Workshop on Devolution and Local Development in Kenya

26 June 2014, Nairobi Safari Club, Nairobi, Kenya

Conference Proceedings

ICLD Swedish International Centre for Local Democracy

PROCEEDINGS NO 2

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TABLE OF CONTENTS

THE RATIONALE OF THE WORKSHOP

On June 26 2014, a workshop was held on devolution and local development at the Nairobi Safari Club in Nairobi, Kenya, to discuss the historic devolution reforms one year after their implementation. The workshop was organised by Agnes Cornell, Aarhus University, and Michelle D'Arcy, Trinity College Dublin, with funding from the Swedish International Centre for Local Democracy and in partnership with the Institute for Development Studies at the University of Nairobi. The workshop was attended by 58 participants from a wide range of backgrounds: civil society; academia; county administration and assemblies; and the donor community.

The objective of the workshop was to provide an opportunity for academics, politicians and policy practitioners to reflect on the progress made and the challenges that remain in terms of devolution in Kenya. This publication contains the papers presented at the workshop, which were grouped around a number of key themes: devolution one year on; devolution and governance; devolution and development; and devolution from theory to practise. Together these papers provide a unique insight into the experiences of devolution from both those working within and alongside the devolved institutions.

Although the discussions that took place at the workshop often raised the challenges and issues that have arisen over the course of the last year, there was also recognition that devolution has had a very significant impact on Kenyan politics and society. In the first session the panelists discussed how these long-fought-for institutions, although far from perfect, have now arrived. In the second session on devolution and governance, the speakers highlighted a number of different challenges for devolution: the impact of the new institutions on subnational accountability and the balance of power between institutions; the deeply embedded gender norms that act as barriers to women's effective participation in county government; and the overlapping of county governments onto traditional institutions that could play a much greater role in devolution. In a parallel session, the papers examined the impact of devolution in the water and health sectors. In the session on devolution and development, the papers discussed the revenue performance of the county governments to date, which has been less than optimal; the issues that have arisen in the planning processes county governments have undertaken, particularly in terms of politicization; and the lessons to be learned for devolved government from the Constituency Development Funds.

In addition to the paper sessions, two panels invited expert practitioners and academics to reflect on their personal experiences and impressions of devolution to date. In 'Sharing Experiences' a number of county assembly members, officials from county government, and academic and NGO practitioners discussed their perspectives. A summary of this discussion is included in these conference proceedings. In the plenary debate – 'Devolution: From Theory to Practise' – leading authorities on devolution discussed what needs to happen now to realise devolution's full potential. A short report on this debate is included in these proceedings.

We would like to extend particular thanks to Dr Adiam Tedros, Programme Director of the International Training Programme and Programme Director of the Knowledge Center at the Swedish International Centre for Local Democracy, and to Professor Winnie Mitullah, Director of the Institute of Development Studies at the University of Nairobi. Both provided invaluable support in advance of the workshop and their participation on the day was key to the success of the event.

Agnes Cornell
Aarhus University
Michelle D'Arcy
Trinity College Dublin

DEVOLUTION AND LOCAL DEVELOPMENT IN KENYA
26 JUNE 2014, NAIROBI, NAIROBI SAFARI CLUB

PROGRAMME

8.30 – 9.00 **Registration** – *Mawingo room 2nd floor*
9.00 – 9.15 **Introduction and Welcome** – *Mawingo room 2nd floor*
Michelle D'Arcy, Trinity College, Dublin

9.15 – 10.45
Session 1 **Devolution One Year On** – *Mawingo room 2nd floor*
Chair: Agnes Cornell, Aarhus University
'Kenya's Devolution: Taking Stock One Year On'
Samwel Oyomo, Kenya Human Rights Commission
'Kenya's Ethno-Politics and the Implementation of Devolution under the Constitution of Kenya 2010'
Conrad M. Bosire, University of the Western Cape, South Africa and Strathmore University, Kenya
'Unraveling Intergovernmental Relations in Kenya: Taking Stock of Tensions and Conflicts within the Devolved System of Government'
Wambua Kituku, University of Nairobi

10.45 – 11.00 **Coffee Break –** *Mawingo room 2nd floor*

11.00 – 12.30 **Parallel Sessions**
Session 2.1 **Devolution and Governance I –** *Mawingo room 2nd floor*
Chair: Dickson Omondi, National Democratic Institute
'Subnational Accountability under Kenya's New Constitution'
Joshua Kivuva, University of Nairobi
'Because of Culture: The 2013 Gubernatorial Elections and Masculine Democracy in Kenya'
Steve Ouma Akoth, Pamoja Trust
'Traditional and Modern Governance Institutions: Can They Cooperatively Work for Efficient Services in Contemporary Kenya?'
Lawrence Tsawe-Munga Chidongo, Pwani University

Session 2.2 **Devolution and Development –** *Room 1601 16th floor*
Chair: Reginald Nalugala, *Tangaza University College, (CUEA Nairobi), ISMM Governance Postgraduate Programme*
'Devolution in the Kenyan Water Sector – Rural Water User Preferences to Institutional Transformations in Water Services and Water Resources Management'
Johanna Koehler, University of Oxford
'Examining the Effects of Political Decentralisation in Kenya on Subnational-Level Health Sector Governance for Planning and Budgeting'
Benjamin Tsofa, KEMRI-Wellcome Trust Research Programme.
12.30 – 14.00 **Lunch –** *Safari Restaurant 1st floor*

14.00 – 15.30 **Parallel Sessions**
Session 3.1 **Devolution and Governance II –** *Room 1601 16th floor*
Chair: Joshua Kivuva, Institute for Development Studies, University of Nairobi
'Local Revenue Mobilisation at the County Level: Experiences and Challenges'

Rose Wanjiru, Centre for Economic Governance
'First County Integrated Development Planning: Experiences and Lessons from Laikipia, Nandi, Uasin Gishu and Meru Counties'
Abraham Rugo Muriu, Devolution, Public Policy and Leadership Consultant
'Devolving Corruption? Kenya's Transition to Devolution: Experiences and Lessons from the Decade of the Constituency Development Fund in Kenya'
Michael Otieno Oloo, National Taxpayers Association

Session 3.2 **Sharing Experiences of Devolution: Practitioner Perspectives –** *Mawingo room 2nd floor*
Chair: Adiam Tedros, *Swedish International Centre for Local Democracy*

Speakers:
Churchill Suba, *National Civil Society Congress*
Florence Fulano Wekesa, *Member of County Assembly, Bungoma County*
Margaret Atieno Osogo, *Save the Destitute, Homa Bay County*
Alice Nekesa Wafula, *Bungoma County Government*, and Gerry Nyongesa, *Kinda-Kimilili Twinning Programme*
Reginald Nalugala, *Oxford Centre for Mission Studies*

15.30 – 16.00 **Coffee Break –** *Pool deck 2nd floor*

16.00 – 17.00 **Plenary Debate – Devolution: From Theory to Practise –** *Mawingo room 2nd floor*
Moderator:
Adiam Tedros, Programme Director, International Training Programme and
Programme Director, Knowledge Center, Swedish International Centre for Local Democracy
Speakers:
Winnie Mitullah, Professor, *Institute for Development Studies, University of Nairobi*
Hamisi Mboga, Secretary General, *Association of County Governments of Kenya*
Alfred Omenya, Associate Professor and Head of School, *TU-Kenya (on leave of absence) and Principal Researcher and Architect, Eco-Build Africa*
Charles Warria, Capacity Development Manager, *Drivers of Accountability Programme Kenya, Joint Programme of DFID, DANIDA, CIDA and managed by Overseas Development Institute and Development Alternatives Inc.*

Conference Papers

"KENYA'S DEVOLUTION – TAKING STOCK ONE YEAR ON"

Samwel Oyomo*

ABSTRACT

This discussion defines devolution and traces the history and philosophy behind the development of the term in the United States and the United Kingdom through the war of independence and abolition of the slave trade. The process of conceptualising devolution is further shaped during the world wars and end of the Cold War, which ushered in the ideology differences between the Western capitalists and the Eastern communists. This was a defining moment as the Western capitalists introduced social welfare to counter communism. The brief also looks into the post-independence period and what influenced countries that devolved their governance system. Finally, it gives a historical background of Kenya's struggle to change its constitution, the challenges therein one year on, recommendations on how to avoid the pitfalls and concluding remarks regarding moving forward with the process of implementation to realise the development aspirations of the people of Kenya.

DEFINITION AND HISTORICAL CONTEXT

Devolution is a movement to place governmental power in the hands of elected or appointed managers operating closer to the beneficiaries of government actions (Loveridge, 2010). Decision-making governance is dispersed closer to the people. Muia (2008) asserts that decentralisation is one way through which people's right to participate in governance is attainable.

The history of the United States offers examples of points in time when the local-level control changed substantially. The Declaration of Independence in 1776 marked a vigorous move away from a centralised regime to thirteen semi-autonomous local governments, loosely bound by federation (Institute of Economic Affairs, 2010)**.** The struggle to define state property, abolition of slavery and the Declaration of Independence in 1776 and a move away from centralised form of government triggered the civil war that necessitated the constitutional amendment, especially those touching on the Bill of Rights. Similar struggles for autonomy took place in the United Kingdom in the nineteenth century, with the devolution of powers to Ireland, followed by Scotland.[1]

In response to the economic crisis of the 1930s, the United States' federal government enlarged its scope of action to include anti-poverty programs. The civil rights movement of the 1960s led to stronger federal intervention on such issues as voter rights, desegregation and equal opportunity.

The end of the Cold War in the 1990s also triggered a move towards devolution, because the United States did not have a common enemy to unite against, and hence, no need for a stronger federal government. There was also a need for capitalists to modify their ideology towards creating a welfare state to better compete with the communist ideology built on the foundation of resource sharing.

The move towards a devolved system of government has also been triggered by the information age and the global economy. Information can move from one side of the globe to the other in a matter of seconds and what happens in one part of the world can have a global impact. Multinational corporations also have influence in their ability to raise large amounts of resources and impact lives of local people in various parts of the globe.

Also, countries that moved towards a devolved system of governance did so because of ethnic diversity, religion, difficult terrain and colonialism led to marginalization in some parts of the country, as was the case with Papua New Guinea, South Africa, Nigeria and India.

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1 http://en.wikipedia.org/wiki/Devolution_in_the_United_Kingdom, accessed on 2014/05/12

THE QUEST FOR A DEVOLVED SYSTEM OF GOVERNMENT IN KENYA

The clamor for a new political and governance dispensation in Kenya has been long and winding, spanning over two decades. This agitation for change was occasioned by successive regimes' 'policies' of marginalization, exclusion and repression based on ethnicity and political affiliation championed by the few political elites. This quest for change was also catalyzed by the gap between the government and the people through the highly centralised form of government. Many lost their lives, others were either maimed or imprisoned, and others went into exile for demanding change.

The engagement with forces of change within the then ruling class resulted in the repeal of section 2A of the Constitution in 1992, which restored Kenya to a de jure multiparty state. Further reforms were seen in the run up to the 1997 general elections when the mantra was that of 'no reforms, no elections'. Eventually in 2002, the National Rainbow Coalition government achieved victory on the slogan of constitutional reforms and zero tolerance to corruption. The first term of the government was marked by wrangles and filibustering in delivering constitutional reforms. The impetus to reform was occasioned by the wave of violence that engulfed the country immediately after the declaration of presidential results in the 2007 elections. Under the stewardship of the African Panel of Eminent Persons, former UN Secretary General Dr Kofi Annan brokered a peace deal between the two main contenders in the presidential contest and drew up the Agenda Four reforms, which outlined a clear blueprint that delivered the current constitution in 2010. Kenyans resoundingly supported (70 percent) the 2010 constitutional referendum, and this was largely because the devolved system of governance was the only vehicle that could deliver development by addressing marginalization, exclusion and power disbursement both horizontally and vertically while ensuring that the seat of governance was closer to the people, so they could have a greater impact on their future.

DEVOLUTION AND DEVELOPMENT PARADOX

Kenya's devolution is unique and ambitious and the world is keen to learn from it: never before has a country embarked on this process by devolving administrative systems, political structures and resources simultaneously. However, the process has been afflicted by a number of factors:

1. At the helm of the government with responsibility for the implementation of the constitution, was the leader of the "No" campaign (deputy president William Ruto) that opposed the new governance dispensation. It is no wonder that the government has been blowing hot and cold when devolution matters are raised.
2. Immediately after the members of parliament and county representative assumed office, their first item on the agenda was to agitate for higher pay despite the Salaries and Remuneration Commission's recommendations. This compromised service delivery for the better part of the first quarter of Jubilee Government's term and pushed the wage bill to unsustainable levels. Kenya is the country with the highest wage differential in the whole world between the minimum wage of approximately Kshs 8,000 and a Member of Parliament's salary of Kshs, 850,000. This is a differential of approximately 97 times compared to other countries (Norway and Hungary less than 3 times, Namibia, USA, Tunisia and Saudi Arabia less than 10 times and Morroco, Jordan, Bolivia and Lebanon less than 20 times) according to Gini-coefficient income inequality, 2011.[2] Members of county assemblies (MCAs) had their salaries pegged at Kshs 79,000, but upon assuming office, they arm twisted the Salaries and Remuneration Commission and their pay increased to Kshs 180,000 per month[3]. Further contribution to the ballooning wage bill in the counties, as county assemblies were not compliant with the two-thirds gender principle, the parties had to nominate 772 additional MCAs

2 http://data.worldbank.org/indicator/SI.POV.GINI/

3 Salaries and remuneration Commission (SRC), Kenya Gazette Notices No.2885,2886,2887,2888

(Constitution Implementation Commission, 2014: 22). This will cost taxpayers an extra 103 billion for the next 5 years, not including monthly allowances of between Kshs 100,000 to 200,000 per month. Further bloating an unsustainable wage bill, individual MCAs have hired 3 to 10 staffs each to man the 4450 ward offices countrywide.

3. Insecurity has also been a major challenge in the country since devolution started: there is poor co-ordination of security matters and intelligence gathering and sharing due to the complex relationship between the county governors and county commissioners without clear guidelines on how the two offices should work together. The National Government Co-ordination Act 2013 section 14 establishes coordination units of a county government (urban areas and cities, sub-counties, wards and villages) that accords to section 48 of the County Government Act 2012. While section 41 of the National Police Service Act 2011 establishes a County Policing Authority, which comprises of the county governor or his or her appointee, there are no clear guidelines on how security intelligence will be shared. Section 47(9) (j), on functions of the County Policing Authority, stipulates its mandate of receiving reports from county policing forums and committees, yet these structures have no provisions for funding. This is largely why Kenya's community policing initiative failed to deliver: the district structures had funding, but the forums at the location and sub-locations did not.
4. The health sector has also been affected because health practitioners are resistant to being part of the County Governments . A number of doctors resigned from government health facilities to join the private sector or work in other countries. 'This week I have received seven resignation letters from doctors. Before September 2013, we had a good distribution of doctors in the country,' said Dr Francis Kimani, director of medical services. [4] Kenya has 6,500 trained doctors but only 4,000 are active. There are 3,100 in government service and of these, 2,000 work in or around Nairobi, which even highlights the regional disparities in the country. The doctor-patient ratio is 1 doctor to 17,000 patients. In November 2011, it was estimated that up to 80 percent of doctors would leave government by the third year of service to go to the private sector, with Botswana and South Africa being the biggest beneficiaries, while others would go to the United States, France, Australia, Canada and Britain. The total estimated cost of educating a doctor from primary school to university is KES 5 million, and for every doctor who emigrates, the country loses about KES 1.5 million worth of returns from investment. The discontent amongst medical practitioners within the devolved system of governance paints a grimmer picture for the health sector and requires urgent action.
5. Protests have arisen against counties that have increased levies. These levies were imposed without consulting with constituents, as stipulated in the constitution. This has led to a growing number of Kenyans erroneously concluding that devolution is expensive and should be done away with, and the government of Kenya has not come up with a national law on participation that would guide counties in tailoring their own legislation on participation.
6. Water has also been a source of concern in devolution, because the existing water boards cut across counties and the concern on how to manage them has been an issue. Some counties use water sources from other counties, as is the case of Mombasa and Nairobi. The counties with water sources have considered levying taxes, but this will make water expensive and unaffordable to the poor who live in urban slums. The draft Water Bill, 2014 seeks to address emerging conflict between counties on water-related issues. Section 151(1) transfers all property, functions, assets, liabilities, obligations, agreements and other arrangements from Water Services Boards and the National Water Conservation and Pipeline Corporation to county water service providers or to cross-county water service providers.
7. Kenya's public wage bill has been a source of recent concern and wages were estimated to be 12.1

4 Daily Standard. 'Why Why doctors' flight is a growing concern in the ailing healthcare system.' May 31 2013. http://www.standardmedia.co.ke/?articleID=2000084831&story_title=why-doctors-flight-is-a-growing-concern-in-the-ailing-healthcare-system&pageN o=2 http://www.standardmedia.co.ke/?articleID=2000084831&story_title=why-doctors-flight-is-a-growing-concern-in-the-ailing-healthcare-system&pageNo=2 accessed on 2014/07/25.

percent of gross domestic product (GDP) in 2013 (approximately 50 percent of the country's total revenue). This is higher than the internationally accepted levels of wages to GDP and wages to revenue, which are 7 percent and 30 percent respectively (Parliamentary Service Commission, 2013). Bloating is also seen as the new county governments employ new staff and inherit over 40,000 employees from the defunct local authorities. It is upon this backdrop that the Salaries and Remuneration Commission issued a communique to all counties to stop new recruitments until staff rationalisation is completed and audits are conducted, because the government loses approximately KES 1.2 billion annually to paying non-bona-fide workers (NTV, 2014).

8. The process of devolution has also been beset by lack of auditing of the resource requirement for all 47 counties and hence the cash transfers are not based on factual figures. According to the 2010 chapter in the Constitution of Kenya on Public Finance (11), section 203(2) states that national income that is equitably allocated to county governments shall not be less than 15 percent of all revenues collected by the national government. The recent budget for Financial Year (FY) 2014/15 stated that 43 percent of all national government revenues (KES 226.7 billion; Kenya National Treasury, 2014) yet this percentage is not derived from the *latest audited accounts* for FY 2012/13 (as required by law) because those accounts are yet to be audited.
9. Numerous amendments have been proposed by parliament without giving devolution time to take root and without having the chance to learn from it before suggesting changes to the law. Just one year into devolution implementation, a committee with a budget of KES 80 million has been established to review public service delivery. Currently there are proposed bills that seek to undermine devolution by amending the County Government Act 2012, such as the bill awaiting presidential approval that creates county development boards to be chaired by county senators.
10. Devolution has also been plagued by supremacy battles between the National Assembly and Senate, county assemblies and governors, and the judiciary. This does not portend well to service delivery, as energies are channelled to politicking and jostling for power.
11. Finally, devolution has also been a victim of concerns of accountability and transparency as the majority of counties operate without regard to fiscal principles and objectives as stipulated in the constitution, leading to wastage and spending in non-priority areas. According to the Chairman of the Council of Governors, Isaac Ruto, "governors cannot handle the issues of misuse of funds by the Members of County Assemblies (MCAs). They and their executives fear for their jobs and take a back seat" (Mbaka, 2014). MCAs have also set a side KES 3.6 million to purchase iPads in the 2014/15 budget. According to audit report, KES 182 billion had not been spent for FY 2013/14 and counties had spent KES 2.6 billion on foreign travels out of the allocated KES 8.6 billion and were in a rush to blow the balance. The Commission on Revenue Allocation has suggested a drastic cut in the travel budget, while the Office of the Controller of Budget wants the national government to coordinate such travels and set a ceiling (Mbae & Anami, 2014). This has been contested by MCAs in court to challenge the decision to have a national body controlling and limiting their spending.

These factors have a potential to derail the process of implementing the constitution and must be given due consideration if Kenya's devolution is to succeed.

RECOMMENDATIONS

1. Political will by the Jubilee Government is vital to the process of implementing devolution. This is due to the fact that the national government has control of resources that are important for delivering services and enabling the execution of functions that have been devolved to the counties.
2. Audits of all counties' resource needs should to be completed to ensure that the right amounts of resources are transferred.
3. The national government needs to restructure the provincial administration to accord with devo-

lution. This will ensure proper coordination, intelligence gathering and the sharing with all parties of security decisions in a proactive manner.

4. People's participation in decision-making in a devolved system of governance is paramount and is the very essence of devolution. The national government must fast track the process of developing legal and policy frameworks on participation to guide county governments with their laws on participation.
5. The Transition Authority and the Public Service Commission need to fast track the process of county staff rationalisation to ensure that only the needed skills and human resources are maintained and other employees who do not meet the required criteria are either re-trained or retired and compensated.
6. The Intergovernmental Authority should take full mandate of its authority and give direction on resources that cut across counties, such as water, to ensure that services remain accessible to the poor and marginalised.
7. In order to assure effective service delivery, health-sector stakeholders in Kenya need to collectively explore the challenges and opportunities of devolving the health function and strategise how to develop sustainable health systems at the county levels in tandem with global trends. They need to develop the institutional and legal frameworks that will govern policy formulation, planning and priority setting (Development Initiatives, 2013).
8. The bickering between the various arms of government must stop and constructive dialogue should guide the process of implementing devolution. Any differences should be referred to legally mandated institutions for arbitration, mediation and litigation.

CONCLUSION

1. Kenyans must learn that implementing devolution is a process rather than an event and that it will not fix our problems immediately, hence patience and persistence. The national government needs to audit the cost of running the counties, ensure quality legislation and policies on devolution and confirm that all county functions are transferred and resources properly managed.
2. Moving forward economically, with the discovery of oil and gas in the historically marginalised parts of the country, the possibility of secession must be foreseen and guarded against if the country is to successfully manage its petro-economy and avoid the 'resource curse' in the extractive industrial sector. The equalisation fund must be used for the purpose it was intended: to improve infrastructure in the marginalised areas to spur economic growth and development. Further, the need to broaden the tax bases of counties is also a key element in the process of devolution to reduce heavy dependence on transfers from the national government and enhance counties' levels of fiscal autonomy.
3. Finally, let us give devolution a chance. It is too early to audit the implementation process and draw conclusions. Let us not squander the chance for the rest of the world to learn from us. We should not go into the annals of history as an example of how not to implement devolution. This process demands patience while taking into account the uniqueness of our country and its diversity, which should serve as a pillar of strength. As a word of caution: "the centralist romanticists and the devolution evangelists must tone down their extreme positions to give the process of implementing devolution a chance".

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KENYA'S ETHNO-POLITICS AND THE IMPLEMENTATION OF DEVOLUTION UNDER THE CONSTITUTION OF KENYA 2010

Dr. Conrad M. Bosire*

Heterogeneity (rather than homogeneity), it has been argued, characterises the majority of states and societies around the world. Kenya is no exception, as it consists of different groups (for example, those based on religion, ethnicity and race). However, a particular form of heterogeneity becomes significant in defining and/or negotiating group-based claims for control of state power if it defines the sociopolitical (and sometimes economic) fault lines of a society. In Kenya's case, politicised ethnic identities define the competition for control of state power. As a result, it is almost impossible to discuss Kenya's politics without reference to ethnicity.

Kenya's ethno-political competition has, over the years, focused on control of the presidency. This generally translated presidential elections and national politics into an ethnic zero-sum game. The perception that 'ethnic control' of the presidency (to the exclusion of other ethnic communities) secured state benefits – resources, opportunities and development – drove the competition for ethnic capture of the state. Failure to capture the presidency was equated to exclusion from development, state resources, and other opportunities. Skewed allocation, in favour of the successive presidents' ethnic communities, fuelled these perceptions which, in turn, made presidential elections deadly political contests.

The constitution seeks to disperse powers from the centre to 47 county governments across the country. One of the objectives of the devolved government is to recognise diversity (for the purposes of enhancing national unity) and protect minorities and marginalised communities. A review of Kenya's political experience reveals that, although not specified in the objectives of devolved government, ethnic accommodation is most urgent for the purposes of achieving national unity. Other objectives of devolved government include the pursuit of equitable development and the delivery of essential services. Accordingly, effective implementation of devolution may address political and economic-based grievances that have been root causes for Kenya's political conflict. However, this may happen where the dispersal of powers and resources facilitates political accommodation and equitable sharing of state resources and development, the absence of which has driven ethnic conflict in Kenya.

Apart from the dispersal of powers and resources, the president's powers have been significantly curtailed. While previous presidents had immense power over other organs of government and public institutions and resources, this is no longer the case under the Constitution of Kenya 2010. Presidential powers have been reduced and the remaining powers are subjected to multiple checks and balances to prevent abuse. There is a clearer separation of powers between arms of government and a more transparent public finance management system. Various independent offices and institutions have been established in the constitution to check abuse of executive power and some of the independent institutions have taken over functions that were previously performed by the president. All these are efforts to curb the abuse of state power by the president; past consequences of which are all too familiar with Kenyans.

While there are multiple channels to address the issue of politicised ethnicity and abuse of central power, this paper focuses on the system of devolved government and its role in managing the politics of ethnicity in Kenya. The objectives and structure of devolved government are based on a set of assumptions regarding the ability of a devolved system of government to manage ethnicity. In turn, these assumptions are drawn from literature and state practise where devolved governments have performed variously with regard to management of ethno-political competition.

However, regardless of the assumptions above, the broad (Kenyan) context in which devolution is being implemented (political, social, economic, etc.) will define the overall effectiveness of the devolved system of government in taming Kenya's ethno-political challenges. Thus, while the structure of the de-

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volved system (institutions, powers, finances, national and county government relations) will influence the nature of impact that the devolved system of government will have on Kenya's ethno-political landscape, the Kenyan context may play a greater role in determining the effectiveness of devolved structures.

Accordingly, this paper examines the context (historical, social, economic and political) of implementation of Kenya's devolved system of government followed by an analysis of the structures of devolved government and assessment of its implementation.

2. THE CONTEXT OF KENYA'S POLITICS OF DEVOLUTION

Kenya's current attempt to manage ethnic politics through the devolved system of government must be seen in the broader context. The current constitution is not the first attempt to devolve power. A semi-federal constitution that was composed of regions, which was adopted at independence (commonly known as *majimbo*), was dismantled shortly after independence. The *majimbo* system was a product of ethno-political contestation for state power and resources. The politics that led to adoption of *majimbo* and its subsequent rejection remain relevant to Kenya's ethno-political question.

As the colonial era came to a close in Kenya, the political elite did not arrive at the independence negotiating table as a united group. There were serious ethno-political differences that threatened to derail independence constitutional talks. Ethnic animosity between larger and small ethnic communities affected the structure of government discussion. The Luo and the Kikuyu, who were the larger and more politically and economically dominant ethnic communities, vouched for a unitary and strong central government with emphasis on individual rights protection. Smaller ethnic communities who feared the dominance of the Kikuyu and Luo communities called for regional governments that would act as a 'brake' on the dominance of the two largest communities.

The land issue was one of the sources of ethno-political tension at independence. Specifically, Kalenjin leaders in the Rift Valley feared that a Luo-Kikuyu-dominated government would settle the Kikuyu in the Rift Valley and disregard the Kalenjin's ethno-territorial claims to the region. Similarly, the coastal people feared domination by 'upcountry people' and called for secession of the coastal strip but supported calls for *majimbo* as an alternative.

The dismantling of *majimbo* was accompanied by amendments that vested powers in the president. As both head of state and government, the president became an all-powerful ruler with immense control over other arms of government and public institutions. Presidential powers have, however, not been used for the common good of all Kenyans. Successive presidents (Kenyatta, Moi and to some extent Kibaki) used their powers to appoint persons from their ethnic communities to key positions in government. Karuti, for instance, notes that while the Kikuyu were 20 percent of the population, they composed of almost 30 percent of Kenyatta's cabinet between the years 1966 to 1978 (Kanyinga, 2013: 56). The Kikuyus also composed 24 to 38 percent of the permanent secretaries positions in Kenyatta's government during the same period.

President Moi, a Kalenjin, saw Kikuyu representation in the cabinet decrease drastically during his administration – from 30 percent upon entering office in 1978, to a mere 4 percent by the time he left office in 2002 (Karuti, 2013: 59). As expected, the Kalenjin community's representation in the cabinet and composition of permanent secretaries also grew significantly over this period (Karuti, 2013: 60–61). Statistics have also shown that resources allocated for development by successive governments favoured the president's home region to the exclusion of other regions that were not 'in control of the presidency' (Chege & Barkan, 1989: 27; Southall & Wood, 1996: 509).

Obviously, these general trends created real or perceived grievances for ethnic communities that were at the periphery of state power. Specifically, the trends created a perception that the only way to access state opportunities, resources and development was through the capture of the presidency. As a result, all political attention was increasingly focused on presidential elections. Indeed, multiparty presidential elections, which started in 1992, were accompanied by ethnic clashes. This was repeated in the 1997 elections and again after the 2007 disputed presidential elections, which claimed over 1,000 lives and displaced close to 500,000 people. Persistent crackdowns on opposition politicians, human rights groups and even churches led to a clamour for constitutional and political reforms. This led to a constitutional review process in the late 1990s. However, it was not until August 2010 that the country would see a new constitution in place.

3. DEVOLVED SYSTEM OF GOVERNMENT AND ITS IMPACT ON KENYA'S POLITICS OF ETHNICITY

While the objective of unifying Kenya's ethnic groups through the devolved system of government is clear, its impact will largely depend on two main factors. First, the nature of the devolved government structure will influence its effectiveness. These include the nature, number, size and character of the devolved units of government. The nature and extent of powers and resources under the control of the county governments (vis-a-vis the centre) may also affect Kenya's ethno-political landscape. Second, while the structure is important, the broader context in which the structure will be implemented will vary the effectiveness of the system of government. This part evaluates the structure of devolved government.

3.1 The Size and Nature (Ethnic Composition) of County Boundaries

The 47 counties adopted in the 2010 constitution are based on the 46 administrative districts that existed in 1992, along with Nairobi County, which was considered a 'special province' in the provincial administration structure (Districts and Provinces Act, 1992, sec. 3, chap. 5). The 47 counties are a product of a colonial policy that entailed an ethnically based 'divide-and-rule' strategy. However, the boundaries were not retained with the explicit purpose of continuing this policy. The 47 county boundaries were adopted because they are large enough to provide additional checks and balances against the centre and are at the same time economically viable (CoK 2010: 92). Thus, the current county boundaries that are ethnically defined are more of a historical accident that happens to coincide with other apparently legitimate purposes than a reflection of a deliberate policy to organise devolution on the basis of ethnicity.

The number and size of the current 47 county governments can be analysed in five main ways. First, the county boundary structure fragments the larger ethnic communities into several counties. Accordingly, each of the larger ethnic communities in Kenya has several counties that are carved out of the former 'home provinces'.[5] Second, a number of the smaller ethnic minorities that never had a home province in the former regime now have a 'home county' or two under the 2010 constitution. Third, there are ethnic minorities who, because of their small size, were not given their own counties and who can be termed 'in-county' minorities. Fourth, historical migration has also created 'migrant' majorities that are not considered 'indigenous' to the area. Lastly, there are counties that are fully or partially urbanised (for instance, Nairobi) and form ethnic "melting pots".

The five largest ethnic communities in Kenya account for over 50 percent of the total Kenyan population and each controlled a 'home region' in the former system of provincial administration. However, these communities have been split into several counties – the Kikuyu community into five counties, the Luhya into four, the Luo into four, the Kalenjin into six, and the Kamba community into three. These 22 counties account for over 50 percent of the country's population.

Apart from the former home regions, some of the large ethnic communities are migrant majorities in other counties outside of the home regions. This can be traced to historical factors such as displacements and immigration to other regions. The movements into other regions have, in some cases, fundamentally altered the ethnic composition. Nakuru County, in the former Rift Valley, was originally inhabited by the Maasai, but historical migration of the Kikuyu and the Kalenjin into the area has turned the Maasai

5 Central Province (Kikuyu), Nyanza Province (Luo), Western Province (Luhya) and the Rift Valley Province (Kalenjin).

into a tiny minority (Kanyinga, 2009: 332). Other counties with substantial migrant majorities include Trans-Nzoia (with a Luhya majority) and Laikipia (with a Kikuyu majority). In some cases, the migrant communities have a concentrated rural settlement, mainly as a result of ethnically exclusive land allocation schemes after independence (Kanyinga, 2009: 332); in others, there are predominantly mixed and urban-type settlements due to ever-increasing rural-urban migration.

The 47 county boundaries also had the effect of giving the smaller ethnic minorities a home county. Most of these ethnic communities were minorities within the former provinces but now have their own territorial units. These approximately 12 ethnic communities[6] each control one or two counties and make up a total of 20 counties. The total population of these counties accounts for approximately one-third of the country's population.

However, not all ethnic communities have a home county in the current structure. A number of the minority ethnic communities share counties with larger ethnic communities. The removal of the regional level necessitated the reduction of the number of county governments from 74 to the current 47 during the constitutional review process. While these minority ethnic communities had earlier been allocated their own units, removal of the regional level meant that they would be combined with the larger communities. Approximately 18 communities have a population of 100,000 or less, and these form part of the county minorities (Wekesa, 2012: 2).

Within these smaller minorities, there are some that are much larger than 100,000 and thus form a substantial minority within their respective counties. The larger in-county minorities are the Kuria in Migori County, Sabaot in Bungoma County, Teso in Busia County and Marakwet in Elgeyo-Marakwet (Republic of Kenya, 2011: 203). Most of them remain consistently opposed to the current county boundaries and even voted against the constitution in the 2010 referendum.[7] In addition, there are much smaller minorities, such as those numbering 100,000 or less, who may be too small to have a significant "group impact" even in county-level politics.

The Impact of County Ethnic Composition on Kenya's Ethno-Politics

Opinion on the effect of 'ethno-fragmentation' on interethnic relations is divided. Barkan and Mutua argue that the splitting of the larger ethnic blocs acts as a brake on ethnic mobilisation in Kenyan politics (2010). They observe that due to the fractionalisation, '[d]evolution is also likely to break up the concentrations of power wielded by Kenya's largest ethnic groups particularly the Kikuyu, the Kalenjin, the Kamba, the Luo, and the Luhya – who together comprise over 50 percent of the country's population' (2010). This is because the counties will on average serve populations smaller than these groups (Barkan, 2011: 10).

Barkan compares this fractionalisation to the gradual division of the Nigerian regions from the original three to the current 36 states (2012: 150). He observes that since it is not possible to alter the ethnic composition or make up of a country, leaders have to manage the ethnic fault lines, which vary from one country to another and sometimes run deep (Barkan, 2012: 150). Roeder supports this strategy, observing that the fractionalisation of larger ethnic groups in Nigeria has empowered smaller ethnic groups and at the same time politically weakened the larger ones (2010: 25). Initially, Barkan argues, independence leaders used the 'myth of national unity', repression and resource patronage to manage the 'fissiparous tendencies' of their societies. However, the strategy is now shifting as countries such as Kenya, Nigeria and Uganda have adopted the fractionalisation approach 'by establishing some form of "compensatory regime" that simultaneously considers the level of ethnic fractionalisation and the geographic pattern of uneven development' (Barkan, 2012: 150). The resulting state structures, he adds, are semi-federal structures that respond to various ethnic and development issues, structures that were rejected by independence leaders but whose 'time has come' in many countries (Barkan, 2012: 150).

The four largest ethnic groups in Kenya account for almost two-thirds of the population. This composition, Barkan argues, 'raises the prospect for conflict because, depending on its size, the largest group

6 Kisii, Meru, Miji Kenda, Somalia, Embu, Maasai, Taita, Pokot, Turkana, Samburu and Pokomo

7 http://thedailynation.blogspot.com/2010/08/kenyan-referendum-results-constituency.html, accessed 2012/03/05

needs only form an effective coalition with two or four partners to control the state' (2012: 154–155). The danger in such an arrangement is that other large groups will rush to form 'counter-coalitions' and in the process deeply divide the country in a deadly 'zero-sum' game of ethno-political competition (Barkan, 2012: 154–155). At independence, the Kenya African National Union versus Kenya African Democratic Union political conflict was a contest between the large and politically dominant communities versus the smaller communities. However, the conflict now pits the larger communities against each other while the smaller communities have taken whichever side they deem expedient.

Given that fragmentation works against the political objective of the large communities, it is bound to be opposed by them. Indeed, in Nigeria only military regimes could carry out the largely 'undemocratic' fragmentation of units to the current 36 states (Roeder, 2010: 28). In Kenya, for instance, it has been argued that Kalenjin politicians opposed the constitution because devolution had the potential to 'break up their power base in the present Rift Valley Province', leading to a 'No' victory in the 2010 referendum (Barkan & Mutua, 2010: 3).

Given that the larger ethnic communities are not under one polity, fragmentation denies the communities a ready structure for ethno-political mobilisation. While it is still possible for the larger communities to ethnically mobilise across the current county boundaries during presidential elections, the county boundaries do not complement this destabilising effort. Thus, regardless of the reasons for the support of the devolved structure, the current county boundaries have the potential to manage ethnic politics in Kenya.

On the other hand, smaller ethnic communities that never had home provinces and are not part of the national government now have a home county with a measure of control over their own affairs (Barkan, 2011: 10). Furthermore, in the face of domination by the larger ethnic communities, fractionalisation has the effect of politically weakening the larger ethnic communities, thereby equalising them with the smaller ethnic communities. Roeder observes the same effect in Nigeria after the gradual fragmentation of the larger communities (2010: 25).

In the Kenyan context in particular, home counties are an important step towards ensuring ethnic harmony. Past centralisation of political powers and resources ensured that only the president's ethnic community had access to state resources and development; the smaller ethnic communities had no chance, due to their small size, of capturing the presidency. As such, it would not have been possible, under a centralised system, to access and control state resources and powers at the centre. Devolution of powers hence enables the smaller ethnic communities to share in the powers and resources of the state, while the larger ethnic communities struggle for the presidency.

Smaller communities (which exclude the largest five, the Kikuyu, Kalenjin, Luo, Luhya and Kamba) control approximately 22 of the 47 counties. With powers and resources being shared through counties, the current boundary structure has the potential to ensure that ethnic communities with a home county effectively participate in sharing state powers and resources. However, overall effectiveness also depends on how county powers and finances, as well as the structure and powers of the Senate, are designed (this is discussed later).

Not all agree that the current county structure will foster ethnic harmony. Akoth, for instance, argues that the constitution awards 'sovereignty to ethnic groups' through ethnically defined boundaries of county governments (2011: 15). He criticises this approach as one that 'highlights differences at the expense of the pursuit of perpetual peace' (Akoth, 2011: 15) and concludes that the 47 counties are no different from the colonial administration design of Maasai country, Akamba country and other colonial-era ethnic homelands. Indeed, experience generally shows that conflict or potential conflict has been greatest where identity issues coincide with territorial boundaries (Watts, 1999: 4). It has been added that such an approach 'freezes' group differences and slows down any processes towards integration and peace (Fessha, 201: 40).

The 47 counties have, however, denied a number of ethnic communities a chance to have their own units. These include communities such as the Kuria in Migori County, the Sabaot in Bungoma County, the Teso in Busia County and other in-county minorities in counties such as Elgeyo-Marakwet, Baringo and Garissa (Republic of Kenya, 2011: 203). Most of these in-county minorities are opposed to the current county boundaries and voted against the constitution in the 2010 referendum.[8] Due to their weak voice, their calls for the creation of their own counties were largely ignored in the review process.

However, calls by in-county minorities for the creation of their own counties are likely to continue. The current county boundaries are largely ethnically defined and this may have a spiral effect as in-county minorities end up demanding nothing less than 'our own county'. Referred to as 'ethnic entrepreneurship', this trend is led by elites in smaller minority groups who see creation of autonomous units as a way of accessing state resources and opportunities (Ayele, 2012: 217–218). Adjustment of boundaries and creation of more counties is subject to a rigid constitutional procedure that includes a national referendum where the larger ethnic communities would participate.[9]

The Taskforce that was appointed to recommend implementation of devolution suggested that decentralisation of power to levels below the county government may encourage in-county minorities to participate in governance and thus make decisions affecting their livelihood (Republic of Kenya, 2011: 59). However, effective accommodation of county minorities can only be achieved through real sharing of powers and resources with the minorities. Counties have discretion on what to decentralise to the subcounty level and how to do it (CoK, Art. 176 (2)). Accommodation of in-county minorities will thus depend on whether counties will be willing to devolve powers and resources.

3.2 The Role of County Powers and Resources in Managing Ethnicity Politics in Kenya

For the purposes of considering the impact of county powers and resources on ethno-politics in Kenya, the analysis should focus on three major categories of ethnic communities: the 'big five' who are presidential contenders; the smaller ethnic communities who are too small to capture the presidency but able to secure a county or two; and in-county minorities who are too small to have a county of their own. The way in which county powers have been designed has a different impact in each of these categories of ethnic communities.

For the larger ethnic groups, county powers can address ethnic conflict only if they provide a viable 'consolation prize' in lieu of control of the presidency. Given the nature of most of the powers exercised by county governments, the counties amount to vehicles for local service delivery as opposed to being institutions that wield significant political and state power (Ghai & Cottrell, 2012). In addition, the possibility exists that county powers could be constricted even further by the adoption of a restrictive interpretation of county powers and functions. There are limited grounds on which county laws and powers can override the national government in matters of concurrent jurisdiction, and the national government retains a regulatory, supervisory role in respect of most or all powers exercised by the counties.

Each of the major ethnic communities holds the possibility of clinching the presidency and might not see the weak county powers as an alternative to the control of the presidency. The bulk of political powers and resources are retained at the centre, with the constitution retaining a pure presidential system, albeit with clipped presidential powers. The limited county powers diminish the 'political significance' of counties, meaning that the presidency may thus remain a highly attractive prize to these communities. Barkan warns that this situation could make the large ethnic groups rush to form counter-coalitions and in the process deeply divide the country in a deadly zero-sum game of ethno-political competition (2012: 154–155). Indeed, the run up to the March 2013 general elections saw gradual ethnic and political polarisation as coalitions and counter-coalitions formed around the big five ethnic communities (Mathiu, 2012).

While the constitution formally recognises the people's sovereignty as the basis for exercising county powers, the actual content of county powers does not represent any fundamental sharing of state and political power. This division of sovereignty and powers between the national and county governments

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8 http://thedailynation.blogspot.com/2010/08/kenyan-referendum-results-constituency.html, accessed 2012/03/05

9 Article 255 (1) (i) requires an amendment of the provisions on the 'structure of devolved government' to be subjected to a national referendum and this can be interpreted to include the addition of another county as the current 57 counties are listed in the First Schedule to the constitution.

is more symbolic than real, and the bulk of political and economic power has remained in the hands of the national government. Despite the fact that county powers are constitutionally recognised and entrenched, the powers are diminished by a number of factors discussed in the preceding sections. The larger ethnic communities are thus likely to remain fixated on capturing the presidency.

For smaller ethnic communities with a home county or two, the current design of county powers may actually address their ethnic grievances and bring about their political inclusion. Being too small in number to capture the presidency, most of these communities are content with political and economic inclusion at the county level. The constitutional recognition and entrenchment of county powers and functions is of significance to these smaller ethnic communities. In the past regime, powers and functions of local authorities were subject to administrative authorisation and other forms of control (Southall & Wood, 1996: 503). The local authorities were overshadowed by central government departments and were largely irrelevant to local communities (World Bank, 2002: 46).

Counties now have powers over crucial sectors and will play a relevant role in local development. Ethnic communities, through home counties, will shape their own development at the local level as opposed to complying with a centrally determined agenda, as was the case in the past. The smaller ethnic communities will thus have a chance, through county democratic processes, to participate in the political governance of the country. This has the potential to address their grievances relating to political exclusion. Therefore, while the larger ethnic communities will find county powers inadequate to quench their 'political thirst', the smaller ethnic communities with no stakes in the presidency may well be content with the current county powers.

However, the fact that the larger ethnic communities will remain in competition for control of the presidency means that threats to ethnic harmony and national political stability still exist. Whereas ethnic conflict in the independence era was between the larger, more dominant ethnic groups and the smaller ethnic communities, the nature of the conflict has changed. The large and politically dominant groups are divided and in open political competition; smaller ethnic communities have gradually been drawn into the conflict between the major ethnic groups and could still play a role in ethnic conflict by taking sides in the 'presidential contest' between the larger communities.

For the tiny ethnic groups who are minorities at the county level, the manner of decentralisation of powers to levels below counties will determine whether they will be included or not. In-county minorities can only be politically and economically included through decentralisation of powers and resources from the county level to the subcounty level. However, the preceding discussions have shown that the framework for decentralisation of power to levels below the county is weak and unclear. Counties have almost complete latitude on what to, and how to, decentralise from the county level. Even mere deconcentration without any real decentralisation of powers and resources can still satisfy the constitution. However, county minorities will only be effectively included if powers and resources are devolved to the subcounty level, where the minorities are dominant. If powers and resources are concentrated at the county level where they are in the hands of the dominant ethnic group, county minorities may protest against such exclusion, leading to conflict.

While in-county minorities may protest exclusion, they – much like the slightly bigger ethnic minorities with a home county or two – are not a threat to national political stability. However, where county minorities form a substantial part of a county population, they are capable of being disruptive at the county level. This is true of groups such as the Kuria in Migori County, the Marakwet in Elgeyo County, the Sabaot in Bungoma County and the Teso in Busia County. Singo'ei, for instance, warns that 'while Luos are dominant in Migori and can secure most positions at the county level, the stability of the country depends also on the extent of inclusion of the Kuria minority' (2012: 23). Concentrating powers and resources at the county level may lead to resentment and minority conflict in reaction to real or perceived domination by the local ethnic majority in counties where there is a substantial presence of in-county minorities. However, minimal attention was given to the within-county dynamics of devolution – dynamics relating, for instance, to intracounty equity – and this has the potential to ignite county minority conflict (World Bank, 2012: 17).

Thus, it can be concluded that while county powers have been constitutionally entrenched and safeguarded, the possibility remains that ethnic and political conflict will continue because the larger ethnic communities, the main threat to political stability, are likely to be dissatisfied with county powers and may still focus on clinching the presidency. While the smaller communities with a home county may be content with county powers, past experience shows that they are usually drawn into competition for presidency by taking sides with the larger ethnic communities, thereby aggravating the conflict. The lack of a clear framework for decentralisation of powers to county ethnic minorities may also lead to perceptions of exclusion from county powers. As such, there is a likelihood of county minority conflict in counties that host substantial numbers of county ethnic minorities.

Counties generally have a weak local revenue base, because all the major taxes are allocated to the national government. At 15 percent of revenue collected nationally, the minimum equitable share of county governments is far too low even compared to unitary states such as Tanzania (25.6 percent) and Uganda (17.6 percent) (World Bank, 2012: 74). First, it less likely that such limited resources will translate into a viable political alternative for the larger ethnic communities. The government can constitutionally justify the retention of a considerable 85 percent of revenue collected nationally. This in itself is a permanent motivation for larger ethnic communities to capture the presidency.

4. ASSESSING IMPLEMENTATION OF DEVOLVED GOVERNMENT: THE EMERGING IMPACT ON ETHNICITY

The impact of the devolved government has to be assessed against the objectives of devolved government regarding the management of ethnic politics and conflict. As discussed earlier, the devolved government objectives are to enhance national unity by accommodating diversity (lack of political ethnic accommodation has led to conflict in the past). Also, the devolved system of government is meant to protect and safeguard minorities and marginalised ethnic communities. The limitations of the structure of devolved government (size, number, powers and resources) have been discussed in the preceding parts. However, several issues have emerged in the actual implementation of devolution that may affect ethnicity and politics in Kenya.

A number of national politicians and other 'political heavyweights' (former ministers and members of the previous national legislature) vied for county governor and senator positions in the March 2013 general election. This enhanced the political significance of county governments and devolution in general. Indeed, elective positions in the former local authorities were viewed as politically inferior and were routinely used as a springboard to national politics by career politicians. The decision to quit national politics to start a career in county politics enhanced the significance of the devolved government in the national political system. This may, in turn, provide a chance to pacify the need for political inclusion for ethnic communities that are not in control of the presidency.

The emergent political significance of the devolved system of government can be seen in the political rivalry between the national and county politicians from Kalenjin community. While ethno-political patronage has been built around the culture (and cult) of national ethnic kingpins, there are signs that county governors may wrestle this away from national politicians who are reputed as the ethnic kingpins. The best example here is the rivalry between the deputy president from the Rift Valley region (William Ruto) and one of the governors from his home region (Isaac Ruto, Governor of Bomet County). The governor is seen as trying to wrestle ethnic kingship of the Kalenjin community from the deputy president.

There is an increasing perception that the deputy president's political party (and community) is gradually being sidelined from the national political spoils by the president's party (and by extension the president's ethnic community). This has resulted in the rising popularity of devolution as an alternative to having access to state resources, development and opportunities. However, this has not, in any way, diluted the powerful perceptions associated with capturing and controlling the presidency.

The run up to the March 2013 elections also witnessed ethnic political bargaining for national and county elective positions although it is not clear whether voters adhered to these pre-election pacts. In Migori County, the two largest ethnic communities in the county (the Luo and Kuria) agreed to share the senator and governor positions in exchange for the Kuria's support for the Luo presidential candidate. There are mixed views on whether the Kuria kept their part of the bargain, since the two leading presidential candidates in the March 2013 elections both gathered substantial votes from the Kuria region. However, it is important to remember that the driving force for such cross-ethnic alliances is the calculation to win the presidential vote and this reinforces the dominance of national-focused politics, as opposed to objective local community political bargaining.

For the middle-sized ethnic communities with home counties, the level of resources controlled by their respective county governments is significantly higher than they were allocated in the past. The World Bank notes that some areas have received more than 1,000 percent of what they used to receive in previous government allocations. Therefore, it is most likely that resource-based grievances may have been pacified with the coming of county governments. However, it is also true that most of the county governments in such areas have not developed adequate capacity to absorb resources. Therefore, the increased resources are not yet translated to real benefits (development and improved services) due to capacity constraints in the respective county governments.

Indeed, county governments have yet to take up all their powers and functions as a result of capacity constraints. While the county governments are, for instance, in charge of energy reticulation, the rural electrification programme is being run by a national agency because of a lack of capacity at the county level to undertake this function.[10] Transition to the devolved government's legal framework delays powers to counties until the requisite capacity is built within county governments.

Still on resources, there is an emerging concern regarding the highly redistributive formula adopted by the Commission on Revenue Allocation, the body charged with advising on revenue allocation, which is gradually affecting areas that are currently receiving less allocation than in the past. The Commission on Revenue Allocation formula gave more weight to factors such as population, geographical area of a county, and the poverty index. Counties that had a lower poverty index received lesser funding than counties with a higher poverty index and larger geographical areas. As a result, counties with reduced allocations have, for instance, been unable to maintain the same level of services. The proposal to set aside a special fund to 'hold counties harmless' (basically a fund to help maintain the same level of services in counties that saw reduced funding as a result of the highly redistributive formula).

The proposal to hold counties harmless was rejected and dismissed as maintaining past inequity that the current constitution is trying to address. However, the impact of the highly redistributive formula is starting to emerge. County governments are gradually feeling the stress of maintaining services due to reduced allocations. A case in point is the county governments that host the former provincial or regional-based health facilities. The World Bank had advised in 2012 that if the hospitals are allocated to counties, the national government may give 'conditional grants' to counties that host provincial hospitals in order to maintain the vital 'regional scope' of health services (World Bank, 2012: 113). The National Assembly has proposed removing conditional funding in the 2014/15 budget, and emerging evidence is beginning to show that the regional facilities are under stress.

The impact of the above development is that the highly redistributive formula, which has led to a reduction of resources in some areas, is gradually creating perceptions of 'new marginalisation'. While redistribution of resources and expansion of services to previously marginalised areas is urgent and important, it needs to be done gradually in order to ensure that there is no disruption of essential services in areas that may receive reduced allocation. For instance, while it is important to disburse resources to marginalised areas, the capacity of counties in to absorb the funds and utilise them for development and service delivery is a more urgent consideration. Equally, the redistribution should be done in a manner that ensures that service delivery and development is not 'stressed' due to underfunding as a result of

10 The Rural Electrification Authority is performing the function of expanding rural electricity coverage pursuant to an agreement signed between the Authority and county governments.

rapid and radical redistribution. This has an additional impact of raising grievances of marginalisation and is gradually developing new grievances with some ethnic undertones.

5. CONCLUSION

This paper set out to assess the impact of the devolved system of government on the ethnic factor in Kenya's politics. The central question in regard to ethnicity and devolution is how to ensure effective political accommodation of ethnic identities in Kenya; the lack of which has led to serious conflict in the past. Indeed, the whole question of ethnicity is addressed through a variety of channels of which the devolved system of government is one. An analysis of the devolved government structure, and an admission by the designers, reveals potential weaknesses in the structure in terms of solving the main political puzzle, which is effective accommodation of the larger ethnic communities (the perennial presidential contenders). Smaller communities that are not presidential contenders have received some 'self-rule' rewards. However, the implementation process has also brought some issues that either pose further danger to effective political accommodation or have raised the political significance of the devolved system of government.

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TRADITIONAL AND MODERN GOVERNANCE INSTITUTIONS: CAN THEY COOPERATIVELY WORK FOR EFFICIENT SERVICES IN CONTEMPORARY KENYA?

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ABSTRACT

Kenya's government recently introduced a new system of local governance, involving devolution of power to county levels. The 2013 elections produced new leaders throughout the country, and county government structures are now in place. An elected governor now runs a county with the support of senators and county officials. Although many details still need to be worked out, this is one of the most fundamental changes of governance in Kenya since independence in 1963. For the new system to work and respond to the needs of local communities, the county management needs to be strengthened and effective ways for county representatives and local government staff to work with local communities needs to be established. In the wake of these changes, Kenyans have high expectations for reformed governance. It is hoped that such governance shall articulate values of transparency, accountability and quality leadership and prepare society to successfully reach its collective goals. This paper results from a comparative study on traditional governance institutions (TGIs) conducted between November 2012 and February 2013. The study was an initiative by the Kenya Transition Initiative Land Governance and Leadership Accountability Program *that targeted those indigenous communities living in the coastal region (counties) of Kenya, with an exception of Mombasa County. The study used a combination of quantitative and qualitative research methods for secondary and primary data acquisition. The study explored the potential role TGIs have been playing in society and may play in the new constitutional dispensation. It is hoped that the output shall be utilised in constructing integrated governance structures and developing rigorous cross-bred policies that could accelerate in the application of reforms and promote responsible leadership.*

Key words: Traditional Governance Institutions, Traditional Governance Structures, Democratic/Modern Governance, New Constitutional Dispensation

INTRODUCTION

Traditional governance institutions (TGIs), both in Kenya and in Africa in general, are known to have played a significant role in defining what it means to be human in Africa. They also offer solutions for some of those critical issues that seem to impede coexistence of communities, as well as the proper use and care of nature. As much as TGIs have undergone trial moments, facing dissolution by various foreign invasions of Arabs, Portuguese, French and British, Africans are still proud that TGIs have survived threats and are actively in practise in many African communities, like Ghana, Botswana and Uganda (Owusu, 2006).

There is an awareness and debate amongst both African and Western political academics trying to evaluate the validity of traditional versus modern governance. Some have identified themselves as *modernists* while others as *traditionalists*, with differing views on governance (Logan, 2008). Contemporarily, what is at stake in independent Africa and Kenya is the marked level of failure of post-colonial modern/democratic governance – particularly in service delivery to society. Many African communities have foreseen the need for modern governance institutions to recognise and acknowledge the presence and values of TGIs. The aim is to integrate, add value to each other and bring about good governance that is acceptable to society.

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The concept of traditional governance in African indigenous society has drawn the interest of global sociologists and anthropologists, and whether it still holds the same grip on delivering services to society has been widely debated. This creation of doubt triggered intensive study at one time by Western scholars – and of late by Africans themselves. In research conducted by the United Commission for Africa (South African Office), Kargbo (2006) analyses that long before the advent of foreign rule in Africa, African communities had their established governance institutions that were intimately concerned with all aspects of human welfare. The key concern in these governance structures was of equitable distribution of societal resources, law making and implementation, and social and political control. In many ways, traditional African governance considered the values of human rights and democracy by corresponding to the political, economic and social needs of the people – although often using diversified structures due to the ethnic diversity.[11]

The study conducted by Kargbo elucidates the fact and history of pre-colonial African governance in different regions such as the Ashanti Kingdom of Ghana, Zulu Kingdom of South Africa, Great Zimbabwe and Buganda. This is also endorsed by Owusu (2006), Ludeki (2007) and Logan (2008). They argue that most African traditional governance practised both centralised and decentralised systems. Fortes and Evans-Pritchard (1940) have published the same thoughts and also emphasise that decentralised African traditional governance is both democratic and proactive in steering society.

In the African worldview, leadership and governance is not only being responsible and committed but is a shared responsibility as well. According to Kirwen (2005), it was for the 'sake of the integrity and survival of the group' (2005: 82). Thus, leadership in the African worldview was a 'state given or accorded to an individual as a result of their outstanding character in the society'. In other words, it was the trust bestowed on a person to act on behalf of others. Kirwen emphasises that it was 'a person's ability to lead others, act as a guide, protector, advisor, judge and facilitator because of their wisdom' (2005: 88).

Leadership is also viewed as a phenomenon of mobilizing human and material resources for the common good of society. Traditional leaders are therefore valued due to the fact that they offer the sense of continuity in a changing society. Williams (2004) suggests that traditional leaders ensure transition because change in political and economic society occurs in an orderly and familiar way for the purpose of shaping, reshaping and reforming society. Significantly, the foreseen emphasis of African leadership is the focus on dignified qualities such as wisdom, perseverance, selflessness and moral attitudes. Gebrehiwet (2011) summarise African leadership qualities into two words 'moral responsibility'. These qualities facilitate the welfare of the community and are also preparation for their successors. Moral responsibility in the past was a major vetting criterion for one to be a leader in African indigenous political society. It was sometimes inheritance, or a deep mystical experience, that identified one as wise and just in decision-making. The decisions reached were representative of the whole community.

Kenyan coastal governance institutions observed moral responsibility in their leaders and played a major social role, in the light of the set of rules, laws and traditions that typically established how the people would live together peacefully as part of a larger group. They were very closely linked with the grassroots and intimately understood the struggles and problems of their society. It can be argued that Kenya's coastal communities recognised good governance and a moral dimension in their traditional political systems in the past. The work of Gailey (1970) explicates the leadership structures of the coastal people: they never had traditional monarchs or kings who would exercise absolute authority (as rulers of the entire nation); rather rule was by a council of elders, with councillors or advisors who were either their close relatives or selected from their communities. These traditional leaders served as political, military, cultural and spiritual leaders and were regarded as custodians of the values of society. Campbell and Meer strongly assert that 'for centuries the African people experienced no other form of governance' (2007: 2).

The power of the council of elders was balanced. The eldest of the council ruled by consent and by being the representative of all the peoples and "participation was at the basis of their political systems' (Hassen, 1994: 189). For example, the Pokomo council of elders was referred to as 'Gasa'. In some groups,

11 This study notes that modernists and neo-liberalists object to the notion of African governance as being democratic. Their arguments are actuated by observed gender discrimination and a lack of focus on development.

such as the Orma, political authority was placed in the hands of 'age-groups or elders' (Mbiti, 1969). The Midzi-Chenda also had the system of the age-set commonly called *rika*, where those most senior members formed the council of elders, *Kambi* (Mwangudza, 1983).

The council of elders looked after the welfare of their people by providing them with land for their subsistence needs in agriculture and grazing. They also provided for orphans and the very poor. Traditional leaders were responsible for the defence of their people against external aggression and for keeping order in their communities (Rugege 2002).[12] They resolved disputes with the emphasis on reconciliation, and thus ensured harmony among neighbours. They inspired unity in their people. Precolonial coastal communities in Kenya are reputed to have had a kind of participatory democracy. Through general assemblies (*baraza*/*moonano*), people participated in decision-making on important matters affecting the community. Traditionally, almost all of the coastal ethnic groups were characterised by what has become known as egalitarian structures.

In this kind of leadership both the leaders and the community focused on issues regarding their communal life. Decisions made 'were never decided centrally' (Oyugi, 1994: 250), and were simultaneously extended to all members of the community. This leadership was very clear, concise, energetic, creative, relevant and achievable in its vision for society. The vision in turn promoted justice, decisiveness, integrity, enthusiasm, loyalty and courage – not only in the affairs of leadership but also in the arena of social, economic and religious affairs of the society.

Leadership, therefore, was a chain of long-lived tradition, entailing oversight of political structures, and religious and economic policies. Logan (2008) explains that leadership traditions were very important, because they helped community leaders to administer justice in property inheritance, oath administration and conflict resolution. Leaders became guardians of their communities' culture, cultural events and rituals. Leadership provided ways of enhancing the social protocol, which called for absolute respect, discipline and commitment due to the duties that always lay ahead. Those who did not perform were indefinitely de-stooled.

Horsley affirms: 'A leader is someone who decisively influences, persuades, inspires, organises followers in a seriously problematic historical situation in such a way that they gain new perspective and take decisive action' (Horsley, 2003: 58).

ADVENT OF MODERN GOVERNANCE

In the wake of Western conquest in Africa, traditional systems of governance gradually underwent radical change and suppression. Largely, they responded and adapted the new formations of the 'so-called International Community' (Kanyandago, 2002: 127). These changes occurred on the basis of intermixing communities and other revolutions, such as, colonialism that later transformed leadership and governance in many societies. Ludeki (2007) and Hick (1987) explain that the turnaround of African traditional leadership and governance institutions was pronounced during the advent of foreign control and influence. Hick writes:

> For during the period when it was accepted as right that all Britons, Frenchmen, Germans, Dutchmen, Spaniards, Italians, and Portuguese should rule over whole black and brown populations, it was psychologically almost inevitable that they should see those whom they dominated as inferior and as being in need of a higher guardianship. This categorising of black and brown humanity as inferior included their culture (leadership and governance) and religions. (1987: 19)

In coastal Kenya, as in the rest of Africa, the political system was superseded by the introduction and imposition of foreign leadership and governance. The imperialistic tendency was sometimes done dip-

12 An example of how coastal region leaders defended their people is the historic event of the British-Giriama revolt of 1914.

lomatically, but many times it was forced (Davidson, 1995) by a 'significant number of migrants' (Ogot, 1976: 180) who decided to stay permanently as labourers and became urbanised in some towns. Owusu (2006) explains that African traditional leadership and governance was gradually weakened in the name of 'progress and governance'.

Nevertheless, the demand for independence was a reaction to colonial domination. It was a cry for a return to the leadership traditions that were threatened and weakened by colonial governments. In Kenya, for example, the struggle for independence meant that Kenyans were really yearning to revert back to their indigenous leadership patterns as the foreign ones did not adequately meet their needs.

Independent Kenya's elected leaders became selfish and unreliable in many ways because they continued with the colonial input. Arguably, Western education had made them appear 'brainwashed' to most elders, because of their political ambition and the need to protect their positions. Heads of state became more prominent with a concern for maintaining their supporters' positions – not solving all the people's problems. Advocacy for human rights, human dignity and cultural dignity faded. Thus, leaders began to struggle for their own political borders. Several elites amended the old constitution, resulting in dictatorship, a lack of respect for the rule of law, and political corruption where the peasants were often exploited. Consequently, people's participation in the exercise of power was reduced. There was a dysfunctional democracy. Generally, 'leadership…failed to create an environment that could ensure the sovereignty of and enhanced participation of the people in constructing the state' (Wanyande & Omosa, 2007: 63). They failed to lay a firm foundation for development. They failed in transforming the polarised ethnic groups into a political community with a common national identity. This was a wake-up call for all concerned African leaders for the eradication of the political malaise and the maintenance of the indigenous qualities.

During Jomo Kenyatta's presidency, for example, his leadership and government periodically received fierce and desperate condemnation from different national political leaders, something that resulted in assassinations and the scramble for political asylum in foreign countries. Tom Mboya and J. M. Karuiki were some of the well-known victims of this period. During Daniel arap Moi's reign, Ngugi wa Thion'go sought asylum in the United States, while Robert Ouko died mysteriously and his case has been reviewed in the courts of law. The communities that the various victims of government oppression came from saw the injustices, but fearing further outrages and casualties, they lacked the courage to challenge that government. Elsewhere – in Uganda under Idi Amin Dada, the Congo under Mobutu SeseSeko, and Ethiopia under Mengistu Haile Mariam – the new rulers became oppressors of their own people.

Despite the failure of modern governance and betrayal by leaders in independent Africa, traditional leaders still provide a firm concept that has a basis in family ties, clan and community. I argue that efforts have to be made to consider the role of the indigenous cultures in order to cultivate a balanced base in governance. It is clear that cultural values are important for the maintenance of society. Tarimo and Manwelo are calling people to return to traditional governance as the appropriate way of transforming community. They say that the traditional value system should not be approached lightly as an 'archaic and abandoned way of life whose patterns and meaning are no longer valid' (2007: 13). Traditional governance needs to be rediscovered. It would be more helpful to enable traditional leaders to become co-partners in the newly devolved governance in Kenya. This would promote friendly intercourse between all the chiefs or elders and unite them for offensive and defensive purposes against a common enemy. Gebrehiwet's (2011) research with the Gada community of Ethiopia indicates that the constitutional solution, whilst devised by the elite, was not seeking to replace the traditional rulers but to be their partners.

Some African countries, such as Botswana, Zimbabwe and Ghana, have noticed the weaknesses of modern governance and made the decision to pursue traditional governance in association with modern governance. Other countries, such as Uganda during the presidency of Yoweri Museveni, decided to revive traditional governance completely. Museveni reinstalled a new Kabaka: Ronald Muwenda Mutebi II whose father (Edward Mutesa II) had been imprisoned by Milton Obote and died in England in 1969 (Owusu, 2006). Museveni realised the potential role that traditional governance could play, addressing issues of national unity and mobilizing society in order to be active actors for their own welfare.

The South African government recognised the role of traditional leaders. It was not limited to mobilizing their communities to vote, but also complementing the efforts of the central government in the provision of services and working as co-partners with the political leaders in providing good governance. President Zuma realised that traditional leadership had something to offer in steering economy and society. He became aware that collective goals have to be established and implemented and that traditional leadership provides an alternative mode that can strengthen the political government.

TRADITIONAL GOVERNANCE INSTITUTIONS: THE ROLE THEY PLAY IN KENYAN COASTAL COMMUNITIES

The Kenyan Ccoastal communities comprise not only of the Coastal Bantu Midzi-Chenda (written Mijikenda), Pokomo, Swahili, Taveta, Taita and the Segegu- but also the Orma community. All are known to have never been subject to a 'central authority, administrative machinery, and judicial institutions on a large scale' (Parrider, 1962: 71). This suggests that there existed a unique relationship amongst coastal communities, implying similarities in their traditional government structures. These coastal region governance institutions observed moral responsibility in their leaders and played a major social role, in the light of the set of rules, laws and traditions that typically established how the people would live together peacefully as part of a larger group. They were closely linked with the grassroots and so understood the struggles and problems of their society intimately. It can be argued that the coastal communities recognised good governance and a moral dimension in their traditional political systems in the past. The work of Gailey (1970) explicates the leadership structures of the coastal people: that apart from the Wangozi, they never had traditional monarchs or kings who would exercise absolute authority (as rulers of the entire nation); rather rule was by a council of elders, with councillors or advisors who were either their close relatives or selected from their communities.[13] These traditional leaders served as political, military, cultural and spiritual leaders and were regarded as custodians of the values of society. Campbell and Meer strongly assert that 'for centuries the African people experienced no other form of governance' (2007: 2).

The practise of TGIs and their structures in Kenyan coastal communities worked effectively. Among the Taveta of Taita-Taveta County, *Njama* – the Council of Elders – was their TGI and was valued due to the fact that it offered positive inputs to society. Some crucial issues, such as those of good leadership, health and wholeness, peace and justice that demanded the attention and redress of traditional governance, were keenly dealt with, handled responsibly and conducted religiously in the reverence of God. For example, in the process of vetting leaders of the Taveta elders' council *Njama*, which is claimed as the supreme authority there, the community met and cast a vote (*kura ya kimila*) for deciding on a leader or leaders. The vetting criteria looked at four major qualities: the one to be nominated came from a blameless family in the community; was a responsible and committed person who cared for people as well as his own family; was courageous in speaking to the public but also listened to the advice of the council and took their opinions seriously; and one who could stand firm to defend the rights of his people and land.[14]

Thereafter the council would delegate a team of community members to go to different diviners (commonly called *Zaro*) at distant places such as Ukambani, Tanzania and coastal Kenya to be confirmed of the worthiness of the nominated leader. The Taveta acknowledge *Zaro* to be a religious process that confirmed true leadership, a kind of divination that confirmed to the *njama* the worthiness of the one nominated. When the nominee was found worthy for leadership, community members went to his village without his knowledge for the purpose of conducting a leadership induction ritual. The *njama* and other community celebrants would surround his house and perform a sacred dance – *Ngainaro*, a dance performed when inducting a certified leader. The inducted leader underwent a process of being announced

13 There is historical evidence that among coastal communities, the Wangozi community had centralised government.

14 This information was obtained during field work. The key informer was Mzee Shodo Rowii.

and taken around the villages, thereby becoming the head of the council *njama* and thereafter hopefully offering competent service delivery to society.

Basically, the *njama* represented each community of Taveta: Wamnene, Warutu, Wazirai, Wandiriri and Wasuya. The *njama* also was responsible for practises of 'rites of passage'. These were believed to impart ethical knowledge that enhanced the social protocol. Their governance and structure meant that all departments – security, land rights, marriages, peace and reconciliation, discipline for young people and community well-being – had their special heads. Children, for example, learnt how to behave towards the older people in society. The young also learnt how to relate well with others. Each stage of life had its own restrictions. For example, young people were not allowed drink alcohol.

The Sagala community of Taita, as with the Taveta, had a similar system of traditional governance that was run by a council of elders (*wagosi ishirini*) formed of 20 reputable elders that represented the six clans: Wakajire, Wakishamba, Wamgangi, Wakisumanzi, Wateri and Watalio. The governing council, *wagosi,* was chosen by village members by virtue of their age, personality, character, wisdom and service in society. The Sagala council of elders handled community cases related to juveniles, land, inheritance and conflicts. In their judgments, they closely followed the structures of their own cultural values that are the source of community cohesion rather than division.

In Lamu County, the Waswahili spread across Barawa, Kismayu, Lamu, Malindi, Mombasa, Shimon, Pemba and Gazi. The Waswahili are among the coastal Bantus, sharing the same origin. The Wangozi community had their own traditional, centralised governance from before colonialism. According to Maalim Hussein, there were records of twenty-six Wangozi kings or sultans before the coming of the Portuguese. Each state had its own king but the system of government was the same because of their shared culture, language and civilization. In Lamu and Pate, however, they never had the system of kings or sultans but had decentralised governance – the system of the council of elders. The council was made up of elders whose duties were divided into different departments. Some were in charge of security, both internal and external. Others were in charge of important land issues, or religious matters, such as prayer and worship times, or acted as judges in trying to resolve conflicts among the people and establishing order in the community.

In Tana-River County, the Pokomo community is comprised of Malakote, Ngatana, Ndera, Gwano, Kinankomba, Korokoro, Mnyoyaya, Ndura, Zupake, Milalulu, Ndura, Gwano, Wamwina, Kalindi, Wabuu and Wadzudza. From their memories, the elders tell of senior council of elders known as *Kijo*. They say that *Kijo* was the supreme government of the Pokomo and would make decisions pertaining to all crucial issues. Later, the *Kijo* was replaced by the *Gasa*. The explanation was that the *Gasa* took authority because the *Kijo* was older and its members were dying and they already had representatives from the villages. The elder set that remained was the *Gasa.* The elders who became members of the council were usually selected from the community by common vote through the 'pots' (*nyungu*). There was a section of elders who dealt with issues of health and well-being. They call it the "*Ngatsi*" – some say they are seers, diviners or medicine men who form part of the leadership. *Ngatsi* in many ways were often despised and feared by the people for their mysterious powers.

The Pokomos were farmers and hunters. Their activities were governed by the *Gasa*. The *Gasa* made the boundaries according to the people and saw to it that each one's needs were catered to. The *Gasa's* decisions were final and bound by an oath to act rightly and could not be bribed. The council handled issues such as marriages and land, especially the cutting down of trees. To cut down a tree, even on his own piece of land, he had to ask for permission from the *Gasa* and pay a certain fee and be supervised. .

The Midzi-Chenda community (the Adigo, Akambe, Akauma, Agiriama, Aduruma, Achonyi, Arihe, Arahai, Adzihana) had a system commonly called *rika*, where the most senior *azhere*/*akare* formed the council of elders, *ngambi/kambi,* and were elected through a vetting criterion. (Mwangudza, 1983). For an elder to be a member of the council or a leader, certain qualities of leadership were considered: commitment to the community, moral standards, voice for the people and wisdom. The Midzi-Chenda councils of elders looked after the welfare of their people by providing them with land for their subsistence needs in agriculture and grazing. They also provided for orphans and the very poor. Traditional leaders were responsible for the defence of their people against external aggression and for keeping order in their communities (Rugege 2012).[15] They resolved disputes with the emphasis on reconciliation, and thus ensured harmony among neighbors and observation of religious rituals. They inspired unity in their people. Recently (2012), the Makaya elders' councils united and formed a larger body under the auspices of Malindi District Cultural Association and developed unique structures and policies – a council secretariat that oversees the functions of community members and has; a well-structured vetting criterion for those who aspire for leadership; experienced traditional leaders; and a space for women who are part of their leadership.

Comparably, the concept of TGI of the Midzi-Chenda and other Kenyan coastal communities had similarities in structure and practise. In all the communities apart from the Wangozi, the council of elders ruled by consent and by being the representative of all the peoples. Pre-colonial Midzi-Chenda, similar to the rest of coastal communities, are reputed to have had a kind of participatory democracy. Through general assemblies (*baraza*/*moonano*), people participated in decision-making on important matters affecting the community. Traditionally, almost all of the coastal ethnic groups were characterised by what has become known as egalitarian structures.

SIGNIFICANCE OF TRADITIONAL GOVERNANCE INSTITUTIONS IN THE DEVOLVED GOVERNANCE IN KENYA

The concept of engaging traditional governance in active participation was not realised early in independent Kenya, as has also been the case in other African states. They adapted the colonial rule in the new leadership. They collaborated with the colonial system, which lately has proved to be extraneous to Kenyans. The argument from this study, and which also supports the study by Logan, is that African leadership differs fundamentally from Western leadership, simply because the latter is not African, and does not meet African needs.

The new 2010 Kenya constitution, contrary to the old colonial style, offers the provision for indigenous leadership to be engaged as an active player for change and reform in the devolved governance. Traditional heritage is one of the key institutions that the new constitution acknowledges can contribute in bringing reforms to devolved governance. With reference to section 174 of the Constitution covering the area of objectives of the devolution of government, the constitution aims 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' (Constitution of Kenya 2010: 107). The constitution recognises and respects the pride that Kenyans have in their culture and it represents the solid foundation for cumulative reforms and change for Kenyans to live in peace and unity.

In order for this to come true, Kenya needs to steer and cultivate full participation of the people in the management of public affairs by enlisting the indigenous leaders to work closely with the County Implementation Committee, whose network is open to work with 'any civil society organization working in the particular county' (Constitution of Kenya 2010: V). Wanyande and Omosa assert that the new constitutional dispensation may not mean much, however, 'unless efforts are made to avoid forces that have hindered transition from dictatorship to democratic governance in the past' (2007: 41). This participation is crucial in modern Kenya for accountability and transparency, community development and decision-making.

ACCOUNTABILITY AND TRANSPARENCY

Over the decades, from when most African states became autonomous, African leaders have been involved in misusing resources and corrupting those public finances meant for society development. This has created a wide gap between the rich few and poor majority in many African states, with Kenya

15 An example of how coastal region leaders defended their people is the historic event of the British-Giriama revolt of 1914.

among them. In this study, elders of Kenya's coastal region argued that involving traditional governance into the county governments may cause a paradigm shift from corruption to good governance of accountability and transparency on public finances and resources. This is due to the fact that traditional leadership is closely acquainted with the grassroots communities and is aware of committed or corrupt leaders. Corrupt leaders can be stopped from serving the society.

SPEEDING UP COMMUNITY DEVELOPMENT

Community development has been an indigenous phenomenon that promotes social cohesion amongst communities in Africa. Nevertheless, it has largely been diverted to be a more academic institution in that project proposals seeking funds have to be drafted and approved for development to take shape. Most often communities end up doing senseless projects that do not bring any development benefits. By and large, African communities tend to resolutely retain their culture and claim a strong voice in matters which concern them. Traditional governance takes development as a responsibility, feeling commitment and duty for individuals and society in general. This is under the communitarian culture where people work as a team to overcome poverty. (Chidongo, 2012). They enforce this under the philosophy 'I am because you are, since you are therefore I am' (Mbiti, 1969). An expression of this is revealed through the many instances of their participation in communal activities (*mwera*): ploughing, hoeing and harvesting. For these activities to be successfully carried out, community members must come together and form working parties (men, women and youth) in order to assist those who have no means of support. Mugambi (1995), writing in general terms of the Kenyan community, reveals that being a true African human is affirmed by cooperating and avoiding living in isolation (*mutu ni watu*). *Mwethia/Mweria* (working together) being a strong tool for community development from the grassroots. County governments can cooperatively work with traditional government basic concepts of developing society such as *mweria/mwethia* and improve standards of life country wide.

PARTICIPATION OF TRADITIONAL LEADERSHIP IN POLICY AND DECISION-MAKING

Avoiding traditional governance in policy and decision-making has sidelined active participation of stakeholders' crucial issues such as health, education, security and resource distribution. The Swahili community have a saying that elderly people contain undisputable wisdom (*Palipo na Wazee Hapakoseki Jambo*). Young people who have been exposed to formal education think they are wiser, ignoring engagement with the elderly for advice in policy and decision-making. The central government has, in many ways, dictated policies from above and the people who take it from below have no alternative other than to accept what is given. This is why before the 2010 constitution, the old constitution was synthesised by leaders in power in order to meet their political ambitions. The people at ground level were not approached for their views and generally decisions were made by those with higher authority. Traditional governance can, on behalf of the community members, contribute to policy and decision-making because it is closer to the stakeholding members of society. The people at the grassroot level are the first bearers of health problems, insecurity and poverty.

CONCLUSION

This paper has significantly delved into traditional governance and the evolution of modern governance in Africa and devolved governance Kenya. It has noted some weaknesses and failures of modern governance in service delivery to society, which is why some African countries are reverting to decentralised governance. The argument is that devolved governance in Kenya in coalition with traditional leadership can now provide alternative administrative systems that are capable of addressing the fundamental needs of national life. The paper has outlined the significance of the cross-bred system to the county governments, which may provide practical democracy and an assurance of continued security and peace by resolving conflicts by means of dialogue and reconciling parties.

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DEVOLUTION IN THE KENYAN WATER SECTOR – RURAL WATER USER PREFERENCES TO INSTITUTIONAL TRANSFORMATIONS IN WATER SERVICES AND WATER RESOURCES MANAGEMENT

Johanna Koehler*

ABSTRACT

Kenya's water services and water resources sectors are currently being transformed in a process of decentralisation set in motion by the 2010 constitution. This study examines the implications of institutional transformations with a focus on the perspective of rural water users from Kitui and Kwale counties. First, changes in the constitution and the 2014 Water Bill, presently under parliament review, are evaluated. Second, it is assessed how rural water users respond to changes in the rural water services sector through the introduction of new handpump maintenance models made possible by an innovative monitoring device implanted into handpumps. Third, implications for the water resources sector and the development of Water Resources User Associations (WRUAs) are discussed. The study concludes that harmonisation of new and long-established rules and norms, the actual behaviour of stakeholders at all levels, and resources allocation will require systematic review during the transitional period.

Keywords: Devolution, Water Governance, Rural Water Supply, Kenya

1. INTRODUCTION

The extent to which political, administrative and fiscal decentralisation improves government effectiveness, democratic rule and socio-economic development is yet to be proven empirically (Grindle, 2007; Myerson, 2014; Weingast, 2014). A key argument in favour of decentralisation is its capacity to improve the accountability and responsiveness of government by altering its structure to increase public participation (Faguet, 2012). Decentralisation programmes are commonly motivated by the quest to further good governance (Shah & Huther, 1999; Rogers & Hall, 2003; Faguet, 2014). While the outcomes of the extensive decentralisation processes of the last decades have been widely researched among Kenya's neighbours (Nsibambi, 1998; Manor, 1999; Francis & James, 2003; Palotti, 2008; Hankla, 2009; Lein & Tagseth, 2009), Kenya's recent constitutional reform offers a singular chance to understand the underlying dynamic relationships of institutional transformation for the water sector. In rural Africa, 275 million people are without improved water, and one in three handpumps do not function at any given time (RWSN, 2010), thus impeding local development. Notwithstanding Kenya's recognition of the human right to water (Ministry of Water and Irrigation, 2007), only half of the rural households have access to improved sources (DHS, 2009) and, like elsewhere in rural Africa, approximately 30 percent of the handpumps are non-functional (Nduati, 2009). These figures demonstrate that increasing coverage alone does not solve the problem. Rather they reflect the need for innovative operations and maintenance models to synchronise rural user demand with service delivery and they indicate that the institutional design of rural water governance is critical for efficiency. Therefore, this study focuses on how institutional transformations in the wake of the 2010 constitution change rural water supply and development outcomes for improved human welfare. Kenya's decentralisation of the water sector offers institutional opportunities from above and below. There is a policy window opening with 47 new water ministries being created at county level. Concurrently, technological change at the local level provides information

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that enables institutional redesign of rural water services. For that reason, the research also evaluates to what extent a small innovation implanted in the handle of handpumps in remote Kenya – a GSM-transmitter that measures pump usage (Thomson et al., 2012) – can link the management approaches of local water user groups with those at the supra-communal level.

This paper first analyses decentralisation and its implications for the rural water sector. It is argued that devolution creates opportunities for establishing new forms of water governance (public/private) and provides a singular chance for a systematic development of local stakeholder engagement. Then the study presents the specific implications for rural water services and for water resources management. In both cases community responses, in terms of user preferences for new institutional forms of water services and management, are outlined. The paper refers to case studies in Kitui and Kwale Counties.

2. THEORY AND METHODS

Institutional transformation leads to changes in the structure of water governance. According to Scott (1995), such changes can take place in three types of social structures: regulative, normative and cognitive. The paper mainly focuses on regulative elements of institutions, such as laws and regulations, and normative elements, reflecting the social understanding embedded in rules or procedures governing decision-making processes. The latter are empirically less evident but may reveal political interdependencies and external budgetary constraints (Thatcher et al., 2001). Cultural-cognitive elements of institutions imply shared conceptions that constitute the nature of social reality (Scott, 1995). What impact institutional changes have on the agency of stakeholders and the allocation of material resources can be examined drawing on structuration theory (Giddens, 1979; 1984), which provides a dynamic explanation of how humans construct and interact with their environment. Actors may perceive social structures as rules or norms that guide human understanding and action. Giddens (1979; 1984) emphasises the dualistic nature of structures in that they enable and constrain human behaviour. For example, group decision-making processes are shaped by legal, moral and cultural boundaries embodied in structures. By shaping interactive processes, structures limit choices; at the same time they allow group members to engage in activities. Structures are stabilised by sanctioning power as well as the provision of human and material resources. In the context of this paper, transformations of regulative institutions are assessed along with implications that these have on institutional properties, human agents and the adoption of technologies for facilitating change in the water sector. For example, a small technological innovation for monitoring handpumps can provide valuable information with implications for the institutional set-up and regulation of rural water services. Human agents give feedback into the institutional design and can effect further changes (Figure 1).

Mixed methods are adopted for analysis in this study. The methods employed for examining decentralisation and its impact on the water sector include a policy document review and targeted semi-structured interviews with key stakeholders at national, regional, county and district levels conducted in March/April 2014. To assess the impact of changes in the rural water services sector, focus group discussions (FGDs) and interviews were conducted in June/July and November/December 2013.

Rural water user responses were also examined through choice experiments as part of a handpump user survey in Kyuso District in July 2012 and a household survey conducted in Kwale County in October/November 2013. Exploratory participatory approaches were used to assess Water Resources User Associations (WRUAs) engagement in water resources management in the Kwale study site in March 2014.

3. DECENTRALISATION AND THE WATER SECTOR IN KENYA

Water governance in Africa faces convergent opportunities and risks from hydro-climatic variability, increased water demands from population growth, irrigated agriculture and extractive industries at the

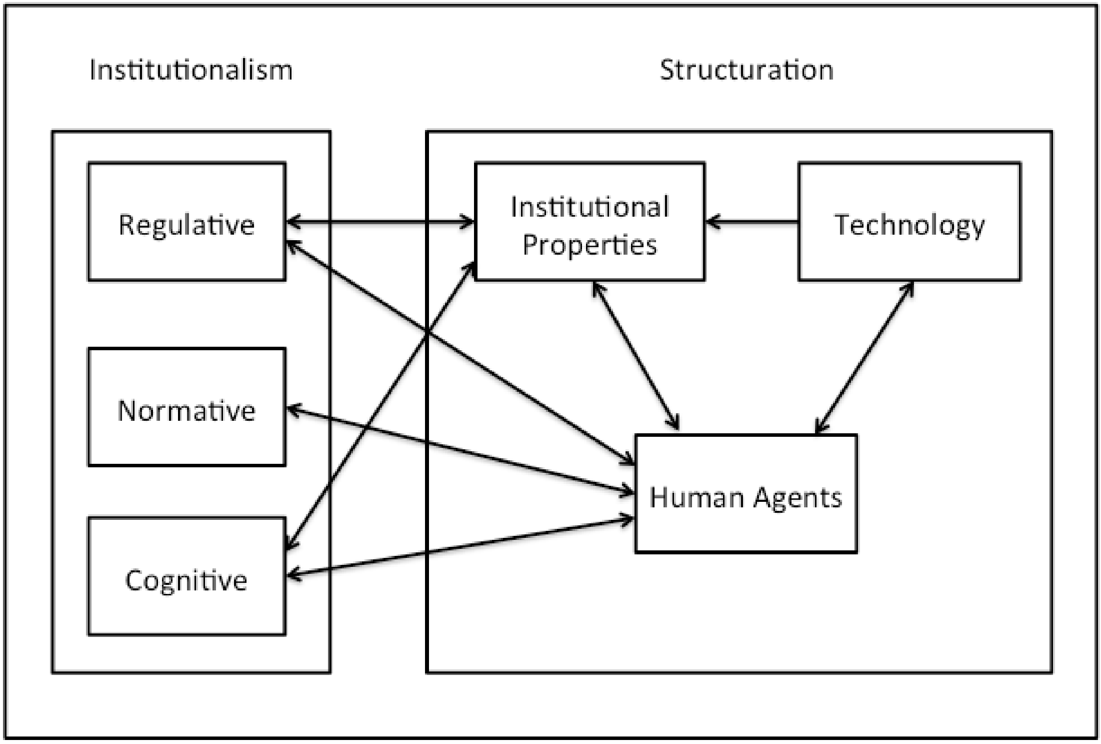

Figure 1. Synthesising Structuration and Institutional Theory: Framework Drawing on Thatcher et al. (2001)

same time that the environment as a 'new stakeholder' is increasingly recognised. These convergent forces are progressively falling under the remit of decentralised government.

How is the concept of decentralisation reflected in water legislation? Kenya's Water Act 2002 already introduced decentralisation of functions to lower-level state organs. However, it did not go as far as fully devolving them to lower-level entities. Ultimate decision-making remained centralised (Mumma, 2007).

Kenya's new constitution of 2010 provided for the transfer of functions, powers and resources to another level of government if the function or power can be 'more effectively performed or exercised by the receiving government' (The Constitution of Kenya, Art. 187(1) (b)). According to Article 43(1) (d), every person has the right to clean and safe water in adequate quantities. The 47 newly created county governments with affiliated water ministries pursue the objectives of promoting the democratic and accountable exercise of power, fostering social and economic development, enhancing the participation of the people in making decisions affecting them, and of providing proximate, easily accessible services throughout Kenya (The Constitution of Kenya, 2010, Art. 174 (a-h)). Governments at either level are required to 'assist, support and consult' each other and, 'as appropriate, implement the legislation of the other level of government' (The Constitution of Kenya, 2010, Art. 189 (1) (b)).

What the constitutional provisions mean for the water sector, is expected to be clarified in the 2014 Water Bill – currently under parliament review – which makes some legal provisions for the devolution of functions to the subnational level (The Water Bill, 2014, Art. 146–153), both on the side of water resources management and water services management. While the constitution states 'arrangements shall be put in place to ensure that the resources necessary for the performance of the function or exercise of the power are transferred' (The Constitution of Kenya, 2010, Art. 187 (2) (a)), not all responsibilities are clearly allocated in the 2014 Water Bill. This may have important fiscal implications. It will also be a measure for the degree of devolution in the water sector.

According to an early political thinker on power transformations through constitutional arrangements, Alexis de Tocqueville (1835), 'decentralisation has not only an administrative value, but also a civic dimension, since it increases the opportunities for citizens to take interest in public affairs'. This statement is relevant for the decentralisation of the water sector in terms of giving communities a voice. While the 2002 Water Act provided a role for community groups in the management of water resources, organised as WRUAs, it upheld the centralisation of functions. The 2014 Water Bill proposes to devolve catchment management to WRUAs under a 'WRUA Agency' model through which WRUAs can provide input into decision-making on water allocation issues, particularly issuing permits.

Concerning water services, the new counties formed under Kenya's constitution have adopted or are about to assume fiscal and administrative responsibility for the delivery of water services, education and health, inter alia. It remains to be seen if further clarification in the attribution of responsibilities for water services infrastructure, delivery and regulation can be achieved and incorporated in the final draft of the Water Bill. The 2013 county elections opened a three-year transitional process, which offers an opportunity for the practical coordination of tasks.

An important question is what implications these institutional transformations have for rural water service delivery and water resources management. The following two sections will provide insights from the local perspective.

4. IMPLICATIONS FOR RURAL WATER SERVICE DELIVERY

Ostrom's (2005) criteria for assessing the performance of institutions – economic efficiency, equity, adaptability, resilience and accountability – are beneficial for evaluating the success of Kenya's water sector reform. Three models dominate rural water service delivery: community management, government or public management and private management. Most sector specialists have been in favour of community management since the late 1980s (Churchill et al., 1987; Therkildsen, 1988; Briscoe & de Ferranti, 1988; Whittington et al., 2008). Its aims are to empower communities though its basic principles of participation, involvement in decision-making, control, ownership and cost-sharing (Briscoe & de Ferranti, 1988; Lockwood, 2004). Although this active role suggests success, operations and maintenance services in the water sector still perform poorly (Lockwood, 2004; Carter et al., 2010).

The causes have been identified as poor planning and service delivery (World Bank Water Demand Research Team, 1993; Carter et al., 1999; Carter et al., 2010), insufficient community financing (Harvey & Reed, 2004; Harvey, 2007; Carter et al., 2010) and inadequate institutional design of management models (Whittington et al., 2008).

In order to test which maintenance models are actually preferred by the communities, a baseline survey, including a choice experiment, was conducted in Kyuso District, Kitui County, in July 2012. The experiment was orthogonally designed with ten pictorial cards that required choices across competing attributes of maintenance provider, maintenance level, payment mode and payment level. A sample of 3,540 observations was produced from usable data from 118 handpump users. The data illustrate that community management is the least preferred option with indifference between government and private sector management (Figure 2).

Therefore, Oxford University in collaboration with their local partner Rural Focus Ltd. implemented a one-year pilot trial with a supra-communal management approach in Kyuso District, Kitui County, superseding community management but following a demand-responsive approach closely aligned with user preferences. A handpump maintenance service organised at district level through the district water office and its leading handpump mechanic was piloted with management support through the project partners. This service builds on mobile-enabled transmitters installed in the handles of handpumps (Thomson et al., 2012), which send information on pump use to a central server and thus enable remote monitoring and management of these water points. When a pump breaks, a handpump mechanic can be dispatched immediately to repair the pump. This measure led to a ten-fold reduction in downtime of the

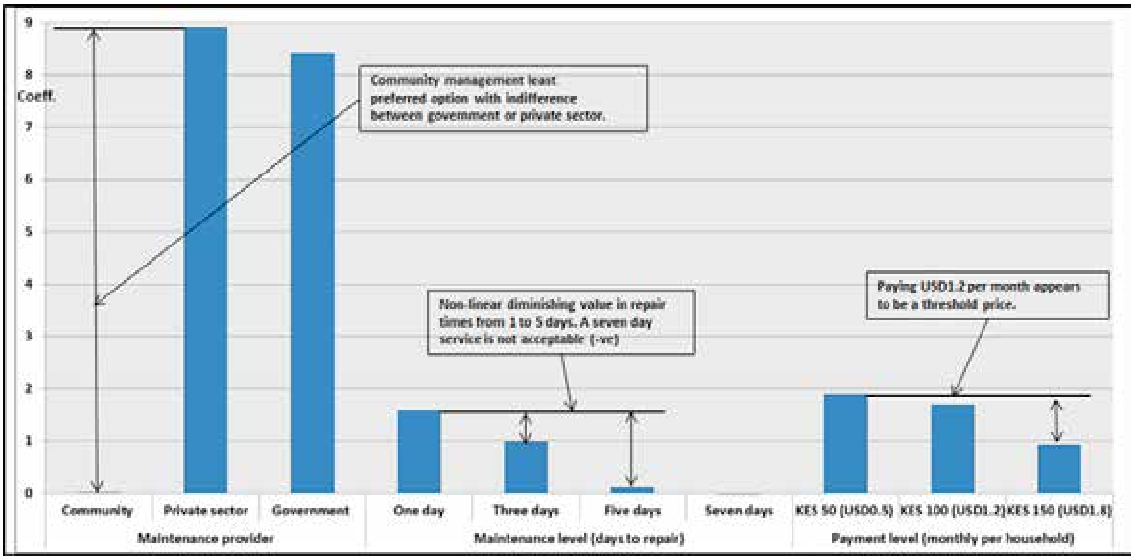

Figure 2. Choice Experiment: User Preferences for Maintenance Service (Oxford/RFL, 2014)

66 handpumps in Kyuso District from 27 days to two to three days on average (Oxford/RFL, 2014). Thus functionality rates increased to 98 percent for Kyuso's handpumps. This innovation helps to structure the interaction between human agents, technology and water institutions through the use of objective data, which can facilitate regulation as well as higher efficiency of rural water service institutions.

Moreover, the users' preferences for this mobile-enabled service were analysed by conducting research on the users' willingness to pay for this new level of service.

FGDs and semi-structured interviews were conducted with 639 participants at all 66 handpumps in Kyuso District in June/July and November/December 2013. Participants ranged in age from 20 to 80 years (with the majority between 30 and 50). The focus group team consisted of one mediator, one facilitator and one observer and the group discussions were conducted in the local language, Kamba. FGD methods included (a) mapping the water user community with alternative sources, (b) a seasonal calendar, and (c) a timeline on handpump maintenance (Narayanasamy, 2009).

The value users place on the reduction of their handpump's downtime after experiencing the new maintenance service is met with a three-fold increase in users' willingness to contribute regular payments and a five-fold increase in willingness to pay (USD 0.20 to USD 1.00) (Figure 3).

A similar choice experiment was repeated in Kwale County with 3,401 households in October to November 2013. A third of the households identifying water supply as their priority concern for public

Handpumps repaired under new model (n=46)	Before			After			Increase in pre-paying handpumps	Increase in payment level
	% handpumps pre-paying		Mean household monthly payment	% handpumps to pre-pay		Mean household monthly payment		
	Yes	No		Yes	No			
	29%	71%	USD 0.2	91%	9%	USD 1	**318%**	**500%**

Figure 3. Service Delivery Increases Willingness-to-Pay Levels (Oxford/RFL, 2014)

or private engagement have access to a community handpump that has not functioned for over a year. Overall, more than nine in ten households (92 percent) identified specific water supply concerns. Reliability of handpumps dominates responses directly and indirectly.

In response, Oxford University fitted 300 handpumps with transmitters in Kwale County between December 2013 and February 2014 and a similar supra-communal handpump service was initiated as in Kyuso District. However, while this service is supported by the Kwale government, it is operated as a private sector service, 'Kwale Handpump Services Limited', with a central manager and two handpump mechanics serving the 300 handpump communities. The service aims at providing more reliable handpump maintenance through an improved mobile-enabled monitoring mechanism. The success of the new management model will depend on its financial sustainability. Therefore, the handpump communities' payment behaviour will be a critical response to the transformations in the rural water service sector. To ensure sustainability, user groups usually impose sanctions, which confirms Giddens' (1984) understanding that rules and norms must be backed with sanctioning power to be effective and able to stabilise institutions.

The core proposition for this new form of rural water service delivery is that scale reduces financial risk by achieving economies of scale and smoothing individual costs. The data on handpump usage allows the design of a fair and flexible payment system that corresponds with the requirement of the human right to water for fair and affordable access to reliable water.

From an institutional perspective devolution offers new opportunities for rural water service systems operating at scale (for example, at county level) through the introduction of a new technology, especially as water services provision has been made a county function. The interaction between new institutional properties, new technologies and the response of human agents may thus lead to improved outcomes for rural water service delivery.

5. IMPLICATIONS FOR WATER RESOURCES MANAGEMENT

As indicated above, the explicitly devolved function for water resources management is catchment management (The Constitution of Kenya, 2010, Fourth Schedule, Part 1, 22 (c)). In the process of devolution, WRUAs have nominally gained importance with a mandate to (a) promote controlled and legal water user activities; (b) promote good management practices that make efficient and sustainable use of the water resources; (c) safeguard the reserve flows for downstream ecological demands and basic human requirements; (d) reduce and solve water use conflicts; and (e) promote catchment conservation measures to improve water quantity and quality (WRMA, 2013). While devolving certain powers from national to local institutions implies increasing 'the opportunities for citizens to take interest in public affairs' (de Tocqueville, 1835), these opportunities also pose challenges to the new local entities – a reflection of the duality of social structure.

The devolution of responsibility in water resources management from WRMA to local WRUAs is analysed according to Giddens' structuration theory (1984). The interplay of regulative, normative and cognitive elements of institutions with internal social interaction may contribute to the stabilisation of the whole system of water resources management, provided that an adequate balance is achieved between national and county responsibilities and user participation. The ultimate question is how rural water user behaviour is shaped in a situation where multiple choices and opportunities for institutional development are available, while the structure and interaction of institutions are not always clearly perceivable. Agency of actors such as WRUAs may be less restricted in a period of transition than one of consolidation, as new agency models and forms of cooperation can be explored.

Participatory research involving 21 members of the Mkurumudzi WRUA in Kwale County in March 2014 diagnosed the major water resource challenges in the three zones of the Mkurumudzi River. Dams of the largest resource abstractors in the county are based there – *Base Titanium Ltd.,* Kenya's largest titanium mine, and *Kwale International Sugar Company Ltd.* – while at the same time private households abstract water from the river and handpumps in the catchment. Water scarcity and pollution were flagged as main challenges in all three groups. However, while WRUA members – particularly those responsible for the more afflicted downstream zone – were able to identify the most significant challenges in the basin, they are inadequately equipped to respond to them. Although the devolved institutional structure of the water sector permits WRUAs to exercise the power of monitoring large-scale water abstraction, their agency is limited due to capacity and information asymmetries. Hence they can only to a limited extent accomplish their task of developing appropriate strategies to implement their Sub-Catchment Management Plan. Consequently, the need for further capacity building arises, financially and in terms of enforcement and training.

Another serious challenge WRUAs face is the lack of awareness of water management institutions among local communities. The household survey results from 2013/14 (n = 3,401) reflect a mixed picture, as 65 percent of the households do not know who is responsible for water resource management; only one percent of the households are aware of the role of the local WRUA; a mere 0.6 percent of all households interviewed know a WRUA member. This may reflect the need for stronger agency of the devolved institutions and broadened interaction with the local communities to explore local demand and priorities, thus contributing to improved drinking water security and development outcomes. Interestingly, the members of the downstream zone of the Mkurumudzi WRUA, who face most water risks, were able to identify a greater number of other organisations in their sphere of activity than their upstream colleagues. This may be a consequence of cooperation requirements in meeting the problems and shows that intense involvement with the community – and collaboration with the likewise devolved health and education sectors – can increase awareness, even on the community's side.

Opportunities and risks of water governance in Kenya illustrate the significance of not only transferring responsibilities and resources to county and local actors but also the capacity of applying hydrological and socio-economic data in their strategies to combat poverty. Prospects of promoting growth and development may in the present three-year transitional period be enhanced through the devolution of institutions, particularly as state, community, civil society and corporate actors have a shared interest in sustaining their water resources – despite sometimes competing priorities.

6. CONCLUSION

Drinking water security is a function of responding to hydrological risks in water-stressed environments and rural water user preferences in terms of socio-economic investment for developing pathways out of poverty. The process of devolution offers a unique opportunity to make rural water services more resilient by adapting them to water user preferences, thus increasing economic efficiency and accountability. But whether this opportunity is grasped, remains to be seen in the future development of Kenya's devolution. Innovative technologies and new institutions alone will not bridge the gap between every person's legal entitlement 'to clean and safe water in adequate quantities' (The Constitution of Kenya, 2010, Art. 43(1) (d)) and the reality of rural water services challenges in Kenya. They provide mechanisms and tools that need to be incorporated into water governance in terms of regulative, normative and cognitive institutional structures by the relevant actors. Therefore, systematic review will be required during the transitional period to ensure harmonisation of new and long-established legal provisions and the way they are implemented by the stakeholders at all levels.

LIST OF ABBREVIATIONS

FGD	Focus Group Discussion
GSM	Global System for Mobile Communications
SCMP	Sub-Catchment Management Plan
WRMA	Water Resources Management Authority
WRUA	Water Resources User Association

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LOCAL REVENUE MOBILISATION AT THE COUNTY LEVEL: EXPERIENCES AND CHALLENGES

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ABSTRACT

A key objective of devolution is strengthening self-governance and public participation through which county governments are expected not only to improve effectiveness and efficiency in revenues allocations and expenditures but also to improve local resources mobilisation.

However, most counties are currently mobilising fewer local resources than they had targeted in their budgeting process. A review of the current performance of the counties against their target for local revenue mobilisation indicated that none of the 47 counties achieved their targets. Counties were projected to raise local revenue amounting to KES 61 billion (22 percent) of the budget which was estimated at KES 269.1 billion in FY 2013/14. As of March 2014 (three-quarters of the financial year), only KES 19.1 billion has been raised, which is 14.3 percent of the total county budget to date and only 31.3 percent of the annual local revenue target (OCoB, 2014).

The paper identifies and reviews the causes of this low performance by the county governments in local revenue mobilisation. The data collection involved desk review of select county budgets, Office of the Controllers of Budget (OCoB) quarterly reports and also key informants' interviews. The study is a descriptive analysis and provides areas that will require further study and in-depth inquiry.

INTRODUCTION

The Constitution of Kenya 2010 ushered in a devolved system of government and created two levels of government: national and county. Forty-seven (47) county governments were established in March 2013, following the first general elections under the new constitution.

The devolved system of government established county governments that have not only administrative and political powers, but also fiscal powers, to mobilise, allocate, spend and account for their own local revenue, as well as the national shared resources disbursed through the Division of Revenue Act.

Through devolution, the past challenges of inequality, poor delivery of services, and a lack of fiscal discipline, accountability and public participation, are expected to be resolved. While theoretical and practical evidence indicates that devolution can achieve these objectives, implementation challenges have more often led to less achievement of these ideals.

The desk review provides the following: a brief historical background of the previous local governments; an overview of the local revenue streams; examples of the targets and achievements or non-achievements of the counties in meeting their targets; the identified challenges; and recommendations for further studies to better review the situation and provide long-term solutions for the challenges.

1. BRIEF BACKGROUND OF THE DEFUNCT LOCAL GOVERNMENTS

In Kenya, like in many developing counties in the late 1980s and 1990s, there was a drive towards promoting local governance reforms. Local governance reforms were seen as panacea to the challenges of low service delivery and development at the local level. Under the Kenya Local Authority Reforms Programme initiatives were started, such as the Local Authority Transfer Fund (LATF) and the Local Authority Services Delivery Plans. The LATF was 5 percent of government revenues allocated to the

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local authorities units. The formula for disbursing this to the local authority was an equal share but also included portions that were to incentivise the local authorities to perform better in local resource mobilisation.

Under the Constitution of Kenya 2010, 175 local authorities were amalgamated into 47 counties. Under the devolved framework the local governments – referred to as county governments – were expected to be more efficient, effective and economically viable (bigger and better) than the previous local authorities.

The objectives of devolution in Article 174 of the constitution, amongst others, are to give power of self-governance to the people and enhance participation

- promote social and economic development and the provision of proximate, easily accessible services throughout Kenya
- facilitate the decentralisation of state organisations, their functions and services, from the capital of Kenya
- enhance checks and balances and the separation of powers
- ensure equitable sharing of national and local resources throughout Kenya.

These objectives indicate that indeed the heart and life of the constitution lies with the county governments. They would make or break the new governance dispensation. Therefore the need to ensure that the systems not only brought in new leadership and structures, but that this leadership and structures led to the reproduction of new institutions, greater ownership and participation of the people, and ultimately improved service delivery and sustainable development.

To achieve increases in services delivery and meeting sustainable development objectives, a predictable and sustainable flow of revenues is critical. Local revenue mobilisation is critical in ensuring this.

2. LOCAL REVENUE SOURCES

2.1 Constitutional Provisions

Mobilisation of local resources is a key goal of the county executive. Increased local revenues would increase county governments' autonomy and provide resources for them to leverage against the development financing, particularly in matching donor grants and loans.

Local revenue sources at the county level are well defined in the constitution's Article 209 (3), which states that a county may impose property rates; entertainment taxes; and any other tax that it is authorised to impose by an Act of Parliament. It also states that the national and county governments may impose charges for the services they provide. The local revenue sources are distinct from the national level which are income tax; value-added tax; customs duties and other duties on import and export goods; and excise tax; and any other tax or duty, except a tax specified for the local level sources.

The object of devolution was to promote self-governance; equity in resource allocation; and allocation of responsibilities to the counties based on the subsidiarity principle and taxation powers, amongst others. These objects provide the core basis from which the county governments were to mobilise local revenues.

The principles that guide resource mobilisation and sharing are that there should be (i) equitable sharing of revenue raised; (ii) fairly shared tax burden; (iii) promotion of the equitable development of the county through expenditure; and (iv) these should be done in a way that is open, accountable and ensures public participation, using prudent financial management.

2.2 Determining the Local Revenue Mobilisation Targets

Since the elections were in March 2013, the county governments inherited a budget that had been prepared by the tenth parliament to cover the last quarter of FY 2012/13. Therefore FY 2013/14 was the first year for the county governments to prepare their budget. The preparation of the budget was to take into account the shared national revenue income and local revenue collection. Under the Public Finance Management Act 2012, the counties are expected to prepare on an annual basis the County Fiscal Strategy Paper (CFSP) that would interrogate the economic conditions and determine the economic and fiscal framework upon which their budget expenditures and revenue targets would be set. The CFSPs are expected to help the counties review the economic activities, revenue streams and the previous years' performance in the medium term (3 years)in both economic and fiscal terms in order to determine the basis for the budget estimates and the financing options.

2.3 Overview of the Performance of the Counties

As at the third quarter of FY2013/14 (March 2014), a review of the counties' performance against their target for local revenue mobilisation indicated that none of the 47 counties achieved their targets for FY 2013/14. Counties were projected to raise local revenue amounting to KES 61 billion (22 percent) of the budget, which was estimated at KES 269.1 billion in FY 2013/14. As of March 2014, only KES 19.1 billion had been raised, which is 14.3 percent of the total county budget and only 31.3 percent of the annual local revenue target. (OCoB, 2014).

The highest local revenue during the period (July 2013–March 2014) was raised by Nairobi City County with KES 7.8 billion; followed by Mombasa, which raised KES 1.4 billion; Narok, KES 1.3 billion; Nakuru, KES 1.2 billion; and Kiambu, KES 869.5 million. The lowest amount of local revenue collection was by Lamu County, which collected KES 18.8 million; Tana River, KES 24.3 million; and Garissa, KES 27.4 million (OCoB, 2014).

The counties with high population and urban areas are bound to collect more revenues. It is therefore important for the revenue potential of each county to be ascertained and the correct and clear benchmarks set for each county.

2.4 Revenue Streams for the Counties

The single highest revenue source for counties is the single business permit. This is an annual fee paid to obtain a license to operate a business or to render a service. The businesses and services are usually placed in two to three categories, including size (small, medium or large) and where they are operated, with urban areas attracting higher fees than those in the rural areas. Therefore the fees are different according not only to the nature of business or service but also to the size and area of operation. Table 1, which is the analysis of the Laikipia and Taita Taveta FY 2012/13 revenue streams for March 2013 to June 2013, indicates that single business permits for Laikipia and Taita Taveta comprised 27 percent and 33 percent of the revenues respectively.

The other high revenue source for the counties is the land rates that are paid for leased land in the urban areas. These and also housing projects are expected to provide high revenues but this has not always been the case. Table 1 indicates that Laikipia and Taita Taveta land rates provided 17 percent and 24 percent of the revenues respectively. Further analysis would need to look into the variations in land mass across the counties and the differences in use and how these affect the revenue potential in each county. For instance, where conservancies and settlers occupy over 50 percent of Laikipia, the Tsavo National Reserve also takes up over 50 percent of the land mass for Taita Taveta. What are the implications and comparisons on revenue mobilisation for the counties?

Key informants interviews revealed that a number of court cases have hindered effective mobilisation of revenues from the land rates. The arbitrary changes in land rates without proper land rolls valuation attracted court cases both in Laikipia and Taita Taveta. In this regard, the old (low) rates have continued to apply as the default rates, and even then only few people are paying. At the same time housing units that could attract higher revenues continue to be rented out at below market rates and also have large default rates in rental payments. There is need to conduct assessments of the total number of housing units and their revenue potential. Nevertheless, most of the housing units have not been maintained and require major refurbishments before new rental rates are set.

The third main source of revenue is based on fees for services rendered by the county governments. The services range from health inspections, cleaning and vaccinations to those that are largely expected to provide safety and security, ensure a conducive business environment and facilitate businesses and trading. Nevertheless, there are cases where these fees are charged but the services are not provided by the county governments. This can lead to non compliance and civil disobedience. For instance, there was a case where fees for cleaning and dump collection had been paid by vendors for months, yet the market was not cleaned and dump not collected. The vendors, led by their ward representative (member of county assembly) refused to pay their daily fees. This went on for six months until the county government conducted a thorough cleaning and garbage collection.[16]

Natural resources such as minerals, which attract royalties, or national parks, which attract fees and charges from tourists and residents, are also high sources of income for those counties that are endowed with these natural resources.

Analysis of data provided by various counties revealed that while the revenue streams may vary from county to county, most sources are similar, and comparability across counties could be enhanced if the recording and naming (or coding) of the revenues streams was standardised. For instance, the miscellaneous income seemed significant in many counties, yet this term obscures the real details of what constitutes this income. Analysis of the Laikipia and Taita Taveta FY 2012/13 revenue streams for March 2013 to June 2013 indicated that miscellaneous income was 21 percent of the Laikipia County revenues, while for Taita Taveta, miscellaneous income was 2 percent of the total revenue. It is unclear what miscellaneous incomes would make up the second largest flow of revenues for Laikipia.

3 FINDINGS ON THE LOW REVENUE COLLECTIONS

This study identifies four main challenges that have contributed to low revenue mobilisation by the county governments. This section elaborates on the five aspects. These were challenges related to

i) Planning and targeting
ii) Institutional challenges
iii) Governance challenges
iv) Political challenges

3.1 Planning and Targeting

The budgeting process for FY2013/14 at the county level was expected to be guided by County Integrated Development Plans (CIDP), which provide the detailed programmes and projects that each county government intends to implement in five years (2013-2017). The counties were expected to have developed the CIDP by 1st September 2013. At the time of this study, all the counties had developed their CIDP and most of them had been passed by the assemblies.

The CFSP was the other key document that was to direct the budgeting process. The CFSP is prepared by the county treasury and submitted to the county assembly by 28 February of each year and it is expected to provide the current economic and fiscal status of the county and the projected changes that will occur over the medium term, informed by global, national and local context analysis. In so doing the county treasury is able to determine budget estimates and the financing options for the coming financial year. In preparing the CFSP, each county is expected to provide the revenue projections and the ceilings for the various ministries or department.

The study showed that for 2013/14 most counties had not prepared the CFSP. To set their revenue targets, most reviewed the revenues of the defunct local authority units had been making and more than doubled these figures to set the targets with the assumption that the county governments would do better with revenue collection. This was debunked, early in the financial year when many of them were not able to meet even half the previous local revenue collection amount.

16 Member of county assembly of Ol Moran Ward of Laikipia County.

TABLE 1: REVENUE STREAMS FOR LAIKIPIA AND TAITA TAVETA COUNTIES FOR MARCH – JUNE 2013

LAIKIPIA COUNTY 2012/13 (In KES)						
Revenue stream	**March**	**April**	**May**	**June**	**Total**	**% total**
Miscellaneous income	5,884,980	4,654,887	4,924,667	5,370,323	20,834,857	**21**
Single business permits	11,176,704	7,929,458	4,808,357	2,917,059	26,831,578	**27**
Land rates	6,246,476	3,983,871	4,007,334	2,035,752	16,273,433	**17**
House & stalls rent	1,017,522	1,060,958	1,085,500	1,792,085	4,956,065	**5**
Produce cess	344,220	356,450	46,200	325,990	1,072,860	**1**
Lease hold plot rent	309,704	1,937,330	1,903,276	1,484,919	5,635,229	**6**
Market fee	391,220	438,426	469,355	468,185	1,767,186	**2**
Plan approval	255,750	397,947	360,710	312,975	1,327,382	**1**
Slaughter slab	30,700	26,300	38,956	60,400	156,356	**0**
Parking fee	2,402,080	2,821,445	2,806,143	3,000,916	11,030,584	**11**
Sheep goat cess	244,140	236,464	254,084	334,704	1,069,392	**1**
Sand cess	902,900	895,700	796,000	557,250	3,151,850	**3**
Manure cess	52,000	59,000	35,650	22,000	168,650	**0**
Ballast	1,300	6,700	7,200	4,600	19,800	**0**
Murrum/hardcore	19,500	23,500	28,900	13,500	85,400	**0**
Cattle	236,300	497,023	279,643	595,695	1,608,661	**2**
Animal breeding	537,700	642,834	-	-	1,180,534	**1**
Education fees	16,100	27,750	-	50,950	94,800	**0**
Temporary occupation license	8,000	-	-	-	8,000	**0**
Charcoal fee	2,500	7,200	8,750	4,500	22,950	**0**
Clearance fee	90,715	77,586	150,645	228,645	547,591	**1**
Motorcycle fee	-	-	-	-	-	**-**
Survey fee	943,500	1,009,200	412,658	196,489	2,561,847	**3**
Beacon fee	87,000	87,000	156,400	77,600	408,000	**0**
Total	**31,201,011**	**26,071,929**	**21,827,769**	**19,286,903**	**98,387,612**	**100**

Source: Laikipia County Budget Implementation Report for 4th Quarter of FY 2012/13

TAITA TAVETA COUNTY 2012/13 (in KES)				
Revenue Stream	**Taita**	**Taveta**	**Total**	**% to total**
Miscellaneous income	585,922	77,100	663,022	**2.5**
Single business permit	5,439,545	3,380,615	8,820,160	**33.2**
Land rates	2,037,625	4,310,631	6,348,256	**23.9**
House and Stalls rents	180,900	13,000	193,900	**0.7**
Cess fees	510,610	1,329,205	1,839,815	**6.9**
Lease hold property	474,626	-	474,626	**1.8**
Market fees	1,012,530	790,810	1,803,340	**6.8**
Plans approvals	550,472	-	550,472	**2.1**
Slaughter house	-	133,000	133,000	**0.5**
Parking fees	3,477,990	110,260	3,588,250	**13.5**
				0.0
Conservancy fees	413,640	633,195	1,046,835	**3.9**
				0.0
Public toilet	521,280	-	521,280	**2.0**
Way leaves fee	385,300	-	385,300	**1.4**
Technical services	-	59,800	59,800	**0.2**
Social charges	-	9,300	9,300	**0.0**
Other services	4,000	108,220	112,220	**0.4**
Total	**15,594,440**	**10,995,136**	**26,589,576**	**100**

Source: Taita Taveta County Budget Implementation Report for 4th Quarter of FY 2012/13

Therefore the immediate problem identified was that the revenue targets were not informed by adequate analysis and were largely "*guestimates*." The counties had increased considerably their revenue targets and were not able to meet them. In so doing the targets affected their implementation plans, which were also not well achieved. In future counties should work more closely with Kenya National Bureau of Statistics (KNBS) and the National Treasury economists and statisticians in order to ensure appropriate revenue targets are set.

3.2 Institutional Inadequacies

This section refers to the adequacy of the systems (administrative, financial and human resources) in use.

Fee collection is typically done on a daily, monthly and annual basis. The indication so far is that the daily charges, such as parking fees and market fees, are collected by the staff who provides a receipt and also does the banking and then provides the receipt to the supervisor. The basic financial rule of separation of duties is not adhered to. There are inadequate systems to ascertain whether the collection was done properly or that banking for all the amounts collected was done. Some key informants indicated that the distances to be covered by the supervisors are vast, but the supervisors' movement and ability to work are not facilitated. The counties should provide vehicles or at a minimum, motorbikes. The logistical and administrative mapping of the requirements for collection and banking needs to be urgently reviewed and improved.

Many counties have indicated a need to carry out a mapping exercise using Geographical Information Systems (GIS). This would enable the county governments to update their data of the buildings and business premises, particularly in the urban areas and to also establish the level of revenue they should be collecting.

Another issue related to financial systems is that both a manual system and the Local Authorities Integrated Financial Operations Management Systems (LAIFORMS) were used to record revenues. The use of both a manual system and LAIFORMS potentially leads to inconsistencies and incoherence in the reports and revenues. Some counties cannot reconcile what is in the bank accounts with what is in the manual ledgers. In one of the cases the county had higher balances in the bank than the information in their manual ledgers and it took a long time to reconcile this difference.

The human resources challenge is even more critical: in all the counties, the county governments inherited the staff from the defunct local authorities but have not to date confirmed them as county staff. The former local authority staff are currently casual staff at the county and have not received letters of appointment. This has created a situation where the staff's future uncertainty has potentially created incentive for increased corruption and theft. While this has not been investigated, the systematic reduction of the revenues collected during a similar period in some counties is a sign for urgent analysis of the staffing issues, which include providing clear performance targets for the staff. The latter, however, cannot be done if the staff have not been confirmed and if the revenue potentials for each of the wards and revenue streams have not been identified.

Generally without proper staffing and accountability mechanisms and systems, leakages and corruption will be the order of the day.

3.3 Governance Challenges

County governments have not paid attention to local revenue mobilisation as a key governance issue. Most county governments had not set revenue mobilisation as a key re-engineering agenda item that needed their prioritization. As a governance challenge, the county governments should have looked into addressing challenges of transparency, public participation, access to information, leadership and accountability with regard to revenue mobilisation, which will enable the counties to achieve much better targets. Other studies have shown that increases in government transparency and accountability motivate compliance in the payment of taxes, fees and charges. County governments will need to enhance the governance mechanisms of mobilisation and management of local revenues.

This study revealed that to get revenue information from the counties is a challenge. The county governments have not been providing detailed information on the revenue streams and collections by wards or former local authority units. Detailed information on revenue streams and the previous local authority units' data will help in computing the trends and analysing where the challenges are. However, this information was not readily available and even efforts to request this information from select counties was not honoured largely because the counties still have not embraced the citizens' right of access to information held by the State, as provided for in Article 35 of the Constitution. The other challenge in accessing information is due to the issues raised in section 4.2, where institutional inadequacies have led to poor recording of the data and the Counties are uncertain about sharing their incomplete records.

The establishment of the County Budget and Economic Forum (CBEF), as provided in the constitution, was one framework that is expected to address the governance challenges in mobilisation and management of revenues, but most counties have not established the CBEF. The study found that Taita Taveta County had established the CBEF, which comprised of the representatives of the county executive, civil society and private sector. The Taita Taveta CBEF was in the process of determining the terms of reference for its engagement and operations at the time of the study. A well-established, operational CBEF will go a long way in addressing the governance challenges.

3.4 Political Challenges

Political challenges experienced were numerous, ranging from opposition to proposed taxation measures from within the county structures, especially the county assemblies and the members of parliament, to external actors, such as the representative private sector association.

While the governance challenges led to delays, and poor preparations and engagement of stakeholders in determining the taxes, fees and charges, the political challenges led to counter proposals and outright opposition of the county governments' proposals, which led to collapse or reversals in the intended revenue collection.

Most counties delayed passing their finance bills, which should have been enacted by the end of September 2013. Many were enacted between January and March 2014, losing six months during which the new rates and fees would have improved the revenues. At the same time, since the finance bills had not been well interrogated and the public had not been well involved, many finance bills took too long to be discussed and approved. In cases where they were approved, for instance in Kiambu, a group of private sector members took the county government to court and the Finance Act 2013/14 was annulled.[17] At the same time, poor communication and eventual governance challenges led to Laikipia County being taken to court over the Finance Act 2014/15 due to the new land rate charges. The case was ongoing during this review.

4. CONCEPTUAL ANALYSIS OF THE FINDINGS AND FUTURE IN-DEPTH STUDY

The review reveals various challenges that need future in-depth study. These challenges fall within two broad theoretical frameworks: an organisational framework that focuses on systems and how to make systems more efficient and the institutional theory.

The earliest approach to analysis of organisational behaviour, and one that is still active, featured an engineering orientation: how could work systems be designed to improve reliability and productivity? Engineers proposed reforming work systems from the bottom up. They began with the standardisation of tools and instruments, gradually addressing the motions of workers, the sequencing of tasks, the packaging of tasks into jobs and the arrangement of jobs into departments.

This is certainly an observed need. The fact that there are challenges in the flow of tasks, recording, supervision and the reporting and accountability mechanisms, there is a need to urgently look into these aspects. While focus on systems is critical, the main issue that has emerged is the fact that regardless of the systems' improvement, the institutional frameworks and interplays will continue to dominate what eventually happens. Therefore a deeper analysis using the institutional theory approach is necessary.

Institutional theorists highlight the fact that organisations are complex systems. Institutions are production systems and adaptive social systems, and one needs to devote attention to the interdependence of formal and informal structures within organizations. The primary function of the executive is not to design efficient systems but to devise and promulgate moral visions of the organization's mission that would command commitment from participants (Scott, 2004). Institutional theory analyses the deeper and more resilient aspects of social structure. It considers the processes by which structures, including schemas, rules, norms and routines become established as authoritative guidelines for social behaviour. It inquires into how these elements are created, diffused, adopted and adapted over space and time, and how they fall into decline and disuse (Scott, 2004).

The issues raised in this study have indicated that while the county governments to date (albeit minimally) seemed keen to address the mapping and automation of the collection process; this has to go hand in hand with the institutional changes that have to clearly interrogate the challenges of the complex systems inherited by the county governments from the defunct local authorities. In fact, the latter, institutional aspects are foundational and more critical than the operational/systems efficiency issues. This would include the values and moral issues, which will also address personnel, governance and political issues.

Future studies should seek to interrogate many underlying institutional factors that if not dealt with effectively by county governments will hinder county governments from achieving their potential in mobilising and managing local revenues.

5. CONCLUSIONS

The challenges that have led to the poor performance of county governments in mobilising local revenues include (i) a high percentage increase and blanket prorated raising of taxes, charges and fees, which has led to protests, non-compliance and court cases; (ii) uncertainty about the placement of the former local authority staff (who currently form the bulk revenue collection and accounts staff at the counties),

17 Kiambu Petition 532 of 2013, www.kenyalaw.org accessed on 24th June 2014.

leading to low morale, poor performance and collusion to defeat new fees and charges; (iii) lack of political will as the members of county assemblies have delayed passing the finance bills; (iv) arbitrary cancellation of mining licences by the Cabinet Secretary of Mining, leading to low revenues for counties whose large portion of their local revenues comprise of royalties; (v) poor targeting and planning by the county governments; and vi) governance challenges.

The counties had many set-up issues to deal with in the transition period of FY2012/13 (March 2013 to June 2013) and first year of 2013/14 (July 2013 – June 2014) but even so, none seems to have prioritised revenue mobilisation and, therefore, none has allocated resources to research, review or map the revenue mobilisation potential and opportunities.

The study revealed that revenue collection predominately relied on the goodwill of ill-equipped, ill-facilitated, poorly supervised casual staff. While this may be considered a transitional phase challenge, there is little indication that the county governments have put in place a clear plan or mechanism to analyse the current challenges.

The county governments need to make local revenues mobilisation a matter of priority, because it will enable them to leverage new resources and unique projects. They need to urgently analyse the capacity and potential of the counties in revenue mobilisation by ward, or by the defunct local authority units, to get a good indication of trends and projections.

The valuation rolls for most counties are obsolete. County government needs to gather information about the ownership and tenancy of land and residences in order to raise property taxes in the most appropriate, efficient and equitable manner.

Revenue collection has been a matter of 'guestimates'. There is no clear data at the county regarding the number of business or land owners (amongst others) that should be paying for permits, licences, or other fees. Many counties have discussed automation of fee collection and recording, but none clearly indicates what form of automation. However, the automation process that is making progress relates to banking and recording, not collection.

The fact that the staff involved in collecting, banking and recording the revenues are still casual staff has led to some counties into a situation where some of the staff are said to have instituted their own "pension plan" with the fee collections.[18]

Transparency and accountability are still a big challenge. The data on revenue streams and the total amounts are not readily available. It is critical that the county governments embrace the right to access information, as provided in Article 35 of the constitution.

The first and second years (2012/13–2013/14) since devolved governments were established were a transitional period, but none of the county governments took up revenue mobilisation as a key re-engineering agenda in this period. Most of the county governments had not yet implemented measures to review and modify the staff, structures and process that would re-engineer the local revenue collection. Nevertheless, some progress was seen with the passing of the Laikipia County Revenues Board Act 2014, which will establish an autonomous revenue collections and reporting agency. This is an important milestone; however, real benefits will depend on whether the agency will be well established and resourced to carry out its mandate.

6. RECOMMENDATIONS

Access to own-source revenues and external borrowing is determined much more by the revenue base (population, land, businesses, levels of investments, etc) than by operational systems, legal restrictions, governance, and political aspects. The counties with high population and urban areas are bound to collect more revenues. It is therefore important that the revenue potential of each county is ascertained and appropriate and clear benchmarks set. This information will enable the equitable sharing of national rev-

18 As said by a key informant.

enues, based on the potential of each county to mobilise its own revenues. The information can be used to determine decisions on both the division of shared national revenue as well as the equalisation fund.

Once the fiscal capacity of each county is identified, own (local) revenues mobilisation and collection parameter can be used to incentivise counties to do better against their own set benchmarks. The Commission on Revenue Allocations (CRA) is set to review the formula for shared national revenues by 2015. The fact that county governments have shown overreliance on national shared revenue and have not put effort to effectively and efficiently mobilise local revenues shows that there is need to include this as an incentive in the new CRA formula for national revenue sharing.

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FIRST COUNTY INTEGRATED DEVELOPMENT PLANNING: EXPERIENCES AND LESSONS FROM LAIKIPIA, NANDI, UASIN GISHU AND MERU COUNTIES

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ABSTRACT

Planning is a central function of government. In Kenya this mandate is shared between the national and county governments. Elected on 4 March 2013, each county government was immediately required to generate their 2013/14 budget as well as their first five-year County Integrated Development Plans (CIDPs). The nascent governments moved at different speeds and have so far produced different results. This paper provides a first-hand account by the authors working with four counties in developing their CIDPs. As for Laikipia County the work started with support to the 2013/2014 budgeting process and this is also document in this paper. The engagement with the counties was on a technical assistance basis. The paper provides a framework for analysing the planning process based on the applicable law. Using that framework, it reviews the work done in Laikipia, Nandi, Uasin Gishu and Meru counties. It finds that while each of the counties was unique, the process followed was more or less the same. The call for participation was through the mainstream and local media and through meetings organised at local (subcounty and ward) levels. Uasin Gishu County had public participation after the planning technical team generated a first draft of the CIDP. Achieving consensus between the members of the county assembly and those of the executive remained a challenge and hence many of the plans have long lists of proposed projects. This also could be the reason why it has taken rather long to have the CIDPs approved by the respective assemblies. Programme planning was a challenge in most counties and hence it may be difficult to use the CIDPs as a basis for developing programme-based budgets. The paper also finds that the lack of a clear format especially on the budget and financing section may create differences between the counties, especially when it comes to implementation. That noted, the paper observes that the experiences provide a good learning basis for future planning processes. It recommends the need for harmonised frameworks for planning and public participation in the process.

1. INTRODUCTION

Devolution has ushered Kenya into a new dispensation with two levels of government,: a national government and 47 county governments. The two levels of government exercise delegated authority from the people of Kenya. By devolving power and functions of government, Kenyans have made a firm commitment towards a more democratic and accountable society. They expect that there will be better representation of their voice in decision-making, resources will be equitably shared and service delivery will be greatly improved. Kenyans expect a governance system that will value and promote their interests.

To realise the aspirations that Kenyans have, the institutions mandated to carry out various obligations will need to plan and implement public programmes effectively. Towards this, the Constitution of Kenya (2010, Art. 185, 186, 187 and Schedule 4) assigns to the national and county governments various functions. Specifically, both levels of government have a planning mandate. The national government has an obligation for national economic policy and planning. It also is to handle the general principles of land

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planning and the coordination of planning by counties. The counties are obligated with county planning and development including statistics; land survey and mapping; boundaries and fencing; housing; and electricity and gas reticulation and energy regulation. The constitution provides for mandatory planning before budgeting in Article 220. Article 220 provides that national legislation would prescribe the structure of the development plans and budgets of counties; when the plans and budgets of the counties shall be tabled in the county assemblies; and the form and manner of consultation between the national government and county governments in the process of preparing plans and budgets.

County governments were established on 4 March 2013 by the first elections under the Constitution of Kenya 2010. The 47 counties were new in every sense. Counties interpreted as their first mandate the preparation of development plans that would guide expenditures. Hindsight shows that it would have been better for counties to prepare the first-year plan then take time to generate the five-year plans. This would have provided ample time for more detailed and sound work. Five key plans are expected in every county, namely County Integrated Development Plan (CIDP) (Article 185, 186, 187 and Schedule 4 of the Constitution of Kenya, 2010); County Sectoral Plans (County Government Act, 2012, Sec. 109); County Spatial Plans (CG Act, 2012, Sec. 110); County Urban Areas and Cities Plans (Urban Areas & Cities Act, 2011, Sec. 36–42; County Government Act Act, 2012, Sec. 111); and County Performance Management Plans (County Government Act Act, 2012, Sec. 47). These plans are interrelated as they deal with different aspects of development. Annual budgets are to be based on the approved plans by the respective county assemblies.

This paper assesses the experience of developing the first plans with a focus on the CIDPs in four counties – Laikipia, Nandi, Uasin Gishu and Meru. These are counties where the authors had an active role in the CIDP preparation. It also reflects on the general experience of developing the CIDPs across the country. The paper assesses the process and structure factors as opposed to the content of the four CIDPs. At the point of publishing the paper, it had not been established how many counties have finalised and had their CIDPs approved by the respective county assemblies. Both the National Treasury and the Commission for Revenue Allocation should be the central depositories of the plans, but they did not have them.

Part 2 of the paper proposes an analytical framework of planning in Kenya. Part 3 looks at process in the four study counties. Part 4 details a synthesis of the observations, experiences and lessons across the counties. Part 5 gives a conclusion of the main lessons to be carried forward.

2. ANALYTICAL FRAMEWORK FOR COUNTY PLANNING IN KENYA

County planning is a requirement of the constitution and the subsidiary legislation as shown in the introduction. The planning is expected to address all aspects of governance and to be participatory in nature. This is to be guided by the principles of integrating national values in all processes and concepts [19]; protection of right to self-fulfillment within the county communities and with responsibility for future generations; protection and integration of rights and interests of minorities and marginalised groups and communities; protection and development of natural resources; aligning county financial and institutional resources to agreed policy objectives and programmes; promotion of equity in resource allocation; unification of planning, budgeting, financing, programme implementation and performance review; and public engagement.

The objects of county planning are to ensure harmony between national, county and subcounty spatial planning requirements (CG Act, 2012, Sec. 103); facilitate the development of a well-balanced system of settlements and ensure productive use of scarce land, water and other resources for economic, social, ecological and other functions across a county; maintain a viable system of green and open spaces for a functioning ecosystem; harmonise the development of county communication systems, infrastructure

19 National values and principles of governance are established in Article 10 of the Constitution of Kenya 2010. They include participation, rule of law, accountability and non-discrimination.

and related services; develop urban and rural areas as integrated zones of economic and social activity; provide the preconditions for integrating underdeveloped and marginalised areas to bring them to the level generally enjoyed by the rest of the county; protect the historical and cultural heritage, artefacts and sites within the county; make arrangements for public security and other critical national infrastructure projects and other utilities and services; work towards the achievement and maintenance of a tree cover of at least 10 percent of the land area of Kenya as provided in Article 69 of the constitution; and develop the human resource capacity of the county. These objects are aimed at ensuring that planning is all inclusive and leads to equitable development of the county.

The law requires that the preparation of the various plans should be participatory; integrate county and national plans; integrate economic, social, physical, environmental and spatial planning; and should be approved by the county assembly (CG Act, 2012, Sec. 104). This provides a framework for assessing any given plan.

3. DESCRIBING THE PLANNING PROCESS IN EACH OF THE COUNTIES

This section provides a review of what happened in each county. It maps the process, the actors and the output in each county.

3.1 Laikipia County

Laikipia's CIDP process was led by the county government with support of technical experts. The work started early in May but it was not until mid-July 2013 that the process took a high priority. On 29–30 July 2013 a county devolution and planning conference was organised in Nanyuki town, where the framework of the CIDP was presented, as well as the framework for public participation. On the first day of the conference there was an attendance of 160 people from across the county. Sector groups gave input, adding to what had been collected earlier during the review of the 2013/14 budget. On the second day a technical team of about 50 people worked on the various sector/thematic areas and drafted them into actionable points that were to be included in the CIDP.

After the conference, the county further consulted with citizens individually and in groups on 12–17 August 2013. During this period, an email address was provided to the wider public for input.[20] Announcements were placed in the daily newspapers and made through the members of the county assembly (MCAs). A drafting workshop that brought together the government officials and non-state actors was held on 21–23 August in which the CIDP was discussed and agreed on. On 7 October an all-government-stakeholders validation workshop was hosted by the County Assembly Committee for Planning and Finance. In this forum the Laikipia CIDP was adopted with some amendments and thus committed for approval in the county assembly.

From the above, one observes three things. First, despite the lack of a clear framework for engaging the public in planning, the county made deliberate efforts to have such input made. However this was affected by the means of communicating to them to attend meetings. Using the MCAs to mobilise limits the invitees to those persons who support the MCAs. This has, however, an advantage in that it ensures that the people's elected representatives play a leading role in ensuring public engagement. Use of newspapers and radio was minimal, and thus little can be attributed to it. Second, the cost of participation does not seem to have been factored in. Laikipia County is a sparsely populated county with high costs of transport. Thus where citizens are expected to go to a central place for deliberations meant that only those near the meeting point could participate. Third, while planning is a technical exercise, the political aspects of who gets what resources allocated to them are more critical. This became apparent in the review of the budgets, where each ward wanted more and more projects done in their areas. The MCAs thus pushed for greater allocation to their wards. The problem with this is that it ignores the economies

20 planning@laikipiacounty.go.ke

of scale and value for money principle. This is further compounded by the fact that the consultations were more about people giving their wish lists than prioritising their needs. In fact there was no predesigned format or criteria for helping the public come up with priorities.[21]

3.2 Nandi County

The process of developing the Nandi CIDP started with a launch held on 24 June 2013 in Kapsabet. The governor and key officials of the county had a planning meeting on the same day in which the schedule of the work and especially public consultations was agreed on. The work was supported by a team of three consultants with technical guidance from the author.[22] The county appointed the deputy governor to coordinate the process at the policy level with the County Executive Committee (CEC) member for finance and planning with the assistance of the county development planning officer providing the technical coordination. At the policy level the discussions were more on the broad priorities and especially those emanating from the governor's campaign manifesto, while at the technical level, the focus was on the specific details of drafting the actual plan. Public participation was arranged to gather input from organised professional groups and individual citizens through subcounty forums. Mobilisation was through local leaders, community radio stations and print media. The last session targeted persons from the county but who resided outside, such as in Nairobi or abroad. Nandi County was supported with technical assistance that guided the governor and his team in the process of coming up with the CIDP. The process was participatory in the sense that it involved all actors including the county officials from the various departments, and the private and public sector.

The development process facilitated engagement of the public through the community meetings spearheaded by the elected leaders and where the consultants were able to record information from the community as part of the priority of development projects in the county. The activity gave the local community in the larger Nandi County the opportunity to take part in the planning process. The downside of this participation was that people were only asked to state what they needed. The result was a long wish list that lacked rationale for further prioritisation.

3.3 Meru County

In Meru County the CIDP development process started late (i.e. 16 August 2013). The county had barely two weeks to meet the statutory deadline of 1 September 2013, when the CIDP was to be tabled in the county assembly for approval (consequently, it was tabled in January 2014). A planning meeting held on 20 August 2013 resolved to conduct an intensive programme to ensure that all key aspects of the work were completed. Public consultations across the nine subcounties (constituencies) were planned for 22–24 August. Communication was through the local radio stations, while on-ground mobilisation was led by the MCAs. The forums were coordinated by the development officers who compiled the reports of public inputs. A drafting workshop was held in Nanyuki on 26–29 August: technical officers from the various line ministries of the national government and those of the county worked hand in hand. The time between the public consultations and the drafting workshop was so short and coupled with limited personnel for collecting the public views. Also, this short mobilisation period led to poor attendance at meetings, and there was limited use of information and communication technology platforms in ensuring the collection of public views and providing feedback to the public. This meant that the final draft may not have captured much of the public input. This has been a general weakness in most counties given that there was no established framework.

3.4 Uasin Gishu

The planning process in Uasin Gishu County began in early June 2013. At this point the county government had not been fully constituted, because CEC nominees were not yet approved by the county as-

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21 Common ways of getting the public to list priorities is by sharing the budget limits, mapping past and ongoing interventions and providing a baseline from where to operate.

22 Abraham Rugo Muriu played the role of the technical advisor.

sembly. Thus the CIDP development process in Uasin Gishu was driven by the governor himself, assisted with the core team of officers and four consultants supported by a development partner. The consultants designed the process and guided the team in developing the plan. Contrasting with other counties, the public was consulted after the planning team had developed a working draft. The team argued that it was futile to go to the public with an empty slate. It remains to be seen if this had better results than where the public was asked to propose the priority area at the start of the process. The mobilisation was through radio, print media and MCAs.

The county government organised stakeholder meetings with farmers, religious leaders, women and youth leaders. Stakeholder meetings were also held with professionals drawn from various sectors including health, education, water, and the association of manufacturers, among others. These were organised as separate forums to ensure that each group was accorded the opportunity to articulate their priorities. Additionally, public engagement was achieved through public forums conducted in the subcounties. Forums inviting public participation in the planning process were held in the six subcounties in Uasin Gishu: Kesses, Kapsaret, Ainabkoi, Moiben, Soy and Turbo. One roundtable meeting with the members of the county assembly was held to get their input on the CIDP. One review workshop was held to evaluate progress in development of the CIDP, point out gaps and add development strategies. The participants included MCAs, the executive and representatives from non-state actors.

4. MAIN OBSERVATIONS, EXPERIENCES AND LESSONS

The observation, experiences and lessons made here should be understood in the context of a country in transition from a highly centralised system to a devolved system. Capacity still resided in the national government, which had the advantage of inheriting the greater framework of the former central government. The 47 county governments are new institutions that immediately assumed the planning function as a basis for their operations in the coming five years. They were ill-prepared for the task but had the planning structures of the previous system to work with. Most plans have been done to completion without the presence of the technical heads of county departments (i.e. the chief officers) due to delays in recruitment.[23]

Was the Timing Correct?

Was it realistic to expect every county government to have its CIDP by 1 September 2013? As soon as the county governments were established, they had to prepare budgets for FY 2013/14. Thereafter the pressure of having their CIDPs ready by the statutory deadline of 1 September started mounting. This was amidst establishing their structures of administration, recruiting public officers and ensuring continuity of service delivery on functions already transferred to them. This saw most of the counties develop their plans in a hurry and without the critical technical officers, such as chief officers, in place. The outcome is that counties rushed to have CIDPs that fall short in form and content. Hindsight shows that it would have been more prudent for counties to just concentrate on the first year's plan. They would then have had ample time to develop the five-year CIDP and other longer plans.

Interpretation of Functions and Planning Priorities for County Governments

A critical step in the planning process is interpreting the mandate of the county. There were three options. One, limit the CIDP to the 14 functions assigned to the county government in the Fourth Schedule of the constitution. Two, plan for all functions, whether assigned to the national or county government. Three, plan for only those sectors that the county citizens and their leaders thought were of importance to the county. These options were further complicated by the promises made by the various politicians during the election period. A key one was that of the governor elect, but there were also those of the re-

23 A key cause for the delays was the establishment and operationalisation of the County Public Service Boards (the equivalent of the Public Service Commission at the national level).

spective MCAs, the senators and the county members of parliament (known as women representatives). The constituency members of parliament were not as much interested in the planning process, because they felt they already had an avenue of achieving their promises (i.e. the Constituency Development Fund).

Further, the counties had yet to recruit their officials and or to properly induct them. Thus, the only available technical officers were those of the various national government departments who interpreted the function as that of the former provincial and district development planning and hence advocated for option one (to limit the CIDP to the 14 assigned functions). In fact, the County Development Profiles (CDPs) produced by the Ministry of Devolution and Planning, reflected option one above and had some functions not planned for (e.g. sanitation and traffic, as these were a responsibility of the former local authorities).

The law provides that the county plans shall be based on the functions of the county governments as specified in the Fourth Schedule to the constitution and on relevant national policies (CG Act, 2012, Sec. 106). However, while this clearly eliminated scenarios one and two, there was contention largely due to the election promises given on sectors that had mass societal benefits but had not been assigned to county governments (i.e. primary and secondary education, roads infrastructure and security systems, such as police offices, houses and equipment). Also, it was not clear whether national policies were limited to the 14 functions. Further, planning was also a key determinant of transfer of functions; this is because plans are the basis for budgets and without both, the county would not be deemed to be ready for the transfer of functions. Discussions were held on this matter and they remained inconclusive throughout the process of developing the CIDPs and thus each county adopted its own emphasis on the functions. This problem was compounded by the fact that there was no clarity provided by the Transition Authority on what functions needed to be planned for.

Intergovernmental Relations between National Government and County Government Officials

Related to the first observation was the planning of the relationship between the national and county governments. Were counties to customise national plans to their areas or were they to generate their own priorities? What was the role of the second Medium Term Plan (MTP II) 2013–2017 of the Kenya Vision 2030? At the time of passing the Constitution of Kenya 2010, the country was already implementing the Kenya Vision 2030 through the first Medium Term Plan (MTP I) 2008–2012. County governments came into place when the country was entering into MTP II 2013–2017. This plan was criticised for having little appreciation of the change in system of governance. While MTP I was implemented under a centralised government, MTP II came into place in a devolved system of governance. It thus needed to have an appreciation of this especially in the structure of implementation where functions are distributed between national and county units and some shared between the two (see Constitution of Kenya, 2010, Art. 186 and Schedule 4).

Of greater concern for the CIDP processes was how to link the two documents (i.e. CIDPs and MTP II). Were counties to plan around the already established projects in the MTP? Or were they to propose their preferred flagship projects? And if they included the MTP II projects were they also to budget for them or would the national government fund them directly or send the money to counties as conditional grants? These questions seemed to have been left to the counties to decide. For instance, Laikipia County decided to maintain the ongoing flagship projects on condition that the national government would send conditional funds for the same. The county also introduced more flagship projects, especially those that were campaign promises of the governor.

By the time counties were working on the CIDPs, the MTP II was neither finalised nor available for reference. All there was were the CDPs, which were a merger of the various district development plans for the districts that fell within each county. The officers who stood seconded to the counties were not sure of where they stood in the entire process and whether they were participating as county or national government officials. Furthermore their reporting mechanisms were those under the national government framework along the line ministries.

Planning Units within the County

As noted, the CDPs were prepared using data from the former districts. This varied from the subcounty units, prescribed as planning units in a county. The subcounties are equivalents to the elective constituency boundaries. Below the subcounties are the wards and villages. The villages are to be gazetted by the respective county assemblies. Save for where subcounties were equivalent to the former districts, there was no data segregated by subcounty. It was even more complex for wards as most of them were new entities from the drawing of boundaries before the 2013 general election. Most CDPs had the proposals drawn according to the former districts and this presented a key challenge. In Laikipia County there were five districts and only three subcounties. In Meru there were ten districts against nine subcounties. Are subcounties to be as defined by the County Government Act or the districts as adopted under the National Government Coordination Act? This presented a challenge especially in the context where the planning officers were accustomed to the district system.

Further there was concern about the planning of programmes in the subcounties. Of interest is that these units have three functions. First, they are the constituencies that receive allocations from the Constituency Development Fund (CDF) and members of parliament were not enthusiastic to engage in priority programmes, as they think that they should decide what to fund. Second, they are the first tier of decentralised units within a county. As such, the law requires that they be level two service delivery units and hence planning units. Third, they are administrative units of the national government under the deputy county commissioner. Thus they will be the planning and service delivery units of the national government.

The law tries to cure the duplication by introducing citizen service centres, which are at the county, subcounty, ward and any other decentralized level (see County Government Act 2012, Sec. 119). These centre are supposed to be jointly used by the national and county governments as a one-stop shop for key services. However, it does not address the question of CDF. CDF is addressed in the CDF (Amendment) Act of 2013,[24] which establishes the County Projects Committee. This committee brings together members of parliament, senators, women representatives, the governor and national government officials in the county. A key mandate is to align the projects proposed by the various CDF committees to the CDPs and policies. This is a good proposal, but it is not clear how this is to be managed given that each of the key actors is in a political office seeking visibility through projects to the people. A provision in the CDF (Amendment) Act 2013 that creates room for duplication is section 40 subsection 2, which states 'the existence of another allocation by government to a project in the constituency shall not be used as a reason to deny either approval or funding of any project consistent with this Act'. Thus a CDF committee may decide to fund a project that is already funded by a county government and vice versa, especially where it has high political gains. This balancing act to ensure coordination and minimum wastage of public resources will be the real test of the three structures. The best option would have been to consolidate all provisions of goods and services under the county government, leaving national legislators to make policies and provide oversight.

Interrelationship between the Various Plans

As previously noted the law requires each county to develop at least five plans that are to be related to each other.[25] All this should be implemented through annual development plans and budgets that should be approved in the county assembly. The annual plans should be tabled on or before 1 September for approval as the first step of the budgeting process for the next financial year. The law states that the sectoral and spatial plans are to be components of the CIDP. A first concern was on how the various plans were to be developed – parallel or one after the other? And if the latter, which one should be developed first, the CIDP or the components? How much detail was the CIDP to go into without taking the details of the

24 There is a case in the high court challenging the constitutionality of the CDF (Amendment) Act 2013, especially on the principle of separation of powers. With the establishment of county governments it makes no sense to retain CDF in its current form.

25 These are the County Integrated Development Plan; County Sectoral Plans; County Spatial Plan; County Urban (City and Municipality) Areas Plans; and Performance Management Plan. See County Government Act, 2012, Secs. 47, 108–112 and Urban Areas and Cities Act, 2011, Sec. 36.

other plans? How were the various plans supposed to be developed and linked to each other? The position taken by most counties was that the CIDP provides the overall framework with sections on spatial framework, urban planning and sectoral plans.

The sectoral plan sections of the CIDP were easier to develop but the Spatial Plans were difficult and in some cases impossible. This is because the law requires that they are based on Geographic Information System (GIS) maps that did not exist. Thus CIDPs in Meru and Laikipia (for example) provided for spatial planning as a key project in the medium term. Uasin Gishu made an attempt to develop a spatial plan. Urban area plans were developed generically. There was ongoing support through the Kenya Municipal Programme to various local authorities to develop integrated plans. However, the law now requires that county governments establish cities, municipalities and towns based on a new criterion that renders most of the former local authorities obsolete. Thus with no formal structures most counties, especially rural ones, have not commenced with urban area plans. The performance management plan was seen as best to be developed within the context of the structure of the county public service so as to link it with the performance contracts of the respective county public officers. At the time of writing this report there was no indication that any county had developed their Performance Management Plan.

Format for the CIDP and Its Link to Budgets

There are essentially two references to the format of the CIDP. The County Government Act of 2012 provides a framework of the CIDP through its section 108, which provides the content of what should be contained in the CIDP. Alternatively, the Public Finance Management Act 2012 in section 125 requires that regulations provide the format of the CIDP, especially the budget aspects. At the point of developing the CIDPs, the PFM regulations had not been finalised and thus counties used the County Government Act 2012 format. This was further aided through guidelines developed by the Ministry of Devolution, Planning and Vision 2030.

The complex part of the CIDP format was on the resourcing section, which requires that a number of strategies be developed over and above the budget projections. These include revenue raising strategies, asset management strategies, financial management strategies, capital financing strategies, operational financing strategies, and strategies that would enhance cost-effectiveness. The challenge was that these are related to corporate governance (borrowed from the private sector) practises, skills that are limited within the public sector, especially at the county level. Budget and finance experts in the former system were concentrated at the treasury and ministry headquarters and few if any were at the local levels. Further, there was no format available on how to develop them. Yet they provide a great opportunity for better resource mobilisation and management. Thus none of the CIDPs analyzed by the author has comprehensively addressed this area. Of greater concern is that while the law requires counties to use the programme-based budgeting framework,[26] the plans were not done according to programmes. This raises a concern as to how they will be linked. It will be of interest to see how counties will navigate this challenge.

This observation may explain the difficulty in most county budgets of linking to the CIDP. The CIDP can only inform the budget if it is done in a way that is coherent with the categories of the budget.

The Technical versus the Political Process

The law provides and envisions a technical process with clear steps and deliverables for the CIDP process. However, as is well known, the process of developing a county CIDP is as political as it is technical. The various actors have interests that need accommodating. This is particularly because the political leaders get elected based on their campaign promises and this forms their social contract with the people. They will therefore endeavor to ensure that their promises to those who elected them are fulfilled. In the county framework of government, the CIDP is the mechanism to ensure that those promises are

26 Programme-based budgeting is a budgeting approach where the focus is on outcomes at programme level and thus every budget item should lead to the achievement of a programme goal. The Public Finance Management Act 2012 section 12 makes this mandatory for counties starting in FY 2014/15.

fulfilled. It thus becomes a negotiated document that seeks to balance the county executive (governor) and the county assembly members' expectations. This can be a daunting task and can cause delays as politicians may have unrealistic demands based on the constituencies they represent. Thus in most CIDPs there are several programmes/projects that are politically sound but technically not feasible. Further, in the consultative forums the citizens would add much more desired projects and programmes, many of which were included in the CIDPs without vetting as to their viability. Unavailability of proper data to establish the real state of things further complicated the ability to filter proposals more objectively.

Public Participation in the Planning Process

Public participation in the county planning process is mandatory. Planning should be done in a participatory process and the plans done should provide for public participation in governance. Participation was conceptualised as the process through which the various groups of the county would give their input into the CIDP. Rarely was there any information available in terms of key indicators within the county area. Thus most of the feedback from the people and institutions were lists of projects and programmes that they wanted the county to run in their area. In rare occasions there were members of the public or institution that had done proper research and analysis to justify their proposals.

To mobilise the people, counties put advertisements in the print media and some used local radio stations. The message indicated the intention of the meeting and the venue. There was also mobilisation through the MCAs, as happened in Laikipia, and in some cases the members of parliament, as was the case in Uasin Gishu and to some extent Nandi. Various media was used to reach different people. While the local radio works most effectively with the rural people, the newspaper was effective for the elites. Unfortunately, few of the elites turned up for the consultations unless they were mobilised under professional associations. The numbers varied from as few as five people in one meeting in Laikipia County to 700 in Nandi County. In the latter, it is difficult to state whether consultations truly took place because only the key opinion leaders and politicians presented what they considered to be the needs of the people in that locality.

A critical observation was that counties rarely planned and budgeted for public participation especially in terms of time and resources. County staff were randomly requested to go and facilitate or take notes in a consultative forum and without a guiding framework of what was required. Thus each forum would have different formats and outcomes that made it difficult to consolidate the public inputs.

Was Participation Effective?

While this would be hard to ascertain, it would be fair to conclude that in most instances the key priorities of the people were taken into account. However, due to poor recording and the nature of the consultations, as some turned to be political meetings, sometimes the issues would be wrongly represented and thus difficult to incorporate in the document. The speakers in most forums had only time to articulate what needed to be done and not necessarily the rationale for that choice. None among the four counties had a feedback mechanism through which to communicate what was included or left out and for what reasons or even to follow up with proposals that were not clear. One therefore got the sense that participation was pursued more to fulfill the law and not necessarily out of genuine willingness to get the public input. This can partly be attested to by the delays of counties in establishing and institutionalising public participation frameworks. Meaningful conversations have to be on a smaller scale of sectors, geared towards neighbourhoods and guided towards some expected goal.

Data, Its Availability and Relevance

The main source of information for all the CIDPs was the CDPs, which were prepared and published by the Ministry of Devolution and Planning and Vision 2030 in May 2013. These were prepared by the former district development officers with an intention that they would guide the nascent counties in developing the CIDPs. As is well known, most of the data used in planning has been either old or insufficient to inform policy decisions. Limited capacity at district statistics offices has meant that it is difficult to collect longitudinal and regular data. There were constant disagreements between stakeholders and statistics officers with the former finding the data reflective of a better situation than they had experienced before. Related to this was the unavailability of monitoring and evaluation reports of past programmes and projects that would inform decision-making. It thus meant that a key aspect of the county governments would be to establish robust planning and statistics offices.

Strategy versus Structure – Which Leads the Other?

Efficient and effective implementation in public service requires that there be coherence between the strategy (content) and structure (mechanism of delivery). It is expected that a comprehensive CIDP, having provided what the county would deliver, should also have a comprehensive mechanism of implementation. The nascent counties established departments/ministries of the county and appointed CEC members, thus creating a structure. However, during the process of developing the CIDPs, they were presented with an opportunity for introspection and evaluation of their structures. At the start there were heated discussions as to whether to plan around the already established structures or to use sectors such as those provided by the medium term expenditure framework (MTEF) and then see how best to reorganise the structure.

While the different actors, especially consultants and national government officials, preferred MTEF sectors or other open -sector groupings that they were familiar with,[27] CEC members were hesitant. It appeared that some were fearful that any reorganization may leave them without powerful portfolios and hence weaken their positions of influence. It appears that the main value of MTEF or any other structure used is in helping to structure the conversation on how resources are allocated and to whom. In Laikipia County, it was agreed that plans be based on closely related sectors and that responsibilities (even within the same sector) that fell to different county departments be assigned as such in the implementation matrix. This was necessary to create the political consensus that saw the work progress well to completion.

The Approval Process

Once the CIDP was finalised it was to be tabled in the county assembly for approval. This is required by law. However, it was far from an easy process. First, MCAs have been adamant that they want all plans and even budgets to be based on wards so that they can see what is in it for them and the people they represent. This is not always possible because most of the programmes and projects of great significance have to be based at a unit bigger than a ward. So while certain projects would be located within a specific ward, it would be fallacious to consider them as ward projects. This is especially in rural counties that have smaller populations in a given ward. Second, the MCAs were keen that the projects planned in their wards be based on what they had promised in their election campaign. This has presented a planning complexity because some of these projects are politically promising but they are technically impossible, or they would have little value for money. Third, the county assemblies are required to consult the public before approving the plans. What emerged from the consultations were additional proposals for programmes and projects or revision of already proposed programmes. This was largely because each consultative forum attracted different participants even in the same area. Whether that was the mandate of MCAs or whether the MCAs were to refer the document back to the executive was not clear. Fourth, it was not clear as to what the MCAs were to consider when approving the CIDP. Were they to base their decisions on the extent of public participation? Budget projections? Feasibility of programmes? Distribution of proposed programmes by different clusters, geography, population, etc.? There is also no provision in law providing the date by which county assemblies should have approved the plan with or without amendments. However, one can deduce that it should be before 30 September when the county treasury tables the Budget Review and Outlook Paper (BROP) in the county executive, and after approval the county executive should table it in the county assembly by 21 October 2012. The rationale is that the approved plan should inform the outlook section of the BROP because it is forward looking.

Thus the approval process has taken very long in most counties. For instance while Laikipia had the

27 This is grouping sectors that are closely related for ease in planning and implementation.

CIDP tabled on 3 September 2013, it was yet to be approved by the end of January 2014. The factors varied from one county to another, which particularly included operational disagreements between the county executives and assemblies..

What Steps Were Counties to Take after Approving the Plans?
The county governments have a mandate to publish and publicise the approved plans. They are to inform the public on what will be done where and when. This is to be followed by making concrete budget allocations in a process that is equally public and participatory. The public has a right to information on what counties are planning and to see how the counties link the CIDP to performance contracts to ensure delivery and ease of monitoring. It is also of interest to see how they link the plans to the budgets of 2014/15, starting with the County Fiscal Strategy Paper. Another critical step is establishing the monitoring and evaluation framework at all levels of the county.

CONCLUSION

What Lessons Do We Have for the Future?
The mentioned experiences show that the process of developing CIDPs has been an interesting one for development-planning practitioners. A key question is to what extent the county plans will facilitate better development than those of a centralised system of government. Key lessons include the following:

- County planning is a negotiated process, is political in nature and based on tradeoffs between various stakeholders. Not all proposals can go into any given plan and thus prioritization is of the essence. This is only possible where the public is asked to respond to a questionnaire that guides them in choosing between the possible options or at least establish programmes in order of priority;
- For effective public participation, frameworks for information access need to be established. Further, public participation should be planned for in time and resources. Feedback mechanisms should be established to ensure that the public gets reports on what gets into the plan and the rationale for the choices made;
- Planning processes should start early enough and consultations done with as wide a public as possible to build consensus. Such consultations should be guided by a standard format for all consultative meetings with guided questions that can yield relevant information;
- Provisions on planning in the various laws should be harmonised and coordinated under the already established mechanisms, such as the County Budget and Economic Forum under section 137 of the Public Finance Management Act 2012.

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DEVOLVING CORRUPTION? KENYA'S TRANSITION TO DEVOLUTION: EXPERIENCES AND LESSONS FROM THE DECADE OF THE CONSTITUENCY DEVELOPMENT FUND IN KENYA

Otieno Michael Oloo*

LIST OF ABBREVIATIONS

CDF	Constituency Development Fund
CDFC	Constituency Development Fund Committee
CIDP	County Integrated Development Program
CRC	Citizen's Report Card
DDC	District Development Committee
DFRD	District Focus for Rural Development
IEA	Institute of Economic Affairs
LASDAP	Local Authority Service Delivery Action Plan
MP	Member of Parliament
NTA	National Taxpayers Association
PMC	Project Management Committee
SRDP	Special Rural Development Program

1. BACKGROUND

The concept and practice of devolution is better contextualized within the broader ambit of decentralisation, which comes in multiple facets, including political, administrative, fiscal and market. In this context our concern will be more with the political, administrative and fiscal variants. Decentralization is political because it gives citizens and their elected representatives more power in public decision-making and supports democratization by giving citizens and their representatives more influence in the formulation and implementation of policies. The essence of political decentralisation is enshrined in citizen participation at a local and subnational level of government. Robertson (1993) asserts this important aspect of political decentralisation with regard to local-level decision-making that guarantees inclusion of local priorities in policymaking and implementation.

Fiscal or financial decentralisation involves the transfer of financial resources from the central government to autonomous local-level units. This may be done directly through tax powers, central government disbursements or both to enable the decentralized agencies to undertake responsibilities already transferred to them. (Olowu, 1997)

Administrative decentralization on the other hand concerns redistribution of authority, responsibility and financial resources for providing public services among different levels of government. These levels of government can either be autonomous or semi-autonomous in nature. This is the perspective of Rondinelli, Nellis and Cheema (1983). It is within the context of administrative decentralization that Maddick (1963), Smith (1967), and De Valk and Wekwete (1990) have classified de-concentration, delegation and devolution.

De-concentration connotes different forms of field administration (Smith, 1998; Mutahaba, 1996), while delegation involves the transfer of managerial responsibility for specific functions from the central government to organizations outside the bureaucratic structure. These forms of decentralisation are sponsored by the state and therefore depend of the goodwill of the state (Ngethe & Kanyinga, 1998).

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Devolution comes with a greater level of autonomy as well as political, administrative and financial leeway. It involves the transfer of power to sub-national political entities; it entails an inter-organisational transfer of power to semi-autonomous local units of government, the activities of which are outside the direct control of central government. (Mutahaba 1989; 1996) Devolution encompasses the transfer of functions, authority for decision-making, finances and management to semi-autonomous units of local government with clearly defined and legally recognized geographical boundaries. Devolution underlies not just administrative but also political decentralization that involves the sharing of power with the central government, as defined by legal and/or constitutional provisions. Therefore the objective of devolution as a variant of decentralization is twofold: first, is to improve the performance of government by making it more accountable and responsive to the needs and aspirations of the people; second, is to facilitate the development and consolidation of participatory democracy. Rondinelli (1987) and Nellis (1983) argue that the objectives of decentralization revolve around the desire by governments to enhance and mobilize popular participation in the development process. In addition, decentralization can promote national unity and increase the stake of the local people in maintaining political stability. These objectives are in line with Kenya's clamor for political and administrative reforms that eventually led to the promulgation of the current constitution that ushered in a new devolved system of government.

2. HISTORICAL PERSPECTIVES OF DECENTRALIZATION AND DEVOLUTION IN KENYA

At independence, the constitution of Kenya provided for a federal system of government that was enshrined in the *Majimbo* Constitution. The constitution provided for political decentralization, which was meant to resolve problems of land, internal competition between ethnic groups, the fears of dominance of majority communities, resource distribution and control of state power. However the constitution did not live to see the light of day as it was systematically and quickly dismantled and replaced by a unitary republican constitution that was highly centralized. The spirit of the independence constitution would 47 years later greatly influence the design of the current constitution. The promulgation of the 2010 constitution, with striking similarities to the independence constitution, clearly reasserted the fact that the independence problems were never resolved and had to be dealt with in the new constitutional dispensation. This explained the huge support for devolution provisions in the constitution with the creation of the 47 county governments.

However, this new framework was preceded by several failed attempts at decentralization. With a centralized system of government in place, local authorities emerged as the only avenue for local-level participation. The period after 1965, with the enactment of the Local Government Act (Cap. 265), saw increasing control of local authorities by the central government through the Ministry of Local Government. The local authorities would subsequently remain mere appendages of the central government with little or no resources to perform their limited functions. On the contrary the provincial administration was significantly strengthened as the instrument of development at the local level by the central government. (Oyugi, 1986)

The introduction of the Special Rural Development Program (SRDP) in 1969 was meant as an experimental integrated area-based development planning and implementation effort in six administrative divisions in Kenya, with intentions to extrapolate the experience to the rest of the country. However, the reluctance to relinquish control to lower-level units ensured that by 1976 the SRDP had died a natural death. In 1971, the government introduced the district planning program to match the preparation of the five-year development plan. The district planning objective was to localize development as an attempt to eliminate the image of centralized development by the central government. It introduced the position of district development officer to provide a secretariat for the new planning exercise. Just like the SRDP, without goodwill and support from the central government, failure was unavoidable.

This was followed by the introduction of the District Focus for Rural Development (DFRD) in 1983.

It was an attempt to delegate planning and implementation to the District Development Committees (DDCs). The DFRD provided an opportunity for successful de-concentration of development planning and implementation. However just like its predecessor, the program turned out to be a form of re-centralization as the local development committees came under the ambit of the central government ministries. In addition, the DDCs came to be dominated by the districts commissioners who chaired them. (Oyugi, 1986) By the end of the 1990s, the DFRD program had lost much of its initial favor at the local level. While these three attempts at decentralization may have been good in design, the lack of commitment for implementation led to their inevitable failure.

With the failure of the local authorities, the introduction of the Constituency Development Fund (CDF) in 2003 was an attempt to bring local-level participation into development planning and implementation. Significantly different, however, was the infusion of political leadership in the fund led by the members of parliament rather than bureaucrats, as was the case in the past. The CDF is largely a fiscal decentralization mechanism primarily meant to address developmental challenges at the constituency level.

In 2010 the country ushered in a new constitutional framework that completely reorganized the governance structure in the country with the introduction of a devolved system of government. The system, from chapter 11 of the constitution, consists of 47 counties, with county executives and county assemblies. The object of the chapter, among others, is to promote the democratic and accountable exercise of power; foster national unity by recognising diversity; 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; ensure equitable sharing of national and local resources throughout Kenya; and enhance checks and balances and the separation of powers (The Government of Kenya, Kenya Constitution, 2010). While the new devolved system is in theory more robust than the previous attempts at decentralisation, the actual implementation must learn from the experiences of the past attempts at decentralisation. The CDF framework, thus, provides an important reference point.

3. CONSTITUENCY DEVELOPMENT FUND

The CDF has been viewed as a key strategic driver of socio-economic development and regeneration within Kenya. It is a development initiative targeted at the constituencies that devolves resources to the regions to meet socio-economic objectives that have previously been managed from the centre. The key objectives of the CDF are to fund projects with immediate social and economic impact with a view to improve lives, alleviate poverty and promote general development purposes (Institute of Economic Affairs[28], 2006). It supports local development projects, especially those aimed at fighting poverty, creating wealth and developing infrastructure at the constituency level. It targets community-based development projects as a criteria and whose benefits are enjoyed by all as well as projects related to setting up and equipping constituency project offices. In this way, the fund seeks to address imbalances in regional development, improve pro-poor targeting, expand coverage and improve development outcomes by eliciting local people's participation in decision-making. (CDF Act, 2013)

The fund was established in 2004 through the CDF Act in 'The Kenya Gazette Supplement No. 107 (Act No. 11)' on 9 January 2004. The Act was subsequently amended in 2013 to align it to the new constitution. The fund comprises an annual budgetary allocation equivalent to 2.5 percent of the government's ordinary revenue and any other money that is received by the National Management Board.

At its inception in 2004, the CDF gained popularity as *Mheshimiwa's* (the nondurable's/MP's) money. The prime object of the fund is to improve people's living standards and reduce poverty while giving them the opportunity to take part in national development and root out disparities created by the national budgeting process that resulted in some parts of the country lagging behind after independence. Over the last decade the fund has undergone significant transformation as well as contributed to positive transformation at the local level. However, it has also faced numerous challenges.

28 The Institute of Economic Affairs is a Nairobi based Policy Research non-governmental organization that focuses on fiscal policy research and advocacy.

Broadly CDF is viewed as a homegrown initiative for uplifting the living standards of the people of Kenya at the grass-root level. The CDF has succeeded in achieving three important milestones. First, it has increased the levels of citizens' awareness on matters of public finances and taxes. Even though MPs are still in control of the fund, the branding of CDF as *pesa ya mweheshimiwa* (the nondurable's money) is progressively changing to *pesa ya wananchi* (the citizens' money). It is with the introduction of CDF that citizens proactively began to directly engage with matters of public finances. In spite of the previous attempts at fiscal decentralization, local-level planning and the implementation of public projects initiatives, the management of these initiatives remained heavily bureaucratized with little room for citizens' involvement.

Most of these initiatives were mainly spearheaded by the provincial administration and civil servants. Given the historical detachment of the provincial administration from the public, public participation remained a mirage. Indeed, even under the DFRD structure of DDCs, public participation if any was strictly controlled by the district commissioners and other central government bureaucrats. Even with the reform of local authorities in the 1990s that introduced Local Authority Service Delivery Action Plans (LASDAP) the management of public funds at the local level remained fairly out of reach for citizens. The LASDAP process was ideally meant to guarantee public participation in the local-level planning, budgeting and project implementation for local authority resource envelope that included Local Authority Transfer Fund from the central government as well as local revenue. However, in practice, the process was largely controlled by local authority workers and councilors with little or no local-level public participation.

While CDF has also largely remained under the tight control of the local MP, it uniquely introduced an unprecedented citizen involvement and engagement with public finances. Despite its weaknesses, the introduction of Constituency Development Fund Committees (CDFCs) and Project Management Committees (PMCs), as well as the fact that citizens even if in a small way have an opportunity to question how the resources have been allocated and utilized, has progressively increased citizen involvement.

Second, the face of public resources and development at the local level has increasingly been seen through the contribution of the fund to financing education, health, water and roads projects, among others. Indeed, in some parts of the country, the first ever publicly funded infrastructure project came through CDF. Since independence, a development provision was viewed more as a favor from the state rather than a right of the citizens. The adoption of the harambee (fundraising) in the 1970s relegated development from being the direct responsibility of the state to a shared responsibility of the citizens. With time local-level development almost became entirely the responsibility of the local citizens. Very little investment in local service facilities and infrastructure was witnessed in the first three decades of independence, particularly in health, education, water and related sectors. Where it was done, it was mainly a top-down dispensing of development favors by the regime.

The introduction of CDF saw unprecedented development of infrastructure in schools, health centers, water pans, boreholes, shallow wells, cattle dips and other infrastructure developments at the constituency level. Most of these developments were happening for the first time in many constituencies across the country.

Third, the fund has redefined elections as a tool for political accountability. Most MPs who mismanage CDF find it difficult to recapture their seats in the subsequent elections. It is now more likely to find MPs in public rallies being challenged to account for the use/misuse of CDF, based on Citizen's Report Cards (CRCs) from civil society organizations such as the National Taxpayers Association (NTA). It is also common to hear MPs publicly commit to account for resources badly used or unaccounted for that were reported in the CRCs. In the last two general elections, average turnover in parliament has significantly increased, which can be attributed to the increasing demand for accountability from the electorate on how CDF has been managed. While this assertion will require more research on the direct linkages between management of CDF and the possibility of being re-elected, a significant number of MPs that were ranked poorly by the NTA CRCs did not recapture their parliamentary seats. It is important to note that re-election in Kenya is also influenced by many other factors including the dominant party in a region, the influence of money in the elections and clan politics. Therefore, demanding CDF management accountability is only an emerging new factor.

On the other hand the fund also provides a classic lesson on how not to manage public resources. As we will see in the next sections, problems with failure to follow procurement regulations, local-level corruption, micromanagement of the fund by the MPs and political patronage are inherent in the fund. In addition to wastage of public resources through poorly implemented, incomplete, abandoned and ghost projects, unaccounted for expenditures continue to plague the fund.

3.1 CDF Management Structure

The management structure of the fund presupposes citizen involvement in the entire cycle of CDF projects. The process is dependent on sets of committees meant to ensure citizen involvement in project identification, prioritization, resource allocation, implementation, monitoring and evaluation. At the national level, there is a CDF board and a chief executive officer who is also an ex officio member of the board. The board has the overall responsibility for the management of the fund project. The board reports to a national assembly select committee on CDF. The select committee provides oversight functions. In every constituency there is a CDF committee. The committee is composed of representatives elected from the ward level by the ward development committee. The structure of the committee, as provided for by the CDF Act 2013, is meant to ensure that all interests including those of the marginalized are taken into account. The committee subsequently elects a chair while the CDF fund manager serves as the secretary and ex officio member of the committee. The MPs are also ex officio members of the committee. The Act also provides for the establishment of PMCs for every project to be responsible for overall project management. This structure, if strictly adhered to, guarantees public involvement in the management of the fund at all levels. The Act also creates a County Projects Committee that is responsible for cross-constituency projects with the county to ensure harmonization of projects.

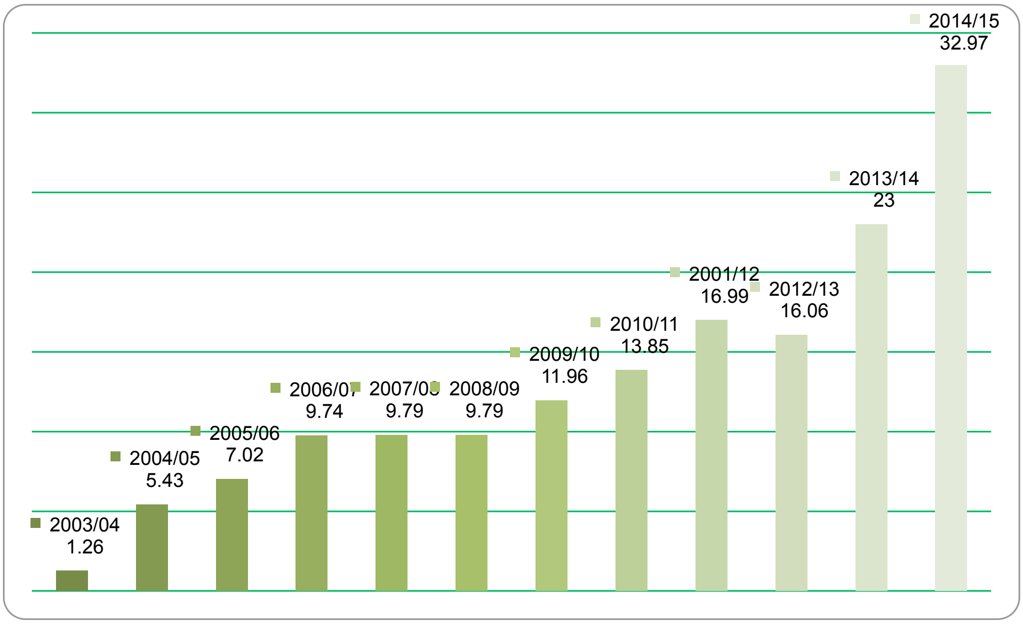
It is important to note that the role of the MP is particularly important. Over the last decade, MPs have had an overbearing control over the fund. Previously they served as patrons to the fund, however under the amended Act they are now members of the CDFC, albeit ex officio. This raises numerous procedural questions. First, within the context of separation of powers between the different arms of government, the concern is that the direct involvement of MPs in implementation contradicts the primary role of oversight that may deny them the moral authority to provide oversight to the fund. Second, within the structure of CDF, there is a national assembly select committee on CDF that is ideally supposed to provide oversight to the CDF board. Bearing in mind that the members of the committee are also members of CDFCs in their various constituencies, it will be fairly difficult for them to perform this function objectively and independently because they have inherent vested interests. The fundamental contradiction here is that technically the CDF board is on the one hand answerable to the MPs through the select committee, while on the other hand the MPs are answerable to the board through the CDFCs to which the MPs are members. Note that the CDF Act requires that the CDFC present a list of projects to the board for approval for disbursement of funds. This nuanced relation between the CDFC, the board and the select committee presents a very complicated accountability scenario that borders on illegality and unconstitutionality of the CDF Act. (This matter is pending in court.)

3.2 Experiences from CDF: Lessons for County Governments

Over the last decade CDF allocation has risen from KES 1.26 billion in FY 2003/04 to KES 33 billion in 2014/15 (Figure 1).

Cumulatively, the fund has received a total of KES 157.86 billion over the last decade. The indications are also clear that the figure will keep rising as Kenya's revenue increases. Over this period, the fund has been a subject of numerous social and citizen audit processes that have consistently raised red flags on mismanagement. The NTA has consistently produced CRCs for a total of 134 constituencies across the country for the past five years. These constituencies have collectively received over KES 8.6 billion in CDF allocation during this period.

Figure 1: CDF Allocation (in KES billions), FY 2003/04 –FY 2014/15



Source: www.cdf.go.ke , accessed 2014/06/17

The impact of these funds is phenomenal, particularly in education, health, water, roads and agriculture. The funds have mainly been used in construction of classrooms and other school infrastructural development, with provisions for bursaries to individual students, health centers, boreholes, shallow wells and water pans, and rural access roads, including road openings, cattle dips, and community social and resource centers. On the other hand, this large injection of resources at the constituency level has resulted in numerous problems of accountability and mismanagement that lead to wastage and loss of public resources. This wastage is mainly as a result of political interference, failure to adhere to procurement law and regulations, ineptitude, and inadequate monitoring and oversight during implementation. More specifically there are several avenues for leakage. Given that the county governments operate on a more or less similar structure of committees and forums it is highly likely that the experience of CDF will be replicated at the county level. In addition, given that counties will be in charge of a much larger pool of funds, it is imperative that these wastages are pre-empted.

3.3 Avenue for Wastage and Corruption: Areas Counties Must Watch Out For

Experience with CDF has shown that there are various avenues for corruption, wastage and loss of public resources. A review of the NTA reports over the last five years identifies several mechanisms of leakages including poorly implemented projects, abandoned projects, unaccounted for funds, ghost projects, failure to adhere to procurement regulations and processes and a tokenistic involvement of citizens in committees.

3.3.1 Poorly/Badly Implemented Projects

Poorly implemented projects are mainly due to subpar workmanship resulting from various inherent weaknesses in the process, such as, a lack of appropriate qualification and capacity among the contractors. As shown in figure 2 below, this problem is the end result of systemic failure to follow procurement procedures and awarding contracts to unqualified but politically correct individuals who in most cases are supporting political interests. Such projects are sometimes so poorly done that they are condemned

Figure 2: Poorly/Badly Implemented, Incomplete Project

Badly implemented, incomplete project

Constituency	Sabatia – Nadanya Health Centre (2004 project)
Project Activity	Maternity Wing and gate construction
Total Funds Awarded to Date	1,920,000
Total Funds Spent to Date	400,000
Total Unaccounted Funds	1,520,000

Source: NTA Sabatia CRC 2011, www.nta.or.ke, accessed 2014/06/20

by government technical officers. While the regulations encourage promoting local enterprise, development and expertise by awarding tenders to locals as a priority, this must not be done at the expense of quality work. Where quality is not prioritized, the structure is of no benefit to the citizens and therefore is a waste of public resources.

3.3.2 Abandoned Projects

Abandoned projects are projects that are started and could be well done, but they do not receive funding in the subsequent financial years and remain incomplete long after they were started (see Figure 3 for an illustration). These are common when MPs do not retain their seats in subsequent elections and the new MPs seek to build their own legacy and political patronage networks without being involved with their predecessors' projects. New MPs therefore find it more politically expedient to start their own projects rather than complete those started by their opponents. There have, however, been attempts to reduce the number of abandoned projects through targeted funding for completion of projects prior to the end of the parliamentary term.

Such projects underscore the political nature of the fund. While in law, the fund was meant to address development problems at the constituency level, the unwritten political justification for CDF was to relieve politicians of the burden of *harambees* (fundraisers) for public projects, which the MPs viewed as a huge burden. However, *harambees* are a tool for political patronage and are instruments of maintaining a patron-client relationship and for that reason have remained a burden for MPs in spite of CDF. This reality further exacerbates the exposure of the fund to corruption by politicians and political interests to keep with the high demand for their 'individual social responsibility' to their electorate.

County governments must therefore put in place measures to ensure continuity of projects even after the end of the current county government's term. This will effectively eliminate the possibility of projects being abandoned in case of transition to a new government.

Figure 3: Malanga Chief's Office - Nambale Constituency, Busia County

Source: NTA Nambale Constituency CRC 2011, www.nta.or.ke, accessed 2014/06/20

3.3.3 Unaccounted For Funds

Unaccounted for funds are funds allocated to projects but are not officially accounted for by the local Constituency Development Fund Committee (CDFC). Mainly due to weak accountability structures, there is a mismatch between the amounts of money allocated to projects and what is officially reported as spent. The NTA assessments established rising instances of disparities between the two. While in some cases this result from corrupt use of resources for unintended purposes, in some cases it is a result of a reallocation of funds to other projects without the prior approval from the board, as is required by law. Reallocation outside the legal framework has emerged as a common avenue for corruption. New MPs divert resources from projects earlier identified and prioritized by citizens within the framework of the CDF project cycle to new projects that in most cases are individual preferences. This often leads to projects that are not prioritized by the public and, more importantly, it corruptly circumvents the procedures of project identification, prioritization and implementation. Where reallocation is done in this manner it becomes very difficult to officially account for the resources. County governments must therefore guard against the implementation of projects outside the County Integrated Development Plans, County Annual Plans as well as the priorities as identified by County Budget and Economic Forums.

3.3.4 Ghost Projects

These are projects that are officially allocated funds and are reported as having been completed but are physically non-existent. This is the most blatant avenue for corruption and loss of public resources. Close monitoring of resource allocation and implementation will significantly reduce and even eliminate cases of non-existent projects. There are already indications of high risks in this area. From the recent report by the auditor general some counties are already incurring non-existent expenditures.

3.3.5 Failure to Adhere to Procurement Regulations and Processes

Just like all public funds, CDF is subject to the national procurement legislation including the Public Procurement and Disposals Act, the Public Finance Management Act and the accompanying regulations that operationalise the laws. CDF nevertheless, gives priority to local bidders and can only seek external bidders if the expertise is not available locally. The objective of this is to empower local contractors to benefit from the fund. The fund however, faces major challenges in this regard. In some cases this process is subject to both direct and/or indirect political influence, which often leads to failure to follow the laid down procurement procedures. In other cases, it is often a result of a lack of capacity and knowledge of the law and the regulations by the CDFC and the PMC. Whichever the case, it opens up opportunities for corruption, mismanagement and inept implementation of projects. County governments may run the risk of circumventing the procurement procedures. Whether out of ignorance or otherwise, safeguards must be put in place to ensure that procurement procedures are followed. The impeachment cases against the governors of Embu, Kericho and Garissa in 2014 have all included a failure to follow procurement regulations. In addition, the governor of Machakos County is under investigation for similar reasons.

3.3.6 Tokenistic Involvement of Citizens in Committees

The CDF Act in section 24 details an elaborate process of electing the committee members, but this process is often less than democratic and is mainly politically determined through systematic exclusion of those that may be perceived as unfriendly to the area's political leadership. This guarantees that only those that are loyal to the political authority have access to control of the fund at different levels. Indeed even though the area MP is listed merely as an ex officio member of the committee, the practicality of the fund certainly makes him or her, the ultimate authority in the committee. With friendly committee members, political patronage subsequently becomes the most important determinant of decision processes, creating an avenue for political corruption. It is however important to point out that increased awareness among citizens has made it more difficult for politicians to continually use CDF as patronage.

3.4 The Waste in Figures and Impact of Interventions

Over the last five years a total of KES 1.8 billion out of KES 8.7 billion, spent mainly in construction projects in 134 constituencies across the country, has been badly used, wasted or unaccounted for (see Table 1). This accounts cumulatively for 20 percent of CDF funds allocated during that period. The table below gives a summary of the level of wastage in the five-year period that covers FY 2006/07 to 2010/11. From Table 1 there is a systematic reduction in wastage of resources since 2006. Mostly this is due to the intense campaign and demand for accountability by citizens across the country led by civil society organizations such as the NTA.

Table 1: Level of Wastage, 2006 – 2011

Financial Year	No. of Constituencies assessed	Total CDF Funds (KES) Awarded	Total CDF Funds Badly Used, Wasted & Unaccounted For	Percent
2006/07	23	1,159,206,328	306,650,185	26%
2007/08	17	1,649,790,290	443,994,384	27%
2008/09	28	1,771,249,601	425,096,869	24%
2009/10	38	2,279,957,282	357,040,815	16%
2010/11	28	1,835,840,744	241,928,006	13%
Total	**134**	**8,696,044,245**	**1,774,710,259**	**20%**[30]

Source: NTA CDF Assessments Reports, www.nta.or.ke, accessed 2014/06/20

The level of wastage however varies between financial years and constituencies. An assessment of 28 constituencies for the year 2010/11 indicated the variations in the level of wastage between different constituencies in the two financial years. (www.nta.or.ke, NTA 2012 CDF Assessment Reports) Some constituencies, including Runyenjes, Belgut and Magharini, have no wastage at all, while others, such as Kwhisero, Isiolo North and Rongo, have as high as 81 percent, 42 percent and 24 percent wastage respectively.

29 This is the average percentage of the five–year assessment period.

On a more positive note though, demand for accountability through the CRCs and public involvement has a positive effect in the management of CDF/public resources. This is demonstrated in Table 2: follow up assessments in 2008 and 2012 of 11 constituencies initially assessed for financial year 2006/07 indicate marked improvement in the level of wastage in some constituencies. The table provides a comparison in the constituencies. However, there are also cases of worsening levels of wastage in two constituencies.

Table 2: Level of Improvement in Repeat Assessments

	Proportion of badly used, wasted or unaccounted for funds FY 2006/07 (Follow up)		Change in proportion of badly used, wasted or unaccounted for CDF funds assessed in 2008 and 2012
Constituency	**Assessment for 2006/07 projects in 2008**	**Assessment for 2006/07 projects in 2012**	
Tetu	**28%**	**0%**	**28% improvement**
Kisumu Rural	**28%**	**2.3%**	**25.7% improvement**
Eldoret North	**18%**	**0%**	**18% improvement**
Mvita	**7%**	**0%**	**7% improvement**
Nambale	**33%**	**27.7%**	**5.3% improvement**
Kisumu Town West	**53%**	**48.5%**	**4.5% improvement**
Westlands	**29%**	**25.3%**	**3.7% improvement**
Butula	**29%**	**25.5%**	**3.5% improvement**
Machakos Town	**18%**	**47.9%**	**29.9% decline**
Changamwe	**0%**	**49%**	**49% decline**

Source: NTA CDF Assessments 2013 Reports, www.nta.or.ke, accessed 2014/06/20

Apart from the two outlying constituencies, there is clear indication that citizen demand for accountability through the CRCs has a positive impact on improving management of the CDF.

4. MOVING FORWARD, LESSONS FOR COUNTY GOVERNMENTS

With the new governance framework, county governments have a lot to learn from the CDF. The counties, just like constituencies, are headed by a political leader, which means they both carry the associated danger and baggage of political patronage. In addition, counties are in charge of much a bigger budget, geographical area as well as a wider scope in development and service provision. On the other hand, unlike CDF, which is primarily for development, county governments are directly involved in service provision and management of large payrolls for staff of devolved functions. The counties also have directly elected county assemblies that are meant to provide oversight to the county executive. This bigger role of the county governments subjects them to greater dangers of corruption.

The safety net for local-level corruption therefore lies in public participation. The constitution as well as other enabling legislation such the County Government Act and Public Finance Management Act expressly provide for public participation in all aspects of county government in general and more specifically in management of public resources. While CDF is largely dependent on management committees at different levels, the Public Finance Management Act 2012, article 137, requires the county governments to establish the County Budget and Economic Forum. This is the forum for public consultation in budget formulation and implementation. In addition, the counties are required to involve the public in the budget process through ward and other appropriate meetings.

Counties are required to develop, through public consultation, a County Integrated Development Program (CIDP) as well as annual plans on the basis of which budget is drafted. These provisions ideally would guarantee public involvement in the activities of the county at various stages. Comparatively, as is the case in CDF and the CDF board, the county budgets can only be approved by the controller of budgets after, among other considerations, getting adequate proof of public participation in the process and more importantly that the budgets are in line with the county CIDP.

A preliminary assessment by NTA, however, established that there is still a very low level of awareness among citizens regarding these institutions and requirements.[30] In addition, not many citizens were involved in the development of the inaugural CIDPs for most counties. While this can be attributed to the challenges of setting up counties, there is need to implement measures to pre-empt counties heading in the same direction as CDF, where participation is not only tokenistic but also politically limited.

The CIDP process is in most counties the responsibility of the county executive and assembly members; this exposes the process to political manipulation by county assembly members. Counties must therefore avoid the development process being held hostage by political patronage.

There is also need for counties to put in place appropriate citizen monitoring mechanisms. One important intervention is to have a social audit framework that the citizens can use to undertake follow-ups for project implementation as well as the provision of services.

The role of the civil society is also important in holding county governments accountable. With bigger resources and greater powers, comes greater political influence. Citizens and the civil society must ensure that county governments do not fall into the same trap as the CDF, where political control becomes an instrument for perpetuating corruption; otherwise the country runs the risk of devolving corruption. The social audit process in CDF has demonstrated that public involvement in the demand for accountability can significantly reduce corruption and wastage of public resources. This intervention should be part and parcel of the county governments' establishment process as a preventive mechanism.

Finally, priority should be given to institutionalising adherence to procurement laws and regulations. This process requires high levels of awareness among citizens and the county government officers, so that citizens can scrutinize and hold county officers accountable with regard to the procurement process. As is the case with CDF, corruption largely lies in the procurement process both as a result of failure to adhere to the regulations, as well as the sheer ignorance of the laws and regulations.

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REPORT FROM THE SESSION: "SHARING EXPERIENCES OF DEVOLUTION: PRACTITIONER PERSPECTIVES"

Six persons shared their different experiences of devolution. They also discussed what the challenges are and provided recommendations for the process as it moves forward. Adiam Tedros from the S*wedish International Center for Local Democracy (ICLD)* chaired the session. Churchill Suba from the *National Civil Society Congress* stressed that public participation is a right according to the County Government Act. One of the main challenges is the lack of capacity of civil society organizations in the counties. Suba's recommendation to the civil society organizations in the counties is that they should form county-wide networks, which are much better at approaching the county governments than if they try to do it one by one. The county government don't know who NGOs represent or who they should talk too. Margaret Atieno Osogo from *Save the Destitute* in Homa Bay County shared experiences from her home county, especially regarding women and children. Women have the right to be part of the procurement processes and also to have a chance to get a contract but they are not given these opportunities. Also the children should be given more space and they need a voice in the counties. Alice Nekesa Wafula, a community development officer in the *Bogoma County government* told the audience about the progress that has been made in her county, especially in terms of infrastructure (e.g. in street lighting). The challenges to development in her county are, for example, corruption and citizen dissatisfaction. It is hard to satisfy everyone. There is also a need for capacity building. Gerry Nyongesa, a participant of the *Kinda-Kimilili Twinning Programme of ICLD*, also from Bungoma County, stressed that devolution has increased employment opportunities for men and youth but women have been left out. A lot of people do not understand what devolution is. His recommendation is that information about devolution should be spread to explain it. Florence Fulano Wekesa, a member of the county assembly in Bungoma County shared her experiences from working in the county assembly. The members of county assemblies meet with the local people in the wards. She also said her experience from being a councillor in the old system was different from the one as a member of the county assembly. Now, they have to be very transparent with what they are doing. She argued that devolution has brought power closer to the people. Before, everything happened in Nairobi and they had to go there, but now everything happens in the counties. There are also challenges including confusion about roles and responsibilities between the national and the county level and the relationship between the executive (the governor) and the assembly. As Wekesa describes it: 'We are supposed to have oversight over the governor. We are not friends, we are not enemies. We just need to work'. Her recommendation was, if possible, to make the executive understand the role of the members of the county assembly. Reginald Nalugala from the *Oxford Centre for Mission Studies* stressed the importance of studying the traditional 'African' system in relation to devolution.

The discussion that followed brought up a number of issues.

Media

- What is media's role in the devolution process? Mainstream media sometimes portrays a very negative image of what is happening in the counties. However, the county government should also provide its own perspective through TV stations and radio, which is mandated by the law.

Women's role

- Women are being discriminated against in the county assemblies. This group could do a lot if they were capacitated.

Role of members of county assemblies and the impeachment of governors

- There is disagreement among the participants on whether the members of county assemblies are making good or bad use of impeachments of governors. Some people argue that the members of the county assemblies are too powerful while others argue that they would like to see even stronger assemblies and more governors being impeached.

Rapporteur: Agnes Cornell

SHORT NOTE ON THE PLENARY SESSION

The plenary debate invited four speakers, from different professional backgrounds, to reflect on the themes and issues around devolution that had emerged over the course of the workshop. The speakers were Professor Winnie Mitullah from the *Institute for Development Studies, University of Nairobi;* Hamisi Mboga, Secretary General, *Association of County Governments of Kenya;* Professor Alfred Omenya, Associate Professor and Head of School, *TU-Kenya* and Principal Researcher and Architect, *Eco-Build Africa;* and Charles Warria, Capacity Development Manager, *Drivers of Accountability Programme,* Kenya. The debate was moderated by Dr Adiam Tedros, Programme Director, International Training Programme and Programme Director, Knowledge Center, *Swedish International Centre for Local Democracy.*

A number of key points were stressed by the speakers:

- Devolution is a process, and the institutions involved are in the middle of transition. In light of this, it is difficult to really assess devolution at this point and very important to be realistic about the pace of change achieved to date. In this regard, there was a disjuncture between the legal deadline for implementation and what was achievable, leading to unrealistic expectations among some.
- The danger of over-romanticising public participation was stressed by one speaker, arguing that not everyone needs to know the technical details of devolution. However, another speaker pointed out that devolution has achieved a significant shift in mindset among the general public, because politics has now shifted to the ward level away from constituencies.
- The role of the media was a controversial one: while some speakers felt the media have unfairly dwelled on the negative aspects of devolution, others felt that this is their responsibility and that county governments should do more to communicate what they are doing and what they have achieved.
- The importance of statutes and laws was emphasised. There are legal provisions about many aspects of devolution, but they are not fully understood and they are not being implemented.
- In administrative terms, an audit of functions is needed to clarify responsibility between central and county governments. This is necessary to clarify confusion and to enable funds to follow functions.
- Overall the panelists agreed that, while not diminishing the problems to be faced in converting the theory of devolution into practise, it is important to acknowledge the very significant achievement and the considerable investment of time and resources that has brought the process of devolution up to this point. Devolution has happened, now it is a case of getting it up and running.

When the discussion was opened up for responses from the floor, a number of points and perspectives were put forward:

- The issue of security was raised, and the problems in this area emerge from the fact that there is no clear designation of responsibilities between the central and county governments.
- A question was raised as to whether devolution really consists of devolving centralisation, rather than decentralisation. If this is the case, the danger is that the 'imperial' system of government will be replicated at the county level, with negative implications for development and democracy. Another speaker, echoing this point, emphasised that there is a challenge created by the fact that statecraft at the centre has emerged in a manner that is resistant to devolution.
- A number of speakers reiterated the need to have realistic expectations given the short time since devolution was implemented. They felt that many Kenyans are in fact very optimistic about devolution and its potential to deliver meaningful change.
- In relation to the media portrayal of devolution, some participants felt that the media has been very biased. Others stressed that there are legal provisions that enable county governments to set up their own media channels and present their own side of the story. However these provisions have not, up to this point, been utilised.
- The need to address urban spaces and the need for a one-stop-shop for research and knowledge on devolution were also raised by participants.

Rapporteur: Michelle D'Arcy

LIST OF PARTICIPANTS

Name	Organization
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Sebastian Gatimu	Institute for Security Studies
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Patricia Mande Nyaundi	Kenya National Commission on Human Rights
Kennedy Masime	Centre for Governance and Development (CGD) and National Taxpayers Association (NTA)
Hamisi Mboga	Association of County Governments, Kenya
Winnie Mittullah	Institute for Development Studies, University of Nairobi
Feisal Mohamed Awer	Strathmore Governance Centre
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Mike Mutungi	I Choose Life – Africa
Felesia Muyia-Odada	Act Change Transform (Act)
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