

THE TWO FACES OF DEVOLUTION

The devolution blunder



AFRICA | ASIA | AMERICA | EUROPE

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DEDICATION.

To the members of my beloved family, employees and leaders working under the devolution system in Kenya and beyond.

To fathers of devolution and those people in Kenya and worldwide, who have suffered or died while fighting for devolution.

To the freedom fighters of the second liberation which brought democracy and devolution.

I dedicate this book to you whole heartedly.

ACKNOWLEDGEMENT

To my heavenly Father for the abundance of grace, protection, gift of life and deep understanding.

My recognition and appreciation also go to my colleagues, the county council, town council and county government employees who have given me crucial information on matters of devolution.

I further acknowledge various devolution practitioners in Kenya who have inspired me to write this book through their passion to make devolution work.

Finally, to Destiny Ink Publishers Ltd. led by Amb. Eric Kyalo (commonly known as the Destiny pusher), I forever remain grateful for your timely, transparent, honest and reliable work that has given this book the quality it brags of. Your work has touched lives and is inspiring many to be who they are supposed to be. Keep moving!

INTRODUCTION

Motivation to write the book

I was motivated by the following reasons to write this book;

- To create awareness on the status of devolution in Kenya with a comparison to other countries in the world.
- Highlighting the weaknesses of devolution and recommending possible solutions.
- Raising points of concern on the dangerous route devolution is currently taking and strongly warning of the serious negative consequences.
- To contribute in finding solutions to the extreme challenges bedeviling devolution.
- To avail knowledge on devolution matters by recording durable information for the current and future generations.
- To provide vital information to students, researchers and policy makers to digest and come up with more interventions to save devolution from destruction.

Devolution is when a centralized governing power chooses to relinquish some power and authority to the

smaller governing regions within their power. Ever since the Garden of Eden, humankind has been constantly devolving, hence this practice is old as the creation. Devolution means that decision making is moved closer to the citizen and is democratic.

Due to resistance to change, lack of good will and critical resources devolution has become like a fluff, a blunder and an invented fumble. Local governments have been put in an awkward position by the chaotic lapse, misstep, stumble, mis-judgement and purposed backsliding by some players.

Devolution has been made to look like a silly mistake walked on a slippery ground, a grueling exercise and a useless laborious effort. Devolution has gone through a severe testing for all players who must now repent and pay keen attention for success.

The primary goal of devolution is to allow greater autonomy to local government units for more effective and efficient delivery of public services. It targets transfer of more power to local authorities and assist communities to respond to their unique challenges and opportunities for greater prosperity.

Proper funding of devolution and full transfer of critical functions by the central government is necessary for devolution to work and become meaningful to the citizens.

Devolution must protect and promote the interests and rights of minorities, marginalized communities and bring national harmony and integration. It must provide accountability channels which ensure that individuals are held responsible for their decisions and actions. It must also promote social and economic development, and provide easy access to government services throughout the country. Setting the leadership and integrity standards required of all public servants to comply is very necessary.

However, devolution in Kenya faces numerous challenges including very high cost, duplication of roles, mismanagement of funds, incomplete transition processes, very huge human resources and technical gaps, extreme fiscal challenges, exclusion and numerous terrible conflicts.

Other challenges which seriously frustrate and may kill devolution include low revenue collection, inequality,

youth unemployment, transparency and accountability issues and the vulnerability of the economy to internal and external shocks. Divisive politics, huge pending bills, entrenched impunity, ethnicity and a political intolerance culture are other risks. These make devolution lose its real original meaning and become a laughing stock.

Corruption issues in county offices have brought a big mess in Kenya. It is the biggest monster and the elephant in the room which has become the norm, lifestyle and part of life. It is in the blood stream of many county governments. In fact, corruption as an outright theft is the ‘emerging profession’ in Kenya and all over the world.

Sadly, more amplified corruption was devolved from national government from the year 2013 after transfer of power through devolution. Indeed, corruption seriously follows resources.

The reports of the Senate Public Accounts Committee, Controller of Budget and Auditor General (OAG) on the 47 County Governments outlines several areas of

risk including unprofessionalism, mismanagement, incompetence, lapses and malpractices which are based on illegalities and corruption. These are raising the red flag on the need to take urgent action to bring sanity and save the tax payers' money from further loss.

The areas questioning integrity sampled from the 47 counties are of transactions of approximately over Ksh.16 billion in just one financial year compared to Ksh. 286.8 billion received from the equitable share of revenue. This can be concluded shockingly that over 6% of county revenue either goes to waste or is stolen.

The darkest side of devolution provides some of the extremes practiced within the devolution system, which if not tackled, can kill devolution on one strike. These include stalled projects, irregular procurement, misappropriation of funds, unresolved prior years' audit issues which were based on impunity, non-compliance on the wage bill, non-remittance of payroll deductions, unutilized projects and non-compliance of the law on ethnic composition which adversely affects the national unity and integration. To be precise devolution has indeed strengthened tribalism.

Unremitted statutory deductions, abuse of office, irregular employment, top management doing business with counties, overpricing of goods and services and approving incomplete or ghost projects for payments are other problems observed.

Despite the tug of war between the counties and the national government devolution is still a milestone and a great spring board to faster development and cannot be reversed whatsoever. It can only be improved so that we can enjoy the fruits of development like many other nations of the world.

We must all resolve to acquire new energy, passion and resilience so as to regain the lost glory and bring together the entire army of stakeholders to work and achieve the much-sought prosperity in Kenya and world over.

CHAPTER 1:

HISTORICAL BACKGROUND INFORMATION ON DEVOLUTION

This chapter deals with definition, history of devolution in Kenya, disadvantages of centralization, allocation of funds per year to counties by National Treasury, rampant strikes by health workers, objectives of county government, forces of devolution, pillars of decentralization, structure of Kenyan government, devolution services in Kenya, features of devolution in Kenya, principles of devolved government, cooperation between national and county government, support for county government, conflict of laws, suspension of a county government, values and principles of public service, leadership and integrity, benefits of devolution, devolution in France, German Federal system, devolution in United Kingdom, devolution in USA, devolution in India, devolution in Australia, devolution in Nigeria and features of South African government.

Devolution refers to the process where regions within a state demand independence and autonomy at the central government's expense. A prime example of

devolution is when France's central government extended more power to the government in Corsica, a region of France, giving it more autonomy. It involves transferring powers from the central government to subnational levels like regions, departments and municipalities, fostering local democracy and bringing policy making closer to citizens. In other words, it is the transfer or delegation of power to a lower level.

Devolution is the proper distribution of State functions and powers amongst and between the three arms of government namely; the Legislature, Executive and Judiciary.

Devolution is not new and there have been different forms of devolution in the United Kingdom (UK) for decades and it is common in other parts of the world. The current form of devolution in the UK date back to the late 1990s.

Examples of devolution are the powers granted to the Scottish Parliament, the National Assembly for Wales, the Northern Ireland Assembly and to the Greater London and Local Authorities.

Decentralization means to hand over political, financial and administrative authority from central to local (district/city) governments, so that the government can facilitate and guarantee better public services for the people. Those powers can be taken away with or sometimes without notice. Decentralization can be defined as the relocation of administrative functions away from a central location, and devolution is the relocation of power away from a central location.

The primary goal of devolution is to allow greater autonomy to local government units, which can lead to more effective and efficient delivery of public services. By transferring powers and responsibilities to local authorities, communities gain the ability to respond to their unique challenges and opportunities.

History of Devolution in Kenya

In the 1990s, devolution was one of the objectives of the Safari Park National Conferences. The Constitutional of Kenya Review Commission (CKRC) took up the matter during the process of the Constitution of Kenya Review Act (2000).

As the CRCK involved the people in the drafting process the issues that emerged included pledges to work with government, sought recognition against concentration of power in state (primarily the president). Most of the decision making was away from people and did not mirror the realities at the grassroots. Some areas felt neglected, marginalized and deprived of the local resources (what was rightfully theirs).

Local governments had fewer financial resources and authority to ensure equal distribution of power. People complained about dealing with dilapidated public resources and infrastructure including roads and hospitals which impeded economic growth. Lack of diversity in the systems of government (minority communities had little or no representation). Victimization due to political affiliations; if an area did not support the government of the time, they did not receive any attention.

The Bomas delegates okayed the proposal on devolution, but at the time it failed to get to the implementation stage. The government of the time

went with the Wako draft that favored the provincial administration system. Nevertheless, the people rejected the Wako Draft during the 2005 referendum.

The High Court okayed the appointment of panel to recruit electoral body's commissioners. Kenya went back to the drawing board, and the Committee of Experts included devolution in the draft constitution of 2010. The difference between the CRCK and Committee of experts' proposal was on the levels of governance and the number of devolved units.

The creation of the 47 counties came from the 46 Districts, and Nairobi Area stated in the District and Provinces Act of 1992. Chapter 11 of the 2010 Constitution breaks down the aspects of devolution which are as follows;

- Administration where the county executive committee led by the governor undertakes all administrative duties.
- Political element where the county assembly which constitutes elected and nominated members of the county. Its functioning is not similar to that of the

defunct local government but was given more powers, responsibility and resources.

- Fiscal devolution where the Public Finance Management Act outlines sharing of revenues and other financial resources between the national and devolved governments' services: The Fourth Schedule of the Constitution lists functions of the national and county government.
- Public participation: The people are legally part of the decision-making process at the county level.

Devolution has not only transformed the structure of government but has also essentially altered the political scene in Kenya. The country has witnessed a gradual but comprehensive transfer of power, responsibilities and resources from the central government to local governments. Decentralization has also appeared in the form of devolution of major functional responsibilities such primary education, health, water and sanitation and rural feeder roads from the central to local governments.

However, resource mobilization locally to generate resources is lacking due to the poor funding of devolution services from the central government. For

devolution to succeed, it is recommended that training, empowerment and mobilization of resources should be encouraged by the authorities. Systems should be established at local level to ensure that devolved services reach the ordinary citizens.

Before devolution, the local government system in Kenya was about municipal, town, urban, area and county councils assisting the central government in delivery of public services which included health, primary school education, markets, street lights, housing, social services, burial sites, games, entertainment, minor roads and bridges as indicated in the book 'Our Government' by Thomas Mulusa (1970).

Also, the councils had the powers to levy taxes and make By-laws. The need became necessary because the central government based in Nairobi found it complicated to provide the numerous services to the people. However, the central government took over the responsibility from the councils when they became unable to provide the services because the ultimate responsibility rested with the central government.

In his book ‘Government and Politics in Kenya’ C.J. Gertzel et al (1969) provides the four streams of local administration in Kenya as follows;

- Six (6) largest towns as municipalities.
- Seven (7) county councils.
- 33 African District Councils (ADC) made up of several districts.
- Townships which mainly handled sanitation services overseen by the District Commissioner together with the locations, divisions and districts.

In the book ‘Governance and Transitional Politics in Kenya’ by Peter Wanyande et al (2007) they identified the control and allocation of resources as the fundamentals of political transitions. They say disputes over the distribution and ownership of resources was the main cause of political transitions.

Governance issues

The writers add that governance issues were determined by the following;

- Representation

- Accountability
- Respect for rules and ethical standards.
- Distribution of resources.
- Socio-economic prosperity.
- Moderation of political and social relations.

In his book, *Kenya African Nationalism*, the second President of Kenya, Daniel Toroitich Arap Moi (1986), says leadership exists to ensure communities access resources to promote unity, cohesion and prosperity.

Peter Wallensteen (2012) in his book, ‘Understanding Conflict Management’, says the main solutions to conflicts include legal backed access to resources, human rights, political and administrative representation (democracy).

Tarsis B. Kabwegyere in his book, *People’s Choice, People’s Power* (2000) says lack of participatory democracy cause conflicts and instability which bring military take overs in Africa. He says there is need to overhaul the form of local governance so as to promote participation, bring power and services closer to the

people and empower local governments with reasonable financial and human resources.

Disadvantages of centralization and concentration of power

Kabwegyere (2000) outlines the following as the disadvantages of centralization and concentration of power at the center;

- Fails to promote national development.
- Stifles local initiatives.
- Ignores local consensus.
- Makes the government far from the people.
- Makes people feel sidelined and are forced to go to the headquarters for every service.
- It undermines national unity by failing to take account of diversity.
- Absence of important institutional checks on authoritarian tendencies of the center.
- Making the local administration a source of patronage to those in power at the center thereby destroying the local administration capacity.

- Destroying the accountability of civil service at the local levels.
- Destroying the financial capacity of the local administration to serve their people.
- Increases tensions and conflicts due to imbalance in development.

D.W. Edington in his book, ‘The Theory and Practice of Government’ (1968), he explains about a federation which represents a compromise between the need for a strong central government in order to give the smaller units economic and strategic viability and the determination of separate states to retain as many of their rights as possible. By joining a federation, the states have to agree to surrender certain aspects of their sovereignty but they must protect their most important rights. Each federation has to work out for itself the difficult balance of power between the federal legislature and the regions or states.

Edington (1968) says that the division of power between the central government and federal states is often a very difficult task to work out in detail but the most basic principles which must be adhered to are;

- A written constitution.
- A supreme court.
- A machinery for alteration of the constitution.
- Having a second parliamentary chamber to defend the states i.e. senate.

Allocation of funds per year to counties by National Treasury

S/No.	Year	Allocation
1	2012-2013	107 billion
2	2013-2014	190 billion
3	2014-2015	227 billion
4	2015-2016	260 billion
5	2016-2017	280 billion
6	2017-2018	302 billion
7	2018-2019	314 billion
8	2019-2020	317 billion
9	2020-2021	317 billion
10	2021-2022	370 billion
11	2022-2023	370 billion
12	2023-2024	385 billion

13	2024-2025	387 billion
	Total	3826 billion

Source: National Treasury

NB: Even with this huge funding many counties have little or nothing tangible to show apart from paying staff salaries and per diem allowances (daily subsistence allowances).

Since the inception of devolution in 2013 in Kenya, the counties have bemoaned a cash crunch and governors frequently threatened to shut down services. The erratic cash releases from National Treasury, low revenue collection, massive financial wastage and wanton graft have condemned counties to perpetual penury.

On 21st March, 2025 the Council of Governors issued a 14-day ultimatum to the national government, threatening a total shutdown of county operations over funding cuts amounting to 38 billion shillings if the diversion of funds and delay in disbursement is not reversed.

According to county leaders, a significant portion of these funds are conditional grants from development partners, initially earmarked for critical projects but later diverted during the passage of the County Government's Additional Allocations Bill, 2025. Governors are also demanding the immediate release of the 78 billion shillings County Equitable Share, which has been in arrears for the past three months.

The Council of Governors (COG) has yet again faulted the national government over what it terms as deliberate efforts to kill devolution. The COG took issue with a reduction in their allocations by 38.4 billion that they say has been moved to the National government. Addressing the media CoG Vice Chair Mutahi Kahiga said the deductions will paralyze operations devolved to counties. Kahiga also noted that some counties have not received any monies from the exchequer since January 2025 as the equitable share runs in arrears further suppressing essential services.

Annually the Council of Governors holds a Devolution Conference which is Kenya's premier governance forum that brings together thought leaders,

policymakers, practitioners, development partners, private sector, academia and *mwanaanchi* to engage in meaningful discussions on devolution in Kenya and to chart the way forward. It reminds that devolution is not just a system of governance but an opportunity to offer equitable and inclusive service delivery for all citizens.

Of importance, the Conference offers an exceptional opportunity for delegates to network with key stakeholders; exchange best practices and contribute to policy recommendations that will shape the next phase of devolution. It is where County Governments pledge their commitment to strengthen devolution in Kenya.

The Council of Governors (COG) is a non-partisan organization established under Section 19 of the Intergovernmental Relations Act (IGRA 2012) and consists of Governors from 47 County Governments. Its mandate is to provide a mechanism for consultation amongst County Governments, share information on the performance of the counties in the execution of their functions, facilitate capacity building for Governors and consider reports from other intergovernmental forums on National and County interests, among other functions.

The Siaya Governor, James Orengo, once said devolution was on trial and under serious threat while the former Prime minister, Raila Odinga, said the Constituency development fund (CDF) should be abolished and its fund be transferred to counties because they were implementing county projects e.g Road Maintenance Levy Fund (RMLF) roads. The former premier wondered how can one implement projects and oversight at the same time. He also said youth and women funds should also be sent to counties to have an impact instead of spreading them too thinly. Earlier the Judiciary had ruled that CDF was legally a contradiction of devolution hence violation of the constitution.



48 Governments 1 Nation



Council of Governors (COG) Chairperson and Wajir Governor H.E FCPA Ahmed Abdullahi

Devolution has gone a great journey in Kenya. It is a journey of change, transformation, progress, empowerment, resilience, innovation, inclusivity and growth, challenges notwithstanding.

During the 11th Summit, H.E Ahmed Abdullahi EGH, Chair of the Council of Governors, underscored the importance of urgently addressing critical issues. These include; the gazettment and transfer of unbundled county functions alongside their resources, finalizing the long-standing valuation of assets from defunct local authorities and revitalizing sector forums to streamline national discussions.

It was mutually agreed that all the unbundled devolved functions pending transfer shall be gazetted by 16th December, 2024. Further, the corresponding resources related to those functions shall be transferred to County Governments commencing July, 2025.

Furthermore, the National Treasury shall disburse all pending equitable share allocation monthly disbursement for November, 2024 to the 47 County Governments.

Devolution remains the cornerstone of sustainable, bottom-up development, bringing governance and progress closer to the people.



Anne Waiguru, former CoG Chairperson.

Governors have rejected the National Treasury's plan to reduce the equitable share allocated to devolved units in the 2024/2025 financial year by Ksh. 5 billion, noting that it undermines the spirit of devolution and is a threat to effective service delivery to Kenyans.

Addressing a press following a Council meeting held on Friday, 21st June 2024 at the CoG offices in Nairobi, Council of Governors (CoG) Chair H.E. Anne Waiguru cited Section 5 (1) of the Division of Revenue Act (DoRA) 2024, which stipulates that any shortfall in nationally raised revenue should be borne by the national government, not counties.

“We wish to state unequivocally that the Council rejects this proposal in totality,” said the Kirinyaga governor.

She further urged the exchequer to expedite the timely release of outstanding disbursements to Counties for the month of June, 2024 amounting to Ksh. 30.83 billion to enable the devolved units meet their obligations, especially in healthcare and payment of salaries for county staff.

The Council meeting was convened to discuss key issues affecting County Governments including claw back on devolution and the roll out of Universal Health Coverage (UHC).

Speaking during the engagement with Governors Health Cabinet Secretary, Susan Nakhumicha said that preparation for the rollout of Social Health Insurance Fund (SHIF) was to commence on July 1st 2024 with registration of persons.

The county bosses also stressed the need to settle debts owed for a smooth transition, particularly with outstanding bills at Kenya Medical Supplies Authority

(Kemsa), which they said requires a resolution by the National Government.

On claw back on devolution in devolved sectors, Governor Waiguru highlighted the recent notice issued by the Water Services Regulatory Board (WASREB) for a public consultation meeting regarding the licensing of Athi Water Works Development Agency as a Water Service Provider for the Northern Collector Tunnel (NTC).

“This conflicts with Nairobi County’s constitutional mandate to provide water and sanitation services,” she said while calling upon WASREB and the Ministry of Water to immediately suspend the public participation process until all constitutional and statutory concerns are addressed.

Additionally, governors urged the National Government to fast track the gazettment of transferred functions following the conclusion of the exercise of unbundling of functions and transfer of attendant resources and stakeholder engagement process in March, 2024. This will enable Counties to ensure the smooth running of operations and safeguard the gains made in devolution so far.



H.E Mutahi Kahiga, EGH, Nyeri County, COG Vice-chairperson

Rampant Strikes by Health Workers

There have been very rampant strikes by Health workers in Kenya due to many unresolved challenges by the county and national governments touching on the welfare of the staff.



The Kenya Union of Clinical Officers (KUCO) officially called off their ninety-nine-day strike on 8th July, 2024 and instructed all members to return to their workstations. This development followed the signing of a Return-to-Work Formula agreement between the workers' union and the Council of Governors (CoG).

“We have been on strike and by virtue of signing this agreement, we are officially declaring that our strike has come to an end. Our members shall resume duty in their respective places of work starting today and not later than 24 hours,” stated KUCO Secretary General George Gibore.

The signing and formalization of the agreement was attended by CoG Vice Chairperson H.E Ahmed

Abdullahi, Chairperson of the CoG Health Committee H.E Muthomi Njuki and KUCO leadership led by their National Chairman Peterson Wachira.

The clinical officers' strike began on April 1, 2024, a situation which greatly affected the operations of health facilities in the country. KUCO members had withdrawn their services to demand the conclusion of negotiations for a new Collective Bargaining Agreement (CBA), employment on permanent basis and pensionable terms, promotion of officers, employment of new officers and the posting of clinical officer interns.



Kenya's President H.E. William Ruto addressing a devolution meeting



Kenya's President H.E. William Ruto gracing the annual Turkana cultural event, Tobong'u Lore.

Turkana County is home to one of Kenya's most distinct ethnic groups, the Turkana people. They are known for their resilience, deep-rooted traditions and rich heritage. They have maintained a unique cultural identity for generations. Celebrating this legacy, the annual Turkana Cultural Festival, also called *Tobong'u Lore*, has become one of Kenya's most anticipated events, drawing attendees from all over the world.

This festival showcases Turkana customs, music, dance, and art while promoting peace and unity across diverse communities in the region. On October 24th – 26th, 2024, Turkana County held its 8th Turkana Tourism and Cultural Festival, *Tobong'u Lore*, themed “Celebrating our culture to promote tourism, peaceful

coexistence, and climate resilience for sustainable development.”

This event was attended by President William Ruto, Chair Council of Governors (CoG); H.E. Ahmed Abdullahi, CoG Vice Chair; H.E. Mutahi Kahiga, Host Governor; H.E. Jeremiah Lomorukai, and other dignitaries.

During the event, President Ruto declared the festival a global event, encouraging international tourists to visit Kenya visa-free.

The attending governors urged the national government to promote cultural tourism in all regions, enhancing traditional tourism alongside coastal and safari attractions. Council of Governors Chair, Ahmed Abdullahi, emphasized that *Tobong’u Lore* attracts similar language-speaking communities from neighboring East African countries, underscoring its potential for international unity.

Objectives of devolution

Below are the objectives of devolution;

- Promoting the democratic and accountable exercise of power.
- Enhancing popular participation in the exercise of the powers of the state and in decision-making that affects citizens.
- Protecting and promoting the interests and rights of minorities and marginalized communities.
- To provide democratic and accountable government for local communities.
- To ensure the provision of services to communities in a sustainable manner.
- To promote social and economic development.
- To promote a safe and healthy environment.

Forces that lead to devolution.

The forces that may lead to devolution in a country include the following:

- Cultural factors.
- Competitive environment.

- Need for faster decision-making and adaptation.
- Physical geography.
- Ethnic separatism.
- Insecurity and terrorism.
- Economic and social problems.
- Democratic involvement.
- Irredentism (incorporation on historical or ethnic considerations).

Pillars of decentralization

The three pillars of decentralization are as follows;

- Authority which is delegated to lower levels.
- Responsibility which is assigned to those who have the authority.
- Accountability which ensures that individuals are held responsible for their decisions and actions.

Forms of decentralization

Below are the forms of decentralization;

- Deconcentration.
- Delegation.
- Devolution.

Difference between decentralization and devolution.

Decentralization can be defined as the relocation of administrative functions away from a central location, and devolution as the relocation of power away from a central location.

Types of decentralization?

These are the four types of decentralization;

- Political.
- Administrative.
- Fiscal.
- Market decentralization.

An example of deconcentration

Deconcentration may be based on function. For example, when an independent service unit is created by the central administration or have a geographical basis and when a degree of decision-making capacity is granted to various administrative units across a given territory, (Gélinas, 1975).

Disadvantages of decentralization

- Higher Costs: It can entail higher costs due to the duplication of resources and efforts.
- It can be harder to save costs and share resources in decentralized systems.
- Organizations need to allocate resources for decentralized decision-making processes and technology, which could incur additional expenses.

Structure of Kenyan government

- The current structure of government allows power to be held on two levels: The national level and the county level.

- The country is a representative democracy legislatively, and a direct democracy in the election of its president, who is leader of the Executive branch of government.
- The politics of Kenya take place in a framework of a presidential republic, whereby the president is both head of state and head of government, and of a multi-party system in accordance with the constitution passed in 2010.

Services devolved in Kenya

The following services are devolved in Kenya;

- County transport.
- Cultural activities.
- Public entertainment.
- Public amenities.
- Animal control and welfare.
- Trade development and regulation.
- County planning.
- Vocational/village polytechnics.
- Home-craft centers.
- Childcare facilities.
- Agriculture.

- County health services
- County public works and services.
- Natural resources and environmental conservation.
- Early childhood education.

NB: There are 47 Counties in Kenya as indicated in Appendix 1 annexed.

Features of devolution in Kenya.

Objects of devolution.

The objects of devolution in accordance with Article 174 the Kenya Constitution 2010 are as indicated;

- a) To promote democratic and accountable exercise of power;
- b) To foster national unity by recognizing diversity;
- c) 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;
- d) To recognise the right of communities to manage their own affairs and to further their development;

- e) To protect and promote the interests and rights of minorities and marginalised communities;
- f) To promote social and economic development and the provision of proximate, easily accessible services throughout Kenya;
- g) To ensure equitable sharing of national and local resources throughout Kenya;
- h) To facilitate the decentralisation of State organs, their functions and services, from the capital of Kenya; and
- i) To enhance checks and balances and the separation of powers.

Principles of devolved government.

The principles of devolved government in accordance with Article 175 of the Kenya Constitution 2010 are as indicated below;

- a) County governments shall be based on democratic principles and the separation of powers;

- b) County governments shall have reliable sources of revenue to enable them to govern and deliver services effectively; and
- c) No more than two-thirds of the members of representative bodies in each county government shall be of the same gender.

County governments.

County governments are established in accordance with Article 176 of the Kenya Constitution 2010 as indicated below;

- a) There shall be a county government for each county, consisting of a county assembly and a county executive.
- b) Every county government shall decentralise its functions and the provision of its services to the extent that it is efficient and practicable to do so.

Cooperation between County and national governments.

Article 189 of the Kenya Constitution 2010 dwells on harmonious relationship between the two levels of government as shown below;

1. Government at either level shall;
 - (a) Perform its functions, and exercise its powers, in a manner that respects the functional and institutional integrity of government at the other level, and respects the constitutional status and institutions of government at the other level and, in the case of county government, within the county level;
 - (b) Assist, support and consult and, as appropriate, implement the legislation of the other level of government; and
 - (c) Liaise with government at the other level for the purpose of exchanging information, coordinating policies and administration, and enhancing capacity.
2. Government at each level and different governments at the county level, shall co-operate in the performance of functions and exercise of powers and, for that purpose, may set up joint committees and joint authorities.

3. In any dispute between governments, the governments shall make every reasonable effort to settle the dispute, including by means of procedures provided under national legislation.
4. National legislation shall provide procedures for settling inter-governmental disputes by alternative dispute resolution mechanisms; including negotiation, mediation and arbitration.

Support for county governments.

Article 190 of the Kenya Constitution 2010 dwells on support for county governments as shown below;

- a) (1) Parliament shall by legislation ensure that county governments have adequate support to enable them to perform their functions.
- b) (2) County governments shall operate financial management systems that comply with any requirements prescribed by national legislation.
- c) (3) Parliament shall, by legislation, provide for intervention by the national government if a county government—
 - d) is unable to perform its functions; or
 - e) does not operate a financial management system

that complies with the requirements prescribed by national legislation.

- f) (4) Legislation under clause (3) may, in particular, authorise the national government—
- g) to take appropriate steps to ensure that the county government's functions are performed and that it operates a financial management system that complies with the prescribed requirements.

Conflict of laws

Article 191 of the Kenya Constitution 2010 dwells on Conflict of laws as shown below;

- a) National legislation prevails over county legislation if— the national legislation applies uniformly throughout Kenya and any of the conditions specified in clause (3) is satisfied; or the national legislation is aimed at preventing unreasonable action by a county that —
 - i. is prejudicial to the economic, health or security interests of Kenya or another county; or
 - ii. impedes the implementation of national economic policy.

- b) (3) The following are the conditions referred to in clause (2) (a)—
- c) the national legislation provides for a matter that cannot be regulated effectively by legislation enacted by the individual counties;
- d) the national legislation provides for a matter that, to be dealt with effectively, requires uniformity across the nation, and the national legislation provides that uniformity by establishing—
- i. norms and standards; or
 - ii. national policies; or
- e) the national legislation is necessary for—
- i. the maintenance of national security;
 - ii. the maintenance of economic unity;
 - iii. the protection of the common market in respect of the mobility of goods, services, capital and labour;
 - iv. the promotion of economic activities across county boundaries;
 - v. the promotion of equal opportunity or equal

access to government services; or

vi. the protection of the environment.

f) (4) County legislation prevails over national legislation if neither of the circumstances contemplated in clause (2) apply.

g) (5) In considering an apparent conflict between legislation of different levels of government, a court shall prefer a reasonable interpretation of the legislation that avoids a conflict to an alternative interpretation that results in conflict.

Suspension of a county government.

Article 192 of the Kenya Constitution 2010 dwells on suspension of a county government as shown below;

a) The President may suspend a county government—

b) in an emergency arising out of internal conflict or war; or

c) in any other exceptional circumstances.

d) (2) A county government shall not be suspended under clause (1) (b) unless an independent

commission of inquiry has investigated allegations against the county government, the President is satisfied that the allegations are justified and the Senate has authorised the suspension.

e) (3) During a suspension under this Article, arrangements shall be made for the performance of the functions of a county government in accordance with an Act of Parliament.

f) (4) The Senate may at any time terminate the suspension.

g) (5) A suspension under this Article shall not extend beyond a period of ninety (90) days.

h) (6) On the expiry of the period provided for under clause (5), elections for the relevant county government shall be held.



Kenya's Deputy President, Prof Kithure Kindiki during a meeting with County Governors.

Values and principles of Public Service.

Chapter 13, Article 232 of the Kenya Constitution 2010 dwells on values and principles of public service required of all public servants to comply for good governance as shown below;

- a) High standards of professional ethics;
- b) Efficient, effective and economic use of resources;
- c) Responsive, prompt, effective, impartial and equitable provision of services;

- d) Involvement of the people in the process of policy making;
- e) Accountability for administrative acts;
- f) Transparency and provision to the public of timely, accurate information;
- g) Subject to paragraphs (h) and (i), fair competition and merit as the basis of appointments and promotions;
- h) Representation of Kenya's diverse communities; and
- i) Affording adequate and equal opportunities for appointment, training and advancement, at all levels of the public service, of—
 - j) Men and women;
 - (ii) The members of all ethnic groups; and
 - (iii) Persons with disabilities.
- k) (2) The values and principles of public service apply to public service in—
- l) All State organs in both levels of government; and

m) All State corporations.

NB: There is still a huge gap in regard to the implementation of these values.

Leadership and Integrity

Chapter 6, Article 73 of the Kenya Constitution 2010 dwells on leadership and integrity required of all public servants to comply as shown below;

- a) (1) Authority assigned to a state officer is a public trust to be exercised in a manner that;
 - i. Is consistent with the purposes and objects of this Constitution;
 - ii. Demonstrates respect for the people;
 - iii. Brings honour to the nation and dignity to the office; and
 - iv. Promotes public confidence in the integrity of the office; and
- b) Vests in the State officer the responsibility to serve the people, rather than the power to rule them.

- c) (2) The guiding principles of leadership and integrity include;
 - i) Selection on the basis of personal integrity, competence and suitability, or election in free and fair elections;
 - ii) Objectivity and impartiality in decision making, and in ensuring that decisions are not influenced by nepotism, favouritism, other improper motives or corrupt practices;
- d) Selfless service based solely on the public interest, demonstrated by;
 - i. Honesty in the execution of public duties; and
 - ii. The declaration of any personal interest that may conflict with public duties;
- e) Accountability to the public for decisions and actions; and
- f) Discipline and commitment in service to the people.

Oath of office of State officers.

Before assuming a State office, acting in a State office, or performing any functions of a State office, a person shall take and subscribe the oath or affirmation of office, in the manner and form prescribed by the Third Schedule or under an Act of Parliament.

Conduct of State officers.

A State officer shall behave, whether in public and official life, in private life, or in association with other persons, in a manner that avoids;

- i. Any conflict between personal interests and public or official duties;
- ii. Compromising any public or official interest in favour of a personal interest; or
- iii. Demeaning the office the officer holds.

g) Financial probity of State officers.

A gift or donation to a State officer on a public or official occasion is a gift or donation to the Republic and shall be delivered to the State unless exempted under an Act of Parliament.

h) A State officer shall not;

(i) Maintain a bank account outside Kenya except in accordance with an Act of Parliament; or

(ii) Seek or accept a personal loan or benefit in circumstances that compromise the integrity of the State officer.

i) Restriction on activities of State officers.

A full-time State officer shall not participate in any other gainful employment.

j) Any appointed State officer shall not hold office in a political party.

k) A retired State officer who is receiving a pension from public funds shall not hold more than two concurrent remunerative positions as chairperson, director or employee of;

i) A company owned or controlled by the State; or

ii) A State organ.

NB: There is also still a huge gap in regard to the implementation of the leadership and integrity.

The Benefits of Devolution in Kenya

Devolution has many benefits as indicted below;

a) Supports Economic and Social Growth

It is easier to achieve growth both at national and county development. As county headquarters and centers develop, new opportunities for employment and investments arise paving the way for more significant progress. Currently, county governments are implementing growth strategies that aim at improving the living standards of its people.

b) Equitable Distribution of Resources.

In a centralized system most of the resources are based in major urban centers and cities. But with devolution, each county has equal chances of growth as the share of resources is equal.

c) Diversity and Inclusion

Today, all people including the marginalized and minorities can reap the benefits of self-governance and manage their development and affairs.

d) National Unity

By reducing the power of the central government and distributing it equally among the counties, the devolved systems will achieve national unity.

e) Democracy and Accountability

People at the grassroots get to choose their leaders and directly participate in decision-making processes hence making room for accountability and democracy.

f) Informed Decision Making

Decisions made at county level focus more on the local needs.

g) Public participation.

Participation helps bring disengaged citizens back into the democratic process. Effective engagement in devolution can help to reverse the trend of decline in democratic involvement.

Disadvantages of devolution

Devolution has numerous disadvantages as shown below;

a) Administrative complexity.

Devolution can lead to increased administrative complexity and duplication of efforts. Multiple layers of government can result in inefficiencies and higher administrative costs.

b) Coordination challenges.

Coordination between central and regional governments can be challenging. Differences in policies and priorities can lead to conflicts and inconsistencies, potentially undermining national cohesion and effective governance.

c) Political Fragmentation.

Devolution can lead to political fragmentation, where regional interests take precedence over national unity. This can weaken the central government's ability to implement nationwide policies and creates a fragmented political landscape.

d) Resource allocation conflicts

Conflicts over resource allocation and funding can arise between central and regional governments. Disputes over financial arrangements and revenue sharing can strain relationships and hinder effective governance.

e) Limited expertise.

Regional governments may lack the expertise and experience to manage certain functions effectively, particularly in specialised areas such as healthcare or large-scale infrastructure projects. This can lead to inefficiencies and sub-optimal outcomes.

f) Potential for Corruption

Increased autonomy and control over resources at the regional level can create opportunities for corruption and mismanagement. Without strong oversight mechanisms, devolved governments might be prone to local elites exploiting their positions.

g) Governance Disparities

Different regions may have varying levels of governance quality, leading to disparities in public service delivery and economic development. This can result in unequal opportunities and outcomes for citizens in different parts of the country.

h) National Identity Tensions

Devolution can sometimes fuel separatist sentiments and tensions related to national identity. Regions with distinct cultural or historical identities might push for greater radical autonomy or even independence, hence challenging national unity.

i) Funding Issues

Devolved governments often rely on central government funding, which can lead to laziness, dependency and uncertainty. Regional governments might face financial instability if central funding is reduced or if they lack sufficient revenue-raising powers.

j) Inequality Between Regions

It has the potential for inequality between regions. Wealthier regions might prosper more than poorer ones, exacerbating economic and social disparities within the country.

NB: Devolved governments offer numerous advantages and challenges at the same time, hence there is need for greater visionary wisdom and proper balancing to escape the potential messes.

Inequality Challenge

In terms of resources and economic contribution, Nairobi County is considered the richest in Kenya, with a Gross County Product (GCP) per capita of Ksh 802,344, followed by Mombasa and Nakuru.

- **Nairobi County:**

- Leads with the highest GCP per capita (Ksh 802,344).
- Contributes significantly to Kenya's national wealth, with a 27.5% contribution to the total gross value added (GVA) in 2023.

- Is a major economic and innovation hub in East Africa, often referred to as the "Silicon Savannah."
- Boasts a robust economy fueled by various sectors, including real estate and financial services.

Other Notable Counties:

- **Mombasa County:** Follows Nairobi with a GCP per capita of Ksh 507,337.
- **Nakuru County:** has a high GCP per capita (Ksh 334,667).
- **Nyeri County:** has a GCP per capita of Ksh 317,459.
- **Lamu County:** has a GCP per capita of Ksh 304,024.

Resources and Economic Activities:

- Nairobi dominates other counties in manufacturing and services.
- Kiambu, Nakuru, and Meru have a mix of manufacturing and agricultural output.

- Agriculture remains a key driver of growth in most counties, except for Nairobi and Mombasa.
- Counties like Nakuru, Kiambu, Meru, Bungoma, Kakamega and Nyeri have recorded robust growth powered by agriculture and the services sectors.

Key Aspects of Devolution in France

Below are the key aspects of devolution in France;

- **Historical Context:**

Although France initially had a highly centralized administration, local government powers have been extended by legislation since the 19th century, with notable steps taken in 1871 and 1884.

- **Subnational Levels:**

France has three sub-levels of governance: Regions (régions), Departments (départements), and Municipalities (communes).

- **No Legislative Powers:**

These subnational levels do not have legislative powers; they exercise their functions through regulations and budget execution.

- **Decentralization as a Policy:**

The policy of decentralization was initiated by acts of the French Parliament, known as the Gaston Defferre laws in 1982.

- **Bringing Policy-Making Closer to Citizens:**

Decentralization fosters the emergence of local democracy by bringing policy-making closer to citizens.

- **Evolution of Local Governance:**

The powers of local governments have been extended by legislation since the 19th century.

Germany's federal system

In Germany's federal system, devolution, or the transfer of powers from the federal government to the 16 Länder (states), is a key feature, with the Länder exercising primary state powers unless otherwise specified by the Basic Law, and municipalities falling under the Länder's jurisdiction.

1. Institutional Basis:

- The German Basic Law (Constitution) establishes the principle that the Länder have primary responsibility for exercising state powers and discharging state functions unless otherwise specified by the Basic Law itself.
- This principle of federalism ensures that the Länder have significant autonomy in their affairs.

2. Division of Powers:

• Federal Government (Bund):

The federal government retains responsibility for areas like defense, foreign affairs, citizenship, immigration, currency, federal transport, and postal/ telecommunication services.

- **Länder (States):**

The Länder are responsible for areas such as culture, education, law and order, environmental and health policies, and regional economic policy.

- **Shared Powers:**

The federal and state governments share concurrent powers in areas like business law, civil law, welfare, taxation, consumer protection, public holidays, and public health.

3. Local Government:

- **Two-Tier Structure:**

Germany's local government structure consists of 107 single-tier county-free municipalities (kreisfreie Städte) and 294 upper-tier counties (Kreise).

- **Local Authority Responsibilities:**

Local authorities carry out a significant portion of all implementation-requiring legal provisions, including

those originating from the European Union (EU), and handle a large share of public (infrastructural) investments.

- **Municipalities:**

Municipalities (Gemeinden) have considerable autonomy and responsibility in the administration of schools, hospitals, housing, social welfare, public services and cultural amenities.

4. Fiscal Decentralization:

- **Tax Sharing:**

The tax revenues accruing to the Länder are largely dependent on federal laws and the tax-sharing regime divides revenues from major taxes between the Bund and Länder.

- **Local Taxes:**

Local governments have the ability to levy local taxes, such as local business tax and property tax, and they also receive a share of value-added tax and personal income tax.

5. Bundesrat (Federal Council):

- The Bundesrat, which represents the interests of the Länder in federal legislation, plays a crucial role in the federal legislative process.
- The Bundesrat's participation in federal legislation is justified by the fact that almost all federal laws must be executed by the Länder in their own right and at their own expense.

Devolution in United Kingdom

Devolution is about how parliaments and governments make decisions. Across the UK there are four different legislatures and executives, each with a different range of powers.

Devolved matters are the areas of public policy where the Parliament of the United Kingdom has devolved its legislative power to the national legislatures of Scotland, Wales and Northern Ireland, while reserved and excepted matters are the areas where the UK Parliament retains exclusive.

Features of the state government in USA

All state governments are modeled after the federal government and consist of three branches: executive, legislative and judicial. The U.S. Constitution mandates that all states uphold a "republican form" of government, although the three-branch structure is not required. The four characteristics of a state in the United States are territory, population, government, and sovereignty.

Territory means that the state has distinct and well-defined borders. Population means that the state contains people.

Devolution in India

Devolution in India, the transfer of power and resources from the central government to state and local levels, is characterized by constitutional provisions, statutory laws, fiscal decentralization, administrative decentralization and constitutional amendments aiming for greater local self-governance and participation.

India is a Sovereign Socialist Secular Democratic Republic with a Parliamentary form of government

which is federal in structure with unitary features. There is a Council of Ministers with the Prime Minister as its head to advise the President who is the constitutional head of the country.

Devolution in Australia

- In Australia, devolution refers to the transfer of power and responsibility from the federal government to state and territory governments, a system that's been in place since the country's founding as a federation.
- Australia is a federation and has six states and two territories with less power than states.
- The Australian Capital Territory refused self-government in a 1978 referendum, but was given limited self-government by a House of Assembly from 1979, and a Legislative Assembly with wider powers in 1988.

Below are the key features of devolution in Australia:

1. Federal Structure as a Foundation:

- Australia is a federation, meaning power is constitutionally shared between the federal government and the six states and two territories.
- This contrasts with a unitary system where power is concentrated at the national level.
- The Australian Constitution outlines the powers of the federal and state parliaments.

2. State and Territory Autonomy:

- State and territory governments have considerable autonomy in areas like education, health and infrastructure.
- They have their own parliaments, elected officials and legislative processes.
- Territory legislation can be disallowed by the Commonwealth Parliament.

3. Areas of Shared Responsibility:

- Some areas of governance, like defense, foreign affairs and trade, are primarily the responsibility of the federal government.
- However, there are also areas of shared responsibility, such as social security and welfare, where the federal and state governments collaborate.
- The Commonwealth can offer interventions that are better targeted at specific reforms.

4. Devolution and Decentralization:

- Devolution is a form of political decentralization, where control is transferred from a large governing body to smaller bodies.
- The objectives of devolution are to streamline and simplify Commonwealth purchasing, strengthen flexibility and accountability at agency level and remove unnecessary central prescription and regulation of suppliers and buyers.

- The Commonwealth Procurement Guidelines (CPGs) set out aspects of senior executive responsibility and the need for accredited purchasing units.

5. Examples of Devolution:

- **Health:**

State governments have considerable discretion in how they organize and fund health services.

- **Education:**

State governments are responsible for the delivery of public education.

- **Infrastructure:**

State governments have significant control over infrastructure projects within their jurisdictions.

- **Devolution of the social license to operate:**

The mining industry has seen a devolution of the social license to operate, with communities and stakeholders

increasingly taking on responsibility for ensuring responsible and sustainable mining practices.

Main features of local government in Nigeria

The functions of local governments are detailed in the Nigerian constitution and include the following:

- Economic recommendations to the State.
- Collection of taxes and fees.
- Establishment and maintenance of cemeteries, burial grounds and homes for the destitute or infirm.

Nigeria has 774 local government areas (LGAs), each administered by a local government council consisting of a chairman, who is the chief executive, and other elected members who are referred to as councilors.

Each LGA is further subdivided into a minimum of ten and a maximum of twenty wards.

A ward is administered by a councilor who reports directly to the LGA chairman. The councilors fall under the legislative arm of the Local Government, the

third tier of government in Nigeria, below the state governments and the federal government.

Nigerian politics take place within a framework of a federal and presidential republic and a representative democracy, in which the president holds executive power.

Legislative power is held by the federal government and the two chambers of the legislature: the House of Representatives and the Senate.

Functions of local governments

The functions of local governments are detailed in the Nigerian constitution and include the following:

- Economic recommendations to the State.
- Collection of taxes and fees.
- Establishment and maintenance of cemeteries, burial grounds and homes for the destitute or infirm.
- Licensing of bicycles, trucks (other than mechanically propelled trucks), canoes, wheelbarrows and carts.

- Establishment, maintenance and regulation of markets, motor parks and public conveniences.
- Construction and maintenance of roads, streets, drainages and other public highways, parks and open spaces.
- Naming of roads and streets and numbering of houses within their local government areas.
- Provision and maintenance of public transportation and refuse disposal systems.
- Registration of births, deaths and marriages in their locality.
- Assessment of privately owned houses or tenements for the purpose of levying such rates as may be prescribed by the House of Assembly of a State.
- Control and regulation of outdoor advertising, movement and keeping of pets of all descriptions, shops and kiosks, restaurants and other places for sale of food to the public and laundries.

Features of the South African government

The following are the features of the South African government;

- South Africa is a constitutional democracy with a three-tier system of government and an independent judiciary.
- The national, provincial and local levels of Government all have legislative and executive authority in their own spheres, and are defined in the Constitution as distinctive, interdependent and interrelated.
- South Africa is a multiparty parliamentary democracy in which constitutional power is shared between the president and the Parliament.
- The Parliament consists of two houses, the National Assembly and the National Council of Provinces, which are responsible for drafting the laws of the republic.
- Non-racialism and non-sexism.
- Supremacy of the Constitution. Universal adult suffrage, a national common voters' roll, regular elections and a multiparty system of democratic government to ensure accountability, responsiveness and openness.

General Advantages of Devolution

a) Localised Decision-Making

Decision-making is brought closer to the people affected by those decisions. Local leaders have a better understanding of the specific needs, preferences and issues of their regions, enabling them to create policies that are more relevant and effective.

b) Increased Accountability

Devolved governments can enhance accountability. Elected representatives in regional governments are directly answerable to their local electorate, which can lead to greater transparency and responsiveness. This proximity can also foster greater political engagement and participation among citizens.

c) Flexibility and Innovation

Devolution allows for flexibility and innovation in governance. Different regions can experiment with policies and solutions tailored to suit their unique

circumstances, which can lead to more effective governance and the potential for successful policies to be adopted more widely.

d) Improved Public Services

Localised control over public services, such as education, health, and transportation can result in better service delivery. Regional governments can allocate resources more efficiently based on local needs, leading to higher quality and more accessible services.

e) Economic Development

Devolved governments can focus on regional economic development, tailoring economic policies to suit local industries and conditions. This can lead to more effective economic strategies, job creation and investment in local infrastructure.

f) Cultural Preservation

Devolution can help preserve and promote regional cultures, languages and identities. Local governments can implement policies that reflect and support the cultural diversity within a country, fostering a sense of pride and identity among regional populations.

g) Conflict Reduction

In regions with distinct identities or historical grievances, devolution can reduce conflict by granting more autonomy and addressing local concerns. This can lead to greater political stability and unity within the nation.

h) Democratic Strengthening

By spreading power more widely, devolution can strengthen democratic institutions and processes. It encourages a more pluralistic political environment

and reduces the concentration of power in a central authority.

i) Enhanced Efficiency

Local governments can be more agile and responsive, potentially leading to enhanced efficiency in governance and quicker implementation of policies and projects.

j) Better Resource Allocation

Devolved governments can allocate resources more effectively based on local priorities and conditions, leading to more efficient use of public funds.

CHAPTER 2:

IDEAL DEVOLUTION

This chapter deals with the ideal situation in a devolved system of government which will be meaningful to the populace in any country in the world;

- Real transfer or delegation of power to a lower level, especially by central government to local or regional administration.
- Bringing policy-making closer to citizens.
- Proper distribution of State functions and powers amongst and between the three arms of government, namely; the Legislature, Executive and Judiciary.
- Real autonomy and handing over of political, financial and administrative authority from central to local (district/city) governments, so that the government can facilitate and guarantee better public services for the people in a sustainable manner.
- The powers shall not be taken away whatsoever unless during a state of emergency or through provided constitutional laws. Moreover, the

suspension of local governments should be just for a short period.

- Enabling communities to gain the ability to respond to their unique challenges and opportunities.
- Proper funding of devolution services by the central government in order for devolution to work.
- Having systems established at local level to ensure the devolved services effectively reach the ordinary citizens.
- Providing democratic and accountable government for local communities.
- Promoting social and economic development and a safe and healthy environment.
- Promoting the democratic and accountable exercise of power;
- Protecting and promoting the interests and rights of minorities and marginalized communities.
- Promoting unity, national harmony and integration while recognising diversity.
- Providing accountability channels which ensure that individuals are held responsible for their decisions and actions.
- Promoting the democratic and accountable exercise of power;

- ✓ Enhancing popular participation in the exercise of the powers of the state and in decision-making that affects citizens;
- ✓ Giving powers of self-governance to the people and enhancing the participation of the people in the exercise of the powers of the State and in making decisions affecting them;
- ✓ To recognise the right of communities to manage their own affairs and to further their development.
- ✓ To ensure equitable sharing of national and local resources nationally.
- ✓ Facilitating the decentralisation of State organs, their functions and services, from the capital of Kenya.
- ✓ Enhancing checks and balances and the separation of powers between national and local governments.
- ✓ Local governments shall also have their reliable sources of revenue to enable them to govern and deliver services effectively.
- ✓ Establishing county governments in accordance

with the country's constitution.

- ✓ Having a harmonious cooperation and relationship between the two levels of governments.
- ✓ Supporting fiscal, human resource and legal mechanisms for county governments at the initial stages to ensure success.
- ✓ Establishing a reliable mechanism to address the conflict of laws;
- ✓ Establishing a set of national values and principles, leadership and integrity standards required of all public servants to comply.
- ✓ Strict adherence to the supremacy of the country's constitution.

NB: Although there is an ideal set up structure identified, negotiated and agreed, made into law; there has been gross violation of devolution in many countries of the world due to dishonest, selfishness, hunger for power and resources. These evil deeds must be stopped forthwith.

CHAPTER 3

FAILED DEVOLUTION

This chapter deals with challenges facing devolution, corruption issues in public offices, most corrupt counties, bribery in counties, common integrity practices in counties and the darkest side of devolution.

Challenges Facing Devolution in Kenya

While devolution has had its pros, Kenyans have also witnessed its shortcomings. Some of the weaknesses of decentralization are indicated below;

a) It is expensive

The introduction of more seats (67 senators, 47 governors and 2,526 members of county assemblies) means that the taxpayer is at a loss since the wage budget increased significantly.

b) Non-uniform Development

Some counties such as Nairobi, Nakuru and Mombasa already had a head start development wise. These counties have better infrastructure and public utilities as well as opportunities for employment and

investment. It will take extra efforts and many years for other counties to catch up.

c) Duplication of roles

Currently, more people are doing the same job. Therefore, the chances of misusing powers and wasting resources are higher. Beginning 2014 to 2016, Kenya witnessed a lot of back and forth between the National Assembly and the Senate. For some, it is hard to distinguish between the role of the senators and the MPs.

d) Mismanagement of funds

Some county governments have been in the spotlight for misappropriating funds while most counties cannot account for the money allocated.

e) The rough transition processes

Over the last couple of years, Kenyans have been spectators in the pull-and-push between the National and county governments regarding the mandates of both and allocation of resources. Sometime back, the Council of Governors pointed an accusing finger at the state for derailing the transition process. As the two

lock horns, service delivery at county level becomes adversely affected. When the counties took over health docket, there has been a go-slow in the services offered and strikes lasting months. Some analysts think that the transition process is to blame for the problem.

f) Human Resources gaps

The hiring process of county executives and other officials is questionable. Some county governments seem to be rewarding allies, rather than appointing professionals to get the job done. Sadly, jobs are sold to the highest binders.

g) Lack of resources and capacity for efficient service delivery

The county governments have a problem in the management of current resources. As it is, salaries and wages account for a significant portion of the county budgets. Therefore, compromising other development efforts.

h) Fiscal Challenges

While the National and county legislature oversees the budgeting process, the National Treasury still has a lot

of power and control over the fiscal policy via IFMIS system. The county governments have not yet come up with systems or measures to handle county treasury operations.

i) Inclusion is still a problem

Ethnicity still plays a major role in securing votes and representation in the counties. Some minority communities in areas such as Migori, Turkana, Garissa, Bungoma, Uasin Gishu, Baringo and Samburu etc. feel left out. Also, the participation of special groups such as the disabled, youth and women has not increased significantly as a result of devolution.

j) Potential for conflict:

Devolution can create conflicts between regional and central governments over issues such as funding, policy priorities and authority. This can lead to lack of coherence in national policies and potentially weaken the central government's authority. It can kill both local and national development programs.

k) Human Resource Challenges

- **Limited financial resources:** Most County Governments do not factor in Human Resources budget initiatives hence Human Resources issues e.g. CBA negotiations process remains underfunded.
- **Transfer of County officers to other departments:** Setbacks occur when County officers experienced in Human Resources issues are transferred to other departments hence creating a skills gap within the dockets.
- **Slow uptake and implementation of proposed legislation affecting the Human Resources sectorial areas:** Devolved governments have faced challenges in harmonizing the implementation of county legislation and assimilation of national policies and legislation.
- **Weak collaboration between the national and the County officials:** There have been difficulties in coordination & liaison of activities between the national government and the county governments.

- **Uncoordinated transition process of human resource from National Government to County Governments**, for example, transfer of files and pending promotions.
- **Slow uptake of proposed legislation affecting Human Resource at County level.**
- **Further demand for huge salaries and allowances** by MCAs and public servants, unhealthy rivalry and poor attitude amongst county leaders, resistance to change and shortage of qualified human resources are some of the Counties' administrative challenges.
- **Resource constraints:** Local governments often struggle with inadequate financial resources to fulfill their responsibilities. This lack of funding impedes their ability to provide essential services, infrastructure development and other initiatives that improve the quality of life for residents.

Challenges of the devolved health sector in Kenya

- Inadequate resources from the national government.
- Understaffed health facilities.

- Inadequate financing.
- Poor infrastructure.
- Insufficient health commodities e.g. drugs.
- Acute shortage of human resources.
- Poor governance.
- Low technology uptake.

Other challenges

Below are more challenges facing devolution in Kenya and other nations;

- Low revenue collection due to lack of adequate revenue collection infrastructure and inadequate human resources.
- Development challenges including poverty, inequality, youth unemployment, quality jobs, transparency and accountability, climate change, continued weak private sector investment, and the vulnerability of the economy to internal and external shocks.
- Divisive politics, entrenched impunity, ethnicity and a political culture of persons seeking to preserve the old order and self-seeking political interests.

- Trade problems among the counties and a weak economy plague the counties.
- Huge pending bills.
- Issues of poverty, inadequate infrastructure and lack of basic resources.
- The limited fiscal space to operate in.
- Government's challenge of meeting its international debt obligation.
- Difficult economic conditions globally.
- The inadequate and limited resource allocation especially in carrying out development activities.
- Political interferences.
- Uncertain political environment.
- Constant and ever rising inflation compounded with the weak currency.
- Lack of and poor conditions of rural roads linking the farmers' facilities and the commercialization spots in the country.
- The increase in population of the country has created extreme pressure for the limited resources.
- Inequality between counties and regions due to administrative complexity, coordination challenges, political fragmentation, resource allocation

conflicts, limited expertise, corruption and governance disparities.

Corruption issues in public offices.

- Conflict of interest; personal versus official.
- Fraud and forgery in transactions.
- Outright theft.
- Favoritism and taking sides.
- Playing politics in offices.
- Abuse of office; using office for personal gain.
- Bribery to offer services to the clients.
- Under banking of revenue.
- Kickbacks in contracts or tenders.
- Nepotism in employment.
- Collusion in illegal activities between officers and clients.
- Irregular employment; flouting legal procedures.
- Unlawful acquisition of property; personal gain.
- Violation of laws with impunity.
- Violation of human rights e.g. discrimination on race, tribe, gender or sickness.
- Unprofessionalism; flouting procedures.
- Misuse of official information.

- Bullying people.
- Sexual harassment; seeking sexual favors.
- Implementing unplanned projects; not approved.
- Petty corruption i.e. small scale.
- Getting employment using fake certificates.
- Selling or buying jobs or sex for jobs, internship or attachment.
- Leaking job interview questions by interview panels.
- Employing persons who did not apply for the jobs.
- Employing persons who are not qualified.
- Circumventing procurement procedures and working backwards to achieve evil plans.
- Falsifying staff office locking-in and locking-out registers.
- Faking office claims i.e. allowances.
- Top management irregularly influencing the giving of contracts to their secret companies.
- Failing to carry out due diligence before approving transactions.
- Overpricing of goods and services by engineers to create room for corrupt practices.
- Using public vehicles for personal work.

- Double registration of vehicles e.g. having both government and private registration for one vehicle.
- Approving incomplete or ghost projects for payments.
- Diversion of disaster money.
- Buildings collapse due to poor planning and workmanship.
- Fraudulently fueling of private vehicles and recording in work tickets.
- Paying casual workers below minimum wages and retaining for even up to 10 years.

The media reports recorded that a Treasury Cabinet Secretary in Kenya called on Kenyans to at least reduce corruption by 50% so as to assist manage external debt. This shows how desperate the fight against corruption is in Africa.

Causes of corruption;

In his book ‘The Faces of Corruption, Pius K. Kidombo (2004) lists the following as the causes of corruption;

- Uncertainty of the tenure of office among leaders.

- Uncertainty of job security.
- Poor terms of service.
- Unbearable working conditions.
- Bureaucracy.
- Management of personal income.
- High domestic demands.
- Loss of moral values and ethics.
- Political interference and extravagance

Conduits for corruption

The writer outlines the following as the avenues or conduits for corruption;

- Government bodies.
- Official corruption.
- Constituency Development Fund (CDF).
- Commissions e.g. Independent Electoral and Boundaries Commission.
- Donor/partners.
- Political parties.
- Learning institutions.
- Religious organizations.
- Business enterprises, women groups, harambees among others.

Hierarchy of corruption

Kidombo (2004) provides the following as the hierarchy of corruption;

- Executive or top-level management including the ‘big fish and sacred cows.’
- CEOs, Principal Secretaries, high profile politicians, Judges etc. This is where official and grand corruption is practiced like in Goldenberg and Anglo-Leasing scandals.
- Middle level management which includes procurement officers, accountants and deputies. This is where 10% of project values are given as kickbacks.
- Low level where *Chai* or *Toa Kitu Kidogo* (TKK) is common. This involves the Police, clerical officers, gate keepers, chiefs, land officers, personal assistants, secretaries and support staff. This is where the public gives small tokens to staff so as to receive public services.

Obstacles to the fight against corruption

Kidombo (2004) provides the following as the obstacles to the fight against corruption;

- Resistance to change.

- Institutional weaknesses.
- Legal constraints i.e. shielding corruption or slowing it down.
- Scarce financial and human resources.
- Political interference.

Characteristics of corrupt persons

Kidombo (2004) provides the following as the characteristics of corrupt persons;

- Working very hard for just attention.
- Defensive behavior like using media.
- Living beyond their means.
- Poor listener if it is not about money.
- Patronizing exclusive restaurants and residences.

In their book ‘Control of Corruption in Kenya’, Luduki Chweya, John K. Tuta and S.K. Akivaga (2005) point out that corruption has been since independence Kenya’s nemesis and has contributed to retardation, stagnation and negation of the country’s development initiatives. It has been at the core of the strained relationship between Kenya and development partners. It has perverted the perception and attitudes of the

citizens towards work, personal initiatives and development.

Despite the intensified anti-corruption rhetoric there is a consensus between Kenya and the donor community that it is still rampant or even on the increase.

Nature of corruption

Luduki Chweya et al (2005) outlines the following as the nature of corruption;

- Exterminate – compelled.
- Defensive (forced).
- Transactional – mutually agreed.
- Invective – offer of goods and services.
- Nepotism.
- Antogenic – Involves an individual.
- Supportive – no money involved but gives protection.
- Grand corruption – by senior government officers.
- Looting – most destructive, paying for nothing i.e. air supply.

Ways to detect corruption

In his book ‘The Architecture of Corruption in Kenya’ Pius K. Kidombo (2007) lists the following as the ways to detect corruption;

- Integrity testing.
- Lifestyle, financial and
- Electronic surveillance.
- Undercover operations – in secrecy.
- Measuring corruption – index survey.

How to fight corruption

Kenya Anti-Corruption Commission (KACC) recommends the following to fight corruption;

- Report and prevent corruption.
- Encourage whistle blowers.
- Name and shame corrupt persons.
- Never give bribes.
- Be a role model.
- Tell everyone about it.
- Refuse pressure.
- Be a faithful servant.
- Teach children.
- Implement policies against corruption.

- Inculcate good cultural values.
- Use partnership.

NB: It is very difficult to detect and prevent corruption, it has no obvious victim like in violence and you only discover when it has happened. Insiders can be shortchanged or threatened and may not report. It requires much prudence, sacrifice and resilience.

Most corrupt Counties

According to the Nairobi Law monthly and EACC the following are the 20 most corrupt counties in Kenya in relation to bribery;

1. Nyamira.
2. Baringo.
3. Siaya.
4. Bungoma.
5. Turkana.
6. West Pokot.
7. Samburu.
8. Nandi.
9. Kakamega.
10. Kisumu
11. Tharaka Nithi

12. Nairobi
13. Machakos
14. Laikipia
15. Isiolo
16. Nyandarua
17. Nakuru
18. Homabay
19. Busia
20. Elgeyo Marakwet

Bribery reported in Counties

S/No.	County	Bribery Amount Ksh.
1	West Pokot	56,695
2	Nairobi	37,718
3	Murang'a	18,378
4	Kisii	16,810
5	Uasin Gishu	11,136
6	Kitui	9,849
7	Busia	7,468
8	Tharaka Nithi	7,041

Common integrity practices in counties

The reports of the Senate Public Accounts Committee, Controller of Budget and Auditor General on the 47 County Governments for the Financial year 2019-2020 outlines several areas of risk, suspected unprofessional, mismanagement, incompetence, lapses and malpractices which border on illegalities and corruption as indicated below.

These are raising the red flag on the need to take urgent action to bring sanity and save the tax payers money from further loss. The following areas sampled from all the 47 counties in Kenya questions integrity of transactions of approx. over Ksh.16 billion in just one financial year when they received Ksh.286.8 billion from the equitable share of revenue. From this estimate it can be concluded shockingly that over 6% of county revenue either goes to waste or is stolen.

- Unconfirmed County Own Revenue means unreliable records.
- Inaccuracies in the transfer of funds means unreliable records.

- Unsupported acquisition of assets means lack of prudence.
- Unsupported payments or expenditure risk loss of funds.
- Pending bills Ksh. 2, 670, 863, 155. 00 creates doubtful expenditure.
- Un-transferred revenue to County Revenue Fund, Ksh.568, 767, 708. 00 risk loss of funds.
- Outstanding imprests, Ksh. 52, 223, 680 means lack of accountability.
- Long standing imprest, Ksh. 2, 498, 775 means lack of accountability.
- Inaccuracies in cash and bank balances Ksh.2, 532, 888, 232. 00 means unreliable records.
- Undisclosed proceeds from domestic and foreign grants, Ksh. 22, 921, 419. 00 means lack of accountability.
- Payment of allowances outside the imprest system, Ksh. 121, 743, 353. 00 means lack of prudence.
- Stalled projects, Ksh. 20, 678, 574. 00 points to incompetence and lack of proper planning.
- Loss of cash, Ksh. 43, 240, 740. 00 points to theft.

- Unauthorized expenditure i.e. exceeded the amount approved by the Controller of Budget, 389.4 million, means lack of prudence.
- Unbudgeted pending bills, Ksh.133, 572, 547. 00.
- Irregular supply and delivery of goods, Ksh. 25, 853, 752. 00 points to corruption.
- Unapproved or irregular withdrawal of funds from the County Revenue Fund, means lack of prudence.
- Irregular engagement of casuals, Ksh. 197, 024, 618. 00, means lack of prudence.
- Over-expenditure, Ksh.15, 963, 138. 00 means lacking in accountability.
- Irregular procurement of projects, Ksh. 9, 503, 553 is illegal.
- Operating of irregular commercial bank accounts means lack of transparency.
- Use of manual payroll to pay salaries instead of the automated system (IPPD) means lacking prudence.
- Undisclosed revenue management system fees mean lack of transparency.
- Undelivered equipment and supplies mean lack of transparency.
- Engagement of a non-responsive bidder means lack of accountability.

- Irregular award of contract means lack of transparency.
- Irregular payment of salary means lack of prudence.
- Non-compliance on E-procurement is illegal.
- Processing of payments outside IFMIS system means lack of accountability.
- Non-compliance to public procurement and asset disposal regulations.
- Misclassification of expenditure means lack of prudence.
- Irregular purchase of vehicles is wrong.
- Doubtful expenditure is risk of funds.
- Misappropriation of funds, Ksh. 4, 920, 000 is theft.
- Irregular variation of contracts is illegal.
- Delay in banking of revenue is teaming and lading means lack of prudence.
- Irregular recruitment of staff is illegal.
- Unresolved prior years' audit issues, hence pending for years. This shows disobedience, unwillingness or impunity.
- Violation of the approved budget means lack of prudence.

- Recruitment of unqualified staff means lack of prudence.
- Unconfirmed purchase and distribution of goods risks funds.
- Irregular acquisition of land is illegal.
- Undisclosed pending bills is lacking transparency.
- Unauthorized variation of works is illegal.
- Inconsistencies in county ownership documents.
- Misallocation of expenses means lack of prudence.
- Incurring confidential expenditure is lacking transparency.
- Expenditure of COVID-19 funds in way indicating there was no value for money.
- Unbanked revenue, Ksh.6, 729, 614. 00 risk loss.
- Lack of ownership documents for property e.g. land, vehicles etc. risk loss.
- Undisclosed banked accounts are lacking transparency.
- Unsupplied equipment risk loss.
- Non-compliance on wage bill, at 44% instead of 35% can hamper development.
- Under-absorption of the approved budget shows inefficiency.

- Unsatisfactory implementation of projects questions value for money and poor planning.
- Delay in implementation of projects shows lack of proper planning.
- Non-remittance of payroll deductions, Ksh.27, 061, 998. 00 means suffering and demotivation of staff.
- Irregular payroll deductions, Ksh. 2, 561, 123. 00 means suffering and demotivation of staff.
- Lack of a risk management policy or framework exposes the counties to many costly risks.
- Unimplemented projects, Ksh. 33, 305, 640. 00 is a loss to the tax payer and poor planning.
- Failure to appoint County Audit Committees expose counties to integrity issues.
- Unutilized projects, Ksh.20, 565, 975.00 is a loss to the tax payer.
- Unaccounted payment of taxes, Ksh.153, 284 ,413 may punish the staff or counties.
- Over-age employees in payroll may promote inefficiency.
- Non-compliance to the law on ethnic composition requiring 30% employees outside the dominant community means we are entrenching tribal

counties where discrimination is practiced. This adversely affects our national unity and integration.

- Ineffective financial control systems open a way for corruption channels.
- Inadequate safeguards on ICT data security exposes systems to hacking or abuse.
- Non-compliance to Withholding Tax and VAT Act 2013 is illegal.
- Poor management of county assets leads to faster depreciation, loss or damage.
- Unapproved collection of revenue promotes mismanagement.
- Lack of human resource plans and staff establishment weakens staff recruitment and management controls.
- Overpayment of tax to Kenya Revenue Authority, Ksh.1, 111, 125.00 shows lack of prudence in managing funds.
- Unremitted statutory deductions, Ksh. 1 532 263 571. 00 punishes the staff and creditors and also kills investment.
- Unused projects is a loss and waste to the tax payer's money and lack of proper planning.

- Insecure duplicate receipt documents give loopholes for pilferage.

The darkest side of devolution

Below are some of the alleged extremes practiced within the devolution system, which if not tackled can kill and burry devolution forever. This is an arrangement which has transformed many nations to great prosperity in many parts of the world while others are busy making it lose the real meaning.

- Mega corruption and impunity in the counties.
- Huge pending bills kill business investments. This has pushed contractors and service providers to suffer depression, sick or even deaths while following their cash with counties.
- Currently, many service providers fear county contracts and are hesitant to plunge into the mess of pending bills.
- Mismanagement of funds and lack of accountability in management of other resources.
- Stalled projects point to incompetence and lack of proper planning.

- Massive unauthorized expenditure paints a grim picture.
- Irregular procurement of projects and other related illegalities.
- Misappropriation of funds and outright theft.
- Unresolved prior years' audit queries indicate great disobedience, unwillingness to change, impunity or sheer incompetence.
- Cases of payment of unsupplied goods and services.
- Non-compliance on wage bill regulations which currently is at 44% meaning the biggest development in counties is the payment of salaries and allowances while development is at 30% or even below. This is killing devolution daylight in our very eyes.
- Non-remittance of payroll deductions hence demotivation of staff who are expected to assist in the delivery of public services. Demotivation of staff equals poor services.
- Having many complete but unutilized projects is a big loss to the tax payer since there is no value for money.
- Non-compliance to the law on ethnic composition which requires 30% employees from outside the

dominant community means we are entrenching tribal counties where discrimination is practiced. This adversely affects our national unity, cohesion and integration.

- Abuse of office by officers using offices for their personal gain.
- Irregular employment by flouting legal procedures is equal to incompetence because it is garbage in garbage out e.g. employing unqualified people.
- Violation of laws and human rights with impunity.
- Unprofessionalism by flouting of standard operation procedures.
- Circumventing procurement procedures and working backwards to enhance corruption.
- Top management irregularly influencing the award of contracts to their secret companies.
- Overpricing of goods and services by technical officers to create room for corrupt practices.
- Approving incomplete or ghost projects for payments to strengthen the kickbacks systems.
- Very huge human resources gaps which promote poor services.
- Fiscal challenges today, 11 years after devolution some functions approved by the constitution 2010

are yet to be transferred, 85-90% of funds still reside in Nairobi.

- Exclusion of regions is still the order of the day and even equalization fund is not being felt.
- Brewing of serious conflicts over the scarce resources which can threaten national unity in the long run.
- Debt increases in Kenya from 8.7 trillion to 11.02 trillion is straining both national and county governments and weakening the ability to strengthen devolution.
- County assemblies have become crime scenes, places of insults, exchanging blows, assaulting members, violence, causing injuries and dishonoring the will and authority of the people.
- Impeachment of speakers, County Executive Committee (CEC) members and governors on very flimsy grounds, hence often overturned by the Senate or Courts. Some of the accusations are based on hearsay, gossip, witch hunt, intimidation, personal vendetta and corruption.
- Some county assemblies deny the executive funds as punishment for refusing to comply with corrupt deals.

- Corruption is practiced and is a form of day light robbery.
- Too much control of funds by the Controller of Budget; micromanagement makes devolution lose its independence and meaning. It makes counties look like the departments of national government.
- Pay slip crisis (mutilated pay slips) as families' income is messed up; staff take home is about 45-50% leaving workers in pain as pay slips continue to decrease due to increased deductions. A media survey shows that 82% of Kenyans are financially unhealthy. This scenario promotes discontent from employees and poor service delivery.
- Too much deductions leading to loss of colossal sums of money, disposable income is reduced and becomes detrimental to country's economic recovery since this chokes the middle class in the counties and even nationally.
- Federation of Kenya Employers (FKE) pointed out that payroll deductions for most staff exceed two-thirds of their take home salary contrary to HR rules. Staff may default in meeting of financial obligations like loans.

- Devolution in Kenya is like an exaggerated, upgraded, manipulated or generic defunct county or municipal councils (*kanjo*) of 1990s. The devolution name is a minus of the critical and commensurate resources. It is the former local government in practice under the old constitution; the only difference is the huge budget figures from hundreds of millions to now billions.
- Some counties delay staff salaries for 3 months, hence pushing staff to slavery and begging where they cannot afford basic needs including fees, food, drugs, house rent, clothing etc.
- Service providers deny services to counties, hence grounding some operations to a halt because of long delays in payment for services e.g. hospital drugs by KEMSA.
- Performance of public service in the devolved units in Kenya is at its lowest and is at the verge of collapse if measures are not put in place to contain. This has adversely affected service delivery, rate of development projects reduced drastically, which is a sad state of affairs.
- Few counties have implemented performance contracting (PC) or Staff Performance Appraisal

System (SPAS) since 2013 so as to improve on work performance by introducing work plan targets for the top executives to all workers. Seconded staff indicate that they last properly filled appraisal forms before devolution. Staff reporting to office at 8.00 am and leaving at 5.00 pm is not enough to gauge real staff performance results and productivity.

- Delayed insufficient disbursement to counties completely breaks down the devolution system, hence becomes very ineffective.
- Long delay in the transfer of functions from national government to counties indicates lack of support e.g. museums, library services, health facilities, roads, markets among others.
- Many selfish and corrupt county leaders are just there chasing per Diem allowances, deals and kickbacks at the expense of service delivery.
- Poor implementation of projects like roads make them impassable, distant dispensaries, white elephant projects engaging bogus contractors is an unfortunate scenario.
- People still walk on foot for 50-100 km in pastoral communities to look for essential services like

health and education. Controllable diseases still kill them due to inaccessibility.

- Staff shortage and unskilled work force are still real issues.
- Complete dispensaries are closed due to lack of staff for 5 years or even more.
- Employing unqualified staff, selling jobs, undergoing corrupt interviews and practicing nepotism.
- Stalled projects for up to 10 years or more and no leader cares.
- In one county, 50 dispensaries since 2015 are complete but not operational according to media reports. The health docket is grossly understaffed, for instance one nurse serving in one dispensary alone.
- The health departmental programs in many counties are mostly supported by partners more than the county governments and it looks like not a real priority.
- In a program carried out by the NTV Kenya named ‘clinically corrupt hospitals’ it exposed the lack of drugs and staff in various dispensaries, complete facilities but not operational, using of facilities for

storage for non-medical stuff, turning them into living houses, little funding, fake doctors, nurses and medical staff.

- The television covered about home delivery of mothers by traditional birth attendants in pastoral areas which was a great risk of deaths to the new born children and mothers during delivery.
- Walking on foot by women on labor and delivery on the way to medical facilities was a sad state.
- Money from National Treasury insufficiently trickles like doses of drugs and counties have to put pressures every time including threatening to shut down counties.
- Counties beg National Treasury to receive their rightful disbursement although there is a legal framework to comply with.
- Run-away security, long distances to facilities and climate change effects put more strain on the devolution function.
- Some senior county officials are sometimes arrested in possession of huge sums of money suspected to be corruption cash and banking huge sums raising concerns on money laundering.

- Political staff transfers, deployment, employment on wrong grades, poor career progression procedures, lack of key policies to guide and high incompetence levels.
- Unfair labor practices e.g. putting on several short contracts the ECDE teachers continuously for ten years and officers acting for years beyond the required 6 months period.
- Many labor cases in court and Public Service Commission (PSC) and the reinstatement of staff for wrongful dismissal.
- Entrenched tribalism, ethnicity, shoddy or sub standards works and frequent staff strikes due to unresolved HR issues.
- Ghost workers and poor work performance is very common with counties.
- Many of the accounts of counties have been put under adverse and disclaimer opinions by the Office of the Auditor General (OAG) due to the massive mismanagement.
- Devolution is struggling to survive with seconded staff who are demoralized and still living in the past or resisting change, all at the cost of service delivery to citizens.

- The tug of war between the county assemblies and county executive, Senate and National Assembly is making devolution extremely a difficult affair in Kenya.
- Division of revenue bill has remained a controversy since devolution to date for no reason because of lack of good will.
- Serious cash flow crisis and budget deficits make payments in counties a nightmare. Cash crunch, crisis in counties has been continuous from 2013 to 2025; a period of 12 years, moving from bad to worse.
- The teething problems which should have taken at least 2-3 years have never come to an end. Devolution seems to be teething forever.
- Lack standard protocols or if they are there, are not followed has indeed come with many challenges.
- Pulling back on devolution is real with bitter struggles between the counties, Council of Governors/ national and counties, every time they want to share funds.
- Conflicts are endless, bad blood and weak relations are real. It seems there is no real good will to make devolution work in Kenya.

- Devolution is practically terminated at the county headquarters yet it was meant to go down to the sub county, ward and village for the citizens to feel it. The facilitation of the Sub County and Ward administrators is almost zero for many counties.
- Many counties also are yet to hire the village administrators as required by the County Governments Act 2012. Everything remains the same to the common mwananchi since devolution has not made much impact in their lives.
- Devolution is working for fewer people yet the drafters of the constitution wanted a real radical transformation of Kenya into a rich industrialized middle-income country where everyone is proud of the equitable sharing of resources.
- Devolution of corruption from Nairobi to the 47 counties was the greatest injustice to devolution. We have seen over the years many senior county officials named and shamed for serious integrity issues or even prosecuted including governors, CEC members, chief Officers and Directors.
- Collapsing of buildings frequently due to poor workmanship, incompetence, faulty approvals and corruption.

- Calculating equitable revenue sharing using older county government accounts, financial statements of 2-3 years late. This is silently, smartly and professionally robbing the counties of their funds.
- Staff Collective Bargaining Agreements (CBAs) are negotiated, signed and outrightly violated leading to strikes and picketing by staff unions like Kenya Union of Medical Doctors Pharmacists and Dentists Union (KMPDU), Kenya Union of Nurses (KNUN), Kenya Union of Clinical Officers (KUCO), Labotratoty staff unions, County Government Workers Union (CGWU) among others.
- Long delays and stagnation in staff promotions, redesignations, salary increments and confirmations leading to low staff morale, industrial actions, serious conflicts and poor service delivery to the residents.
- Some politically well-connected officers work like activists, threaten with great impunity and get involved in many illegalities.
- Some Water companies who are fully owned by the county governments are struggling to survive while

providing shoddy water, sanitation and sewerage services while others are almost closing.

- The budget for the health docket in Kenya has been reduced drastically by billions over a few years according to KMPDU, something which pains a gloomy, dismal, bleak and miserable future.
- Payroll crisis and very slim pay slip below the third HR rule.
- EACC seizing millions of suspected corrupt monies in the houses of top county executives.
- MCAs demanding bribes from CEC members, speakers and governors to avoid impeachment.
- Impeachment of county leaders on flimsy grounds.
- Corrupt oversight and investigative bodies seeking bribes and kickbacks from corrupt county officials so as to leave them scot-free.
- Stuffing counties of much needed funds by National government forcing them to go through endless cash flow strain and painful struggles.
- Retaining staff under very difficult unfavourable conditions leading to mental health situations.
- High staff turnover due to low morale, unprofessional and inhuman treatment; pushing them to unplanned early retirement, transfers, resignations and even deaths.

CHAPTER 4:

RECOMMENDATIONS

This chapter deals with very important recommendations which if implemented can save devolution by bringing back devolution to the right track; making it meaningful instrument for transformation to the citizens in Kenya and to many nations around the world.

Recommendations

- Strengthen internal audit units and committees to improve on inspections, monitoring and oversight.
- Allocation of resources to counties commensurate with the devolved functions.
- Return back the health function to the national government since it has fallen into deep crisis in HR and operational issues like operating without drugs. The priorities of county governments have been upside down.
- The Kenyan youth who are about 28 million cannot be ignored in important national decision making. We must listen to the voice of the people including the youth and address their concerns since their ideas may sharply differ with the traditional ones.

- Introduction of lifestyle audit for civil servants, public officers and state officers to check on corrupt practices.
- Where there are no policies, counties should borrow from the national government.
- The church should concentrate on her mandate of rebuking evil, preaching the true gospel and showing the way in integrity and good governance matters in the church and country.
- Cutting the size of government (Cabinet Secretaries) to save on the huge national costs.
- Facing corrupt head on by all stakeholders.
- Creating more opportunities for the youth so that they can contribute to development e.g. employment.
- Reduction of the number of counties from 47 to 24 to save on the current huge national expenditure, reduce tribalism and improve on governance.
- Encouraging negotiation, mediation and arbitration to resolve bitter disputes over resources between the National Assembly, Senate and counties.

CONCLUSION

- Devolution has been made to look like a silly mistake walked on a slippery ground by our selfish interests. Due to resistance to change, lack of good will and critical resources devolution has become like a fluff and a blunder. Counties have been put in an awkward position by the chaotic lapses.
- Despite the tug of war between the County and National governments, devolution is still a milestone and a great spring board to faster development. To be honest, Kenya is not where it was in the 1990s for there is more devolution of power, democracy and resources in the country.
- Devolution remains the cornerstone of sustainable, bottom-up development, bringing governance and progress closer to the people despite the numerous challenges. It is still the best option.
- It is clear that resource mobilization locally to generate resources is lacking despite the poor funding of devolution services from the central government. Therefore, for devolution to succeed training, empowerment and mobilization of resources should be encouraged by the authorities.

- Effective systems should be established at local level to ensure the devolved services get to the ordinary citizens.
- Kenya has a very good constitution but it's not being followed to the letter.
- The church should not overlook evils in society but should fight them instead since we are reminded biblically that *“Righteousness exalts a nation, but sin is a disgrace to any people.” Proverbs 14:34, NIV.*
- Corruption is a very expensive venture for any country and if it is not controlled it may cost us absolutely everything. Corruption is bleeding Kenya, Africa and almost all nations of the world. It requires a serious joint effort by all to succeed.
- Despite the great failures, devolution cannot be reversed because of the immense benefits it carries and all must work together to make it work so that we enjoy the fruits like many other countries of the world.
- We must acquire new energy, passion and resilience to regain the lost glory and bring together the entire army of stakeholders to work so as to achieve the

much-sought success and prosperity in Kenya and world over.

- The mutual agreement between counties and national government in 2024 was that all the unbundled devolved functions pending transfer shall be gazetted and the corresponding resources related to those functions shall be transferred to County Governments in July, 2025 should be implemented this time round without further delays.

Appendix 1

SCHEDULES

FIRST SCHEDULE

(Article 6 (1))

COUNTIES

47 Counties in Kenya

- 1. Mombasa
- 2. Kwale
- 3. Kilifi
- 4. Tana River
- 5. Lamu
- 6. Taita/Taveta
- 7. Garissa
- 8. Wajir
- 9. Mandera
- 10. Marsabit
- 11. Isiolo
- 12. Meru
- 13. Tharaka-Nithi
- 14. Embu

- 15. Kitui
- 16. Machakos
- 17. Makueni
- 18. Nyandarua
- 19. Nyeri
- 20. Kirinyaga
- 21. Murang'a
- 22. Kiambu
- 23. Turkana
- 24. West Pokot
- 25. Samburu
- 26. Trans Nzoia
- 27. Uasin Gishu
- 28. Elgeyo/Marakwet
- 29. Nandi
- 30. Baringo
- 31. Laikipia
- 32. Nakuru
- 33. Narok
- 34. Kajiado
- 35. Kericho
- 36. Bomet
- 37. Kakamega
- 38. Vihiga

- 39. Bungoma
- 40. Busia
- 41. Siaya
- 42. Kisumu
- 43. Homa Bay
- 44. Migori
- 45. Kisii
- 46. Nyamira
- 47. Nairobi City

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