

**ADDIS ABABA UNIVERSITY
COLLEGE OF SOCIAL SCIENCES
CENTER FOR AFRICAN AND ORIENTAL STUDIES**

**Opportunities, Good Practices and Challenges of Implementing
Devolution under the New Constitutional Order in Nairobi
County, Kenya**

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Fulfillment of the Requirement for Master of Arts Degree in African
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By: Medhanit Legesse Negash

Advisor: Getahun Fenta (Ph.D)

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ABSTRACT

This thesis looks into the system of devolution as a major component of the constitution Kenya adopted in 2010. Aimed at examining opportunities presented by devolution, good practices recorded so far and challenges that hinder its implementation, it set out to consult stakeholders on the ways forward. Qualitative research design was found to be best fitted to the work and as such, purposive data collection and snowballing were utilized to analyze data through narrative analysis. Citizens in Nairobi county, having voted for the coming into effect of the constitution through a referendum, had their own expectations of what devolution means for their communities and country as a whole. As such, they have identified how devolution can benefit their country given, it is implemented well. While they have witnessed good practices ranging from improved health care services to improved infrastructure; they have also been disappointed by outcomes of devolution in many regards. Inadequate levels of public participation, corruption, tribalism, poor and politicized governance, and lack of human/financial resource and proper coordination between national and county governments have been identified as the main challenges threatening the success of devolution. Some of the recommended solutions include devolution of oversight bodies, capacity building of county leadership and core county staff, depoliticizing of county offices, and putting efficient and capable leaders in elective posts at the county level. Suggestions towards improving public participation as well as coordination between national and county governments have also been made.

Key words: Challenges, Constitution, Decentralization, Devolution, Opportunities

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ABBREVIATIONS AND ACRONYMS

CBD	:	Central Business District
CDF	:	Constituents Development Fund
CEC	:	County Executive Committee
CSOs	:	Civil Society Organizations
DPP	:	Director of Public Prosecutions
ECDE	:	Early Childhood Development Education
FGDs	:	Focused Group Discussions
FMS	:	Financial Management Systems
ICESR	:	International Convention for Economic and Social Rights
ICJ	:	International Court of Justice
KADU	:	Kenya African Democratic Union
KANU	:	Kenya African National Union
MCAs	:	Members of County Assembly
MDA	:	Media Development Association
MP	:	Member of Parliament
NGOs	:	Non-Governmental Organizations
OECD	:	Organization for Economic Co-operation and Development
PNG	:	Papua New Guinea
UNDP	:	United Nations Development Programs
UNESCO	:	United Nations Educational, Scientific and Cultural Organization

OPERATIONAL DEFINITION OF TERMS

- Challenge:** Something that by its nature or character serves as a call to battle, contest, special effort
- County:** Is a geographical region of a country used for administrative or other purposes in a modern nation.
- Decentralization:** The restructuring or reorganization of authority so that there is a system of co responsibility between institutions of governance at the central, regional and local levels according to the principle of subsidiary, thus increasing the overall quality and effectiveness of the system of governance, while increasing the authority and capacities of sub-national levels (UNDP, 1999).
- Devolution:** The transfer of authorities from the central government to lower-level units, such as provincial, district, or local authorities that are legally constituted as separate governance bodies (UNDP, 1999).
- Opportunity:** **A situation or condition favorable for attainment of a goal or a good position, chance, or prospect, as for advancement or success.**

CHAPTER ONE

INTRODUCTION

1.1 Background

There has been a growing interest in the concept of devolution, not only among academic researchers but also among politicians and bureaucrats, and the general community. This interest is not confined to Western countries, but is also evident in many African and Asian countries, as well as in the "island states" in the Pacific, namely Fiji, Vanuatu, Solomon Islands and Papua New Guinea (Bhindi, 1990). There have been numerous conferences and workshops on the topic, sponsored and conducted by both the public and private sectors within these countries, and by international agencies such as UNESCO and OECD. The issues relating to the notion and practices of devolution define a "new field" for research in public and educational administration (Kulwaum, 2005). The reasons for this include scholarly interest in devolution as an important political idea within democratic theory; the desire to understand the nature of political and administrative reforms; the need to identify and explain the problems confronting the implementation of these reforms and the requirement to provide effective solutions to these problems. In light of the global economic changes that now shape policy options at the national level, countries across the globe have found it necessary to re-examine their administrative structures in order to deliver goods and services more effectively and efficiently to their population (Kulwaum, 2005).

Devolution is a form of decentralization. It is defined as the process of transferring decision-making and implementation powers, functions, responsibilities and resources to legally constituted, and popularly elected local governments (ICJ Kenya, 2013). When governments devolve functions, they transfer authority for decision-making, finance, and management to quasi-autonomous units of local government with corporate status. Devolution usually

transfers responsibilities for services to municipalities that elect their own mayors and councils, raise their own revenues, and have independent authority to make investment decisions (KPMG, 2013).

Devolution has certain fundamental characteristics. Local units of government are autonomous, independent and separate levels of government over which central authorities exercise little or no direct control. In addition, these local governments have legally recognized geographical boundaries over which they exercise authority and perform public functions (Nguzo za Haki, 2013) Local governments have the power to secure resources to perform their functions. Devolved governments should play the role of service provision to local citizens who should participate in decision making. Finally, there should be reciprocal and mutually beneficial relationship between central and local governments in the system of devolution. (UNDP, 1999)

According to Dent (2004), devolution has been advocated as a political response to the ills plaguing fragile and plural societies such as conflict inequalities, rent seeking, economic stagnation, corruption and inefficient use of public resources. However, for devolution to be effective, the criteria of subsidiarity and consensus must be observed. The rationale behind decentralization is to allow subnational participation in decision making (Nyanjom, 2011). It consequently enhances relevance of local governments in affairs of government and citizen participation in implementation (Nyanjom, 2011). By allowing local communities and regional entities to manage their own affairs, and through facilitating closer contact between central and local authorities, effective systems of local governance enable responses to people's needs and priorities to be heard, thereby ensuring that government interventions meet a variety of social needs (UNDP. 1999).

Kenya's system of local government was established during colonial rule. The colonial government had two separate systems; one for settlers and another for indigenous Kenyans (World Bank, 2011). State power was divided into Legislative Council, Executive Council and Judiciary. However, real power resided in the Colonial Office in London (Nguzo za Haki, 2012). The system was restructured in the 1950s with the creation of African District Councils and a system of county Councils in white settler areas (World Bank, 2011). These authorities had a majority of elected councilors, power to employ staff, formal legal status, and a system for collecting their own revenues. They also benefited from limited intergovernmental transfers. This two-tiered system was combined under the 1963 Local government Act, which gave the new councils significant responsibilities and revenue-raising powers (World Bank, 2011).

The 1963 Constitution provided for a system of devolution now popularly referred to in Kenya as 'Majimbo'. The Constitution provided for devolution of government to regional assemblies in the context of a bicameral parliament with a Senate and National Assembly – the Lower and Upper Houses, respectively (Nyanjom, 2011). Majimbo was premised on the need to secure the rights of ethnic minorities grouped in the Kenya African Democratic Union (KADU) party, against domination by tribes grouped in the Kenya African National Union (KANU) party. However, the newly independent government sought to weaken devolution in three ways: by exercising much closer control over regional civil servants than the Constitution envisaged, by delaying implementation of provisions allowing regions to assume full responsibility for their own finances, and by delaying the transfer of functions to the regions (Nguzo za Haki, 2012). The system was abolished in 1964 and replaced by provincial and district administrations. While local authorities continued to exist, their powers were assigned administratively rather than under constitutional authority (World Bank, 2011).

Kenyans voted for a new Constitution in 2010. This marked a major milestone in the way the country was to be governed. It stipulated the dispersal of political power and economic resources from the center in Nairobi to the grassroots in a process known as devolution (Kenya Devolution, 2015). Among many reforms, devolution was arguably the most significant. Since the 2013 general elections, devolution has transferred powers from the central government to local units divided into 47 counties (Koki et. al., 2011). It has established a new sub-national level of government, including counties, each with an elected Governor and county assembly, responsible for a significant portion of public finances and service delivery (Khobe, 2012).

The Constitution is predicated on five basic principles: equity and inclusiveness; equity of opportunities; de-linking politics and policy; better access to national resources and bringing government closer to the people (World Bank, 2011). Under the devolved system, Kenya is divided into two levels of government - national and county. The county government comprises of the county assembly and the county Executive Committee (Khobe, 2012). The county assembly, which comprises of people hailing from the locality of the county, is mandated to make any laws necessary for or incidental to, the effective performance of the functions and exercise of the powers of the county government as stipulated in the Constitution. One notable feature of the Constitution is the broadening of the country's democratic space through enhanced political participation (Nguzo za Haki, 2012).

1.2 Statement of the Problem

Global experience with decentralization bears out the Constitution's emphasis on governance, transparency and participation. Contrary to common expectations that devolution will

improve service delivery, governance factors often undermine expected performance and accountability gains from decentralization (Kenya Devolution, 2015). Devolution is a central promise of Kenya's new Constitution. But the ambition and magnitude of the administrative and political changes, and the formidable expectations about what it will deliver, mean that making it work will pose substantial challenges (Kenya Devolution, 2015). One of the objects and principles of a devolved government in accordance to the proposed constitution, Article 174 is to recognize the right of communities to manage their own affairs and further their development (Koki et. al., 2011). However, the downside risks—of service delivery failure and political backlash—are very real if devolution is not skillfully managed and seen to deliver tangible results (World Bank, 2011).

Some challenges (political, administrative and financial) have so far been observed in the implementation of the devolved system in Kenya (World Bank, 2011). However, so far, a comprehensive study on the challenges and opportunities of devolution in the new Kenyan constitutional dispensation has not been undertaken. Most of the work so far either covers the new constitutional dispensation as a whole or focuses on a sectoral implementation of the rules of devolution in the constitution. Public participation, for example, is one of the areas that has been studied by researchers and institutions alike. The Kenya School of Government (2015), published a series of studies on public participation in 2015. The papers covered topic ranging from enhancing public participation to public participation in the health sector and practical approaches for county governments to facilitate public participation. Another research on public participation was by Khobe (2012) which studied Devolution of Government in Kenya as a Means of Engendering Public Participation in Governance. Another sector-focused work was produced by the World Bank, (2013). It issued a policy note on the opportunities and challenges for the water sector under the new constitutional

dispensation. In addition, Okumu, (2010) studied financial devolution under the new constitutional dispensation of Kenya. As regards research works on implementation of the Constitution as a whole, a paper under the auspices of the Friedrich Ebert Stiftung (2011), studied the challenges and prospects of constitutional implementation in Kenya. Devolution was covered as one topic in the study. Another study by (Koki et. al., 2013) looked at the prospects of devolution for nation building in Kenya. In 2011, Society for International Development commissioned research on some aspects of the new constitution that require further policy and legislative intervention, culminating in ten Working Papers, one of which was on devolution by Nyanjom, (2011). The paper examined the (then) anticipated administrative and development planning imperatives of devolving power.

So far, the researcher has not come across a study investigating the practice of devolution in terms of the opportunities, good practices and challenges in every sector of implementation. This study is therefore designed to highlight good practices, asses opportunities and examine challenges of implementation of this relatively new system of government in order to suggest ways to make it work both efficiently and effectively.

1.3 Objectives of the Study

The general objective of this study is to examine the opportunities, good practices and challenges of implementing devolution in the new constitutional order in Kenya with a special focus on Nairobi County. More specifically, the objectives are to:

- i. investigate the framework of implementation, the theory and practice of devolution in Kenya;
- ii. asses the opportunities and good practices of implementing devolution in Kenya ;
- iii. identify the challenges of implementing devolution in Kenya ;

- iv. examine reform options that can be undertaken to enhance successful implementation of devolution in Kenya.

1.4 Significance of the Study

At an academic level, few approaches have focused their attention on the challenges and opportunities of implementation of the devolved system of government in Kenya. This research will attempt to address this gap by examining the experiences of incumbent government and county offices in terms of their implementation roles, concerned organizations, as well as Nairobi residents. It is hoped that the findings of the study will be used by the national and county governments as a spring board to further investigate the major challenges and loopholes in implementation of devolution at the national as well as county levels.

Findings of this study are also expected to be of importance to academic researchers and policy makers. While it identifies the major areas that pose challenges to the implementation of the system of devolution, hence, requiring the drafting of additional instruments of implementation, it also identifies areas of focus that can be further studied by concerned parties.

1.5 Scope of the Study

The study was carried out in Nairobi County. The researcher sought to examine opportunities, good practices and challenges of implementation of devolution under the new constitution in the county of Nairobi.

1.6 Limitations of the Study

The county of Nairobi has seventeen parliamentary constituencies. The study being about Nairobi County would have ideally covered all constituencies. However, due to mainly time constraints, it was not possible to include all constituencies. However, the study has attempted to include participants from as many constituencies within Nairobi as possible.

1.7 Organization of the Thesis

Chapter 1 consists of the background of the study, statement of the problem objectives, scope and significance of the study. Chapter two contains conceptual and theoretical framework and empirical literature on devolution as well as research gaps. Research methods are covered by chapter three. Data collected on theory, practice and frameworks of implementation is analyzed in chapter four. Opportunities and good practices of implementing devolution are analyzed in chapter five. Challenges of implementing devolution are analyzed in chapter six. Some reform options are examined in chapter seven. Chapter eight presents conclusions and recommendations of the research work.

CHAPTER TWO

LITERATURE REVIEW

2.1 Introduction

This chapter presents a review of the related literature on the subject. The researcher drew materials from books and journal articles closely related to the theme and the objectives of the study. It focuses on theoretical review, critical/analytical review, and identification of gaps that are to be filled.

2.2 Conceptual and Theoretical Framework

2.2.1 Global experience of Devolution

Since 1999, United Kingdom has been transformed by devolution, a process designed to decentralize government and transfer powers from the UK parliament in London to assemblies in Cardiff and Belfast and the Scottish Parliament in Edinburgh. Devolution is applied in different ways in each nation due to historical and administrative differences. The UK government is responsible for national policy on all powers which have not been devolved. These are known usually as "reserved powers" and include foreign affairs, defense, international relations and economic policy (APSEA, 2011).

The Indian Constitution assigns the powers and functions of the Center and the states, in Union, State and Concurrent Lists. All residuary powers are reserved to the Center. The assignments are fairly typical of federal nations. The functions of the central government relate to those of defense, those required to maintain macroeconomic stability, promote international trade and relations, exploitation of major minerals, and those having implications for more than one state. The major subjects assigned to the states include public order, public health, and agriculture. In practice, the states assume a significant role for subjects in the concurrent list, including education, transportation, and social insurance (Rao & Singh, 2004)

Papua New Guinea (PNG) is a political construction, the unity of which was maintained prior to 1975 by the colonial powers through the operations of a highly centralized bureaucracy. It is a land of many contrasts, many languages, many tribes and many cultures. Prior to colonial occupation, its people did not regard PNG as a nation. This western construct was only achieved in the late nineteenth century, with its boundaries defined by the colonial powers, who ruled over it for more than a century. Colonialism has thus mediated in defining not only internal relationships between tribes but also PNG's external relationships with its neighbors (Kulwaum, 2005).

Many outside observers, and residents have noted that PNG's centralized state is weak and ineffective in delivering basic government services in large parts of its territory. In the first three decades since PNG's independence in 1975, per capita income grew only slightly; rates of children in primary school are very low, even by the standards of sub-Saharan Africa; roads, schools, clinics, and other public assets are poorly maintained and many have deteriorated over time. The problem is not lack of resources but that the country's resources are inefficiently exploited and badly distributed, as a result of a highly dysfunctional political system (Fukuyama, 2007). Despite many attempts to move towards a decentralized and devolved system of governance after independence, PNG's bureaucracy remains centralized. Democratic reforms in PNG have had to filter through this entrenched structure. From the very beginning of PNG's political independence, the idea of devolution has been viewed as a way of ensuring both its fragile unity and the efficiency and effectiveness of its system of educational delivery. However, this balance between its democratic aspirations and bureaucratic reality has not been easy to achieve. The policy of devolution, while widely supported, has been difficult to implement (Kulwaum, 2005).

South African society is characterized by large socioeconomic backlogs and under-servicing across social groups and regions. One of the critical challenges that the national government faces, therefore, is how best to redistribute national revenues with a view to equity and poverty alleviation.

The South African intergovernmental fiscal system is designed to address this concern through the assignment functions allocated to each sphere of government (Yemek, 2005). Despite improvements over the past few years, South Africans are still confronted with rising levels of poverty, unemployment, increased living costs and high rates of mortality and HIV/AIDS infection. In this light, the ability of the country's fiscal decentralization system to focus public service delivery on vulnerable people and communities is open to question. Over the past ten years, South Africa has made significant progress in social delivery and redistribution, but the majority of South Africans are still poor and suffer disparities in the provision of public services such as health, education, clean water, sanitation and housing. The South African government has committed itself to extending social welfare to all citizens by providing efficient and effective public service delivery through a progressive realization of constitutionally mandated basic services (Yemek, 2005).

2.2.2 Historical Background of Devolution in Kenya

In 1963, along with its independence from the British colonial rule, Kenya, through rounds of Lancaster House talks between Kenyan nationalists and the British colonial office, adopted a constitution based on the standard "Lancaster House Template" used for the former British colonies in Africa (Nyanjom, 2011). The constitution was a symbol of independence of the State and the creation of a new State. It provided a measure of legitimacy for the new rulers and confirmation that political power could be truly exercised by the African majority (MDA, 2012). It was also a proof of national unity since it had been endorsed by a majority of the political leaders. It served as a vehicle for introducing new values, including the notion of constitutionalism. Between 1963 and 2005, the Constitution was amended many times. Most of the amendments are said to have entrenched an authoritarian and undemocratic administration. Other amendments were intended to solve political problems facing the government from time to time (MDA, 2012).

The promulgation of the 2010 Constitution of Kenya marked a major milestone in the way the country is governed. It stipulated the dispersal of political power and economic resources from the center in Nairobi to the grassroots in a process known as devolution. Among many reforms, introduced by the constitution, devolution is arguably the most significant (Kenya Devolution, 2015). Article 174 of the 2010 constitution stated that the objectives of the devolution of government were; to promote democratic and accountable exercise of power, to foster national unity by recognizing diversity, to give powers of self-governance to the people and enhance the participation of the people in the exercise of the powers of the state and in making decisions affecting them (Kenya Constitution, 2010). Additionally, the government seeks to recognize the right of communities to manage their own affairs and to further their development, protect and promote the interests and rights of minorities and marginalized communities (Hope, 2015). It also aims to promote social and economic development and the provision of proximate, easily accessible services throughout Kenya, ensure equitable sharing of national and local resources throughout Kenya, facilitate the decentralization of state organs, their functions and services from the capital of Kenya and enhance checks and balances and the separation of powers (Hope, 2015).

2.2.3 Devolution and the Purpose it Serves

Devolution is the transfer of powers from the central government to local units which involves both administrative and political/decision-making authority (Koki et al, 2013). This is usually to a sub-national level of government, which can then be said to enjoy autonomy in respect to the devolved subjects/functions, provided that nothing else inhibits the exercise of such autonomy (Miller, 2002). The defining characteristic of decentralization by devolution is that the transferred power should include political power, not just administrative and economic power directed by central governments, namely, de-concentration. The new sub-national level of government includes 47 counties, each with an elected governor and county assembly, responsible for a significant portion of public finances and service delivery (Kenya Devolution, 2015).

Devolution is seen as a mechanism to bring government closer to the people. Bringing decision-making and resources to the county level is seen as a way also to ensure more equitable development throughout the country. Devolution, it is held, will foster the transfer of power to minority ethnic communities who have for too long stood outside the pattern of ethnic dominance not only in power but as well in development (Steeves, 2015). The level and quality of government services and the path of development will be under the control of elected and accountable local leadership. No longer, it is hoped, will critical service and development decisions be made by the dominant and unaccountable ethnic winners in the zero-sum game that has marked Kenyan national politics (World Bank, 2015). Kenya's decentralization is among the most rapid and ambitious devolution processes going on in the world with new governance challenges and opportunities as the country builds a new set of county governments from scratch (World Bank, 2015).

2.2.4 Framework of Implementation of the Devolved System of Government

Each county has a county assembly whose members are elected inwards, an elected Governor who serves as the political head of government and who selects a county executive apart from the county assembly members. Their term of office is five years and elections are held at the same time as general elections. Each county government also recruits its own civil service to administer devolved governmental functions (Koki et. al., 2013). Devolved government in Kenya represents the culmination of years of lobbying by politicians, civil society organizations, professionals and church and trade union leaders to reduce the dominant power of the central government. Elected governors have now become the real centers of power standing between the president and the common people. Local representatives of substance are no longer chiefs and assistant chiefs but elected members of county assembly (MCAs). Similarly, county governments would now be hiring their own specialized public servants no longer dependent on central officials with divided loyalties (Steeves, 2015).

As regards functions and powers of the county/ sectors, the Constitution of Kenya enumerates them as follows; agriculture, health services, pollution control, cultural activities, county transport, animal control and welfare, trade development and regulation, county planning and development, pre-primary education, village polytechnics, home-craft centers and childcare facilities (Kenya Constitution, 2010). Implementation of national government policies on natural resources and environmental conservation, county public works and services, Fire fighting services and disaster management, control of drugs and pornography, coordinating the participation of communities and locations in governance at the local level and assisting communities and locations to develop the administrative capacity for the effective exercise of the functions and powers and participation in governance at the local level are the other functions. (Kenya Constitution, 2010, p. 176).

Education and health policy remain under the jurisdiction of the national government (RoK, 2010). The taxation powers of the counties are very restricted as they cannot levy income tax, value-added tax, custom duty or excise tax. They are limited to property and entertainment taxes (RoK, 2010). On the surface, these jurisdictional powers pale by comparison with those of the national government. However, county functions touch on fundamental livelihood concerns and services of the people. Hence, county governments affect closely and significantly the common person (Steeves, 2015).

2.2.5 Theories of Devolution

I. Participation Theory

At all levels of government, citizen participation programs were launched beginning in the 1960s with the underlying assumption that if citizens became actively involved as participants in their democracy, the governance that emerged from this process would be more democratic and more effective. This began with Arnstein's ladder of participation. He described different levels of

participation; manipulation or therapy of citizens, consultation and genuine participation, i.e. the levels of partnership and citizen control (Storey, 1999).

Participation is often referred to as community participation. It is the role of community in decision-making. It represents a move from the global, top-down strategies that dominated early development initiatives to more locally sensitive methodologies (Storey, 1999). Claridge (2004) suggested that the historical antecedents of community participation include: the legacy of western ideology, the influence of community development and the contribution of social work and community radicalism. According to Holcombe (1995), acknowledgement of the importance of participation grew out of the recognition that the worlds' poor have actually suffered as a result of development, and that everyone needs to be involved in development decisions, implementation and benefits.

As participatory approaches advanced, they highlighted the weaknesses inherent in traditional, top-down approaches that focused on single disciplines and reductionist paradigms (Johnson & Walker, 2000). They identified the limitation of the state in top-down resource conservation practices and emphasizes popular participation as the remedy of these shortcomings. Mompoti and Prinsen (2000) made a similar observation of the uniqueness of an individual as an entity who is capable of making unique contributions to decision-making. This move represents a move towards people-centered development at a normative level. Claridge (2004), Suggested that the community development movement of the 1950s and 1960s was another source of inspiration for contemporary community participation theory. This theory therefore supports devolution of services and resources as well as community participation.

The Kenyan Constitution seems to have laid its foundation in the theory of participation. The Constitution and the new legal framework place a strong emphasis on strengthening public

participation. It has been mentioned that strengthening public participation and governance is a core element in Kenya's strategy to accelerate growth and address inequalities in economic opportunities, investment and service delivery in different parts of the country. (Kenya Devolution, 2015).

II. Sequential Theory of Decentralization

This theory was proposed by Tulia G. Falleti, an assistant Professor of Political Science at the University of Pennsylvania (2004) when he sought to investigate whether decentralization increased the power of governors and mayors. He argued that the sequencing of different types of decentralization is a key determinant of the evolution of intergovernmental balance of power. According to Falleti (2004), sequential theory of decentralization has three main characteristics: it defines decentralization as a process; it takes into account the territorial interests of bargaining actors and by incorporating policy feedback effects and it provides a dynamic account of institutional evolution.

Administrative decentralization comprises the set of policies that transfer the administration and delivery of social services such as education, health, social welfare, or housing to sub-national governments (Huber & Stephens, 2001). Fiscal decentralization on the other hand refers to the set of policies designed to increase the revenues or fiscal autonomy of sub-national governments. Fiscal decentralization policies can assume different institutional forms. An increase of transfers from the central government, the creation of new sub-national taxes, and the delegation of tax authority that was previously national are all examples of fiscal decentralization (William & Webb, 1999). Political decentralization is the set of constitutional amendments and electoral reforms designed to open new or activate existing but dormant or ineffective spaces for the representation of sub-national policies. Political decentralization policies are also designed to devolve electoral capacities to sub-national actors. Examples of this type of reform are the popular election of mayors and

governors (who were previously appointed), the creation of sub-national legislative assemblies, or constitutional reforms that strengthen the political autonomy of sub-national governments (Falleti, 2010).

2.3 Empirical Literature

Studies on devolution generally agree that the system comes with its own challenges. Some mention the difficulties, technical and financial, of implementing devolution while others deem devolution a threat for the unity of a nation in a country. Steeves (2015) argues that there are a number of challenges that face the implementation of decentralization/devolution in developing countries. It is essential to know the jurisdictional authority being given over to devolved governments. Often, the new responsibilities being assumed demand large and continuous financing and staffing levels which may strain the abilities of nascent local public services to deliver services effectively. Second, often central political and administrative elites are reluctant to relinquish control over key areas of public policy and instruments of central control over local society.

Through devolution, an alternative political arena is created in which new political actors strive to assert their power and quite naturally resist any intrusions by national politicians (Steeves, 2015). The latter see the new leadership as a threat to their claims for influence within local society, hence, may undermine the new devolved units through under-financing and through using conditional funding mechanisms to control the direction of local spending allotments (Steeves, 2015). Not only is a new political arena established but also a new outlet for the distribution of valued resources will be created. This will mostly be used by political and administrative elites (Steeves, 2015).

In a report by the Ministry of Devolution and Planning (2015), a SWOT analysis and an appraisal of the laws, policies, guidelines and regulations placed to steer the devolution process in Kenya was carried out. According to the analysis, the major weaknesses and threats that pose a challenge to the

new constitution included issues of collaboration between stakeholders in devolution, insufficient legal frameworks and public participation (MDP, 2015).

Wamwangi (2016), Chairman of Transition Authority while giving a public lecture to Kenyatta University students on 'Understanding Devolution' highlighted the following as some of the challenges facing devolution:

Governance structures are being circumvented for personal gain, pillar devolution laws are at times not obeyed in full, lack of legislative framework to cover emerging issues, in-fighting between different levels of leadership has not been resolved, impeachment of governors, speakers and other leaders is gaining currency, double taxation in the counties, inadequate allocation of revenue to the county governments for full implementation of devolution. In addition, some county governments demanded all functions to be transferred all at once but in reality, they lack capacity to absorb all the functions and leakage of revenue at the point of collection in the counties as a result of corrupt officials (Wamwangi, 2016).

Ghai (2008) carried out a research to determine whether Kenya was ready for devolution. A major concern was that devolution would lead to the disintegration of the country and the state. There were worries that it would be the first step towards secession, as devolution would provide disaffected communities with resources and structures of government for collective action which would be focused on a breakaway (Ghai, 2008). The second criticism was that devolution weakens national authorities and thus threatens the achievement of national objectives, such as economic development, and law and order, which require a strong government. It was argued that the counterpart of a strong and effective central government is an inefficient, corrupt and incompetent government at local levels, with little capacity or resources to carry out their responsibilities (Ghai, 2008). It was further argued that local governments will probably be under less media scrutiny, and corruption at that level may receive less attention. Finally, devolution was opposed on the ground that it would greatly increase the costs of government. The costs of a new system of government and comparison with expenditures of a previous system were found to be hard to estimate (Ghai, 2008).

At the inaugural Council of Governors' Devolution Conference, governors and their counterparts in local leadership met to discuss the challenges, milestones and recommendations one year down the line. To deliver on the devolution promise, the conference considered and made the following recommendations: the commitment of county governments to accountability to both the people of Kenya and the relevant oversight institutions as by law established, to working with the audit and accountability institutions appreciating that effective audit framework is a management tool that strengthens systems within institutions. (Open Institute, 2014). On the issue of resources, Otieno (2014) suggested that the national government must provide political leadership on relevance of the senate, questions on oversight and accountability of counties. It must also genuinely facilitate a constructive debate and agreement on the basis of current and future allocation of funds to county governments including the question of if, when and how the issue of 15% minimum allocation to county governments will be addressed.

2.4 Summary and Research gaps

The objectives of the devolution of government as per article 174 of the 2010 constitution were; to promote democratic and accountable exercise of power, to foster national unity by recognizing diversity, to give powers of self-governance to the people and enhance the participation of the people in the exercise of the powers of the state and in making decisions affecting them. Additionally, the government seeks to recognize the right of communities to manage their own affairs and to further their development, protect and promote the interests and rights of minorities and marginalized communities, promote social and economic development and the provision of proximate, easily accessible services throughout Kenya, ensure equitable sharing of national and local resources throughout Kenya, facilitate the decentralization of state organs, their functions and services from the capital of Kenya and enhance checks and balances and the separation of powers (Hope, 2015). The researcher sought to find out whether Kenyans are aware of these objectives, and even if they are aware, whether they are given a chance to participate in their implementation.

county officials have the responsibility of implementing this system and showing accountability to their constituents. Civil society groups have the responsibility to track progress, critique and give recommendations. The researcher therefore sought to meet these groups and investigate their understanding of theory, practice and their participation.

The authors reviewed focused on the potential threats and challenges of devolution. While some predicted the potential threats on devolution, others mentioned actual challenges that have been witnessed on the ground in only but a few aspects of devolution. Following the inauguration of the new constitution and devolution, suggestions have also been made to ensure the process achieves its objectives. Other than having been made fairly early since promulgation of the constitution, none was a comprehensive study on opportunities, good practices and challenges that devolution has been faced with in every sector of implementation.

CHAPTER THREE

RESEARCH METHODS

3.1 Introduction

This chapter presents the research methods by describing the research design, location of the study, target population, sampling procedures, sampling size, data collection and analysis procedures.

3.2 Description of the Study Area

Nairobi county is one of the 47 counties in Kenya. The smallest yet most populous of the counties, the county's capital is Nairobi, which is also the largest city in Kenya. Nairobi county was founded in 2013 on the same boundaries as Nairobi Province, after Kenya's 8 provinces were subdivided into 47 counties (Nairobi county assembly, 2016). The county is composed of 17 Parliamentary constituencies. The Nairobi City County is the creation of the Constitution of Kenya 2010 and successor of the defunct City Council of Nairobi. It operates under the auspices of the Cities and Urban Areas Act, The Devolved Governments Act and a host of other acts. The Nairobi City County is charged with the responsibility of providing a variety of services to residents within its area of jurisdiction. These include the services that were hitherto provided by the defunct City Council and the ones that have been transferred from the national government (Nairobi county assembly, 2016). The former include physical planning, public health, social services, housing, primary education infrastructure, inspectorate services, public works, and environment management. The latter include agriculture, livestock development and fisheries, trade, industrialization, corporate development, tourism and wildlife and public service management (Nairobi county assembly, 2016).

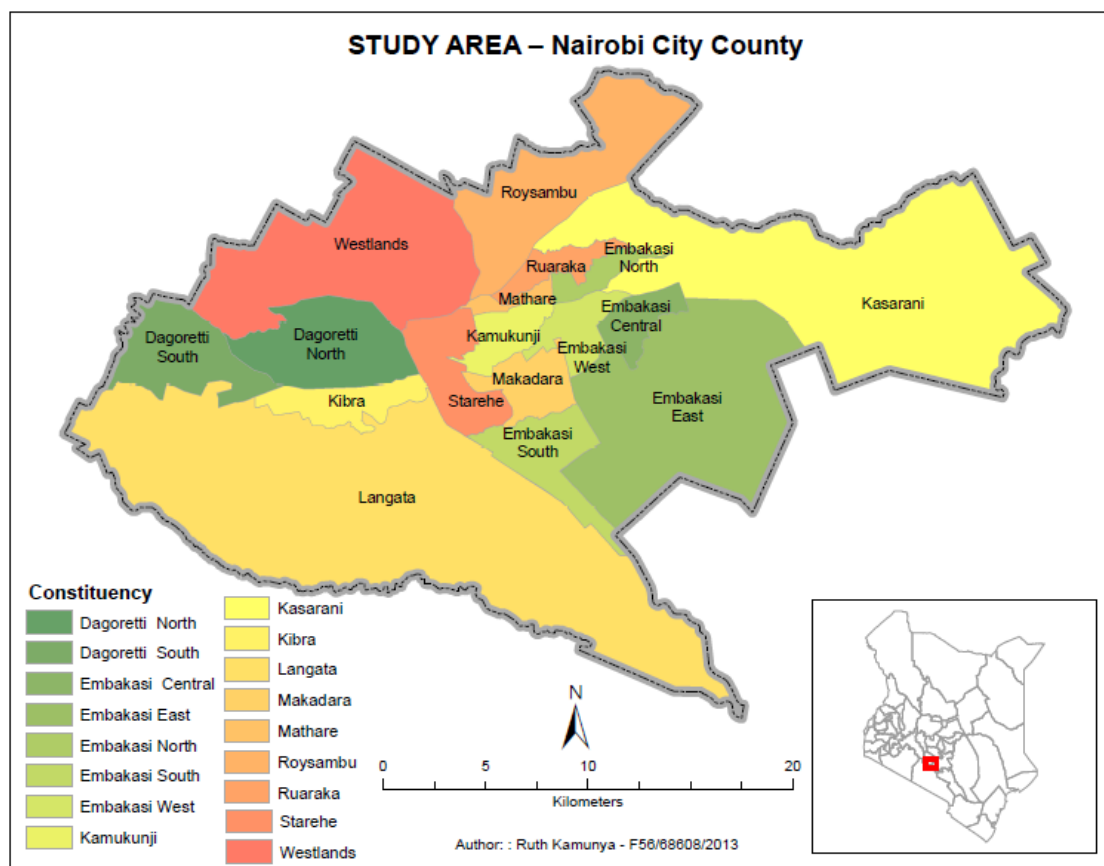
Led by the Governor and Deputy Governor, the Executive Arm of the county is charged with the responsibility of policy formulation. The county Public Service Board is appointed by the Governor and is responsible for the determination of the county Human Resource needs recruitment and related Public Service functions. The board is under the charge of the chairman supported by

various committee members. The county Executive Committee, appointed by the governor, comprises ten members and is the highest policy making organ of the county. Each county Executive Committee Member is responsible for a sector of county operations (Nairobi county assembly, 2016).

Nairobi county is the biggest economic contributor to the national economy. A number of economic, political and administrative activities are undertaken in Nairobi. It is also the seat of the national government and its operations. These made it the most preferable county to conduct this study about devolution and its implementation by national and county governments. Budget considerations and ease of accessibility of information, have also factored into the selection of the study area.

Figure 1. Map of Nairobi County and Constituencies

Source: University of Nairobi Department of Geospatial & Space Technology



3.3 Research Design

According to Kothari (2006), a research design is the collection and arrangement of conditions of analysis of data in a manner that aims to combine relevance to the research purpose with economy in procedure. The research design is descriptive. This study design can be used to determine how people felt about a particular issue by enabling them to describe their experiences (McBurney & White, 2004). In addition, descriptive design lays a greater emphasis on sample selection because the major concern is to obtain a broad picture of the social problem prevailing in the defined universe and make recommendations to bring about the desired change (Majumdar, 2005). As such, it was chosen because the study seeks to determine positive experiences and challenges of Nairobi residents with devolution as a system of governance.

3.4 Samples and Sampling Procedure

Target population comprises of all individuals that the researcher could reasonably generalize his/her findings to. Target population refers to that group about whom the researcher will draw conclusions (Mugenda, 1999). The target population of this study comprises of those individuals that are entrusted with implementation of the devolved system, and Nairobi residents who are the subjects of the constitutional dispensation. Taking time and budget into consideration, the research targeted Nairobi residents knowledgeable in the area of constitution and devolution. The Constitution of Kenya introduced the devolved system of government in the year 2010. Therefore, residents who have lived in Nairobi for a minimum of five years, who as a result can speak of their personal experiences with the devolved system of government were purposively selected for the in-depth interviews.

A sample is a sub-group drawn from the target population with relevant characteristics. Sampling is a process of selecting a number of individuals for a study in such a way that samples selected will represent the target group from which they will be selected (Mugenda, 1999). Since the study is

qualitative in nature, non probability sampling, specifically purposive and snowballing, approaches were used to select samples. The 29 respondents; of the in-depth interviews, key-informant interviews and the focused group discussions (FGDs) were purposively selected from different parts of the city of Nairobi, educational institutions and institutions responsible for the framing of the 2010 constitution and the system of devolution as well as those with the responsibility to ensure proper implementation of devolution country-wide. As such, ten participants were selected for the in-depth interviews, four key informants were purposefully selected from relevant offices i.e. Kenya School of Government, the task force under the Ministry for Local government for implementation of devolution and the Devolution Transitional Authority. In addition, fifteen participants were selected from different walks of life for two Focused Group Discussions.

3.4.1 Description of Respondents

Five basic variables are presented here. These are pieces of socio- demographic data based on the information sought from the respondents. Gender, age, level of education, field of work (occupation) and number of years spent as a resident of Nairobi are presented under each category of data collection technique. Codes were used for each participant to keep anonymity and for ease of reference. Accordingly, in-depth interview participants have been referred to as ID1, ID2 etc. Focus Group Discussions have been depicted as FGD 1 and FGD 2. In addition, key-informants have been referred to as KI-1, KI-2, etc. (Please refer to annex I for profiles of study participants)

A. In-depth interviewees

In terms of gender distribution, out of the 10 in-depth interview respondents the researcher purposefully selected 5 male and 5 female respondents. Data about ages of respondents was gathered from respondents of the in-depth interview and the FGDs. In-depth interview participants fell between the ages of 27 and 58. The other relevant type of information gathered is the level of education of respondents. Out of the 10 in-depth interview respondents; 4 respondents had master's

degree, 4 had a University degree out of which 1 was pursuing an LL.M. degree, 1 had a degree in Medicine and 1 was pursuing a degree in Human Resource Management. The other method by which diversity of respondents was achieved was the diverse occupations or fields of work of the study participants. As such, the researcher made a deliberate attempt to reach Nairobi residents in as diverse occupations as possible. As a result, the in-depth interview respondents consisted of; a financial controller, a former member of parliament and Minister (politician), Intelligence and Security Officer, Advocate of the High Court of Kenya, a Chairperson of a motor vehicle company and a motor assembly plant, a Director of Technology in the field of Information Technology, a Medical Doctor, a student, a student in Human Resource Management and a Teacher.

The number of years spent in Nairobi as a resident was relevant because it determined the quality of information acquired especially from the in-depth interviews and the GFDs. The researcher set out to select participants that have resided in the county of Nairobi for a minimum of five years. This was important because the participants needed to have been residing in Nairobi at least for the duration of the time devolution has been in practice. However, a longer period of residency was preferred so as to ensure that participants were able to compare and contrast between devolution and the former system of government to acquire information rich in quality. The number of years in-depth interview respondents have resided in Nairobi range between 5 and 49 years.

B. Focus Group Discussion Participants

Out of the 15 participants of the Focused Group Discussions, 12 were male and 3, female. An effort was made to include respondents ranging from young adults to elderly persons as well as those from different walks of life in order to capture responses from as diverse groups as possible. As a result, ages of respondents range between the ages of 22 and 67. in terms of educational background, out of the 15 FGD participants, 4 had finished secondary school, 1 had finished

standard 8 (8th grade), 1 had diploma in teaching, another one had a university degree, 1 had masters degree and 6 were pursuing their education for bachelors degree in different fields.

While 6 of the FGD participants were students in the fields of Biotechnology Research and Vaccine, Bachelor of Commerce in Procurement, Bachelor of Science in Economics and Statistics and Bachelors in Political Science, 2 of them described themselves as business persons, 1 was in the service industry, 1 was a cafeteria worker, 2 were providing transport services, 1 was a mother/wife, 1 was a retired civil servant and another was a licensed Engineer.

The first FGD participants also had differing durations of stay as residents in the county between 7 and 28 years. The second FGD participants resided in Nairobi between 3 and 8 years. While four of the respondents have resided in Nairobi for 4 years, one has only stayed for 3 years. This does not entirely comply with the minimum five-year stay qualification the researcher made. However, the researcher had to give priority to the diversity of the respondents which made the participation of university students important to ensure the inclusion of young people who would also fairly understand the research questions. Given that the participants of the second FGD were University Students that hailed from different counties, it was difficult to find exclusively students that have resided in Nairobi, strictly, for more than five years.

C. Key-informants

All four of the key informants were male. Two of the key informants were Ph.D. students while 2 of them were holders of Ph.D. degree. The key-informants of the study had the following occupations; Head of Research and Consultancy at the Kenya School of government (Leader of the Devolution Donor Coordination Committee), Senior Deputy Secretary in the Ministry of Interior (Formerly, CEO of Devolution Transitional Authority), Coordinator at the Centre of Devolution Studies/ Capacity Building for Local governments at the Kenya School of government and a Former

member of the task force under the Ministry for Local government for implementation of devolution.

3.5 Data Collection Tools

3.5.1 Primary Data Collection

The study mainly employed qualitative data collection tools to get in depth insight from different study groups and stakeholders. The data collection techniques used were in-depth interviews, focused group discussions, key informant interviews and document reviews.

Semi-structured questions were prepared for the in-depth interviews, each clustered under each specific objective. The interview guide was used to get detailed insight on the experience of Kenyans with devolution in their day-to-day lives. It also helps to capture the perspectives of respondents on the challenges of devolution and to suggest possible avenues to tackle these problems.

Other than the in-depth interviews, two FGDs were conducted with two different groups. One group comprised of local community members from different walks of life. The other comprised of University students from different fields of study in Nairobi. A guideline was developed for the FGDs with the specific objectives in mind.

Semi-structured guideline was used for each key-informant interview. Due to the unique nature of information acquired from each key-informant however, a lot of improvisation of questions was required from the interviewer/researcher. The key informant interviews were employed to assess the roles and responsibilities of relevant central government and county offices in facilitating the implementation of devolution. It also helps to identify the challenges and good practices in the process of implementing devolution in addition to views of key-informants on steps that need to be taken for improved implementation.

3.5.2 Secondary Data Collection

Documents related to decentralization and the concept of devolution and Kenya's systems of government were studied. Relevant books, journals, magazines, reports, on-line sources, unpublished documents, and literatures on international and national legal provisions were utilized for comparative understanding.

3.6 Data Processing and Analysis

The data collected through in-depth interviews, key informants and focus group discussions was analyzed using thematic and narrative analysis. As such, the recorded audio responses were transcribed and grouped into similar arguments to draw a conclusion. Narrative analyses seeks to put together the “big picture” about experiences or events as the participants understand them (Tromp, 2006). This method of data analysis was found to be the most appropriate to analyze data gathered through the in-depth interviews, the FGDs and the key-informant interviews in order to make general conclusions about the topic at hand.

3.7 Ethical Considerations

The researcher ensures that she practiced non bias while collecting data. Data collection should be as per the sampling technique so that every respondent has an equal chance of being in the study. In addition, the respondents should try as much as possible to be honest in their responses. The researcher understands that all information from respondents should be handled with ultimate confidentiality. For any disclosure, consent should be obtained from the respondents in writing. In addition, Respondents were informed of the research design and purpose of the study and were given a chance to voluntarily choose whether they want to be in the study or not. All respondents are anonymous as the documents do not bear their names. This was so that they have the freedom to express their views without fear of victimization.

3.7 Field experience

Work, personal schedule and budget were taken into consideration when planning the data collection trip to Nairobi, Kenya. Perhaps the first major concern the researcher had regarding the trip was whether the planned thirteen days would be adequate to contact study participants and conduct all interviews and discussions. To partially address this concern, the researcher had to seek the cooperation of colleagues and friends in Kenya to identify and contact some of the interview participants ahead of time before leaving Addis Ababa.

In the opinion of the researcher, Nairobi is a city in which things generally move at a relatively faster pace than Addis Ababa. Therefore, while the researcher anticipated a number of challenges for the field work, late responses and missed appointments were not amongst them. In fact, the researcher understood that she had to challenge herself to keep up to the Nairobi pace of life. One of the major concerns was financial. It is an expensive city and every hour spent in the bustling city costs good Kenyan Shillings. While at the time of the field work, one Ethiopian Birr was exchanged approximately for five Kenyan Shillings, that in no way is an indication of the standard of living in the city. One exception to that is transportation, such as taxi services. Taxi services cost almost half the amount that they cost in Addis Ababa. In addition, the researcher was hosted by friends, so accommodation was not an item of expense.

The other concern was identifying and getting in touch with key informants. Unlike the other participants, key-informants had to be participants with very specific pieces of information. The researcher was alive to the fact that these were to be contacted and interviewed during her stay in Nairobi and failing to do the same would render the research incomplete. The researcher attempted to address this by contacting people from her network in Nairobi ahead of time. While one of the key informants had been identified before she left for Nairobi, the rest were contacted through the kind cooperation of key informants as well as contacts in Nairobi after arrival. Still, the limited time

the researcher had in the city presented a challenge. Out of the identified key-informants, only a few were available during the researcher's stay in Nairobi. The researcher's attempt to locate a key-informant in the Ministry of Planning and Devolution of Kenya was not successful because of unavailability of a willing respondent within the duration of her stay. However, documents from the ministry have been reviewed and used as input.

While the researcher thought it would be ideal to interview key-informants after all other interviews had been conducted so as to raise questions that would address issues raised by the local community that was not possible. The interviews had to be conducted at the availability and convenience of the participants and that meant interviews conducted at random. The other challenge was as regards gender of the study participants. The researcher made an effort to make the data collection as balanced as possible in terms of gender. As such, she purposively selected equal number of male and female respondents for the in-depth interviews. However, all of the key-informants as well as, majority of the FGD participants were male. This was due to the fact that the researcher did not have much control in selecting the participants that were available at the time.

The English language presented an opportunity. It, being an official and national language, almost anyone on the streets of Nairobi speaks it rather with ease, of course, with different levels of fluency. Local Kenyan expressions were not that difficult to comprehend because of the researcher's familiarity with the country. The researcher has made numerous work-related and personal trips to the country for more than eight years prior to the research work. Although this could well be just a personal opinion and generalization at best, most Kenyans are rather free in expressing themselves. Therefore, 'squeezing' responses out of even the least educated of them all was not amongst the challenges faced during the field work. In fact, they have a culture of debating and expressing their thoughts on matters that are believed to be of interest! This is reflected in the several programs featured on their printed and electronic media that are designed for gathering public opinion and

encouraging public participation on a range of topics. This, at least in Nairobi, applies to both male and female members of society. As a result, the FGDs were rather flowing with relative ease. Similarly, in-depth interviews were full of life. One also cannot pass without noticing the level of information local community members have about politics and the workings of a government. One can roughly say that 'Nairobians' have a good amount of civic education regardless of age or educational background. This was proven time and again by the quality and quantity of information collected from the most 'ordinary' of citizens. Other than language and civic awareness, the relative freedom with which respondents were expressing their opinion about issues such as corruption and government officials, issues that would have been considered 'sensitive' in some other countries, was refreshing. Anonymity was guaranteed of course, however, that was not a priority for most of the respondents.

One challenge that proved to present difficulty at the stage of data collection and analysis was that the interviews, being open ended, invited a lot of discussion and hence, a lot of irrelevant information. The researcher had to skillfully guide the FGDs to gently nudge participants to focus on the topic at hand. At the same time, the researcher had to refrain from interfering in answers being given on in-depth interviews despite the amount of irrelevant discussion that was taking place so that the flow of conversation would continue. This made the transcription process very long and laborious.

Most of the in-depth interviews were conducted in social places and residences. Others were conducted in the work places of respondents. Finding venue for the FGDs was another challenge. Given the number of participants, and the need to find relatively quiet venues, it was not easy to find a convenient place or it was going to be costly. FGD 1 was conducted in a lecture room of Management University of Africa (MUA) located in 'South C' area, with the kind cooperation of staff members. FGD 2 was conducted in a hotel lounge located in 'West lands'.

CHAPTER FOUR

THEORY, PRACTICE AND FRAMEWORKS OF IMPLEMENTING DEVOLUTION

4.1 Introduction

This chapter attempts to analyze the data collected to examine the theory, practice and frameworks of implementation of devolution in Kenya. It begins by presenting general understanding of respondents about devolution and what it entails, the major players and the general framework of implementation. Then, it attempts to present participants' observation of devolution at work against their initial expectations. In addition, it investigates whether public participation has truly been achieved as it has been a major motivation behind Constitutional crafting of a devolved system of government. Data collected through in-depth, key-informant interviews and FGDs has been analyzed as follows.

4.2 Framework for Implementing Devolution in Kenya

Framework for implementation includes legal and institutional structures through which devolution is implemented. The Constitution of Kenya has enumerated the relevant institutional framework for the implementation. As such, it has provided for the national government and county governments with their executive and legislative offices. In addition, it also enumerates functions and responsibilities of both levels of governments. While the constitution itself is the major legal instrument on devolution, it provides for different acts of parliament in major areas of implementation. As regards public participation, Art. 10 of the Constitution states that it is one of the national values and principles of governance (Kenya Constitution, 2010). More specifically, the County Government Act provides further guidelines for the realization of the goal of the Constitution of ensuring the participation of the people in governance (County Government Act, section 87).

In order to assess the understanding of in-depth interview and FGD respondents about devolution and its implementation, questions such as; *What do you know about devolution? Which devolved areas and functions are you aware of in Nairobi county? How is the current practice of devolution in Nairobi? How is it implemented? Who are taking part in the system?* were asked.

For the question about what devolution is; in-depth interview responses have been summarized as follows: As far as Kenya is concerned, devolution is a new form of government under the new Constitution on which leadership is devolved. It was also mentioned that devolution is a system of government where functions to be done by central government are decentralized to county government. The Constitution requires each county to have a Governor and has its own assembly and own members of county assembly who oversee what the Governor does with regards to county Governance. They also explained that Devolution has three main components; resources coming from the center to the devolved governments, decision making and public participation. All the three are inched on the fact that the public is informed and are participating in the sense that they know their rights and what is expected of them and the leaders.

Devolution also includes decentralizing decision making process. It is a system in which central authority is decentralised to lower levels of government. ID3 stressed the need to curb duplication of decision and mandates in devolution because the system is dependent on structures and systems on which it operates from the national government to the devolved units. It was also mentioned that devolution is important not only to avoid duplication but also focus on issues emanating from the ground, making services reflective of the need on the ground. County government, it was mentioned, has the function of bringing services closer to the people. Devolution also means decentralization of resources. In relations to budget, that each county plans on how to spend its funds based on priority projects while previously it was the national government to decide how to allocate funds.

Participants of FGD 1 identified devolution to be similar to a system of decentralization of power and resources that was there in Kenya in 1963. Specifically, they said the following:

Talk of devolution as a form of ‘Majimbo’¹. It is another way of bringing in ‘Majimbo’ through the Constitution which had been advocated for a long time. Where people feel that resources are concentrated in the central government and they wanted autonomy in the various areas of jurisdiction. People feel that we need these resources so that those in power could not use the resources as bargaining tool or to the advantage and the disadvantage of those people at the grass root level. It is a matter of devolution of resources..bring resources closer to the common ‘mwanainchi’².

Moreover, FGD 2 participants pointed out the similarity of devolution to ‘*Majimbonism*’:

Devolution is simply the decentralization of duties from national government to the county government. If we go back to what the ‘KANU’ and ‘KADU’ had about the ‘majimbonism’ back in the days, that is where we could have started. The manifestos of ‘KADU’ spoke of ‘Majimbo’ which means to bring duties of government to each province.

After examining the extent of knowledge of respondents on the system of devolution, respondents of the in-depth interview and FGDs were asked about specific devolved areas and functions. They mentioned health sector, agriculture, road network, and education, management of waste and refuse and general welfare of a community.

On the question about the major players in implementing devolution, respondents mentioned a number of offices such as; governors, deputy governors, members of county assembly, women representatives, county executives, central staff working for governors, senators, constitution implementation commission which was enlisted with streamlining the process and interpreting the work of county governments were mentioned.

Almost all of the responses showed a fair amount of awareness of what devolution is and what it entails including the major actors involved in its implementation. However, only a few sectors of county government functions were mentioned by in-depth interview and FGD participants. This

1 Please refer to the Introduction section of this paper

2 Swahili term for citizen

could be because given the short amount of time devolution has been existent in Kenya, six years to be exact, counties are actively involved in sectors that concern the day-to-day lives of citizens as well as those that are considered basic. According to International Covenant on Economic, Social and Cultural Rights, basic services include, but are not limited to; adequate standard of living, education, health care, social welfare and sanitation. (ICESCR).

4.3 Societal Expectation of Devolution

The decision to promulgate a constitution which provided for devolution of the state into 47 counties was reached at through a referendum (Nyanjom, 2011). At the time, devolution's most significant aspects were generally understood to be the diminution of the powers of the president and central government, and the provisions for substantive devolved government (Nyanjom, 2011). The Kenyan public had many expectations as to what a devolved government would entail to their county.

In-depth interviewees were asked to mention what they expected devolution to bring about. They explained that diverse interest emanating from different counties led to the need to localize both the inputs and the way resources are employed. They indicated that there was a general understanding that devolution entails decentralization of functions previously concentrated in the central government, to the county government. As a result of decentralization, respondents expected to see more focused decision making since whatever used to happen in the national government would be performed at the county level. The other expectation, repeatedly mentioned was creation of more opportunities by way of job openings and business opportunities due to the new government structure and upcoming projects from the governors.

The other issue in the discussion of devolution is public service delivery. In-depth interview responses indicated that society expected public service to be more accessible to the people. They

mentioned greater and improved service delivery in the form of different services. One such service is health services. There was high expectation that the devolved system would ensure effective provision of health by ensuring availability of drugs in hospitals. Others expectations included improved social services in general including housing and the cost of living. Some of the basic roads in congested estates were expected to be fixed for ease of traffic flow. Curbing of floods by a clear focus on drainage and also hygiene by educating the public about the importance of keeping roads in Nairobi clean to prevent flooding.

The other area discussed was resources and the management of resources. Respondents expected that devolution would bring-about prudent use of resources at the county level. Related to that, they expected to see reduced level of corruption. Responses indicated that there was expectation that Nairobi residents would be consulted in day-to-day activities and decision making of the government; citizen participation in decision making at the county level by way of empowering citizens was mentioned.

4.4 Government Performance against Citizens' Expectations

Six years after its introduction in Kenya and four years since beginning of implementation, devolution has had its own challenges and it has also shown results. This section presents how Kenyans assess the performance of the devolved government as opposed to their initial expectations of what it would achieve. In-depth interview respondents expressed disappointment over the performance of the devolved government against their initial expectations of what it would achieve. They said that it is not functioning well. They went ahead to mention some of the reasons they considered were responsible for the perceived under-performance.

Corruption was repeatedly mentioned as the culprit for the disappointing performance of counties. ID1 mentioned that some goals have not been realized because there is squandering of public funds

by county officials. ID3 said that the country was moving backward due to money diverged to unwarranted plans. Nepotism was also mentioned as one of the reasons for the lack of positive results of devolution. ID6 mentioned her observation as follows:

The jobs that are supposed to be created are either not there or when they are available, they are only available to the friends and relatives of people of influence. Governors and their families are the ones who have benefited from this system. Now, they have bought houses in good places in towns and drive flashy cars which in general does not send a very positive message to the people who voted for them.

Likewise, ID1 and ID2 said that corruption has been devolved to counties in the sense that whatever malpractices seemed to be happening at the national level are currently happening at the county level as well.

The other area of concern that threatens the functioning of devolution, repeatedly mentioned by respondents was the lack of confidence in the elected officials responsible for implementation of devolution. While ID2 expressed confidence in the documents under the Constitution and the various legislations put in place after the 2013 elections, providing good structures to start with, he expressed concern in the apparent lack of commitment from those involved in devolution.

Regarding the issue, ID7 said the following:

Those elected have not achieved or delivered what we expected. It has been good in terms of paper. Though the quality of people elected can at times be a problem there are also positive outcomes like establishment of early childhood development education (E.C.D.E), improved health facilities even though it is not yet well staffed or managed.

Similarly, ID8 said: "Some of the leaders have tried. Though more is yet to be achieved by the people as many leaders that we elected are confused about their roles and also inability of the national government to release the funds on time has hindered operations."

Lack of clarity on various roles of county and national government was also mentioned as a challenge. This would create wastage of both time and resources. Optimism was also expressed in

terms of performance. ID2 indicated that not so much has been achieved so far while ID1 said that perhaps, the expectation of citizens on devolution was a bit too exaggerated and that probably it may be too early to make judgment on the performance so far. Participants of FGD 1 and FGD 2 generally agreed that when it comes to the county of Nairobi, they are yet to see positive effects of devolution. They claimed that:

Not much has been done in Nairobi. Actually when you go to the grassroots a lot of people are complaining that the government is not doing anything. Because while one aspect of devolution is to help people in the grassroots, it on the other hand is putting them away from services and they are not feeling the impact.

FGD 2 participants added to the above claim. They said:

We also have challenges as Nairobi residents; the major problem being about insecurity in the slum areas. Though they put up security light, we do not have security. It is all about the poverty level. The poverty level comes from unemployment. The infrastructure planning or the planning of the city is not well organized and sewerage systems are not well developed. That is the reality of things and the county government has so far failed to address such problems. Corruption was also devolved from the national government to county government. Corruption has enabled lower officials like MCAs (Members of County Assembly) to live beyond their means, acquiring costly property in Nairobi and the like.

However, KI-3, an expert in matters devolution, believes that expectations of citizens on devolution have been a bit impractical. He indicated that devolution inherited problems that existed before it came into effect and hence should be given more time before any assessment is done over its effectiveness. He further noted that:

There is a challenge because the citizens had very high expectations. Up to 80% of the citizens had high hopes that their lives would change once devolution came to place. Many of them after the general election expected they will get jobs and good service delivery at the county level. Those expectations may have posed a challenge to the county government because the system of devolution is still trying to get its footing. Citizens expect too much too early.

Moreover, KI-3 had the following to say:

Counties like Nairobi and Kiambu enjoy a system and structure which already existed. There are other counties that didn't have any system beforehand. Citizens'

expectation in Nairobi county was too high in the sense that people want clean neighborhood, clean water, health and the necessary infrastructure soon regardless of the fact that the county government has just come into effect. The system and the process of devolution are not yet in existence. It is true that citizens are complaining about structures, but these are teething problems that can be addressed gradually, over time. For example, the garbage management problem has been there for a long time, you cannot wake up one morning and expect it to have been solved. The housing problem in Nairobi has been there since the 70s and 80s and hence cannot be eradicated overnight. The health crisis in Nairobi was there before the county government came into effect. In every country, where you have a change in the political system, development takes time. Maybe in the 10-15 years things may be better than they are now.

Studies indicate that if too much is expected of devolution, outcomes will inevitably disappoint some. There are popular myths that shape common understandings of how devolution works. Some of those are that; with devolution, central coordination is no longer needed, devolution will result in additional resources and services at the local level, devolution will immediately address inequity across and within counties and that devolution will automatically result in increased accountability (Kenya's Momentous Devolution, 2011). Kenyans decided to promulgate the constitution through a referendum. Naturally, they had their own expectations of how it would affect their lives, expectations that were presented in the previous section of this chapter. The speed at which Kenyans expected devolution to solve problems may indicate that some may have fallen for myths rather than practical expectations. However, it is difficult to make such a conclusion in a situation where it has not been determined how long is too long and how long, too soon. On the other hand, problems mentioned such as corruption and lack of commitment from elected leaders pose a serious threat to effective implementation even in the long run.

4.5 Citizen awareness and public participation

The Constitution and the new legal framework place a strong emphasis on strengthening public participation. Strengthening public participation and governance is a core element in Kenya's strategy to accelerate growth and address long-standing inequalities in economic opportunities, investment, and service delivery in different parts of the country. Multiple studies have documented links between persistent poverty/inequality and governance weaknesses that reduce the efficiency

and equity of public investments and services, impede the investment climate, and undermine job creation. (Kenya Devolution, 2015). This section was deemed important because as mentioned above, public participation is at the core of the introduction of devolution in Kenya. As such, questions about the importance and existence of public participation in the process of devolution as well as efforts on the part of government to create awareness were presented to respondents.

In-depth interview responses reflected that there is general awareness of devolution. However, the implications are not entirely understood. This lack of understanding is also exhibited by county governments. They mentioned that there have been instances where the functions of the devolved government and the national government were not clearly distinguished. ID2 stated that:

Some of the roads, for example, that cross the town are under the mandate of the national government but some people give the credit to the county government. Also some street lights have been erected by the county government and others by the national government within the same county. This overlap of duties has not been clearly disintegrated.

Likewise, ID4 stated the following:

There has been a lot of misunderstanding based on what quality of leadership the people ought to have elected to represent them on both the national and county government. They didn't entirely understand: what sort of leaders to elect, what their mandates are, what services should be offered to them, what role a senator, Governor, MCAs (Members of County Assembly) are supposed to have.

ID6 had the following to say on the same matter:

People, including myself are aware of what generally devolution means and what to expect from it as a system. We may not be aware of the intricate details but I say we are generally aware. This is mostly because the media has covered the topic to a great extent. And we, Kenyans, are always keen to know about new developments in government and in the country in general.

Public participation and public awareness of the workings of devolution go hand in hand as the latter prepares the ground for the former. Hence, awareness creation is an important step to achieve public participation. Almost all of the in-depth interview respondents did not recall efforts by the government to educate the public about devolution. In this regard, ID4 expressed concern that county governments avoid public education so that they have reduced accountability:

The Constitution Implementation Commission tried to conduct public participation forums but it was limited. During the campaign for the Constitution referendum, people were a bit enlightened on the importance of a devolved government. It was a limited process bearing in mind that there were some vocabularies that could not be well understood by some people in the village. The government hasn't done a lot.

Respondents agreed on the importance of public participation for the success of devolution as a system. ID2 said:

Public participation is important as democracy is about the people and the main aim of the Constitution is to bring power to the people through devolved structures. Absence of public participation means people are making decisions without involving the tax payers who are expecting that certain service should be offered to them.

However, some respondents have not witnessed efforts by county government to ensure public participation on decisions made that affect the lives of citizens. Pertaining to the same ID3 said:

“The county government has talked about public participation but they have not actually met the citizens to actually practice what it entails. They never show willingness to hear people out on development projects they should give priority to”.

ID7 reported the following:

I would say that there is public awareness about devolution. However, public participation has not been achievable as has been anticipated. I mean, it is mentioned frequently but then again we never see it happening. What I understand by public participation is that citizens have to be consulted about decisions that will affect their lives. I do not remember a time when the county government consulted us about any of the decisions it made.

Moreover, ID10 mentioned that efforts so far made towards achieving public participation do not necessarily show real commitment from the government. She stated that there have been instances that despite what the law states about advertising public participation events in good time, county governments have given a one-day notice of forums to the public. ID1 expressed suspicion that the lack of initiative of county governments to encourage public participation may be a deliberate attempt to avoid accountability.

Participants of FGD 1 indicated that public participation is lacking in the system. They reflected their observations that citizens are not able to hold government accountable because they have no awareness of what to expect from it. Participants further discussed that:

Even in Nairobi county, the backbone of the country, where most of the GDP is concentrated, the common 'nyanchi' (ordinary citizens) really do not know what the county does in terms of decentralization of services and what the central government needs to do. We are not sure which government should take care of a blocked drainage system or if roads should be fixed by the central government or county. There is no clear awareness or rather, there is lack of education about the kind of services that the county is offering and about those the central government should offer. Until we are able to let the public participate, we will keep on going back and forth without witnessing any observable performance.

FGD 2 participants mentioned that there have been instances that counties take advantage of the fact that citizens are not informed of activities of the county for their personal gains. They further argued that:

For the procurement and tendering of work at counties, officers take advantage of the lack of information of the public to benefit few individuals. Informing the youth of work opportunities in the counties would have been a way of curbing unemployment. However, the youth lack information on the available opportunities.

In the effort to cross-check this perception that there is lack of public participation, the researcher presented the issue to key informants who are knowledgeable in the topic of Devolution. Accordingly, KI-1 argued that indeed public participation is difficult to implement unlike the theory that has been reiterated a number of times. However, there have been mixed practices in terms of implementation of public participation. The practice has not been uniform so far and that is mainly caused by the fact that there are no modalities of how to conduct public participation. He further said the following:

For most of us, public participation was very alien. It is new. people talk about it but when it comes to actual implementation, it's very difficult. I would say that we have not had a framework on the national government level on how to conduct public participation. Various acts of parliament have put emphasis on public

participation, but they have not provided on modalities of how to conduct this. Different counties do these things differently. Has there been public participation? Yes there has been a lot of it. In fact, citizens are very much aware of the need for public participation. A good example is the county of Kiambu, which decided to pass a revenue bill without the input of the citizens. The citizens went to court and the court nullified that bill. Then they were forced to redo it with the input of the public. The extent that citizens went to actually go to court to challenge this means that they are taking it seriously and they ought to have been consulted.

KI-1 also mentioned good practices and failed attempts at public participation. He further said the following:

There are some counties that are doing really well. There has not been clarity on the modalities of conducting public participation. So, a number of counties have been very innovative. Makueni county has been a model of public participation with no structures and no guidelines on how to conduct public participation. Some counties don't do it well. I went to this county where someone came up in a class room, did the budget presentation process then someone else came and said, 'I have these officers from these departments, let them tell you what they have done' and then no questions, no exchange whatsoever! And then, another county where the county presented the budget estimate where they want to spend the money on, the sources of revenue and then they put people in groups to look at the documents and go through every item and raise questions. Later on, each group was given a chance to adjust their budget and to air their views. That's very innovative!

KI-1 concluded by pointing out the lack of uniformity in exercising public participation among different counties. He stated the following:

Because of lack of guidelines, some counties are trying while some others are confused. There is public participation but it is not standardized or structured in a way that it is uniform or in a manner that solicits the citizens' views per-se. In some counties public participation is done as a formality so that they are not taken to court. In some others it's genuinely done to get views from citizens. Some counties announce public participation on the very day that they are supposed to hold the public participation. First of all, people have plans of their own so if you announce that we are having public participation public participation tomorrow, what does that say about what I am going to do tomorrow? I have to forgo my plans! The law says that at least an adequate notice of 7 days should be given upon announcement of public participation forums. Some give 2 or even 1 day! That's one challenge. The other challenges is that the Constitution says that announcement of public participation must be published in 2 major news papers. I have been to the ground and people who read the news papers are in government offices. Citizens don't get access. So if you announce public participation in the news papers, how many people are you going to attract? These problems were unforeseen in the drafting of the law.

KI-2, an expert in devolution mentioned that public participation has been achieved to a certain level given the fact that that it is a fairly new system. He mentioned that the structures for implementation have been laid down for public participation to take place. He further said:

We have made a lot of positive stride on public participation. It was not there at all. One would say that we have about 30-40% of measure of public participation in identification of developmental projects and in governance. If you pick a news paper, you will see announcements from county governments inviting the public to forums where they are going to be informed about the projects that are going to be undertaken. This is what we anticipated; that the person on the ground to have the last say on how to develop the area.

KI-3 stated that the legal structures for public participation are there and are clear. The challenge lies on lack of understanding of what it means, lack of real commitment to allow the public to participate and the gap between citizen's expectations of performance by counties as opposed to what Counties can really afford to accomplish within a budget year. He further said:

Public participation is a cornerstone of devolution. The basis of devolution is to enable people to participate effectively. This is because public participation promotes what many of us refer to as allocative efficiency and the recipients of the programs are the ones who are best positioned to tell us what is in their best interest. Initially, county governments did not take public participation seriously. But after the Kiambu finance bill was ruled unconstitutional by the high court, many counties began to realize that public participation is important and that it is here to stay. Now, the challenge for these county governments is how to implement effective public participation that allows for facilitation and involvement of the citizens. One of the challenges is that there is a misunderstanding of what public participation constitutes, second, we do not know and have not seen any data on the attitudes of public servants in terms of public participation. Our civil service employees did not encourage public participation. The question is, are they now learning to accept it as a necessary component of devolution?

KI3 stressed the need for real and effective public participation as opposed to meetings called for the sake of it. He stated the following:

Then comes the question of what some people have referred to as tokenistic public participation in which counties are not necessarily providing effective involvement and facilitation of the public participation process. They call people for meetings and there are times that very few people show up for the meetings. The question of timeliness is raised here. What is the right time for public participation? How do you bring about quality public participation because what matters is not necessarily the number of people that come for the meetings but the quality of decisions that the people pass. Then how do you translate citizens' expectations against their understanding of the resource envelope? They may come up with all these grand ideas that they want the county government to do for them. You may have a mismatch of expectation of citizens with the finances available within a financial year.

KI-3 agreed with other key informants that the legal framework for public participation has been provided by government. He said the following on the matter:

The legal infrastructure for public participation is very clear, the national government has come up with public participation guidelines, the Ministry of Devolution has come up with public participation guidelines our center has worked with the World Bank and has come up with a series of work in devolution papers on the question of public participation. So the infrastructure is there. Citizens are now demanding public participation and that is one avenue to really change the governance system in Kenya.

KI-3 further reported that Kenya School of Government has programs that are geared towards improving public participation:

Our office has plans to build capacity of county governments to conduct public participation. We are now part of a program called 'performance for results' which is funded by the World Bank. It's a 200 million USD project that is geared towards building the capacity of county governments to deliver services. Counties are required to develop requests for capacity building trainings that inform the capacity building activities that the Kenya School of Government and other actors have planned for the counties.

As mentioned in the above sections, public participation is a very important component of devolution. The level of success on public participation highly determines the success of devolution as a system. Responses of in-depth interviews and the two FGDs generally reflect the lack of confidence of citizens on the willingness of county governments to allow public participation. This,

they reckoned was due to a few reasons, the major ones being, lack of real commitment to the system and apparent inclination of county officers to benefit some while ridding others of work opportunities that come with awareness of projects of a county. As regards structures of implementing public participation; residents showed lack of awareness about the existence of proper instruments of implementation. This however, was refuted by the key informants who said that legal and institutional structures are well provided for. However, the experts in the key informant interviews indicated that the presence of structures does not guarantee uniform exercise of public participation among counties. This could be the result of difference in human resource capacity in different counties. In addition, unlike the in-depth and FGD participants who denied having been invited for public participation forums in Nairobi county, key-informants reported that public participation has been achieved in some counties while it has not been in others, resulting in mixed practices.

4.6 Chapter Summary

The 2010 constitution of Kenya has enumerated the institutions that make up the framework for its implementation. In addition, it provided for acts of parliament that govern specific areas of implementation. Theory of devolution in Kenya, having promised a number of improvements, gave Kenyans high hope for improvement of public services and participation. While study participants have mentioned causes for slow results, they also largely agreed that public participation has not been completely achieved.

CHAPTER FIVE

OPPORTUNITIES AND GOOD PRACTICES OF IMPLEMENTING DEVOLUTION IN KENYA

5.1 Introduction

It was mentioned in chapter two that devolution has many benefits. First, it is a mechanism to bring government closer to the people. Bringing decision-making and resources to the county level is seen as a way also to ensure more equitable development throughout the country (World Bank, 2015). The other benefit of devolution is to empower ethnic minorities who have been economically and politically dominated by others. Under devolution, it is held that the level and quality of government services and the path of development will be spearheaded by elected and accountable local leadership. Introduction of devolution in Kenya is hoped to render service delivery and development decisions to be made by the relevant local communities as opposed to dominant ethnic groups as has been in the past (World Bank, 2015; Steeves, 2015).

The objectives of the devolution of government as per article 174 of the 2010 constitution were; to promote democratic and accountable exercise of power, to foster national unity by recognizing diversity, to give powers of self-governance to the people and enhance the participation of the people in the exercise of the powers of the state and in making decisions affecting them. Additionally, the government seeks to recognize the right of communities to manage their own affairs and to further their development, protect and promote the interests and rights of minorities and marginalized communities, promote social and economic development and the provision of proximate, easily accessible services throughout Kenya. Moreover, it seeks to ensure equitable sharing of national and local resources throughout Kenya, facilitate the decentralization of state organs, their functions and services from the capital of Kenya and enhance checks and balances and the separation of powers (Hope, 2015).

This chapter presents the findings on whether the perceived benefits of devolution have been realized so far, if there have been good practices and the potential benefits of devolution. In-depth interview respondents were first asked to mention how devolution will benefit their county/ country granted that it works well. They mentioned a number of sectors and services that they anticipate devolution to be useful in. Some of the mentioned benefits are: infrastructure improvement, improvement in agriculture, ICT innovation, faster economic growth, effective decision making, and equal distribution of resources, equitable development, good social amenities, reduced corruption and generally improvement in the lives of people.

5.2 Improvement in Health services

Participants of the in-depth interviews and the FGDs were then asked to enumerate benefits brought about by devolution they have witnessed in their county. In-depth interviewees repeatedly mentioned improvement of health services. They argued that health services improved because they are rendered closer to citizens after the introduction of devolution. They also mentioned experience of different counties which have been able to make ambulances available to county residents. Health sector was considered to be the most improved amongst public services. Some of the responses have been summarized as follows. ID2 said that:

The issue of health services has been slightly improved. However, some facilities are still lacking. Some health facilities lack medicine and others run short of the requisite personnel. What creates more challenges is that the personnel available in the facilities is sometimes negligent about the services they are supposed to provide.

ID4 and ID8 reckon that purchase of ambulances highly contributed to the improvement of health services. They said that: “In counties like Machakos, ambulances have been purchased by county governments for county residents. That helped boost health services. In particular, ambulances have improved the rate at which emergency cases have been handled”.

KI-2 also mentioned the improvement of the health sector as follows:

After devolution, an area of huge improvement is the health sector. Before devolution for example, if I lived in Kitale, and needed to get a dialysis service, I would have been forced to have to come to Nairobi. However, today, there are enough dialysis machines in each of the county units. Dispensaries are now all over the country. It was not uncommon to find a sick patient being rolled on a wheel barrow to go and find a 'Matatu' (public transportation services) to take him to a hospital. Today, all county governments have got at least 5-10 ambulances. Most of the facilities are at what we call 'level 5', i.e. a level lower than a referral hospital. And when you go to that hospital, you can get consultants. Thus, the health sector has been the best beneficiary of devolution.

5.3 Improvements in Infrastructure

The other improvements observed by respondents were in infrastructures such as road networks, lighting of streets and other public services such as schools and early-childhood development education. Subsidy in fertilisers, hence boosting agriculture has also been mentioned. ID4 reported good practices of devolution that have been observed country-wide. He said the following:

In Kilifi county, education has improved in that children are offered lunch so as to curb dropouts due to hunger. Bungoma county has helped in subsidizing fertilizer for its residents and an improved road network. West Pokot county has lit its town, improved the road network, thus, opening it to investors.

ID5 highlighted improvements in infrastructure as follows:

A lot has been realised after devolution. For example; roads, schools and infrastructure has been built for the local community, then the local community got a chance to be involved in the process in terms of provision of labour, materials and professionals offering their expertise.

ID8 focused on education and road network:

The county has succeeded in some fields, for example, construction of Early Childhood Development Classes has made kids in pre-schooling class enjoy their studies. Some feeder roads that were impassable previously are now passable because they have been covered with tarmac.

Participants of FGD 1 reported improvement of infrastructure in Nairobi and other counties. Some of the benefits include better flow of traffic in the Central Business District (CBD), slightly improved security in the city, as well as setting up of schools, hospitals and roads:

In 'CBD', the county police has been trying to ease the traffic flow by helping people to exit well in the roads. This has brought sanity in the 'CBD'. 'Matatus'³ used to stop anywhere. However, now the county police, even though they are taking bribes at times, one can see that they have done something good. In Addition, Nairobi was known to be of low security but we have seen security being built up and it has improved. There are less and less cases of people getting mugged.

FGD 1 participants further discussed that:

Devolution is the best thing that is ever happened to this country. For once, people in 'Turkana', for example, are able to smile and say for the first time we have a school nearby. Others can now say that they now have running water and others, kilometers of tarmacked road, women can now comfortably deliver in hospitals.

FGD 2 participants agreed with the assertion that infrastructure has improved as a result of devolution. They stated the following:

We agree that devolving the government is the best thing. The county government has been able to reach people at a more personal level. We have Ministries in the county government now. To mention a few, we have the ministry of education, the ministry of agriculture, water and so on. For example, the ministry of education has provided needy children with funds for their education. In Nairobi, especially the 'lower Kilimani' part, we see that 'Dagoreti' constituency, funded by the county government, has been able to help many needy students. Most of those in high school have benefited from this.

FGD 2 participants further noted that:

Street lights have been installed. It was only areas like 'Runda' and 'Kilaleshwa' that had street lights in feeder roads but it has been installed everywhere now. 'Kibera' has street lights now. It also has tarmac roads constructed by the funds of county government. If all the responsibilities were still with the national government, people living in the slums could not have benefited to this extent. The ministry of water is improving its service provision in Nairobi county. For a long time people have been drinking the salty water of Nairobi which has sodium chloride at high concentration. However, currently, we are supplied with clean tap water.

3 Swahili term for public transportation vehicles

5.4 Improvement in Resource Management

Another area of change observed by study participants after introduction of devolution is in the areas of resources and management of the same. While some applauded the fact that financial resources have been rendered closer to the people through counties, others expressed doubt over the management of resources by county officers. In-depth interview participants indicated that availability of financial resources at the county has enabled development decisions to be made timely. In this regard, ID9 has stated that:

Because of availability of funds at the county level, the county office has been able to set its budget to reflect and work on the key areas to prioritise, unlike the previous system in which national government had to be involved in such projects, hence, taking longer to pass decisions regarding the same.

ID2 said the following:

Money and other resources have come closer to the people but whether it has been well utilized is another question. People have been able to impact on the normal quick projects through either the governor or the MCA unlike the old regime in which all the duties were done at the national level; taking three years to make a decision on fixing a road.

ID4 agrees with ID2, but has a concern:

It is good that counties have their own resources to manage. But some organs entitled to check on these governments have not been devolved. For example, the Ethics and Anti-corruption Commission does not have presence at the county level. In terms of resource management, the performance of counties has been extremely low.

Likewise, KI-2, described the development that has been brought about after devolution as follows:

The level of development at the grassroots has improved. In other words, if today you go to 'Wajir' or 'Mandera' or 'Garrissa', people can now see a government working with them. Previously, you would have people sitting here in Nairobi, they would draw a map of a road they'd want to build, use national government fund to build that road and also pay themselves in the process. Today at least to a large measure, maybe 60%, when the county government says we are going to build a road, it has to consult the people who are immediately and directly affected. If you tell them you are constructing a road this year, you will have to construct that road by next year. They would hold you accountable otherwise. So, one would say that development has been taken closer to the people.

5.5 Chapter Summary

Study participants have identified potential benefits of devolution for the country as well as their county specifically. Other than improvements in infrastructure and service delivery, equal and equitable development opportunities and economic growth as well as effective decision making and reduced levels of corruption were mentioned. In addition, study participants have identified good practices under devolution ranging from improved health services, growing infrastructure and better resource management opportunities.

CHAPTER SIX

CHALLENGES OF IMPLEMENTING DEVOLUTION IN KENYA

6.1 Introduction

It was mentioned in chapter two that there are many challenges that threaten the implementation of decentralization/devolution in developing countries. First, responsibilities being assumed by devolved governments demand large and continuous financing and staffing levels which may strain their abilities to deliver services effectively (Steeves, 2015). The other challenge is that often, political and administrative units in the center of government are reluctant to relinquish control over key political regions and administrative areas (Steeves, 2015). Third, because of additional outlet for the distribution of resources, a whole range of benefits and perquisites open up for new political and administrative elites. Fourth, Central governments may undermine the new devolved units through under-financing and using conditional funding mechanisms to control the direction of local spending allotments.(Steeves, 2015).

In this chapter, results of if indeed devolution in Kenya has been met with challenges in its implementation are presented. More importantly, the questions were framed to find out the major and recurring challenges that are currently threatening the success of devolution in the county of Nairobi and the country in general. A number of challenges were mentioned in the responses. They have been organised and discussed as follows:

6.2 Corruption as a Challenge to Devolution

All participants of the in-depth interview mentioned corruption as a major challenge hindering the proper implementation of devolution, making it the most recurring problem. In this regard, ID1 said the following:

Corruption is the biggest problem. Money allocated to counties is not going to the projects. We hear in the news that money has been squandered. The problem is that Kenya is run by cartels, especially those who are in power. They control things. They don't want the status quo to change and they are powerful enough to control how things run.

ID2 reported that:

The challenge which I feel is very important is the issue of corruption. Corruption takes the form of those implementing devolution, favoring individuals at the expense of the general public. It can be in terms of outright theft, mismanagement of funds and doing shoddy work. This has created a lot of wastage in terms of service provision.

In addition, ID5 argued as follows: "Decentralization of resources actually led to decentralized corruption. Corruption was previously thought to be for urban leadership. Now mismanagement of funds is everywhere".

ID7 said:

First, as long as Kenya is not free of corruption, no system will function properly. Corruption stifles growth as resources planned for community development are diverted to personal benefits. Devolution is not the only field that is threatened by corruption. From the junior officer to the government official, people take bribes and mismanage funds. In order to guarantee the success of devolution, the Kenyan government must fight corruption. Indeed the President is really trying to fight it.

KI-1 said the following on the matter:

The other biggest problem is that the leadership is too corrupt. The majority of governors inherited and kept the former employees who were corrupted and the community wanted to get rid of. These employees have seen the weakness of the current system and they have succeeded in devolving corruption and bureaucracy of Nairobi to county governments.

6.3 Lack of Sufficient Resources and Irregular Resource Allocation

The other major challenge facing implementation of devolution is the issue resources. Other than lack thereof at the county governments, allocation and management of resources has also been mentioned to create a challenge between the national and county governments. ID2 has said the following on the matter:

The other challenge is that the allocated resources are not enough at all times. The budgetary provisions and what the county government is able to collect runs short of expectations in terms of the cost of services. Counties have been assigned many functions. However, their allocated resources do not always match their mandated functions.

Likewise, ID4 reported that:

Resource sharing with the national and county government has been a problem. Sometimes there is being subjected to prejudice due to being elected on an opposition party by the governing party. The other is the issue of conducting census. People, originally being from one county and residing in another becomes a problem when it comes to resources.

ID10 had the following to say:

Lack of capital (finances) and poor support from the people involved in the devolution process is a major problem. The national government lacks willingness to share resources with county governments as much as it devolves functions. Even the 15% of national resources that should be allocated to county governments is not always executed. Counties are left with no choice but to make do with the meager resources that they have been allocated.

KI-1, a government expert in devolution, also mentioned that resources and allocation of the same has been a problem between the national and county governments. He further stated:

When you look at the available resources of the national government vis a vis the resources that are devolved, the counties are undertaking their functions with very little resource but the national government is doing very little with a lot of resource. So the question to ask is, where does the national government take its money? In addition, Nairobi County is a city of 5 million during the day. It is a city of 3 million at night. People from neighboring counties come for services but they go and spend the nights in other counties. It has the obligation of taking care of non residents during the day. It is supposed to foot the bill. However, But that is not always considered while allocating budget.

KI-2, former member of the task force for implementation of devolution, also mentioned that allocation of resources to county governments has been a challenging topic to work on even during drafting of rules of devolution. He stated that:

Lack of resources is a problem. It's the national government that controls 60% of the national resources but also controls in a large measure, developmental aid that comes to the country because this aid is not part of what they share out with counties. The Constitution says that not less than 15% of the national income should be shared with counties but aid from other countries is not considered national income. The president can give it to whoever he wishes. This was a problem when we were drafting the law. We didn't direct that aid money to be directed anywhere because we knew our political problems.

Participants of FGD 2 mentioned that allocation of resources to county governments is not at par with the functions they are required to undertake. They further noted that:

There is a problem of resource allocation between the national and the county government. The national government devolved some of the resources but did not devolve all the resources required for the county to perform its functions. Residents of the county talk about the problem faced by the county, the challenges of the governor and we know there are employment opportunities at the county government. We understand that the county government is trying to perform its tasks. The problem lies in insufficient funds. The county was allocated less than the requisite 15% of the national budget.

6.4 Lack of Human Resource Capacity

Lack of capacity in county governments was mentioned as one of the major challenges to the implementation of devolution. Lack of capacity was mentioned in relation to the fact that the government had not developed the necessary human resource capacity to properly implement devolution. ID5 said that: "The government was not prepared in terms of human resource capacity leading to a lot of time wastage". ID2 added to the argument as follows:

Standardization is a problem. While the national government in the past has been keeping some standards, some of the workmanship that one witness at the county level is an indication that either people are not properly trained or are not experienced. This results in the delivery of some work that one finds to be below standard.

KI-1, an expert on devolution, echoed the sentiment that there is lack of human resource capacity due to a number of reasons. One of the reasons is the absence of capable elected officials owing to the fact that some of the elective positions were perceived to be unattractive to potentially more capable candidates. KI-1 anticipated that the problem of lack of capacity may be partially solved in the upcoming and future elections. He expressed his view as follows:

Lack of capacity of officers has been a challenge. We elected people who formerly served as counselors. Majority of potential candidates were not keen on elected leadership at the county level, especially the position of Member of County assembly. They thought of it as equivalent to the previous positions of counselors. However, now a number of people have realized that the position of Member of county assembly is quite attractive, lucrative and the challenge of capacity that we had in 2013 is likely to phase out as we go to the next election. Because we have now more educated and experienced people who have expressed interest to run for elective posts at the county level. We are likely to overcome this problem.

KI-3 another expert in devolution, said that most of the challenges of lack of capacity were rather 'teething problems' that were faced at the beginning of the system. The remaining challenges, he indicated, are related to the fact that counties inherited former officers who have not necessarily been trained to perform the tasks of devolution at hand. KI-3 also expressed doubt in the efficiency of elected officials in their work as they would have been expected to be. He said the following:

Devolution, being an entirely new structure, the county governments did not even have the proper infrastructure necessary to undertake their work when they came to office. That included lack of offices and competent staff. There are officers absorbed from the former local authorities. Many of them did not have the skills that were well aligned towards effectively implementing devolution. The other challenge was fiscal. We never had the idea of how much devolution was going to cost in its initial implementation and therefore we've never been able to afford enough resources. Moreover, I do not foresee us overcoming this particular problem anytime soon as theory in public finance says that you can't really arrive at the definite cost of delivery of public service. In terms of procurement, human resource and office management, many of the counties did not have systems and infrastructures. Some of the members of the county executives and some of the governors had come from the private sector; they have never worked in a government sector, so there's a learning curve. In addition, for example in Nairobi county they have this bloated work force that they inherited from the Nairobi City Council. The skills that some of the officers have do not necessarily match the work they are undertaking. There is also the issue of expenditure. The current expenditures are not necessarily made on the right priorities. Spending 90% for salaries and retirement benefits and only 10% to invest in infrastructure does indeed make success lag. There is also a problem of the elected officials at the county; the county executive and the county assembly. Maybe we elected people

who may not have been at par with the positions. One of the reasons for this problem is that in 2013, very few people thought of running for the position of Member of County Assembly. However, now we have realized that MCAs are critical in implementing devolution.

6.5 Poor leadership

FGD 1 participants blamed lack of good leadership to direct county and national government responsibilities for lack of proper implementation. They discussed as follows:

Nairobi county has had a lot of problems and it basically boils down to poor leadership. At the county level lack of good leadership is witnessed through absence of information sharing and lack of willingness to have stakeholders participate in development projects taking place. Decisions that are not brought back to the people who are the service users at the end of the day are not good decisions. They lack a vital element, that is, the voice of the people.

FGD 2 participants reflected a similar thought as follows:

There is the issue of system and the people applying the system. There a question of which one comes first. People come first in the sense that people can decide for Nairobi county to come up with a proper structure. For example, the main problem in Nairobi county is poor leadership where things are being done through personal interest. There are instances of companies being commissioned for work by the county when the actual owners of the companies are people higher up in the system. Those officials are exercising poor leadership and these are the things that lead counties to have poor performance. First, we should install capable individuals in offices, then; they can install the proper structures.

6.6 Lack of Rapport between National and County Governments

In the spirit of the constitution, the national and county governments are perceived to be equal and no level of government has supervisory powers over another. In fact, the constitution stipulates that both levels of government are ‘distinct and interdependent and shall conduct their mutual relations on the basis of consultation and co-operation’ (Article 6, sub articles 1 & 2, Constitution of Kenya, 2010). Further, the constitution requires ‘each level of government to perform its functions and powers in a manner that respects the functional and institutional integrity of the government at the other level’ (Article 189 (1), Constitution of Kenya, 2010). These constitutional clauses were deemed necessary because of past experience in Kenya’s government. They were designed to

protect counties from having their powers usurped by the national government, as happened under the old constitutional order (Kobia & Bagaka, 2014).

The issue of intergovernmental relations was presented as a challenge by study participants. There is a perceived lack of coordination between national and local governments. This lack of coordination is said to have emanated from either lack of clear understanding of functions and responsibilities of local governments or the lack of willingness from the national government to devolve duties responsibilities and resources to county governments. ID2 said the following on the matter:

There is lack of focused leadership and integrated planning that will take cognizance of what the national government is doing and the needs on the ground and how the gaps can be filled for purposes of maximizing both on the county resources and also the national government policy programs.

Similarly, ID10 reported the following:

National government has not allowed the devolved units to stand on their own. It is clinching power and it does not want to pass it down to local government. In addition, structures that govern relationship between the two governments seem to be unclear to the implementers.

KI-1, a government expert working in the area of devolution, reiterated that there is lack of proper coordination between the national and county governments and that leads to duplication of efforts. However, KI-1 apports blame on the lack of willingness from the national government to acknowledge that county governments have autonomy on the functions they are supposed to perform. He stated that:

There is lack of good will from the national government to support county governments. There is the feeling that counties are inferior. Article 1 of the constitution states that sovereign power of the state is exercised at the national and county levels. Nevertheless, the national government tends to look at itself as the supervisor of the county governments when it is not. Constitutionally national government does not have the mandate to supervise local governments. Due to this lack of respect for boundaries, we have had a lot of antagonism between the national and county governments. For example, there are instances that the national government decided to procure equipment, medical equipment for the counties that the counties did not need. If they did need the equipments, some of them had already been procured. That was a case of duplication of efforts. There

ought to have been consultation between the two levels of government. This also indicates that there is lack of goodwill on the part of the national government to consult with county governments in arriving at some decisions.

KI-2, a former member of the task force for implementation of devolution, shared a similar sentiment. He said:

In the last four years the relationship between the national and the county governments has not been cordial, politically. The fact that they don't consult each other means that they don't really plan together. This has in many respects, been a cause for repeat projects and duplication of work. We have something we call Constituents' Development Fund (CDF) and many other funds that the national government controls. The national government has its own budget as well. So for example, if there is no intergovernmental consultation, to build a local school, the ministry of education may invest money, that's from the national government and at the same time, the MP (Member of Parliament) may invest money from CDF for the same school. This kind of duplication in itself is an avenue for corruption.

KI-3, another expert in devolution, attributed the problem of allocation of resources to the in-fighting and lack of coordination between national and county governments. He said the following:

In-fighting between the county executive and county assembly which touches largely on intergovernmental relations has hampered service delivery. In terms of the transfer of functions; funds must follow functions. So if you transfer functions and you don't transfer funds to implement them, you are actually undermining the county.

FGD 1 participants pointed out that duplication of efforts between national and county governments should be addressed for devolution to succeed. It has been summarized as follows:

There has been a lot of duplication in the county government. You find different departments in county and national governments performing the same functions. The government should create a good differentiation framework on how they are supposed to carry out activities and make an effort to remove the duplication.

6.7 Tribalism and Nepotism

Tribalism and nepotism are other problems that participants of the study identified to present a challenge to the implementation of devolution. Those in office have been said to engage in tribalism and nepotism in recruiting their staff and granting work opportunities. On the other hand, county

residents are said to be not willing to be ruled by leaders from other communities. Some accused the central government of taking tribe into consideration when making decisions concerning counties.

ID10 responded as follows:

The problem with tribalism is that the central government will favour certain counties because of the tribe. For example, there are counties which are on the opposition side. It will be hard pressed for the government to assist these other parts of the country because of tribalism issues.

FGD 2 participants indicated that nepotism and tribalism threaten the potential success of young and upcoming professionals. They said the following:

For the youth, getting jobs is not that easy. They are usually required to know someone if they want to get employment in the county. They have to be connected because there is nepotism. Mostly you will find a particular tribe that is working in the Nairobi county. There is favoritism towards certain tribes and certain people.

6.8 Politicization of Governance

Highly related to the issue of tribe in Kenya is politics. A number of the study participants mentioned that politics has been playing a role in how matters are handled at counties. They also mentioned that politicization of the office of the governor does more harm than good in terms of implementation of devolution in that it allows for political prejudice to factor-in decisions regarding resources and development. ID3 explained the issue as follows:

Coming to the structures as established in the constitution, there have been proposals that a governor should not be a political governor. This is because if you are governor in a political wing that is not forming the current government, there have been talks that you become a victim of prejudice by the fact that you are in the opposition. So, proposals have been that we should have governors who are Chief Executive Officers; not elected by the people, but perhaps, appointed by those who form government. The office of the governor should be depoliticised.

FGD 2 participants expressed a similar sentiment. It has been presented as follows:

One of biggest challenges in Kenya is the rift between legislation and implementation because of politics. Many good policies have been formulated by national and county governments. However, you do not see necessary infrastructure everywhere. Security is not guaranteed everywhere as is needed. In addition, health care and education are not being developed everywhere. One can see that development has not been uniform and that is because development agenda is being politicized. We need to have separation between governance and politics so that we can move forward.

6.9 Absence of Oversight Bodies at the County Level

The other issue is accountability. Some study participants indicated that institutions such as Ethics and Anti-corruption Commission have not been devolved to the extent that tasks have been devolved to counties. Such offices still exist at the center. This, respondents said that reduces the extent to which county governments can be held accountable. ID8 mentioned that the senate, which has the responsibility of oversight over the governor's office has not performed its function well so far. While the involvement of citizens to oversee the functioning of the county office is important, respondents mentioned that public participation has not always been achieved. ID2 expressed this sentiment in the following manner: “One of the challenges is that the public, though they need to be informed, some of the members of the public are too busy to get involved on the day to day activities of the county operations by effectively giving suggestions that reflect what ought to be done”.

FGD 1 participants echoed the same sentiment but stressed that spending especially should have been regulated. They said as follows:

There is still much that devolution can accomplish but has not. For instance, in terms of spending, there is plenty of financial resources within the county. If spending could be regulated well and the systems properly audited, money issued would only go to serve the main mandate it is supposed to serve and resources would be fully utilized.

FGD 2 participants have a similar sentiment. They expressed it as follows:

Before devolution came in, we did not lay down a clear structure that will see the oversight bodies be given independent mandate to oversee the devolved functions. For example, in Nairobi, we have so many cases of corruption and if there was good framework and good structure before adopting devolution, it would have been better for the transition authority to give us the framework that will allow oversight bodies to be given independence and become functional.

6.10 Perceived Lack of Proper Structures and Planning

FGD 1 participants mentioned that the system has not been properly planned and hence lacks structure which hinders efficiency at the county level.

The biggest problem that devolution is faced with began from the planning stage. The introduction of devolution was a political movement. It was brought about because people wanted change. They did not want centralized government. One of the biggest problems is that the system of implementation has not been planned very well. Especially in terms of the costs, it was not properly planned. Structures were also not in place. However, this is something that will take time to be properly laid down because when the devolved government came into effect, it had to begin from scratch.

FGD 2 participants agreed as follows:

Devolution is a good concept despite the volumes of money that has gone to the drain and that has gone to the wrong usage. However, this can be blamed on the fact that the system of devolution is not very clear to our leaders. The frameworks of implementation need to be spelled out clearly if we aspire to attain goals of devolution. This needs to be considered especially in the upper centers where there is so much resource to manage; Nairobi and Mombasa.

The perceived lack of structures was however, highly contested by KI-1, an expert in the field of devolution. He indicated that structures have been properly laid down by the legal framework as well as through the effort of implementers of devolution and stated that:

In terms of structures, people from civil society have a different view point. As a government insider, I can tell you that the structures are there. We have inducted almost all officers of the essential structures that need to be in place to run a county government. Structures are there. In fact, there is no county that has not created all those structures. The formal structures that law has set up; we have set up those structures, and people have been recruited. Initially, some counties were slow in creating this. However, right now, most of them have these structures in place.

KI-2, a former member of the task force for implementation of devolution, shared a similar idea that structures are not lacking. KI-2 attributes the problem to be rather in the lack of willingness to implement devolution properly. He reported the case as follows:

Structure is not the problem. As someone who was there at the beginning, I know the law is there. Most citizens don't take time/the pain to go through relevant documents to find out whether there really are structures or not. For example, for the claim that there is no structure on devolution, I will refer straight to the inter-governmental relations act, to the county government act, the cities and urban area act and so on. Those statutes have everything necessary for implementation.

KI-2 attributes the problem of implementation to other issues presented as follows:

What actually lacks in the implementation of devolution is not the structures, it is rather, political will. In other words, you will find that a provision on how to handle a particular issue has been set down by the law. But those who are supposed to implement it don't implement it. For example the county government act says it establishes a county government at the county level, it establishes sub county units and establishes village councils and so on. The law says village councils are to be elective. The law provides for people to elect representatives to the village council and out of this village council is where development is supposed to be grown. The whole idea about devolution is that development should be grown from the base. So the village councils are supposed to be the primary units for identification of development projects. However, I haven't come across a village council that has been established anywhere in this country. The claims that there are no structures do not hold water.

6.11 Other Challenges

Other challenges have also been mentioned by participants of the study. Some of those mentioned include; conflicts, insecurity of tenure on the part of governors and deputies that inhibit them from delivering good quality work, poverty, exclusion within the city, environmental degradation, waste mismanagement, the formal and informal settings in the city, double or dual taxation, fiscal responsibility for state mandated services and functions over which the county has no direct control, Inability of the property tax to meet service demands and challenge of government modernization.

6.12 Chapter Summary

A number of challenges have been mentioned by study participants as regards implementation of devolution. The mentioned challenges are caused by different actors and reasons. To summarize; national and county governments as systems, elected officials, officers responsible for implementation of devolution and the community have been blamed for some of the challenges of implementing devolution. Corruption was mentioned as one of the biggest problems and the system as a whole and individuals were blamed for it. Closely related to that are problems of tribalism and nepotism which have resulted in benefiting of some individuals at the expense of the larger public. The absence of oversight bodies was said to exacerbate the problem of corruption. The national government was accused of lacking political will to share relevant functions and adequate resources with county governments. It was also said to have contributed to lack of coordination with county governments in planning and execution of work, resulting in duplication of efforts and resource wastage. Moreover, it was indicated that politics plays a role in the dynamics between national and county governments, hence, causing biased decisions on part of the national government in terms of development. County governments have not been entirely free from blame.

Lack of human resource capacity was said to have been caused largely due to the fact that some elected county officials and county officers do not have the requisite skill sets to undertake the tasks that devolution entails. Rolling over of former county members of staff without the necessary capacity building has been mentioned as the reason for lack of capacity. However, the public was said to have a fair share of blame for not having taken the effort to elect county officials capable of performing the tasks at hand. In addition, experts in the field are of the opinion that the public is uninformed about the existence of legal and institutional structures available for implementation of devolution. Lack of structures cannot be considered a challenge according to key-informants.

CHAPTER SEVEN

REFORM OPTIONS FOR IMPROVED FUNCTIONING OF DEVOLUTION

7.1 Introduction

This chapter contains two parts. First, given the number of challenges mentioned in the previous chapter, it was important to inquire whether participants thought devolution generally is working as a system regardless of its shortcomings. Following that, they were asked to suggest the way forward.

7.2 Is Devolution Working?

Here, the researcher was seeking to briefly record perceptions of study participants on whether devolution is working, six years down the line of its introduction and four years of implementation. In-depth interviewees were generally of the opinion that devolution has laid a good foundation and is in the process of becoming an effective system of government despite the high number of challenges it is faced with. They pointed out that devolution needs to be given time to bring about the positive changes anticipated by society. However, they mentioned some challenges that need to be addressed to ensure the success of devolution as a system.

Participants of FGD 1 largely agreed that Devolution is the best thing that has happened to Kenya except some that stated that centralization would have been better than a devolved system because it has brought more harm than good because of the lack of proper planning. On whether it is working or not, they mentioned that it needs to be given time as it is a fairly new system. The discussion is presented as follows:

Devolution was the young child in the market. Every new product faces every challenge. Devolution is the beginning of a long journey and that we Kenyans have begun. It is the best thing that we have made for our country but it is a journey we have to travel together.

On the same note, FGD 2 participants said:

Devolution is a good thing. It is the best thing the constitution of Kenya could give to this country. In Nairobi, despite the fact that it is not giving as much results as we have expected, at least it is contributing to the 'mwanainchi'⁴ on the ground. It is one of the best things that has happened to Kenya and Kenyans because power is vested in county governments. As a result of devolution, members of the county assembly can come together and make decisions based on the problems facing the people around them since they are the closest contact persons to government and to parliament. The fact that they can make laws definitely makes us expect more from them in terms of development and more so in terms of upholding the human rights of people.

KI-2 stressed that one cannot give Kenyan Devolution a success rate as of now because it is still a young system. He noted that:

During our time at the Devolution Task Force as we called it, we visited Germany; some went to some Latin American countries where devolution works. Our four year old devolution should not be compared to those countries like Germany. In all fairness this system has worked but it has not matured to a level where one can give it a success rate. But like classroom student one would say it is average. It has not failed; it has not fully been implemented. However, we are getting there.

7.3 Way Forward

Participants of the study mentioned a number of challenges in the implementation of devolution in the county of Nairobi as well as on the national level. A number of them indicated that the system is still new to the country and therefore, with time and application and some of the suggested solutions, it will become better. Hence, they suggested a number of solutions for the betterment of devolution as a system.

7.3.1 Empowering Oversight Bodies to Regulate Activities and Spending

One of the major issues raised in this section is the issue of accountability of county governments. In-depth interviewees said that accountability should be raised. One of the major challenges related to accountability is the issue of corruption. Respondents suggested a number of ways to enhance accountability of county offices and curb corruption at the county level. One such measure is to

4 Swahili word for citizens

empower oversight bodies such as the Senate and have Ethics and Anti-Corruption Commission available at the county level since currently it is only present at the central government. ID3 said that the Auditor General, the Judiciary and the police are other bodies that need to execute their duties well to ensure accountability of county offices. Civil Society Organizations (CSOs) are said to be able to play a major role in ensuring better accountability of county governments. ID4 suggested that CSOs should make their presence at counties and not be confined to the center. In this regard ID1 said:

The system is there and is working. It's the people who are creating the problem. The government should empower ethics and anti-corruption commission to prosecute those that are embezzling funds. For some reason, we don't see that commission working to its fullest potential.

ID2 agrees on the issue of oversight stating that:

Oversight authorities need to be improved. They not only need to be independent from national government but also need to be supported by it. It should be understood that the national government is a critical player in all this. And if the national government is seen to not to be beyond reproach, it creates fertile ground for corruption.

ID4 added to the suggestion as follows:

My proposal is that we must have the office of the DPP⁵. Have an office of an Attorney General at the county level to put legal pressure on the county government to perform. We must also have a system that puts pressure on members of the county assembly through civil society. CSOs have only been centralized. They are still in Nairobi. They should come to counties.

FGD 2 participants echoed the same thoughts and discussed that:

On the corruption issue, the national government should form a national oversight authority just like all the other authorities to oversight the county governments and how they are performing. An independent authority outside the national government and the county government should be present at the county level. Objectives and indicators should be set to measure performance of counties against expected results. Productivity is very low at the counties.

5 Director of Public Prosecutions

FGD 1 participants said that spending needs to be regulated. They argued that:

There's still much that devolution can accomplish. For instance, if spending could be regulated well, the systems can be properly audited so that when money is issued, it only goes to serve its main mandate. If we can find systems where resources can be fully utilized then we can really appreciate devolution as time goes.

FGD 2 participants stated that citizens should show interest to undertake oversight themselves. They mentioned that citizens should not hand over their power of oversight to other entities and stressed the need for Kenyans to be vigilant about devolution as it is their right and duty to follow up on the work of their own elected officials. They argued:

The Constitution of Kenya stipulates that the sovereignty of this nation lies on the people of Kenya. Therefore, as the people of Nairobi county, we should not leave the oversight role to the 'MCAs' and those we elect but we should ourselves be the oversight. We should begin over-seeing the leaders we have elected.

7.3.2 Enhancing Public Awareness and Participation

The other recommendation which is related to accountability is public awareness and participation. It was mentioned that public awareness and participation is beneficial for holding county governments accountable. As a result, it becomes instrumental in taming corruption. Participants mentioned that public participation can be achieved by training the public on issues devolution and what to expect from its leaders. ID1 said: "There should be clear information dissemination that is assisting the public to be aware of the kind of leaders they ought to elect needs to be done".

ID2 agreed that public awareness is important. He said: "There is a need for aggressiveness in creating public awareness. This is very important. Because we have a strong feeling that devolution might grind to a halt if we don't manage the level of corruption that is taking place in various counties". On sensitization of the public ID10 said that "people must be fully sensitized to understand that the public money is their money. It does not belong to the leaders. Such that

whatever a leader does should not be seen to be a privilege to the people. They deserve the services that the leadership provides”.

ID3 said: “Civic education needs to take place to improve public participation. Civic education is usually not pushed by government. Those initiatives mostly come from NGOs. This can bring about certain level of awakening to the people to understand. We should raise a stake of what we expect the county governments to do”. ID8 agrees with the above stipulations about awareness creation. She said: “Create awareness among the people because the power lies with the people to help them make the right choices. Educate people to hold those in office accountable to the tax payers money”.

FGD 1 and FGD 2 participants stressed the need for enhancing public awareness and participation as follows:

In terms of creating more awareness of services, there has to be education. Educated people have a better understanding of what the county needs, what a county government does and the responsibilities of governors including the legislation that needs to be put in place. However, not all members of local community have this knowledge. People need to be educated either by the academia or the community. Basically community participation is needed. If all citizens are able to participate fully at all levels; from the grassroots to the national level, it will be clear what devolution is and there will be accountability. Public participation is central for any planned project if devolution has to work.

7.3.3 Capacity Building of Major Players

The other important recommendation made by respondents is the need to improve capacity of major players in the implementation of devolution. It was discussed that capacity development is important to curb problems of delivery of work that is below-par, thus wasting time and resources which at the end of the day creates a feeling on part of citizens that the system is not working. It also assists in improving quality of leadership at the county and national levels of government. The major suggestion to achieve capacity building is training of core county office staff as well as the leadership. ID2 stated the following:

On the issue of quality of leadership; there must be certain basic training for those who aspire for certain offices. They need to be taken through that program to understand the operating principles, such as auditing, so that when they are implementing projects and programs of government in the devolved system, they must understand what the guidelines are, what challenges are and how to meet the compliance because some of them seemed to be ignorant of the rules of play.

ID5 added: “The three key areas where even the World Bank focuses on Kenya has been a devolved system and capacity building. It is a major area through which we cannot make the mistakes we made earlier, because the last few years we have lost quite a good number of the resources”. FGD 1 participants added the following: “The government should provide trainings in governance, leadership and devolution in higher institutions of learning. Elected county officials should go through those courses, including employees at the county level”.

On the need for capacity building, KI-1, a government expert on devolution, had the following to say:

There is need for continuously building capacity for county administrators. Induction has been done. But we should be moving to the next stage where technical skills that need to be impacted are developed. For instance, regarding procurement, we must train them with financial management systems so that counties build the technical capacity. There is career progression type of training. Training and capacity building have to be tied to career progression so that its more structured and more organized so that there is room to grow and we don't see a huge exodus of people working at the county office looking for work.

KI-1 further addressed the issue of respondents' concern about the lack of capacity in the county offices. He was asked about the contributions of *Kenya School of Government (KSG)* towards better functioning of county offices. It was gathered that the school is a capacity building institution and basically deals with training government employees on capacity building both at national and county government levels. It provides technical courses so as to enhance capacity building. In relation to devolution, since 2013, the office has been coordinating donors. It has been responsible for the national Capacity Building Framework whose main agenda is to build the capacity of county governments, financially, in terms of human resource and structurally so that the counties are in a

position to undertake their mandates and serve the public. About the type, depth and quality of capacity building the School provides, KI 1 replied as follows:

Capacity building largely includes training, policy formulation and also advisory services for the counties, on human resource and finance. Donors come through the school and give a grant to for example, a county to do some particular training. The money is wired to the school so the county sends its staff for training at the school. The school plays such that kind of a coordination role. The school has trained the governors, the county executive committees, all the carders at the county level. I can comfortably say that we have provided trainings to 44 out of the 47 counties. We have trained all the essential staff, i.e. leadership and the technical staff. The KSG runs short term courses. There are courses that can be as short as 2-3 days because you cannot run a two week program for governors who have to always be on the ground. So we try to tailor trainings to fit the work load of the elected leaders. For the technical staff, it can run for one to six weeks long. The longest training is for six weeks. The shortest can be even for a day.

KI 1 informed the researcher that while it is hard to quantify the success of the capacity building services that have been provided to the counties, there definitely has been some qualitative evidence:

Quantitatively, it would be difficult for me to place a number to asses how effective our programs have been. Unfortunately, we have not done a study to evaluate the effectiveness of our programs so far. However, anecdotal evidence tells us that we have created totally new structures of governance in 2013. People had zero idea about how to run this devolved system. Our programs have enabled counties to put systems together and create structures. They have started taking up some key functions like health and building roads. In terms of putting structures in place, they did not have what we call financial management systems (FMS). Now-a-days they make payments through FMS. There wasn't a payroll system. So we trained them on how to craft one. When we see these things working, we take credit for it. Therefore, qualitatively, we can say that we've had an impact based on the evidence we see.

KI-3 indicated that there has not been a needs assessment for the capacity building efforts so far and stressed the need for providing a demand-driven support to counties as follows:

What we mainly do is capacity building. That includes public finance, procurement, performance management, human resource planning, organizational management and creating effective county structures. We provide face-to-face training which is traditional; we are trying to do peer-learning whereby we bring counties that have good practices and match them with those that may not be doing very well. We also provide technical assistance to counties. Those include preparation of financial statements. The National Treasury and the Ministry of Devolution and Planning have had an arrangement whereby they second an officer to be at the county for 2 to 3 weeks to do what you call 'hand holding' to help staff at the county perform various tasks. We have been doing supply-driven training. We need to do demand driven trainings. As part of our performance-for-results program, each county comes with its own capacity building plan, a plan informed by the county's own needs. We want to customize trainings to meet the specific needs of each county.

KI-3 was asked whether the results of these trainings are sustainable and he replied as follows:

Yes. Largely our trainings are not for political office holders. They are designed for the infrastructure itself; the people, the chief officers, the directors, the under secretaries and the technocrats who work in the county government. Those are the permanent employees of the county government, recruited by the county service board. The governors and deputies and the county executive committee members may or may not come back after the five-year term ends. Accordingly, we provide induction and executive training to them. On the other hand, the civil service structure will still be around after the end of the five-year term. That is where the nuts and bolts of capacity building is done, with the technocrats. This method helps to promote sustainability at the county level of beyond one or two governors.

7.3.4 Improved Coordination between National and County Governments

The other recommendation by respondents focuses on the national government. Respondents mentioned the need to encourage the national government to facilitate proper implementation of devolution through two major aspects: adequate and timely disbursement of resources and sharing of power. In this regard ID2 said the following:

The national government must, of necessity, let go this new child called devolution. There has been reluctance to fully let go of devolution in that as of now, only about 20-30% of resources are devolved. The rest are still with central government. This effectively means that the central government has not understood that devolution has nothing to do with national politics. The national government should stop interfering with duties of county governments and give the counties their share of allocated funds on time.

Likewise, ID3 stated that:

In terms of structure, the constitution stipulates that 15% of the consolidated funds goes to county governments. That is the minimum amount set by the constitution. That amount may not necessarily be adequate. We have to understand that everyone lives in a county, so when we discuss counties, we are basically talking about the entire population. Moreover, the activities that the national government is undertaking can be performed by the counties as well. If only we can have a better quality leadership. It begins and ends with the kind of leadership we have. Not the structure.

ID10 was of the opinion that the national government should disburse the county funds in advance and also increase the county allocation. ID9 added that the national government should not overstep on county government issues.

KI-1, an expert on devolution, mentioned the need for the national government to identify local governments as sovereign and properly devolve functions and discussed as follows:

There is a need for support from the national government. There needs to be political good will to facilitate the county governments to become as operational as envisaged in the constitution. The national government needs to appreciate that sovereign power is to be shared by the two levels of government. Accordingly, the national government should devolve the functions that are clearly enumerated in the constitution, like roads for instance. There are some county roads that the national government mischievously reclassified to be part of national roads. That was not envisaged in the constitution. It resulted in county governments taking the matter to court which ruled it unconstitutional. This is an example of lack of good will on part of the national government.

KI-1 added that the functions need to be devolved with the attendant resources. He added that national government needs to rethink its ways of sharing resources, whether they are commensurate to the functions of the counties. Counties are often called upon to repair some schools, primary and

secondary schools. Yet, these are functions of the national government. As a result, many people have called for constitutional referendum, especially about resources, but this has not seen the light of day.

7.3.5 Electing Capable Leadership

The other recommendation by respondents was about elected leaders. The office of the Governor is an elective post. Governors are leaders that spearhead implementation of devolution at their respective counties. In order to ensure proper implementation, respondents stressed the need to elect leaders that have the requisite capacity. As such, in-depth interviewees stressed that effective leadership arises from the people. ID2 stressed that leaders the people elect reflect the standards they have set for themselves. He added that elections should not be based on tribalism or party affiliations but rather integrity and competence. On the same issue ID1 reported the following:

Devolution is a good idea, especially the spirit. However, we need to re-look at our values in terms of the people because a system cannot correct things on its own; it requires the right people to do the work. We should forget tribalism and elect the right people. Once this issue is tackled, other solutions will eventually follow.

ID7 also said the following:

The election process is where the people get into a contract with the leadership. To ensure the best results, we could try and separate county elections from national elections as this overwhelms the voters due to the number of leaders to be elected at the same time. The people matter. We should clean the process of electing people to these offices. Get the right people into those offices.

FGD 1 participants stressed the need for governors to realize that they are there to serve the public;

We must remove 'imperialism of governance'. Some Excellencies think they are above the law. They think they are in charge of everything. On the other hand, we, the citizens, must think of governors as leaders in service and not as managers and colonizers. The structures and the systems are not enough if we do not have experts in various fields assigned to the right posts and offices. We should not assign someone who has studied agriculture to positions that require accounting skills, for example.

7.3.6 The Need to Depoliticize Governance

The other important recommendation focused on the relationship between the national and county governments as well as the need to de-politicize the county offices. It was stressed that the leaders at the center of government of the republic should have a certain rapport with county leaders. ID3 stressed the need for synergy between the two levels of governments and argued as follows: “We are witnessing political divide on party political affiliation. There is no proper synergy between the two. The continuous fight between the central government and the county government should be minimized and that energy should be diverted to improving the welfare of the people”.

ID5 suggested that the best thing is to institutionalize functions. For example, the office of the governor should be set in a form that the governor is not directly running the affairs of the county government.

FGD 2 participants said:

We need to separate national politics from governance. There have been instances where higher officials appeared at functions for inaugurations of equipment for service providers. That is an indication that those functions were more political than anything else. The truth is, the public has a constitutional right to access those equipments. The national government should not make the equipments available as a favour of politics.

KI-2 believes that the office of the governor should not be a political office as that will allow bias to take place resulting in reduced accountability of officers to the public. He said the following:

Identification of development projects is subjective and it can become a problem. County government officials should not be politicians. They should be managers and technical people who are capable of making objective and dispassionate decisions. When you give a politician that position, he/she is going to be thinking which area voted for him/her and how to reward them. It's a political thing. He/she may end up looking at the votes when he/she crafts his/her budget. That is not something one can wish away. A related problem to of lack of objectivity in identification of development projects is the development of a reward system within the county governing structures. When the governor is employing the sub-county administrator, he/she may want to employ his/her political protégée. The protégée in turn will feel not indebted to the people he's serving but to the governor who has given him/her a job. This means that the accountability that he/she should have to the people will be given to the governor, resulting in under-performance.

7.3.7 Other Recommendations from Participants

Respondents also called for a clear framework to be developed especially in relation to distinction of duties and responsibilities of both the national and county governments. While some suggested framing of policies to enumerate tasks of both levels of government, others suggested enactment of a policy with a view to developing an institution that will help in managing the entire system at the local level (ID7, ID8 and ID9).

The other recommendation was about setting of clear standards for every project that is undertaken by counties. Respondents stressed that there must be clear demonstration both by the national and county governments that programs and projects of the county government should be anchored on the overall objective of realizing vision 2030. The programs should also go hand in hand with what the national government is aiming at. In order to achieve the same, it is important to set standards in every county to be met in projects initiated by the county governments for purposes of sustainability. (ID2, ID3).

7.4 Chapter Summary

Participants of the study believe that devolution, being a new system, needs to be given time to become fully functional before any success rate is assigned to it. They further mentioned a few measures for better implementation of devolution. Those include; empowerment of oversight bodies, enhancing public awareness, capacity building of major players, improving coordination between national and county governments and the need to depoliticize governance.

CHAPTER EIGHT

CONCLUSIONS AND RECOMMENDATIONS

8.1 Conclusions

The study was premised on the fact that the constitution Kenya adopted in the year 2010 had devolution as a center piece for change in governance of the country. Through devolution, the constitution hopes to decentralize power otherwise concentrated at the center of government to local governments representing local communities. Hence, it is expected to improve service delivery and citizen participation in decision making among other things. However, global experience on decentralization has indicated that expected level of performance and benefits of a devolved government can be hindered by many factors that affect implementation. This research has interrogated opportunities, good practices and challenges of implementing devolution through the experience of incumbent national and county governments as well as concerned organizations in terms of their implementation roles. It has also examined experience of local community of Nairobi county as regards devolution. In addition, it has examined relevant documents regarding institutional and legal framework laid down for implementation of devolution.

The first topic was on expectation of citizens on devolution and government performance against those expectations. The study found out that citizens have been optimistic about benefits of devolution in a number of areas. As a result of decentralization, citizens expected to see more focused and participatory decision making at the county level, more work and business opportunities at the county level, improved infrastructure and public service delivery, prudent use and management of resources as well as reduced levels of corruption. There is a general disappointment in the performance of the devolved government thus far. On the flip side, the possibility of over expectation on the part of citizens was also pointed out. Factors such as

devolution having inherited problems that existed before it came into effect and the fact that it may be too early to say whether it has succeeded or failed are to be considered.

It was agreed by all that the level of success on public participation highly determines the success of devolution as a system. However, citizens lack confidence on the capacity and willingness of county governments to allow public participation. The major reasons being lack of real commitment to the system and apparent inclination of county officers to benefit some while ridding others of work opportunities that come with awareness of projects at the county level. As regards structures of implementing public participation, residents showed lack of awareness about the existence of instruments of implementation. On the other hand, discussions with experts and review of relevant documents showed that legal and institutional structures for public participation are provided for. Nevertheless, the presence of instruments does not guarantee implementation of the principles of public participation by county governments. This could be the result of many factors such as lack in human resource capacity in different offices and where there is capacity, lack of commitment to the cause and unwillingness to include the public in decision making.

Some of the opportunities devolution provides for Kenyans are; improvement of infrastructure, better agricultural activities, innovation in information communication technology, faster economic growth, effective and quick decision making, equal distribution of resources, equitable development, good social amenities and reduced corruption. As regards good practices that have resulted out of devolution, health sector was considered to be the most improved amongst public services. Other than being rendered closely available to local communities, handling of emergency cases has also improved due to availability of ambulances. Infrastructure has also been improved. Better road networks, lighting of streets and other public services such as schools, early-childhood development education, and subsidy in fertilisers and hence, boost in agricultural activities, have resulted from devolution. In terms of availability and management of resources, financial resources

have been rendered closer to the people through counties, resulting in timely development decisions. However, prudent management of resources is not necessarily guaranteed by its availability.

Indeed there are many challenges threatening the success of devolution in Kenya. A number of the challenges are observed in implementation efforts rather than institutional and legal framework laid down by law. However, this does not imply that the structure for effective implementation has entirely been made available. The challenges of implementation of devolution are occasioned by different actors and factors; national and county governments as systems, elected officials, officers responsible for implementation of devolution and the community are responsible for some of the challenges of implementation. Corruption is one of the biggest problems and loopholes in the system, specifically, absence of oversight bodies at the county level and individuals are blamed for it. Closely related are problems of tribalism and nepotism which have resulted in benefiting of some individuals at the expense of the larger public. There is lack of willingness on part of the national government to share relevant functions and adequate resources with county governments. The national government is also said to have contributed to lack of coordination with county governments in planning and execution of work resulting in duplication of efforts and resource wastage.

Moreover, politics plays a role in the dynamics between national and county governments, causing biased decisions on part of the national government in terms of development. County governments are not entirely free from blame. Lack of human resource capacity is said to have been caused largely due to the fact that some elected county officials and county officers do not have the requisite skills to undertake the tasks that devolution entails. Rolling over of former county members of staff without the necessary capacity building is one of the causes for lack of capacity at

the county level. However, the public has also contributed to the problem by not having taken the effort to elect county officials capable of performing the tasks at hand.

8.2 Recommendations

Although devolution was dubbed an ambitious venture, Kenyans have enthusiastically embraced the challenges ahead in their nation's future. It has to be mentioned that devolution is a relatively new system of government in Kenya and needs to be given time to be said to have succeeded or failed. However, agents of implementation have to address identified challenges in order to ensure its success in the long run.

There are a number ways to enhance accountability of county offices and curb corruption at the county level. One such measure is to empower oversight bodies such as the Senate and have Ethics and Anti-Corruption Commission available at the county level since currently it is only present at the central government. The Auditor General, the Judiciary and the Police are other bodies can be entrusted to ensure accountability of county governments. As such, these organs can be sensitised towards focusing their attention towards devolution and organs of implementation. Civil Society Organizations (CSOs) can play a major role in ensuring better accountability of county governments. One way to achieve the same is to have representation at the county level. Citizens should also undertake oversight of their local government. Ensuring public participation is one way to allow oversight by local community.

The perceived lack of public participation can be achieved through a concerted effort of the major players. Perhaps, the primary measure is to conduct civic education for local communities on what devolution means and the results it should bring about. The training programs that are conducted by the Kenya School of Government for county office leadership and key staff can be designed for the citizens at large. County offices can also allocate resources to educate the public on devolution with

two objectives in mind. One objective is for local communities to have a realistic expectation of what can and cannot be achieved by devolution. The other is for local community members to have the necessary knowledge and capacity to hold county offices accountable. CSOs can have a programmatic focus on awareness creation on devolution. The fact that there are mixed practices of public participation in different counties points towards different appreciation of the existing public participation principles and instruments. This can be addressed by designing training programs specifically on public participation in all counties. This can be undertaken by institutions like the Kenya School of Government as well as CSOs. Counties should also invest time and energy in identifying their respective needs for training for improved performance in undertaking public participation.

There is a need to improve capacity of major players in the implementation of devolution. Capacity development is important to improve quality of work and leadership at the county and national levels of government. Capacity building can be done in the form of assistance with material and financial resources or improvement of quality of human resource capacity. The national government should definitely allocate the requisite financial resources along with the devolved functions, if county governments are to deliver results. There are two ways that human resource capacity can be improved. One lies on the shoulders of local community. Members of community should, of necessity, take the time to elect county officials based on merit than political affiliation or tribal considerations. The second is induction and training of elected officials and technical staff of county offices. The Kenyan School of Government has been undertaking this task since the time devolution has been in effect in Kenya. However, sustainability of the training programs has to be ensured for lasting results. One way to ensure sustainability is to continue providing trainings based on need. Counties can undertake a need assessment of their respective leadership and staff in order to develop plans for trainings. Other stakeholders like CSOs should also undertake the responsibility of conducting human resource capacity building of county offices.

Improved coordination between national and county government calls for efforts from both the county as well as national governments. The national government can facilitate better coordination with local governments through three major aspects: adequate and timely disbursement of resources, the need to appreciate that sovereign power is shared by the two levels of government and the political will to make decisions devoid of politics or tribalism. Concerned stakeholders such as Kenya School of Government as well as CSOs can play a role in ensuring this by sensitising the national government on the need for better inter-governmental coordination. In addition, oversight bodies such as the judiciary and Ethics and Anti Corruption Commission can play a role by enforcing relevant legal measures towards ensuring accountability of the national government for the smooth functioning of devolution.

There is also a call for the national government to de-link politics and governance. This can contribute towards improved coordination of the two levels of government as well as tribe not being taken into consideration by county officials on decisions concerning development. There are two ways of achieving this; one is continuous sensitisation of national and county officials on the benefits of unbiased development decisions for the country as a whole. The other is rendering the county office non-elective. This, as it is hoped, will put technocrats instead of politicians in the office of the governor who will be able to make objective decisions towards equitable development of counties.

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