Institutional Change: The impact of Kenya’s new constitution on the diversity of the public service sector

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Abstract
Organizations are forced by political, social or demographic developments to react or even to act as first movers in a new and unfamiliar management field, as is the case with diversity issues. In particular, driving forces at the societal level are prime motors for the implementation of diversity management at the organizational level. Mutual dependencies at the structural level and approaches towards “doing diversity” will vary according to the context. The presented paper will discuss the interesting example of Kenya, where constitutional change has initiated diversity management in the public service sector.

Kenya is a rather special case since the country is presently in a process of transition; the structures of government and major national companies are being rebuilt after many years of colonization and civil war. In 2010 a new constitution was promulgated, while measures to improve diversity – culturally meaningful in terms of tribes, ethnicity and gender – are currently being implemented in the public service sector. Since legislation (in its strongest form as a national constitution) is understood as an institution creating the “rules of the game” (North, 1990), it can be assumed that legal prescriptions regarding diversity will force organizations to appoint individuals of different tribal or ethnic backgrounds and gender to public service positions. This can be seen as a process of institutional change in which the distribution of power is fundamentally shifting between tribes. Such a process will, of course, not take place without conflict; yet the commitment to spread power among all tribes, ethnic groups and genders is strong, resulting as it does from a lengthy civil
war and the subsequent peaceful settlement and new constitution, which seems to draw wide support.

In this paper we explore how diversity legislation in Kenya impacts public service organizations, and how human resource managers (HRMs) deal with new regulations such as the requirement to recruit staff from all tribes. In particular, we wish to pinpoint how different approaches to “doing diversity” are reflected in the loss and gain of power within the new recruitment process. Institutional theory provides a useful theoretical framework to understand and interpret how HRMs act upon this very radical change in “institutions”. “An institutional work highlights how and why actors work to interpret, translate, transpose, edit, and recombine institutions, and how those actions lead to unintended adaptations, mutations, and other institutional consequences.” (Lawrence et al. 2011: 55). While the strategy of increasing diversity in the public service sector is clearly articulated in the Kenyan constitution, the study will show whether the planned strategy is being consistently executed by HRMs or whether there are any variations and unintended consequences (Mintzberg & Waters, 1985).

The Kenyan context
Kenya is located in sub-Saharan East Africa. It has a population of 41.6 million and a gross domestic product (GDP) of 33.62 billion USD in 2011 (World Bank, 2011). Despite the considerable annual growth in GDP of 6% in 2010 and 4% in 2011, the poverty rate remains persistently high. Thus 45.9% of the population was estimated to be living below the poverty line in 2005 (World Bank, 2005). Although the purchasing power of the Kenyan people is rising year for year, it is rather low in international comparison at 1,710 USD per capita per year, and therefore Kenya is still considered a low income country (World Bank, 2011).

Education in Kenya is a scarce resource: only 7% of women and about 10% of men have some form of tertiary education, with the highest rates of education found in urban regions. Overall 85% of women and 92% of men are literate (World Bank, 2010). According to Transparency International (2012), the Kenyan public sector is still seen to be very corrupt. The corruption perception index ranks Kenya 139th out of 176 countries, with a score of only 27. As the index ranges from 0 (very corrupt) to
100 (very clean), a score of 27 places Kenya in the bottom third of countries regarding prevalence of corruption.

Politically, Kenya is a former British crown colony, only gaining independence in 1963 and becoming an independent presidential republic one year later. The colonial government regularly practiced injustices and discrimination against the black majority and the indigenous owners of the land, which finally lead to the decisive Mau Mau war for liberation.

One of the problems which the first independent government faced was the existence of deep rooted tribalism, attributed by some to the colonial powers’ discouragement of contact or intermingling between the various tribes (Akiwumi Report, 1998, Leys, 1975). Leys (1975) called this stigmatizing of ethnicity “tribalism”, pointing to the various indigenous tribes whose homelands bordered one another. The colonial government followed the strategy of “divide and rule” while also introducing capitalistic forms of business practice, both of which served to disrupt the traditional patterns of tribal life (Nyambegera, 2002). It is crucial to be aware of the historical fact that as a nation, Kenya is an artificial construct, created by the colonialists by bringing together 42 disparate tribes (or tribal nations). The diagram gives an overview of Kenya’s various constituent tribes.

Kenya’s demographic characteristics

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<td><strong>Ethnic Composition</strong></td>
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Source: Fitzgerald, 2010: 62

There are other instances of newly independent African countries trying to unify their constituent tribal components (Nyambegera, 2002). However, the fair redistribution of power amongst different tribes in a multi-ethnic context has turned out to be more difficult than one might expect, resulting in persistent social inequities and the concentration of resources and power by privileged groups. During the colonial era,
Kenya was divided into tribal reserves and districts in order to bind ethnicity to territory, and thereby facilitate the administration and domination of native peoples (Little, 1998). The definition of tribes, and consequently ethnic identities, was the first and most important step in controlling the population: “The fact that some ethnic groups were exposed to more resources that gave them power through education and wealth due to an advantaged position of having their kind in the government system might have heightened ethnic identity among people in many African countries. This, in essence, was indirect institutional discrimination as it leaves the majority of people in certain ethnic groups continually without access to society’s opportunities and rewards.” (Nyambegera, 2002: 1080). This indirect discrimination is frequently attributed to the strongly held group identity among various tribes. African countries, especially in rural areas, can be described as collectivistic cultures, in which great emphasis is placed on the group, or here, the tribe or community (Beugré, 2002). As a result, individuals are defined as belonging to certain families, clans or communities, whose values then overlap those of the individual (Nyambegera, 2002). For example in Kenya, it has been observed that managers from a certain tribe are expected to give jobs to their kin, resulting in organizations or civil services that are staffed with people from only one or two ethnic groups (Grillo, 1973; Kamoche, 1992). This means that in the 1960s and 1970s, when the public service, trade and industries became “independent” (with the establishment of an Industrial Development Bank, an Industrial and Commercial Development Corporation and the Agricultural Finance Corporation), some tribes more or less took over the civil service (Kenya, 2011). “Our politics have become largely the politics of ethnicity. Politicians find that an easy way to build support is by playing on ethnicity, by stirring up ethnic loyalties on one hand, and ethnic animosities on the other.” (Fitzgerald, 2010 cit. CIA Factbook). Thus it is easy to understand how the artificial amalgamation of various tribes, the subsequent dividing of territories and war for land, resources and power, has resulted in smoldering conflicts and intermittent civil war.

Indeed, while it was generally believed that the 2007/2008 post election violence was driven by “bungled or stolen” elections, investigations that followed pointed strongly to ethnicity rather than election fixing, with the team concluding that it was impossible to determine who had actually won the election (Kriegler Report, 2008).
The accusation of “stealing elections” was therefore used as an excuse to unleash violence on perceived perpetrators of historical injustices by supposed victims. The country’s population is thus characterized by the dichotomy of “victim versus perpetrator” as well as other forms of discrimination. While there is of course urgent need for diversity management regarding age, gender, education, physical and mental ability, sexual orientation and religious practice, the real “elephant in the room” in the Kenyan context is the issue of ethnicity.

Institutional view of diversity management

The question why and how organizations or nations deal with diversity can be fruitfully analyzed by adopting an institutionalist view of these practices. The study of diversity management, a concept which originated in the USA before travelling to Europe and now finally to Africa, clearly shows that the institutional environment, culture, governing regulations and social norms all greatly influence the form which diversity management and accompanying measures assume in a certain context. It comes as no surprise that diversity and attitudes to equality vary from country to country and from context to context (Klarsfeld, 2010; Vassilopoulou et al., 2013).

As North (1990) describes, institutions are rules that humans within a society observe in their interactions. These can be both informal, such as agreed codes of behavior, and formal, such as legal prescriptions (North, 1990: 4). Institutions are largely shaped by their own individual histories, yet they evolve over time, changing, reproducing and self-reinforcing. “The changes at the margin may be so slow and glacial in character that we have to stand back as historians to perceive them, although we live in a world where rapidity of institutional change is very apparent.” (North, 1990: 6) Because they display a high degree of resilience, Scott (2001: 48) defines institutions as basically stable. However, they are always subject to change, both incrementally and discontinuously.

Institutions, whether formal or informal, create a framework that influences not only human interactions but also organizations and their appearance. Within this framework recruitment practices can be established, for instance, via the positive discrimination of historically disadvantaged groups, or via informal norms and values that promote certain groups over others. On the one hand, equality within
organizations can be an established norm, based on the idea that individuals and groups should be treated equally regardless of gender or ethnicity. On the other hand, it is possible to focus simply on finding the best person for the job without considering any underlying structural inequalities or discriminations. Each of these approaches will lead to different recruitment and human resource practices, and thus the internal constitution and appearance of an organization.

Due to external change or pressure, organizations may be forced to revise certain practices and norms, as in the wake of a new law or constitution. In Europe, for example, the debate on gender quotas for company boards has forced public limited companies to react. Similarly, quotas for certain tribes or ethnic groups would no doubt encourage organizations to revise their historic practices.

However, a new constitution or law does not necessarily lead to an immediate shift in the practice of individuals regarding their interaction with others. Any law or constitution designed as a formal institutional framework to guide people and their behavior will only be successful if the new stipulations are viewed and accepted by individuals as legitimate. Only then will they follow the rules:

“Institutionalization refers to a process through which components of formal structure become widely accepted, as both appropriate and necessary, and serve to legitimate organizations.” (Tolbert and Zucker 1983: 25) However, change in formal structures can occur, as in the case of gender quotas in Europe or the new constitution in Kenya, for political and historical reasons, and not by coercion in order to serve existing organizations. Yet by questioning or subverting the pre-dominant rules, institutional change may still lead to instances of conflict. A certain critical mass of popular support is required to anchor the changes. Existing power inequity and discrimination of certain groups can also lead to changes in formal institutions, prescribing a revised diversity-sensitive formal structure. However, it is necessary that these changes are legitimized by society; a more positively mandated process would almost certainly lead to a different set of changes being adopted within the concerned organizations (ibid). Therefore it can be stated that when change to formal structures lacks legitimacy, the result is conflict and a lack of consensus within organizations (Cyert and March 1963, Pfeffer 1981).
“Legitimation ‘explains’ the institutional order by ascribing cognitive validity to its objectivated meanings. Legitimation justifies the institutional order by giving a normative dignity to its practical imperatives.” (Berger and Luckmann 1967: 92-93)

While legally-mandated changes to formal structures are usually rapidly adopted by the dependent organizations, resistance can occur if there is a lack of consensus on values or if powerful interest groups feel threatened (Tolbert and Zucker 1983). This points to the importance of agency within the process of institutionalization, to “institutional work” that “describes the practices of individual and collective actors aimed at creating, maintaining, and disrupting institutions.” (Lawrence et al. 2011: 52).

Scott outlines three pillars that together provide a foundation for institutions, which he calls regulative, normative and cultural-cognitive pillars (Scott 2001: 52). The regulative pillar describes the rules, laws or indeed constitution that forces individuals to act in certain ways. The notion of legitimacy is vital for regulative pillars, as force, fear and threat based on legal sanction can hardly provide a solid basis for the establishment of institutions. In terms of diversity, certain legal prescriptions build the framework for accepted corporate behavior. However, those prescriptions vary from country to country, and even more strikingly between continents. In the United States race is a primary topic within corporate diversity management, alongside the issue of gender. There the concept of diversity management has evolved from a regulative pattern of affirmative action (AA) and equal employment opportunities (EEO) to an “inclusive, forward looking, business oriented” concept (Litvin, 2000: 330-331). This shift comprises a normative change from a focus on discrimination, power inequalities, hierarchies and justice to a business perspective in order to improve productivity and profitability (Cox, 1993, Kosek & Lobel, 1996, Holvino & Kamp, 2009, Prasad & Mills, 1997). Regarding the European Union the situation is even more complex, as diverse societies and cultures are located within the EU’s borders. Nevertheless, there is a common legal basis for diversity issues: Article 13 of the Treaty of Amsterdam combats discrimination on the grounds of sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation. Even more wider-reaching EU directives have forced national legislations to interdict discriminatory practices. Although they share similar regulative pillars regarding antidiscrimination, European countries are culturally diverse, and thus tackle the issue of diversity rather
differently. Scandinavian countries, for example, strongly focus on equality as sameness as a driver of welfare (Boxenbaum, 2006; Kamp & Hagedorn-Rasmussen, 2004; Lundgren, 2004). Most European countries have a good track record in implementing gender equality measures (Murgia & Poggio, 2010), so that now other diversity dimensions are slowly coming to the fore (Bendel et al., 2010; Bruchhagen et al., 2010). While much of the scholarly debate in Europe looks at the social and antidiscriminatory role of diversity management, on a more practical level the economic orientation is forging ahead (Gebert, 2004; Köllen et al., 2007; Weißbach et al. 2007).

In Africa ethnicity and tribes seem to be the main factors within the regulative system (Fitzgerald, 2010). Justice and equal distribution of resources, land and power is a major issue in regulative pillars concerning diversity. Due to Kenya’s long and troubled history as a crown colony, including the fight for independence and violent conflict to gain equal opportunities, issues of diversity are fundamentally linked with antidiscrimination and equal rights (Hanappi-Egger & Ukur, 2011).

The normative pillar stems from social obligations that create binding expectations and the notion of appropriate behavior. These include values and norms that provide humans with the idea of what is desirable, legitimate and worthwhile. “The regulative and normative pillars can be mutually reinforcing” (Scott 2001: 53). In addition, the normative pillar cannot be considered separately from the cultural-cognitive pillar. Normative social elements influence the treatment of diversity, such as whether it is a desirable feature within organizations, or whether a rather more homogenous workforce is preferred. Thus the various aims and the strategies to achieve diversity will vary depending on the specific context.

The third pillar, dealing with cultural-cognitive factors, encompasses common beliefs and taken-for-granted understandings that are shaped by the external cultural framework. Within such cultural frameworks, stereotypes and power differences are widely and unambiguously accepted as the normal state of society. Of course, power inequalities can be either legitimized or undermined by social value systems favoring, for example, individualism over collectivism (Hofstede, 2010). Thus while some countries are more individualistic, relying on concepts of meritocracy such as in the USA (Holvino & Kamp, 2009), others are based on collectivistic approaches, such as in Kenya where the individual identifies him/herself with their tribe, community, clan or family (Nyambegera, 2002). Consequently, when individualism is a cognitive
cultural pillar, we find strong belief in the idea of “survival of the fittest”, external intervention to promote disadvantage groups is avoided, while instead the “invisible hand of the market” is believed to regularize the playing field and ensure fair play. This approach, favoring business efficiency and strict meritocracy can come into direct conflict with anti-discriminatory aspects of diversity. On the other hand, collectivism and a strong identification with the group, whether tribe or family, can eventually lead to pernicious forms of groupthink, stereotyping and in the end discrimination. Issues of inequality among these groups are analyzed from the perspective not of performance but rather of equal distribution.

In the following section the mutual dependencies of these three pillars will be explored in the case of Kenya.

**Kenya’s new constitution**

As outlined above, it is clear that due to Kenya’s complex history the government needed to resolve various conflicts, not least those associated with ethnical diversity. Inequalities among ethnic groups were (and in some cases still are) omnipresent. These can be understood in large part as the legacy of the colonial period, during which time minority hunters and gatherers were marginalized. The constitution for independence that was negotiated in the Lancaster conference clearly highlighted the importance of safeguarding the rights of minorities; yet other subsequent constitutions, such as that of 1962, mentioned group rights only in general without referring specifically to indigenous peoples. Article 82 of the same constitution, however, explicitly mandated against discrimination. Despite this provision, one of Kenya’s minority tribes, the Ogiek, have been discriminated against in terms of restricted land rights, the right to hunt and gather, the right of representation, various social amenities and equal citizenship (Kimayo, 2004). Also regarding representation in the civil service, it was observed that some departments in Kenyan organizations are exclusively staffed by one particular ethnic group, and that frequently individuals can only secure a position if they are supported by another person who could either bring their case to the relevant authority or make the decision him or herself (Grillo, 1973; Nyambegera, 2002). In order to address these problems of institutionalized ethnic discrimination, Kenya enacted a new constitution in 2010 to replace the
independence constitution of 1963. The new constitution promoted equity and diversity, including cultural diversity. “The Constitution reflects a widely-held belief that guarantees of equality, equitable distribution of resources and balance of power represent the best way to reduce the influence of ethnicity on political decision-making and thereby secure a peaceful future for the country.” (Fitzgerald, 2010: 56f) On the one hand, the new constitution provides a legal framework for combating discrimination, but beyond that also it also lays the groundwork for the positive discrimination of marginalized groups. Deriving from the constitution, a “National Cohesion and Integration Policy” was enunciated to deal with difficulties in enhancing national cohesion and integration. “The Constitution obliges the state to provide for the representation of minorities and marginalized groups in governance, and to provide access to employment and special opportunities in educational and economic fields. Effective implementation of constitutional provisions is expected to diffuse the grievances of marginalized groups.” (Kenya, 2011)

Following these prescriptions, a new law was introduced requiring that one third of elective bodies should be made up of marginalized groups. Article 81(b) foresees the formulation of an act to promote the representation of women, persons with disabilities, ethnic and other marginalized groups in the Parliament. Also the Kenyan public sector is undergoing a drastic transformation to present itself as an equal and fair employer in line with the constitutional requirements. Similarly the human resource management of the public service aims to address and eliminate imbalances (Tshikwatamwa, 2003). The Kenya Public Service Commission (PSC) is the body charged with hiring and promoting all civil servants or public officers. The 2010 Constitution defines “public office” as a position in the national government, county government or the public service. The PSC is therefore in charge of all public officers apart from teachers, uniformed forces and elected officials, and carries out its mandate in collaboration with the human resource managers in each of the 42 government ministries. According to the audit report of the civil service by the National Cohesion and Integration Commission, over 50% of Kenya’s ethnic group are only marginally represented; only 20 out of over listed 40 Kenyan communities are statistically visible, with some 23 having less than 1% presence in the civil service. This makes clear how some communities have obtained a privileged position whilst others have been excluded from development.
The Public Service Commission, in collaboration with HRMs, have come up with new guidelines and approaches to realizing the one third rule for women and ethnic groups, within which all the counties are given a set of seats of their own. Recruitment practices into top positions in the civil service now follow the marginalization and gender rule, so that the situation is improving step by step.

As already stated, the HRMs of all 42 ministries are key players in exercising positive action by recruiting individuals from historically disadvantaged groups, specifically women and certain tribes, into the public service sector.

In order to better understand how these key players have reacted to the new constitution, which can be understood as an institutionalized equality principle, a focus group discussion was conducted in Nairobi in September 2012.

Human resource management in the civil service

From the fourteen invited human resource managers, nine eventually participated, representing a variety of civil service institutions such as the ministries for trade, industrialization, gender and children’s services, justice and national cohesion, foreign affairs, finance and education.

The focus group discussion, which lasted 2½ hours, was structured around the following questions: What do we understand by “diversity” (association cloud)? What has changed in the recruitment process under the new constitution? What are the main challenges with respect to diversity for me as a human resource manager? Finally, there was a brief discussion on why diversity is important for Kenya.

The contributions of the HRMs were written on flip chart, while protocols were also kept in written and photographic form. The focus group discussion provided some interesting findings on an under-researched topic, namely how diversity is dealt with in Kenya’s civil service, exemplifying the process of institutionalizing equality and diversity based on a highly formalized framework. Also, the internal perspectives of HRMs who are executing the legal prescriptions of positive affirmative action shed light on the way in which this constitution and its notion of diversity is dealt with and legitimized. An outline of the findings is given below in order to be able to draw conclusions regarding the specific case of Kenya.
Results of the focus group discussions
The association cloud for “diversity” (see Figure 1) was quite rich, encompassing various aspects of the underlying meaning of diversity for the human resource managers. In regard to dimensions of diversity, the managers talked of gender, ethnicity and disability, as well as tribes, a term which was used synonymously with ethnicity. This confirms that the human resource managers were aware of the constitutional idea of equal opportunity with regard to precisely these three social categories of gender, ethnicity and disability.

Additionally diversity was associated with professional qualifications, different jobs, challenges and geographical differences. When the HRMs mentioned those attributes, it was in personal terms of the work which they brought: “for me as a human resource manager diversity also means dealing with these issues.” Of course, statistics show that educational standards are not equal among different tribes and gender. The managers emphasized that it is difficult to find qualified candidates due to structural inequalities in terms of education: some regions are under-supplied regarding, for example, suitable schools and higher education institutions, and therefore specific tribes still suffer from these relatively weak educational resources. Also gender-specific cultures foster discrimination against girls, who often do not have access to higher education. Drop-out rates in schools are high, while the generally high unemployment rate makes for a highly competitive situation amongst individuals applying for civil service jobs.
The more specific question of how the new constitution affected recruitment processes in the civil service provoked at lively discussion of the managers’ experiences in trying to implement the new regulations. The HRMs pointed out that recruitment decisions were no longer under the remit of the presidential office, which had traditionally been held by the tribe of the “Kikuyu”, but had become a more transparent and public process. This implied that for the first time professional qualifications and experience were decisive for recruitment rather than tribal networks. Such transparency was guaranteed by public announcement of job vacancies on television and in newspapers, or in more rural regions by billboard posters in community centers. Furthermore, an active search for qualified (female) candidates of different tribes was initiated by monitoring the results and statistics concerning the distribution of civil service jobs with respect to gender, tribal background and disability. After a first assessment a shortlist was published and confidential consultation offered to the public, resulting in informed decisions on final recruitment. The HRMs strongly felt that the recruitment process had been...
professionalized in terms of transparency, with a new focus on qualifications and criteria-based decision-making. This professionalization, along with the constitutional requirement to ensure adequate social representation of Kenya’s population, meant that job descriptions also had to screen for any sign of indirect exclusion. For example, sometimes the unrealistically high level of formal qualifications for a position led to the exclusion of certain regional tribes without equal access to formal education. Hence, the formal qualification level was occasionally lowered to better fit the actual job requirements and thereby increase the pool of potential candidates.

Active search for potential candidates with the involvement of community centers helped to identify suitable individuals from marginalized ethnic groups. Another problem mentioned by the HRMs was that because disabled people are still marginalized they tend not to declare their handicap in their applications. The managers also mentioned one side-effect of diversity measures: that the focus on social representation can introduce employment barriers to highly qualified people from less marginalized tribes.

The HRMs were convinced that diversity is an important topic for Kenya, not only for tourism (since the country’s numerous tribes display huge cultural diversity, including cuisine) but also as a motor for innovation. They identified this new empowerment of previously marginalized groups as an important step forward in welfare, social improvement and peace. They strongly believed in the high potential of Kenya’s diverse population – and they considered the constitution as most powerful driver in changing the system towards a more adequate representation of the population at large. They found the revised constitution as very helpful in transforming daily practices, since this is a body of law which demands respect and cannot be questioned. It must be mentioned that the participating HRMs were convinced that the new constitution would lead to greater equality and less discrimination.

It should be pointed out that none of the participating human resource managers previously belonged to the former presidential team. At a meeting organized with representatives of the old presidential cabinet, some of those present criticized the
new constitution. They argued that due to structural problems, Kenyan society was not sufficiently developed to cope with full and balanced representation. This highlights a highly important issue: The advancement of historically disadvantaged groups relies on broad public approval, as the majority of indigenous peoples suffered in the past from ethnic or gender discrimination. However, the formerly privileged tribes holding the reigns of power are not supportive of the new constitution and its diversity policy. In terms of institutional work this means that human resource managers must internalize and apply the new diversity policies and positive affirmative action rules while facing resistance from historically powerful tribes, represented by key players. Interestingly, this resistance is based on the notion that inequalities are tied to the low level of education amongst some ethnic groups, which cannot be so quickly remedied by constitutional law. In contrast, supporters of the constitution argue that it promotes social representation and justice. Thus, while the new constitution creates a binding institutional framework for all, diversity is legitimized in different ways depending on who is in charge of recruitment decisions. The example of human resource managers has shown that the new diversity notion is being taken seriously, and leading to some first positive results.

Wrapping up the case of Kenya

The three pillars identified by Scott (2001, 51) can be exemplified in the case of Kenya:

- The regulative pillar is represented by the powerful constitution and the rule of law, pro-actively shaping the recruitment process in the civil service sector. The human resource managers were aware of the regulations, and thus their search for candidates was shaped by the constitutional guidelines. The constitution clearly legitimizes the new rules by referring to the moral claim of social representation. This is a very specific understanding of diversity management: While in other cultural contexts diversity and diversity management are often justified for economic reasons, Kenya emphasizes the necessity of having an adequate social representation of its diverse population. This social representation is viewed as being particularly important in the civil service, which is the public face of the constitution.
The normative pillar refers to the obligation of the HRMs in the civil service to implement the constitutionally-backed regulations regarding the hiring of members of all tribes, as well as women and the disabled. In parallel, monitoring activities have been set up, such as the annual report of social cohesion, giving a statistical break-down of civil service jobs in terms of gender, tribes and disability. This shows how at this early stage of implementing the new constitution the government does not simply formulate binding expectations in terms of “appropriate behavior”, but also regularly checks the progress which has been made by the HRMs. This provokes the managers to adopt various strategies: obeying the regulations, they publically announce vacant positions, even headhunting in rural regions as well as undertaking confidential consultation after publication of shortlists. By proclaiming that the “new” system is based on professional qualification, they sometimes face problems in finding qualified applicants from marginalized tribes. In such cases it can be sensible to examine the suitability to purpose of the level of stipulated qualification, and, if appropriate, to lower these formal standards.

The cultural-cognitive pillar is defined by common beliefs and culturally formed taken-for-granted understandings. This can lead to ambivalences, as sometimes mentioned by the human resource managers. For example, on the one hand they argue that the idea of social representation is a good one, and thus support the recruitment of previously marginalized groups, as long as they can check the suitability of candidates regarding qualification. At the same time, the managers expressed some reservations about disadvantaging highly qualified people from less marginalized tribes. They recognized structural inequalities and questioned the approach of social representation in view of these inequalities. Hence, the collectivistic notion of tribes and therefore groups is still prevalent in Kenyan society, while more individualistic and business-oriented arguments can occasionally be heard. It will be interesting to follow this development in the future.
Concluding remarks, limitations and further research

This paper has discussed the form and impact of diversity management policies in Kenya. An institutionalist perspective helps to analyze influencing variables. The first important pillar, as pointed out above, is the regulative system. In the case of Kenya’s new constitution it was shown that legal prescriptions very quickly bring results in terms of improved diversity. However, regulative systems are inherently intertwined with normative and cognitive-cultural pillars. In Kenya the primary motivation for the new constitution was to end the violent conflicts among tribes that arose in the context of historical discrimination. There was considerable pressure to find a peaceful solution, as this was clearly in the interest of most of the involved parties. Thus the normative base of anti-discrimination and positive affirmative action for historically disadvantaged groups enjoys broad support among Kenyans. However, some powerful tribes are dissatisfied with the idea of social representation, arguing that the lack of education among marginalized groups makes the idea of equal representation in the civil service difficult to implement. Nevertheless, the benefits of the changed recruitment practices speak for themselves, confirming the fact that recruiters are acting according to the legal framework.

Even though the case of constitutional change and its repercussions within Kenya is still playing out (the new constitution only came into force in 2010), it can be shown that legal, normative and cultural pillars heavily influence the formulation and implementation of diversity policies.

A further interesting line of research would be to look at individuals and groups belonging to previously privileged and powerful tribes, examining how they have reacted to the new constitution. As these people also legitimate their powerful status by means of education, it would be interesting to investigate whether they display a lack of faith in the basic notion of social representation, or whether they indeed share the common ideal of social cohesion as providing the bedrock of a peaceful society.

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