

Devolved Governance in Kenya; Is it a False Start in Democratic Decentralization for Development?

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ABSTRACT

Many democracies world over, including Kenya have in recent years adopted devolution as a system of decentralization for development. In Kenya, this was after years of the post independence approach of Local Governments which still embraced a strong centralized governance structure and which had been meant to resolve the regional development challenges but apparently failed. This is evidenced by the challenges in Kenya have mainly associated with bureaucratic inefficiencies, lack of accountability and transparency, unequal distribution of national resources and minimal community participation in local development, amongst others. The Constitution of Kenya 2010 upon promulgation and enactment changed the Governance structure from a centralized unit to devolved sub-units known as the County Governments. It was expected that the onset of these devolved governments after the 2013 Elections and enactment of subsidiary laws would address these development challenges of the centralized governance that Kenya has faced since independence. Indeed currently, there is a deliberate effort by the National Government to equitably distribute resources through County Government quota disbursements, there is evidence of increased accountability arising from efforts of relevant 'watchdog' institutions and also community participation in development matters through appropriate institutional frameworks can be noted. However, despite these apparent positive realizations through County Governments' establishments in Kenya, they to a larger extent seem to have been overshadowed and threatened by a number of challenges, four years after the enactment of the Constitution and a year into their decentralized functionality. Currently, most media houses in Kenya have so much of the negative reports about the County Governments that the impression given is that this form of decentralization in Kenya could be a false start if not a total failure. For example, it is currently being reported that a Governor in Embu County, Eastern Kenya has been impeached due to impropriety, the Auditor General's report screams of massive impropriety in many Counties, a section of Governors have been summoned by the Senate to account for some specified allegations, striking citizens in some Counties over one issue or another, boycotts due to 'irregular' appointments by respective County Public Service Boards, the list is endless! It is in light of the aforementioned reports and the initial apparent development challenges of centralized governance that the paper seeks to measure the extent to which these challenges have been addressed after the decentralized devolved system of governance was introduced. The paper adopts a diagnostic approach based on desk research to investigate these Kenyan challenges, draws from expert opinion and does comparative analysis based on lessons from other devolved political systems in Africa and the world. The paper explores and discusses these challenges with a view of informing other world democracies that have or are on the verge of adopting this strategy of decentralization for development to be conscious of these pitfalls and design appropriate structures and a roll out framework for circumventing them. It also informs Constitutional development of devolved government structures. The paper establishes that the County Governments in Kenya have indeed made significant progress in involvement of stakeholders on development at County level, a realization of devolvement of funds, creation of employment opportunities, a more accountable political system and devolvement of certain key functions to the local level. This is commendable. However, the study establishes that the Counties have been faced with a myriad of challenges that indeed stand in the way of the realized achievements, namely lack of political goodwill, inadequate funding, 'devolved' corruption, nepotism, inability to absorb some devolved functions, mistrust among stakeholders, different implementers of devolution with varied cultures and approaches, devolved bureaucracy, a bloated workforce with duplication of duties and internal political supremacy wars. These County Governments are also threatened by an over bearing National Assembly and Executive, an overzealous County Assembly, deteriorating public goodwill and a weak legislature and institutional framework. It therefore concludes that the malaise of a centralized system of governance still lingers within this devolved system and until these challenges are addressed, no real benefits of devolution will be realized or even if so, sustained. The author recommends legislation to allow for a phased approach to devolution preferably on pilot basis starting with the fairly large County Governments and those with varied economic, social and demographic characteristics, more stringent anti corruption laws and an effective mechanism for community participation. The retention of the public service functions with the National Government to maintain a smooth transition in public service delivery and a stringent and coherent legislative framework to guide all aspects of the devolution process are other recommendations suggested by the author.

Keywords: *Devolution, Democracy, Centralization, Decentralization, Development, County Government and Challenges.*

1. INTRODUCTION

1.1 Background of the Study

Many democracies world over, including Kenya have in recent years adopted devolution as a system of

decentralization for development. In Kenya, this was after years of the post independence approach of Local Governments which still embraced a strong centralized governance structure and which had been meant to resolve the regional development challenges but apparently failed.

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This is evidenced by the challenges in Kenya have mainly associated with bureaucratic inefficiencies, lack of accountability and transparency, unequal distribution of national resources and minimal community participation in local development, amongst others. Kenya's new Constitution marks a critical juncture in the nation's history. It is widely perceived by Kenyans from all walks of life as a new beginning. Indeed, many feel that post-Independence Kenya has been characterized by centralization of political and economic power in the hands of a few, resulting in a spatially uneven and unfair distribution of resources and corresponding inequities in access to social services: the opposite of an inclusive state.

Born of the political opportunity created by the 2008 post-election violence, the Constitution that was finally adopted after almost a decade of unsuccessful reform attempts presages far-reaching changes. Its vision encompasses a dramatic transformation of the Kenyan state through new accountable and transparent institutions, inclusive approaches to government, and a firm focus on equitable service delivery for all Kenyans through the newly established county governments.

Devolution is at the heart of the new Constitution and a key vehicle for addressing spatial inequities.

A more decentralized government makes eminent sense given Kenya's diversity and past experience with political use of central power. Decentralization has been increasingly seen and adopted worldwide as a guarantee against discretionary use of power by central elites, as well as a way to enhance the efficiency of social service provision, by allowing for a closer match between public policies and the desires and needs of local constituencies. Kenya's Constitution entrenches devolved government by guaranteeing a minimum unconditional transfer to counties under the new dispensation.

Devolved government presents an opportunity to address the diversity of local needs, choices and constraints in Kenya. This is a very diverse country with ten major and more than thirty minor ethnic groups.

Needs are very different between the arid and semi-arid North, the highlands, the rural Northern Rift, the urban centers of Mombasa, Nairobi, and Kisumu, the Coast, and Western Kenya.

It is perceived that Counties will be better placed than the national government to deliver social services, because they have specific challenges and the local knowledge to address them. For instance, in the case of health, lagging counties still need to catch-up in providing basic health services, while the leading urban counties will be faced with new types of diseases (mostly non-communicable such as diabetes and cancer). With these stark differences it makes little sense to provide the same mix of services across the country. And even if there are no dramatic improvements in service delivery, people

prefer to make decisions themselves rather than following directions imposed by a central government. With a constitutional guarantee of unconditional transfers from the center, Kenya's counties will have the means and the autonomy to begin to address local needs, and their citizens will be more able to hold them accountable for their performance.

But Kenya's devolution is very ambitious, and therefore quite risky. It is a massive undertaking from a logistical point of view. The day after the next general election, Kenya's system of government and public administration was remodeled. It was inevitable that teething problems would be encountered during the transition. There have been diverging views on how far and how fast the transition should have been implemented. Since Independence, Kenya's leaders have held diverging views about devolution. From one perspective, it is seen to offer the potential to redress perceived ethnic and political bias by giving local communities far greater control over resources and decisions about service delivery. However, from another perspective, devolution could potentially undermine national unity governments and breed apprehension amongst communities considered aliens in the Counties.

Indeed, Kenya's devolution structure presents massive challenges for political and administrative restructuring by encouraging fragmentation of the state along partisan, regional and ethnic lines or is seen as 'decentralizing corruption', leaving citizens worse off if local elites are able to capture resources to the detriment of the majority, or when the newly established counties fail to put in place the systems needed for effective and transparent service delivery.

1.2 Problem Statement

The Constitution of Kenya 2010 upon promulgation and enactment changed the Governance structure from a centralized unit to devolved sub-units known as the County Governments. It was expected that the onset of these devolved governments after the 2013 Elections and enactment of subsidiary laws would address development challenges of the centralized governance that Kenya has faced since independence. Indeed currently, there is a deliberate effort by the National Government to equitably distribute resources through County Government quota disbursements, there is evidence of increased accountability arising from efforts of relevant 'watchdog' institutions and also community participation in development matters through appropriate institutional frameworks can be noted.

However, despite these apparent positive realizations through County Governments' establishments in Kenya, they to a larger extent seem to have been overshadowed and threatened by a number of challenges, four years after the enactment of the Constitution and a year into their decentralized functionality after the 2013 General Elections. Currently, most media houses in Kenya are awash with negative reports about the County Governments that the impression given is that this form of

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decentralization in Kenya could be a false start if not a total failure. For example, it is currently being reported that a Governor of Embu County, Eastern Kenya has been impeached due to impropriety, the recently released Auditor General's report screams of massive impropriety in many Counties, a section of Governors have been summoned by the Senate to account for some specified allegations, striking citizens in some Counties over one issue or another, boycotts due to 'irregular' appointments by respective County Public Service Boards, the list is endless!

It is in light of the aforementioned reports and the initial apparent development challenges of centralized governance that the paper seeks to measure the extent to which these challenges have been addressed after the decentralized devolved system of governance was introduced.

1.3 Aim of the Paper

It is a fact now that the devolution train has already left the station: the challenge is to make sure it arrives at the right destination, safely and on time. The politics of devolution, according to [1], explain the high intensity of hopes and expectations that have been pinned to it. It also means that there are high risks if expectations are not met. There are great opportunities and enormous challenges waiting for Kenya, in a critical election year, which will determine the fate of the country, politically and economically, for years to come.

This paper takes a look at the critical issues facing Kenya's policy-makers today. It presents suggestions and recommendations on how best to navigate the tough the devolution choices ahead for the Kenyans and other countries with devolved or devolving systems. Its main focus is to help Kenyans and the world appreciate the challenges with a view to managing the delicate transition from a Centralized Government to a Devolved Government structure.

1.4 Study Objectives

- a. To assess the extent of the realization of development through decentralization through devolution in Kenya.
- b. To highlight the major challenges facing decentralized development through devolution in Kenya.
- c. To make practical recommendations that would effectively address these development challenges.

1.5 Study Questions

- a. To what extent has devolution as a strategy of decentralized governance been an effective development tool in Kenya?
- b. What are the major challenges faced using devolution as a strategy for decentralized development in Kenya?
- c. What lessons and hence recommendations can be learnt from the Kenyan case of devolution as a strategy for decentralized development?

1.6 Significance of the Study

The paper explores and discusses these challenges with a view of informing other world democracies that have or are on the verge of adopting this strategy of decentralization for development to be conscious of these pitfalls and design appropriate structures and a roll out framework for circumventing them. It also informs Constitutional development of devolved government structures.

The study will also be relevant to other developing economies that wish to adopt devolution as a strategy for decentralized development.

It may also be utilized by policy makers in crafting relevant proposals in decentralized development.

2. REVIEW OF LITERATURE

2.1 A Historical Overview of Devolution in Kenya

2.1.1 Local Government during Independence up to 2001

At the time of independence in 1963 [2], in an introduction to a working paper on the Kenyan Constitution with the title 'Devolution in Kenya's New Constitution', places devolution and pluralism in opposition to a strong central state at the centre of political discourse. He describes how the independence Constitution provided for the rights of ethnic minorities to counter manipulation by the larger tribes. The party that supported the Kenya African Democratic Union (KADU) dissolved in 1964 and integrated into the Kenya African National Union (KANU), leaving the devolution of government powers without a champion. There is also strong evidence that the Kenyan leaders, at the time, agreed to the independence Constitution only, as they were under the impression that independence would not be granted by the British and would be delayed to the 1970s if they did not do so. Between 1964 and 1970, the Kenyan government did away with the regional governments, centralized authority over finances, and abolished the Senate [3]

Proponents of the independence Constitution believed that "regional autonomy sought to empower the local communities to be responsible for local governance" ([4]). In contrast, the Constitution concerned was referred to as the 'Majimbo' Constitution by those who did not agree with it. The Constitution under debate had a negative connotation, as it was perceived as an attempt by the colonialists to entrench and to create divisions among the African people in Kenya, with the main aim of protecting the interests of the white minority in Kenya. Not only were divisions caused between people, but also the citizens of Kenya were forced to return to their areas of origin in the same way that various people in South Africa were forced to settle in the 'Bantustans'[3].

With hindsight, the eventually increasingly centralized state might have caused more division

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amongst people than a decentralized system might have done, due to the state favoring their own ethnic groups on a national level and possibly some of their business associates amongst the white minority, by awarding government contracts during the economic boom that was experienced in the 1970s [5].

The above issue remains central to the debate about whether devolution of powers could create 'unity in diversity' or whether it will increase the existing divisions. The impressions that were created around 'Majimbo' might still have an impact on some of the debate today [3].

The argument of the current report remains that it all depends on the underlying conditions and actions of government and the people concerned, and not on the particular system of government.

Unity in diversity or increased hostility because of polarization was, then, one of the major variables identified to inform the four scenarios.

The point emphasized for the period covered, however, was the centralization of political power around the head of state. From 1963 to 1990, more than 30 constitutional amendments were passed to give increasing powers to the head of state. By the 1970s, any characteristics of decentralization were removed and by the 1980s (under the rule of Moi) decision-making in the country was centered in the executive. During the 1960s and 1970s the Kenyan government stated that its central government had "superior service delivery capacity" [2].

By the 1980s, which was the third decade of independence, government failure to deliver services to the population had led to 'putrid' attempts at decentralized government, such as Daniel arap Moi's District Focus for Rural Development (DFRD). After about 20 years of the political repression of opposition parties and civil society, along with the second wind of change that swept across Africa after the fall of apartheid in South Africa and the defeat of communism in the global arena, in 1991 Kenya returned to plural party politics [6]. Even though the process of establishing a constitutional democracy had started, Daniel arap Moi clung on to power for another ten years – by all accounts corruption was endemic under his administration, with him being personally implicated in a major financial scandal.

2.1.2 Local Government during the Period of Reform 2002 to date

In 2002, following on the rule of Daniel arap Moi came that of Mwai Kibaki, with a variety of complicated political coalitions [7]. Kenyans were once again disappointed, as it seemed as though the new government, in which there were a number of people who had had to endure suffering in order to oust Daniel arap Moi, kept power [5].

Even though the Local Authorities Transfer Fund (LATF) and the Local Authority Service Delivery Action

Plan (LASDAP) were initiated during Moi's time in 1999 and 2000 respectively, it was only really under Kibaki's rule that the two kicked into action. LATF was established to "enable local authorities to improve local service delivery, improve financial management and accountability systems and reduce local authorities outstanding debts", whereas the LASDAP is a three-year rolling programme of projects and actions showing a LA's prioritization of facilities and services [8]. LAs were introduced by the colonial government in 1950, but were always controlled from the centre. Reference [9] provides the details of such authorities, describing the wide-ranging powers that were conferred over the LAs to the then Minister of Local Government, with various national sector departments and ministries being given the ultimate responsibility for service delivery. The financial records of LATF and the successes of LASDAP inform a description of the part to be played in future by devolved government. As stated earlier, one needs to take into account the limitations due to structural changes that took place, as are provided for in the Constitution and other legislation. County governments will look substantially different to the LAs. Although one cannot draw direct correlations from what happened in previous institutions of local government, but it does provide a context of some sort.

Following on the introduction of the LAs, although not specific to the history of devolved government itself, but, nevertheless, a very significant event, was the matter of the disputed elections that took place in 2007. Ethnicity, as well as religious and generational differences, played a role in the disputation, with those below the age of 35 mainly supporting Raila Odinga, whereas those who were older than 50 years at the time tending to support the election of Kibaki [14].

Violent clashes broke out in December 2007 and January 2008. Only by the end of February 2008 was a settlement reached between Odinga and Kibaki, helped on by the intervention of the former UN Secretary General, Kofi Annan [7].

With hindsight, the two decades those have been taken, with the peace efforts after the election violence in 2007 providing the final push, might have been time well spent in conceiving the Constitution that was promulgated on 27 August 2010. The adoption of a new Constitution that provides for a system of devolved government, which was described earlier on, and the clear separation of powers, is viewed as a major tipping point in Kenya's political history. A BBC journalist commented as follows after the promulgation of the new Constitution: "the nation that is about to be reborn is far wiser than the one that emerged at independence almost half a century ago" as in [10]. If that statement is true, and if lessons were taken from the past in Kenya and from other similar situations

2.1.3 Overview of the Constitution of Kenya, 2010

The devolution concept is a product of a new constitutional dispensation in Kenya, the Constitution of

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Kenya 2010. It is therefore imperative that the relevant sections of this document are highlighted to contextualize the study and appreciate the legal environment in which the decentralized platform for development is anchored.

The Constitution of Kenya is a modern, progressive and pro-people. Some of the salient features of the Kenyan Constitution that are related to this study are that it:-

- Protects the sovereignty of the people and safeguards peoples' involvement and effective participation in Government;
- States that sovereign power belongs to and is exercised by the people of Kenya either directly or through their representatives;
- Stipulates national values and principles of governance which provide the bedrock that guides and binds all persons, State organs and State officers whenever they implement public policy decisions or the law;
- Promotes public participation, transparency and accountability in public affairs;
- Has a modern, comprehensive Bill of Rights which has been expanded to include socio-economic and cultural rights as well as group rights;
- Allocates and separates powers of State organs;
- Provides for proper checks and balances in governance to control abuse of power;
- Creates independent public service institutions;
- Strengthens the independence of the Judiciary;
- Contains affirmative action for women, the youth, persons with disabilities and marginalized communities and prohibits all forms of discrimination;
- Provides for equitable distribution of resources and opportunities;
- Provides for devolved government;
- Defines the role of institutions such as Parliament and the objectives of devolution. This will help the public to assess the performance of public institutions;
- Provides for transitional requirements that ensure a smooth migration from the former constitutional order to the new one;
- Provides a mechanism for its implementation, by creating specific organs of implementation such as the Kenya Law Reform Commission, the Attorney General and the Commission for the Implementation of the Constitution;
- This Constitution is not easy to amend. It safeguards the supremacy and the sovereignty of the people of Kenya, by providing for stringent amendment procedures.

These provisions in the Kenya Constitution 2010 provide the legal framework in which the devolution concept as an agent of decentralized development operates.

According to [11], the enormous aspirations driving the new Kenyan Constitution, and especially the devolution provisions, derive from three major expected changes.

- a. A significant share of government spending that would reach the local level, instead of being consumed at the higher levels of government in Nairobi.
- b. The distribution of resources between regions and localities that would be more equitable, thus leveling the social and economic opportunities of Kenyans.
- c. That the Government that would be more accountable, open and participatory, leading to reduced corruption and increased responsiveness to citizen needs.

In the wake of the worst ethnic violence in Kenya's history following the 2007 election, the power-sharing coalition government led by President Mwai Kibaki and Prime Minister Raila Odinga, gave birth to a constitutional revolution on 27 August 2010.

The changes constitutional changes introduced are wide-ranging and in some instances rather drastic. For example, there is to be independent and accountable institutions, transparent appointment of public officials, and the clear separation of the Legislature and the Executive under a presidential system of government. The centerpiece of these changes which is the backbone of this paper is the devolution of powers to a new tier of constitutionally entrenched county governments.

Devolution is one of the most complex aspects of the new constitutional arrangements to implement, but it holds the promise of having the greatest impact on the lives of ordinary Kenyans, particularly those living in traditionally marginalized and peripheral regions of the country.

On the other hand devolution has always been a highly passionate and also divisive issue in Kenya. While the state that was ushered into place at independence was characterized by some regional autonomy, President Kenyatta, the founding President of Kenya moved rapidly to centralize and consolidate state power, and President Moi furthered this trend, influencing key decisions, including the formation of the Judiciary and the Parliament.

Decentralization began in 1999, lasting until the promulgation of the new Constitution. This decade saw the introduction of devolved funds in an attempt to address regional disparities in economic development. The notable ones, according to [1], were the Local Authority Transfer Fund (LATF) created through the LATF Act No 8 of 1998; the Road Maintenance Levy Fund, (RMLF) created through the Kenya Roads Act, 2007; the Rural Electrification Fund, created through the Energy Act of 2006; and, the Constituency Development Fund (CDF), created through the CDF Act of 2003. Despite these efforts to address the inequality in resource

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distribution, there was still political pressure demanding for more local autonomy in resource utilization.

The changeover from Kenya African National Union (KANU) in the December 2002 general elections to the National Alliance of Rainbow Coalition (NARC) on the platform of a new Constitution soon after it was installed in power gave new momentum to decentralization, but the initial draft produced by the Constitution of Kenya Review Commission, with some provisions for devolution, also appeared to concentrate powers in the Presidency, which was an initial point of contention in the independence constitution. The coalition government from the 2007 elections presented a new constitutional draft, which was approved in 2010, with devolution entrenched into it, with several checks and balances in the national government.

The Constitution established forty-seven county governments, based on the districts established by the Provinces and Districts Act of 1992. A new and historical development was the guarantee of 15 percent of national revenues to be transferred to county governments on an unconditional basis. Similarly, the assignment of major state functions in the areas of health and agriculture to county governments gave a new impetus to devolution. These provisions for devolution in the constitution emerged from a historical debate and struggle over the proper balance of power and resources between the central and local governments.

Those for a strong central government argued that there is the need for control from the center, nationalism and the exploitation of economies. On the other hand, advocates for devolution stress local rights of citizens, enhanced accountability by regional governments, participation by all and above all equity in resources and opportunities. Equity is of particular interest for the due to the large disparities of wealth and social infrastructure between different regions.

However, it is as yet unclear whether the new devolved system delivers the benefits which its proponents hope for, as much will effectively depend on the actual process of implementation.

The push to devolve comes in the context of centralized power within the Executive. Whereas many countries, including the United States, built a central government through a federal system from many separate states, Kenya started from a centralized system, which is to be transformed to devolved units at the local level. The center must therefore willingly give up power to the local level, which is quite an uphill task. This situation in many cases slows and even halts the process, as in the case of Pakistan and Uganda. In some cases, it limits the level of devolution, for example in China [15].

A related dynamic in the Kenyan context is the risk of conflict. The dominance of the Executive in distributing services, projects and other resources, which often operate under a patronage system, is commonly

perceived to provide an incentive for conflict. Politicians reinforce this perception when they campaign for their community, so that they can take their 'turn to eat'.

The advocacy for devolution stems from an effort to reverse these trends. When County governments are provided with substantial resources and responsibilities, many service delivery functions are enhanced. The Constitution also seeks to counter the above trends by both equalizing the distribution of resources, and also reducing view that the presidency means diversion of resources to a specific region where the President is from.

The post election violence of 2007-2008 also fueled the drive for a new Constitution. It was the lowest point for inter-ethnic relations in Kenya which is characterized by diverse communities. It is estimated that about 1,500 died, and hundreds of thousands were displaced.

To realize a devolved system, reference [1] notes that the ambitious legislative program led to a number of frictions in the process, including political fighting between various constituencies.

International experience suggests that there are a number of serious political economy risks to devolution. The numerous experiences with devolution show that it does not follow a singular path, but rather, can follow a number of routes. Much of this variation depends on the motives for devolution; whether to increase democracy or to appease local separatist movements. Moreover, the type of devolution is quite different, whether to a quite large unit as in states in Brazil, or local governments in Uganda [16]. However, despite this variation, in none of these cases was the process of devolution simple and without conflict. "Decentralization comes in many shapes and sizes, but in every instance, it involves changing the institutional rules that divide resources and responsibilities among levels of government. Politicians and bureaucrats thus fight over decentralization for the same reason that they fight over the design of state institutions more generally, that their power and authority are at stake.

First, many officials in the center will inevitably resist relinquishing power and authority, often for good institutional reasons. Naturally, officials who are accustomed to a certain level of authority, as well as a particular oversight role, will be hesitant to give up that authority. Such resistance will arise in both the policy process, as well as the actual process of devolution, when officials will be asked to substantially change their day-to-day work, by the official who is their administrative superior [17].

Such resistance may be encountered in the transfer of functions, from the national to county governments. Different interpretations of Schedule 4 of the Constitution lead to vastly different functions for county governments, with huge cost implications. While

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legislation will clarify some of these ambiguities, the process of devolution will show that other ambiguities remain. Many officials, in this context of ambiguity, will seek to protect their authority (partly out of genuine concern for service delivery continuity and quality), and conflicts could arise in the process between these officials and others who feel that their constitutionally mandated responsibilities (and associated funding) are being denied.

The backdrop to these dynamics is the need for the national government to operate a ‘culture change’ and redefine its role vis-a-vis local service providers. With devolution, the Executive at the national level must learn to transition from an implementation role to a policy setting function. At the same time, the Executive may have the tendency towards excessive legislation as a product of distrust, which may lead to resentment and even non-compliance of county governments.

Overall, there is need to build trust between the national and county governments. A productive dialogue between representatives of both levels of government will be critical to ensuring the trust that will enable the system to function. The intergovernmental mechanisms are key to this process, and especially the institutions bringing together national and county representatives. At the same time, national government must respect the need for county governments to sort themselves out, based on certain guidelines, in terms of the day-to-day functioning of county government administration and finances.

Trust and dialogue are critical to proper coordination of activities, and to prevent duplication of functions. With devolution, there is an enormous risk that national and county governments will hire officials, whose responsibilities are essentially the same, leading to not only lack of accountability, but also the fiscal risk of an explosion in the wage bill. Again, the intergovernmental mechanisms, and especially representative institutions, are key to preventing such a situation.

Capacity concerns often drive the effort for re-centralization. This means ensuring administrative and financial functioning at the county level will be key to both service delivery and the continuity of devolved functions. In Uganda, the push for decentralization lost steam once the government realized that many local governments were not performing. For example, in the education sector, some local governments were wasting substantial resources, which prompted a process of recentralization, which included conditional grants, and reduced fiscal autonomy. Given that national government officials are often hesitant to cede authority to local government, mediocre or poor performance of local governments provides a reasonable argument for these officials to seek re-centralization.

Second, local power holders resist the presence of a new government that competes for their authority and power, or seek to co-opt the new government. Local governments are not established in a vacuum of power,

but rather formed or strengthened in the context of local power structures.

These structures can be formal, such as provincial administration, or informal, such as traditional power hierarchies, like village leaders or the landed elite. Once a prominent local government is established, these power holders seek to take over the new structure or undermine its authority.

Moreover, these local interests are quite varied and complex, even in the formal government structures. Except for rare cases, with the creation of county governments, these various bodies understandably either seek a prominent position within the county government, or to retain power at the expense of the county government.

Decentralizing power requires transferring resources from the center to the local level: but there is no single answer to the question of how much, how fast and in what form. Unlike in many other decentralized countries, Kenya’s counties do not have substantial sources of own revenues.

Consequently, they will depend on the national government for transfers. Deciding the amount of each county’s transfers involves a two-step process to ‘fairly’ divide national resources. First, resources are divided “vertically” between the national and county governments; in such a way that each is adequately resourced to carry out its mandated functions. The vertical division must also take account of historical under-privileging of service delivery. Second, the county share is split across the forty-seven counties in a way that recognizes their different inherited needs and also addresses historical inequalities between them. This is particularly difficult in an overall context of fiscal stress, with limited scope to increase overall public funding.

Third, national government determines where it is appropriate to provide conditional grants from its own resources.

A golden rule of decentralization is “funding follows function”, which is why the function assignment process is so important. While Kenya’s Constitution provides high-level guidance on the respective responsibilities of the national and the county governments, much more granular work is needed in order to provide a basis for sharing resources. The Transition Authority (TA) has been set up with the mandate to carry out a detailed assignment of functions, but the legislated process for function assignment is cumbersome. It was envisaged that each county will apply to the TA for each function to be devolved to it on an ad hoc basis. This approach is likely to be overly complex to manage, and may also lack transparency (because of the resulting complexity), potentially undermining accountability at the local level [18].

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By prescribing a minimum transfer to counties, Kenya's Constitution has not pre-empted the usefulness of an aggregate costing of county needs. This is essentially for two reasons: first, the overall cost of functions to be devolved is likely to be significantly more than the constitutionally guaranteed share of 15 percent of audited national revenue, and; second, functions have been phased out over time during the transition period, and as a result counties have not initially receive the full amount guaranteed to them. Working out a 'fair split' of available resources in a context of limited fiscal space, as well as the most appropriate mix of grant instruments (that is between the equitable share and conditional grants) which require detailed evidence of how much counties will need, for what and by when, the World Bank Report says..

According to [1], in devolved systems, the national interests often dominate local interests, contrary to the theory of decentralization.

Even with formal administrative and fiscal autonomy, national political interests sometimes dominate local government. In one clear scenario, which is common in Nicaragua, national political parties appoint party favourites in elections for mayor, selecting politicians who will please the national political leaders, and not necessarily respond to their constituents' needs. Because of the importance of party name in elections, much of the population will vote simply based on party affiliation. As a result, local political representatives often represent national party leader interests, rather than simply the local interests.

3. RESEARCH METHODOLOGY

The research methodology was based on the following elements namely literature review, study of cases, and the analysis of information sources. Additionally, the cases present in the literature were analyzed [15].

The authors ex post facto research design to collate information relating to the concept of devolution and how it has impacted on other world democracies, gives a comparative analysis with the Kenyan scenario before drawing conclusions and making recommendations. Similarly, expert knowledge from governance practitioners, educationists and views from constitution authors were also sought.

From the information gathered from these sources, and from a posterior analysis, improvement strategies were obtained and a preliminary evaluation methodology was proposed. This methodology described, was applied to the study of historical progression of decentralization for development.

The researchers employed the descriptive research. This gives a brief description of the state of affairs as they exist. Reference [13] points out that descriptive studies are not only restricted to fact findings, but may often result in the formulation of important

principles of knowledge and solutions to significant problems.

The researchers therefore utilized this approach to give a descriptive analysis of the status of devolution in Kenya and if this form of decentralization has realised development in the country. Similarly, other forms of decentralization world over are discussed in a descriptive manner to give a comparative analysis of the state of affairs with the Kenyan context.

A descriptive analysis of the findings was also done to bring out the achievements, challenges and helped to generate logical conclusions and recommendations.

4. FINDINGS

Based on this study, the state of affairs arising from the establishment of County Governments is as follows:-

That County Governments in Kenya have indeed made significant progress in involvement of stakeholders on development at County level. There is engagement of various stakeholders in decision making, hence enhancing acceptance of various development initiatives at County Governments and minimizing resistance from beneficiaries.

The devolved funds are currently being remitted to County Governments. A 34% of total Country revenues are being disbursed to the Counties on a ratio determined by CRA, hence the realization of devolvement of funds. Job opportunities have been created equitably in all Counties as this is no longer a preserve function of the National Government. The County Public Service Boards are recruiting relevant staff, mainly from within the county and this is fairly equitable at a national scale.

There is also a more accountable political system in place in which there are checks and balances at all levels of the political divide. Governors are accountable to County Assemblies on all development matters and this has enhanced political responsibility to some significant extent.

Certain key functions have been devolved to the local level. Functions such health, public works, water and licensing have been devolved and the county governments are fully in charge of these functions, hence bringing services closer to the mwananchi.

However, the study has established that the Counties have been faced with a myriad of challenges. Key among these is the apparent lack of political goodwill from the National Government to fully devolve certain functions. During the recent Governors Conference in Naivasha and Kwale, this came out strongly as one of the impediments of devolution. Functions such as infrastructural development are in contention over the matter [4].

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Inadequate funding is also a challenge construed to hamper the effectiveness of development through these devolved units. Some counties considered being in marginalized regions and lacking in key infrastructural developments are receiving less than should be according to the CRA ratio. The equalization fund fails to properly address these development gaps. There is the new malaise of 'devolved' corruption in which the 'it's our turn to eat mentality' has permeated the Counties whereby political interests override rational allocation of public service positions and resources. There are cases of hiring of staff without adherence to the procedures, purchase of goods and services without due procurement processes, allocation of financial resource without due consideration to the existing legal and institutional framework, the list is endless. This has translated into a system of impunity and disregard to guidelines. Incidences of nepotism are equally rife in most Counties. The recently released Auditor General's report is a clear confirmation of this.

Another noted challenge is the inability to absorb some devolved functions. A function such as health has been riddled by challenges, whereby the medical staff have resisted their function being placed under County Government's public service, and delayed salaries. This has culminated into several cases of industrial action. The different implementers of devolution are also characterized by varied cultures and approaches. In effect, there is an apparent cultural shock amongst some county service employees. Having been drawn from the former LAs, the National Government and some having been hired from the private sector, it is a mix of different backgrounds culminating into varied interests and approaches to common issues. This has bogged down their effectiveness.

There is also a bloated workforce with duplication of duties and internal political supremacy wars. Some of these officers having been hired by CPSBs, others posted by the national government, another set through the Transition Authority, while some are drawn from the former Local Authorities. Some of their roles have not been clearly demarcated and hence there is redundancy in some cases.

These County Governments are also bedeviled by an over bearing National Assembly and an overzealous County Assembly. This has undermined its operations with several cases of Governors being threatened by impeachment by the County Assembly, and Members of the National Assembly dictating to this level of Government. This, according to the Governors is too much undue pressure.

There is also a deteriorating public goodwill based on their dismal performance and cases of corruption through the Auditor General's report. The public is in support to the dissolution of some County Governments as is currently the case with Embu County.

There is also uncertainty that devolution has posed for both national government and county staff. This

is a key concern for thousands of civil servants, who represent quite powerful positions at the county level. Another key concern for county governments is how to manage relationships between different communities at the county level, an issue that was highly relevant to setting ward boundaries.

In some counties like Busia, there are majority and minority communities of Luhya majority and the minority Iteso, Luo and other smaller communities, and it is unclear how minority representation and rights will be ensured. There is a risk that inequality will be devolved to the county level [19].

The County public administration and service delivery systems are complicated, mainly because some of them have overlapping jurisdictions as well as functions. For example the role County Commissioners vis-à-vis the Governor, the sub County Administrator vis-à-vis sub County Commissioners, Chiefs and Assistant Chiefs. This has bred mistrust and a potent source of conflict. The pecking order in County functions is often a source of confusion. In many instances, these officers deliver similar services, making it difficult for citizens to identify their primary service provider, or hold them to account.

The existing public administration and service delivery systems in the Counties also have unrelated institutional frameworks, and therefore blending them is difficult. Varied organization cultures between these institutions, different authority relationships and this is further compounded by duplication of roles creates conflicts and wastage

There is a strong perception among the Kenyan public that the National government simply cannot be trusted to redistribute resources equitably. This explains the hostility, among devolution partisans to Sessional Paper Number 10 of 1965,4 which argued for investing in those areas where the largest returns could be achieved, while using the resulting wealth to equalize opportunities. To many Kenyans, the Paper was simply used to provide a theoretical justification for a de facto policy of targeted investment in developed areas and of ignoring the redistribution requirement altogether. Currently, concerns have been raised about the formula used by CRA in allocating resources to counties.

There is concern that devolution may not immediately address entrenched inequity between counties. Some counties have taken off at a relative disadvantage and it may take time to build up their capacity and ability to use resources well. Reference [12] says that the concern is that counties that stand to benefit the most from devolution in theory, because they were neglected under the old dispensation, may be the least equipped in practice to make efficient and transparent use of their resources, and retain the skilled staff that is essential to making services work. This means that dramatic redistribution will not occur overnight: it will need to be phased in gradually.

5. RECOMMENDATIONS

Based on the challenges being faced by devolved systems in their effort to offer development through decentralization, the authors make the following recommendations:-

The process of clarifying function assignments should begin as soon as possible, led by the TA and capitalizing on work already carried out by Treasury and the CRA.

There should be a deliberate effort to streamline transfer of functions, possibly through a phased approach with functions transferred in groups and in different Counties depending on the prevailing demographic, economic and social factors.

Transfers to counties should be made in consideration to the existing staff to minimize on duplication of roles. Considerations should also base on all possible sources of revenue available to the counties.

There is need to harmonize the different cultures of staff being deployed at county level through training which should help realize re-orientation to enhance a uniform approach to all matters of development in counties and minimize conflicts and competition at the work place.

Relevant laws ought to be enacted and put in place to allow counties to collecting revenues and charges through a framework that would minimize extreme cases of levies to county citizens and create a rational approach that would not undermine national aspirations on decentralized development. New laws to govern county revenues could provide an opportunity to revise existing taxes in these counties.

On marginalized communities in counties, their rights and interests could be promoted by having minority representation in government, either through designated seats or specifically designed wards. Wards should be carved out to ensure all minority groups realize representation in County Assemblies.

There is need to harmonize public service functions, public administration and service delivery system, that that would minimize conflicts and duplication of roles in county governments to enhance smooth transition of services from the formerly local authorities and national governments to the county governments.

There is need to review and strengthen the articles in the Intergovernmental Relations Act 2012 to help clarify the division of responsibilities between the national and the county level governments. This is to avoid some of the functions of county governments being sucked back by the national government. In this regard, an intergovernmental coordination mechanism is needed to build trust between the national and county governments,

and provide a forum for conflict identification and resolution.

There is also need to define the key roles and responsibilities of specific institutions, in light of devolution. These would include the role of Provincial Administrations in the light of the County Governments which are now in existence. The alignment and restructuring of the Provincial Administration with the County Governments should be fast tracked and relevant laws put in place.

To sum it all, devolution provides an opportunity to rationalize the service delivery framework in Kenya for increased efficiency and accountability, by making counties the hub for organizing services at the local level. Therefore, there is need to blend institutional frameworks of co-existing public administrations, clarify the roles and responsibilities of each administration and political unit, align administrative boundaries to county boundaries, transfer staff formerly employed in Local Authorities, those transferred from the national government and those in the former districts in a way that avoids redundancies and maintains an economically viable public service in the counties.

REFERENCES

- [1] Kimenyi, S., (2013), Kenya Devolution and Resource Sharing Calculator, Retrieved from <http://www.brookings.edu/research/interactives/2013/kenya-resource-sharing>
- [2] Nyanyom, (2010), Devolution in Kenya's New Constitution Working Paper No. 4. Nairobi: Society for International Development.
- [3] Kangu, M., (2012), Chairperson, Task Force on Devolved Government in Kenya. Nakuru: Personal Interview, 11 January 2012.
- [4] Republic of Kenya (2011). Final Report of the Task Force on Devolved Government – Volume I: A Report on the Implementation of Devolved Government in Kenya. Republic of Kenya. Retrieved on <http://www.ldphs.org.za/resources/local-government-database/bycountry/Kenya/reports/DevolvedKenyaGovernment.pdf>, Accessed 15 November 2011.
- [5] Bosire C, (2010) , Local government in Kenya. Local government bulletin, vol.12 (2).
- [6] Nyanyom, O., (2011), Devolution in Kenya's new constitution. Constitution Working Paper No. 4. Nairobi: Society for International Development.
- [7] Jennings, Michael, (2008), Kenya: Recent History in Africa South of the Sahara, 2008 Edition. Exeter: Routledge.

<http://www.ejournalofbusiness.org>

- [8] Oyugi, L.N. & Kibua, T.N., (2008), Planning and budgeting at the grassroots level: The case of local authority service delivery action plans. In Kibua, T.N. & Germano, M., (eds.) Decentralization and devolution in Kenya: New approaches. Nairobi: Nairobi University Press
- [9] Cifuentes, M., (2008), Better services for all: The impact of LASDAP in an informal settlement of Nairobi. In Kibua, T.N. & Germano, M., (eds.) Decentralization and devolution in Kenya: New approaches. Nairobi: Nairobi University Press.
- [10] Grest, P. (2010), Kenya's New Constitution Sparks Hopes of Rebirth, Retrieved From, <http://www.bbc.co.uk/news/world-africa-11103008> Accessed 21 January 2015.
- [11] World Bank, (2012); Devolution without Disruption – Pathways to a Successful New Kenya
- [12] Kramon & Posner (2001). Local Government Development Strategy, The Kenyan concept.
- [13] Kombo, D. K. and Tromp, D. L. A. (2006). Proposal and Thesis Writing: An Introduction. Mukuru: Pauline's Publications Africa
- [14] Mitullah, W. (2010). Local Government in Kenya: Negative Citizen Perception and Minimal Engagement in Local Government Affairs. Afrobarometer Briefing Paper No. 89.
- [15] Bardhan, P. ,& Mookherjee, D. (2006). Decentralization and Local Governance in Developing Countries: A Comparative Perspective. Cambridge, MA: MIT Press.
- [16] Potter, J. Graham (2001). Devolution and Globalization: Implications for local decision makers. Paris: Organization for Economic Cooperation and Development (OECD).
- [17] Brosio, G. (2002). Decentralization in Africa. In Ahmad, E. and Tanzi, V. Managing Fiscal Decentralization. Routledge, London and New York.
- [18] Kimenyi, S. Mwangi and Meaghar, P, (2004). Devolution and Development: Governance Prospects in Decentralizing States. Hants: Ashgate Publishing.
- [20] Ministry of State for Planning, National Development and Vision 2030. (2010). Public Expenditure Review: Policy for Prosperity 2010. Republic of Kenya.