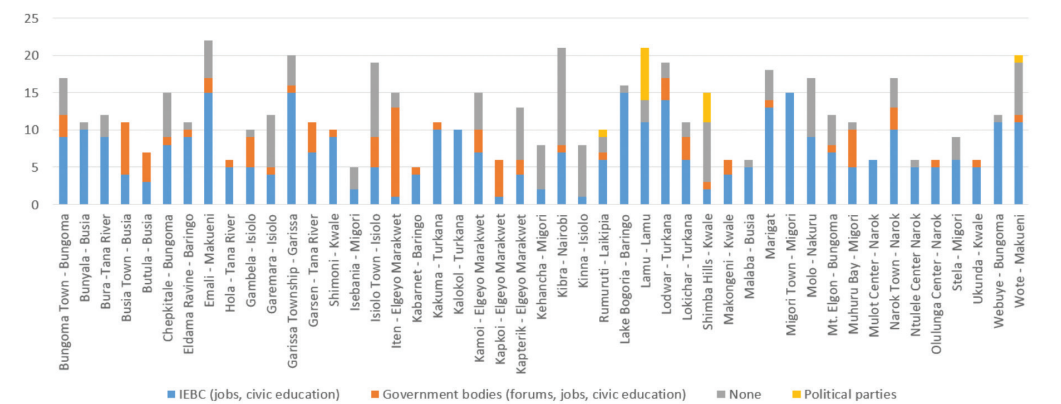
Based on the findings, in most of the areas studied, people rely on community leaders to help them to participate, followed by NGOs/CSOs and religious leaders. The places where most people said that community leaders had been useful to enhancing their participation are: Chepkitale, Isiolo Town, Kabarnet, Kakuma, Kalokol, Kehancha, Lodwar, Makongeni, Migori Town, Mulot, Muhuru Bay, Stella, Webuye.

The people in Hola, Ngaremara, Shimoni, Kapterik, Laikipia, Mulot, Narok, Lamu, Town and Ntulele said that the institution that has been of greatest support to them are political parties.

Further, people in Hola, Ngaremara, Mulot, Shimoni, Narok town, Ntulele, Olulunga and Wote said that the NGOs/CBOs played the greatest role in enhancing their participation.

Lastly, people in Lokichar, Kamoi, Garissa, Eldama Ravine, Kibra, Kapterik, Laikipia, Lamu, Marigat and Webuye said that Religious Leaders played the greatest role in enhancing their participation.

Efforts by public bodies to improve public participation



In terms of the role that some public bodies, especially, have played in enhancing their political participation, the findings were as follows:

In general, most identified themselves with the IIBC. However, people in Ngaremara, Isebania, Isiolo Town, Kapterik, Kehancha, Kibra, Kinna and Marishoni said that public institutions had not been of support to them.

Only participants in Naromoru in Laikipia, Lamu, Shimba Hills and Wote Town felt that political parties were working towards increasing public participation.

7.0 Approaches to a more just and inclusive society

7.1 Based on recommendations from the participants.

One of the objectives of this study was to seek peoples' views on what they think can be done to address ethnic based exclusion that they experience and how they can get support to help achieve that. The participants gave several suggestions that are explained here:

The peoples' suggestions were mostly in relation to actions to empower the people to exercise their rights and to ensure accountability of institutions.

From the discussions, it was clear that the rights and voice of the marginalised and minority communities is well captured in the Constitution. Therefore, for the groups to get justice, it is important that the existing laws are implemented. This also involves implementation of various reports like the TJRC report, Ndun'gu land report.

The duty bearers have a responsibility to ensure that people participate meaningfully. It is therefore, as per the suggestions, important for capacity building among leaders for them to facilitate. This include establishing feedback mechanisms, use convenient channels of disseminating information to reach the public and in time; involving chiefs, village elders and religious elders in organizing forums- they are crucial in organizing people.

Political parties are key as far as democracy is concerned. It is therefore important for these institutions to be strengthened so that they could be active, not only during the electoral period but throughout. They should also be transparent in the nomination process- giving equal chance to all the party members. The issue of campaign financing should also be checked so that others are not discriminated against. Political parties should also be structured to represent Kenya, not just a region or ethnic group.

Participants were very concerned about representation, many feeling that it is crucial for ensuring that their needs are addressed. They suggested creation of special electoral units for the indigenous people, and sensitizing women and youth to participate in political processes. They also called for a clear definition of inter and intra-county boundaries to ensure effective representation. Further, they proposed integration of communities that have not previously been integrated into Kenyan, political, social and economic life.

Generally, it was evident of the need for fair distribution of resources, equal opportunities and service delivery. Specific areas raised include issuance of IDs, provide services more so water, education, healthcare, security and that everyone should stand an equal chance to be considered for the services. They also suggested the need to distribute resources to the people fairly so that no one is left behind.



7.2 Based on claim patterns from the study

The following suggestions (that in no way detract from the validity of the suggestions from people themselves) are based upon the concerns that have arisen from the research, building on both the Constitution and existing literature. They do not include proposals for amending the Constitution. Other research, and reflection, by Katiba Institute suggest that most problems facing Kenyans result not from flaws in the Constitution, but from failures to implement fully the Constitution we have. This is not to say that the Constitution is perfect.

It should not escape the notice of marginalised communities that current debates about possible amendments to the Constitution do not necessarily bode well for them. It is hard to detect in the major proposals that are attracting public and media attention any that focus on the needs of such communities. On the contrary, proposals for “inclusion” seem to concentrate on ensuring that the big communities get included in government. A sextet of top appointments – President and Deputy, Prime Minister and two deputies – is not designed for the Ogiek or the Samburu, perhaps not even for Somali.

Indeed, pressures for “relieving the burden” by reducing the number of elected posts is equally not going to benefit minorities. The Punguza Mizigo proposal to do away with “nominated seats” in the Senate and county assemblies (and almost all in the National Assembly) would have done away with the best chance that most small communities have of any voice in elected bodies.

It is true that a system of proportional representation would enhance the chances of small communities, and particularly communities that are currently split between constituencies and wards, of having their representatives elected. Although ethnic parties are prohibited in Kenya (though in reality common), evidence is that proportional representation systems offer an incentive to parties to ensure that the candidates appeal to as many section of the voting community as possible. (we can see this in South Africa).

But with the system we have, it is suggested that parties and people need to understand better the design of the Constitution. Civic education is indeed needed, so that the role of so-called “nominated members” is understood. Voters need to know who has been nominated by a party before they vote for individual MPs or MCAs – because that vote influences the number of nominated positions a party will get.



Parties must accept the role of those nominated members, and ensure that they do represent the people they are there for. Many counties have list members without geographical constituencies.

Minority groups need to strategize and to work together. In the near future they should focus on the following:

- The constituency and ward boundary revisions due to be conducted shortly – they should seek expert advice on what will maximise the chances of marginalized and minority groups being able to exert influence on elections (or even elect their own)
- They should take parties seriously, become members and push them to comply with their constitutional obligations to be democratic, respect everyone's right to be represented.
- They should work together and vote tactically: one minority member is better than none –none because each group voted for “their” person.

The law on the Political Party Funds should be further changed to make the fund available for the purposes for which it was intended – not just for a few big parties but to make it possible for new parties to enter the political fray, perhaps with manifestos beneficial to minorities.

Public bodies, which must have political participation in their decision making, must take a more professional and effective approach to this. There is plenty of guidance in how to make this effective for all sorts of groups in society. At present it is far too tokenistic, and manipulable by the already powerful.

Minority and marginalized groups need to learn how the political system works, and how to work with their elected representatives, rather than dismissing them as “not representing us”.

Minority and marginalized communities need to learn to make use of access to information – a powerful tool for accountability. This is true for all, but the more so for those who are not well served by the political system. The less justice a group receives the more it stands to gain from learning how much money ought to be spent on them, how much has been spent and what has happened to that not spent, for example.



8.0 Conclusion

In conclusion, this study establishes peoples' ethnic marginalisation claims and proposed strategies on how to enhance their participation in political and other governance processes. The proposal includes starting with the implementation of various provisions that seek to address marginalisation in the Constitution. This includes Article 27 of the Constitution on equality and non-discrimination.

The topic of participation in political and other governance processes remains important as it provides effective approaches to programmes and activities aimed at enhancing participation of the said groups. To date, marginalisation remains an issue of interest and attention as far as promoting a just society is concerned even after the adoption of the 2010 Constitution which sought to address such issues.

The findings of this study indicate that even with such strides (adoption of 2010 Constitution), there are ethnic communities and minority groups that feel marginalized in aspects such as representation, service delivery and recognition which need further attention in terms of implementing the relevant constitutional provisions.



Annex

Number	Ethnic community	Female	Male	Prefer not to say	Total
1.	No identity	11	21	0	32
2.	Abatura	0	3	0	3
3.	Aror	1	0	0	1
4.	Awer	0	1	0	1
5.	Bajuni	5	12	0	17
6.	Bongomek	2	1	0	3
7.	Boran	1	0	0	1
8.	Borana	12	13	1	26
9.	Buganda	0	2	0	2
10.	Bukusu	5	8	0	13
11.	Cherangany	4	10	1	15
12.	Chonyi	1	1	0	2
13.	Digo	4	9	0	13
14.	Dorobo	0	1	0	1
15.	Duruma	3	2	0	5
16.	Embu	1	0	0	1
17.	Endorois	7	11	0	18
18.	Giriamia	1	2	0	3
19.	Ilchamus	8	7	0	15
20.	Iteso	0	1	0	1
21.	Kalenjin	3	10	0	13
22.	Kamba	23	32	0	55
23.	Keiyo	3	3	0	6
24.	Kikuyu	7	12	1	20
25.	Kikuyu/Kamba	0	1	0	1
26.	Kipsigis	2	6	0	8
27.	Kisii	5	9	0	14
28.	Kuria	7	6	0	13
29.	Luhya	21	15	0	36
30.	Luo	11	17	0	28
31.	Maasai	11	14	0	25



Number	Ethnic community	Female	Male	Prefer not to say	Total
32.	Makonde	5	4	0	9
33.	Malakote	2	2	0	4
34.	Marachi	2	0	0	2
35.	Meru	4	5	0	9
36.	Mijikenda	1	0	0	1
37.	Mkifundi	3	0	0	3
38.	Muilwana	1	0	0	1
39.	Munyala	0	1	0	1
40.	Munyoyaya	2	1	0	3
41.	Mwambao	1	0	0	1
42.	Nubian	14	15	0	29
43.	Ogiek	3	29	0	32
44.	Orma	1	5	0	6
45.	Pemba	2	4	0	6
46.	Pokomo	7	4	0	11
47.	Pokot	1	0	0	1
48.	Sabaot	3	11	1	15
49.	Samburu	1	0	0	1
50.	Sanye	0	1	0	1
51.	Somali	2	18	1	21
52.	Suba	4	5	0	9
53.	Swahili	0	2	0	2
54.	Tachoni	0	5	0	5
55.	Taita	2	0	0	2
56.	Teso	3	2	0	5
57.	Tiriki	0	1	0	1
58.	Tugen	4	8	0	12
59.	Turkana	32	42	2	76
60.	Waliwana	0	1	0	1
61.	Watta	1	2	0	3
	Total	263	395	7	665



Areas visited during the field study

No.	County	Study Areas
1	Isiolo	Kina, Isiolo Town, Ngaremara, Gambela
2	Turkana	Lodwar Town, Kakuma, Lokichar, Kalokol
3	Migori	Migori Town, Stella, Isebania, Muhuru Bay, Nyatike, Kehancha
4	Busia	Bunyala, Malaba, Busia Town, Butula
5	Narok	Olulunga Center, Ntulele Centre, Mulot Center, Narok Town
6	Elgeyo Marakwet	Kapterik, Kamoi, Iten, Kapkoi
7	Baringo	Marigat, Lake Bogoria, Kabarnet Town, Eldama Ravine
8	Bungoma	Chepkitale, Cheptais, Webuye Town, Bungoma Town
9	Kwale	Shimoni, Makongeni, Ukunda, Shimba Hills
10	Nakuru	Marioshioni
11	Laikipia	Rumuruti
12	Lamu	Lamu Town
13	Tana River	Bura, Hola Town, Garsen, Kipini, Madogo
14	Garissa	Garissa Town
15	Makueni	Wote, Emali Town,
16	Nairobi	Kibra



Sample questionnaire

Questionnaire

Introduction

Katiba Institute is conducting a research that investigates the participation of ethnic minorities and the marginalized communities in political and other governance processes under the Constitution of Kenya 2010. It is also designed to understand how that participation can be much enhanced. The findings of this study will be used to publish a book on ethnic minorities and marginalized communities in Kenya, their claims and available platforms for their participation in political and other governance processes. Also, there will be development of a policy brief on how to enhance their participation. Please fill out the questionnaire below. We guarantee that your identity will be kept confidential

Section 1: Bio Data

1. **Name**
2. **Contact information** (mobile number)
3. **Age**
(18-25) ☐ (26-35) ☐ (36-45) ☐ (46-60) ☐ (61 - 70) ☐
(71 and above) ☐
4. **Gender**
Female ☐ Male ☐ Prefer not to say ☐ Other ☐
5. **Marital status**
Single ☐ Married ☐ Widow/widower ☐
Divorced/separated ☐ Other ☐
6. **Education level**
Primary ☐ Secondary ☐ College/University ☐ Other ☐ None ☐
7. **Religion**
Christian ☐ Muslim ☐ Hindu, Sikh or Jain ☐ Other ☐
8. **Ethnic community** (tribe) belong or affiliated to (optional)
9. **County**..... **Constituency**
10. **Occupation**
11. **How much is your monthly expenditure?**
Under Kes.10,000 ☐ Kes.10,000-Kes.40,000 ☐
Kes.40,000-Ksh.100,000 ☐ Over Kes.100,00 ☐

Sec. 2: Understanding Marginalization

11. **Do you feel that if you contested for a political seat in your county, you stand a chance of getting elected?**
Yes ☐ No ☐
Please give reasons

12. **In your view, which of the following parameters most define marginalisation**
 Access to water ☐ Road infrastructure ☐ Access to health facilities ☐
 Access to electricity ☐ Historical injustices ☐ Other ☐

Sec. 3:
Participation in political and other governance processes

13. **Do you discuss national/political matters with other people?**
 Yes ☐ No ☐
16. **How often do you attend public meetings/barazas?**
 Once in a while ☐ Every time they are announced ☐ Never ☐
17. **Are you a registered voter?**
 Yes ☐ No ☐
18. **Do you participate in elections?**
 Yes ☐ No ☐
19. **If yes, please explain how**
 Campaigning for or against a candidate ☐ Vying for political seats ☐
 Voting ☐ Others ☐
20. **If no, why?**
 Not interested ☐ Did not have a candidate ☐
 No time to spare to go vote ☐ Vote would not make a difference ☐
 Not interested ☐ Was dangerous to vote ☐
 Other: give reasons ☐
21. **Are you affiliated to a political party?**
22. **Why?**
23. **How many times have you attended meetings from your political party?**
 Once ☐ When I am free ☐
 Always ☐ Never ☐
24. **If you have, please explain why**
25. **If never, please explain your answer**
26. **Do you feel as if the people from your ethnic community or one you are affiliated to are well represented in the political space?**
 Yes ☐ No ☐
27. **Please explain your answer**
28. **We are interested in how Kenyans can be more involved** in decisions that affect them, and even be active in political parties, and standing for election, as well as voting.
 Have any bodies/organisations tried to advise you or help you and others in your community to get more involved?.....
29. **Have you had experience of anyone trying to encourage you or other people** in your community to vote or to get involved in other ways in political matters or public decisions?
 Yes ☐ No ☐
30. **If Yes – can you explain who tried?**
31. **Can you explain how they have tried?**
31. How could other people make it easier for you, and encourage you, and people in your community, to get involved more?



32 **In case you have found it hard to think of anyone trying to encourage you** to be more involved in political matters, here is a list of the sort of people who might have done this.

Please put a tick beside anyone who has tried to do this:

- ☐ i. Political parties
- ☐ ii. NGOs or CBOs
- ☐ iii. Religious leaders (Pastor, Imam etc)
- ☐ iv. Elders and other community leaders
- ☐ v. Chief or assistant chief

33 **If you have ticked one or more in this list, can you say how they tried to encourage or persuade you?**

34 **Did you agree and do what they suggested?**

Yes ☐ No ☐

35 **If Yes – how**

36 **If no – why?**

37 **Do you feel that political parties make any effort to encourage you, or people from your community, or make it easier for you to participate in politics?**

Yes ☐ No ☐

38 **If Yes – can you say what they have done**

(a) to make it more likely that you will vote

(b) to make it more likely that you will stand for office?

39 **Do you feel that government bodies like the IEBC, political parties make any effort to encourage you, or people from your community, or make it easier for you to participate in politics?, if so, how?**

40 **Do you feel that government bodies make any effort to encourage you, or people from your community, or make it easier for you to participate in public consultation processes? If so, how?**

41 **What recommendations would you give to improve your political participation?**





Participation of ethnic minorities and marginalized communities in political and other governance processes: realities and approaches

This book is intended to breathe life into an idea that Kenyans would all say they recognize as a national issue: that there are many people in the country who find themselves particularly excluded from the mainstream of national life. The Constitution speaks of the marginalized.

The marginalized are not an idea – they are real people. The main part of this study is based on research that was conducted by Katiba Institute in 16 counties and in a total of 50 areas within those counties. It involved focus group discussions in each of the areas where the research took place; administering of a total of 665 questionnaires in each of the areas; and face to face interviews in some of the areas

