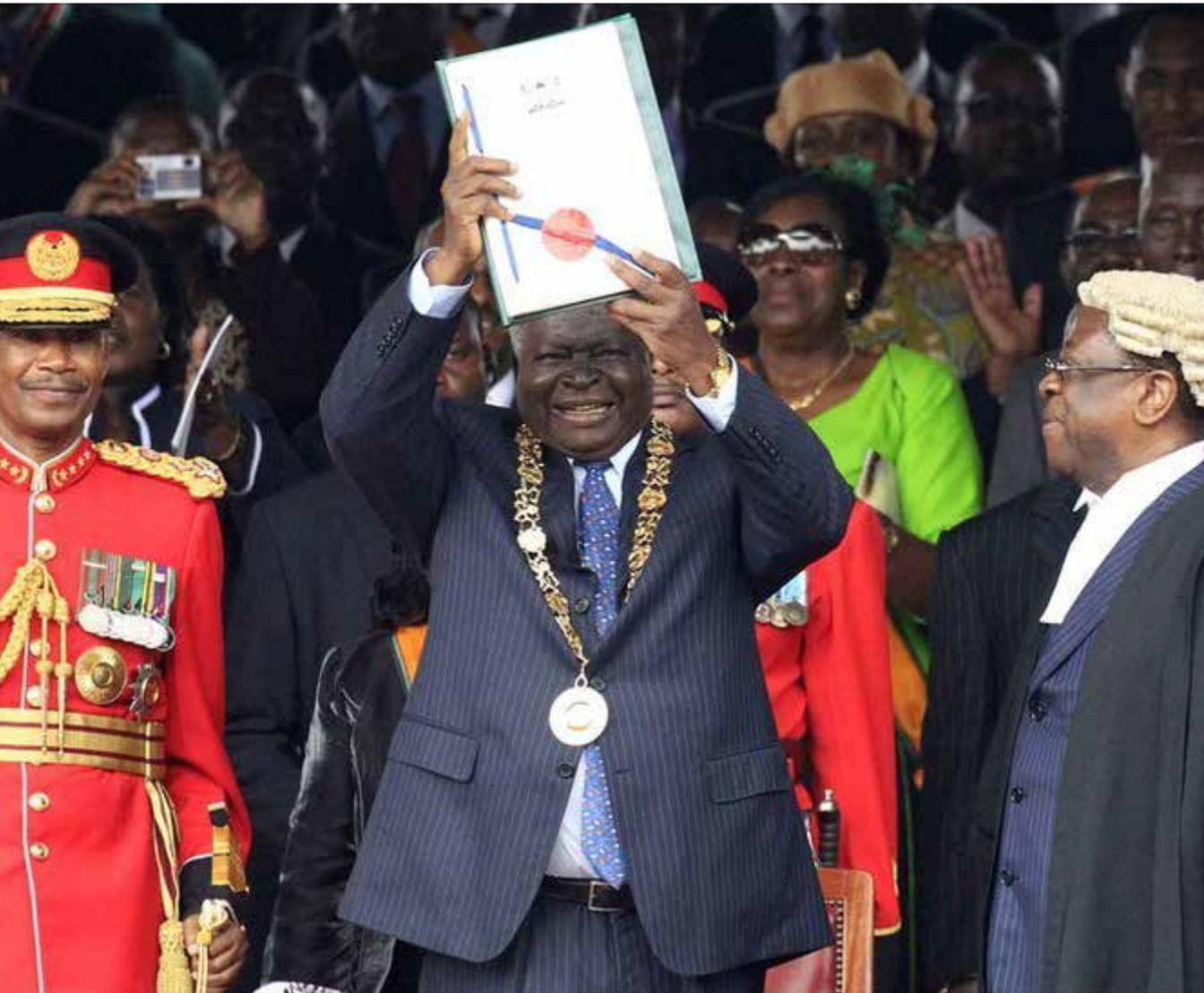


Table of content

1. Introduction	5
2. The Role of the Senate so far, the future and what can be done better <i>Mutula Kilonzo Junior, Senator, Makeni County & Senate Minority Whip</i>	6
3. 8 years on – Is Kenya’s constitutional promise of Devolution a reality or is it a mirage? <i>Masese Kemunche, Programs Manager, CEDGG</i>	11
4. Devolution – Transforming challenges into opportunities <i>Thomas Tödtling, Director, Konrad-Adenauer-Stiftung</i>	18
5. Hither & tither Devolution in Kenya <i>Boaz Waruku, Programme Manager & Coordinator, ANCEFA</i>	23
6. Covering Devolution since 2013 – Role of Media; the wins and the misses <i>Wellington Nyongesa, Special Projects Editor, Standard Group</i>	32

Former President of the Republic of Kenya, Hon. Mwai Kibaki, holds aloft the New Constitution of Kenya during its promulgation on 27th August 2010



Introduction

The introduction of the devolved system of governance has changed Kenya in many ways. The former highly centralized state structure was substituted by 47 counties with political as well as fiscal autonomy. The transfer of power to the local level was meant to ensure improved service delivery, increased social justice and equity, better economic development and more democracy as well as public participation. Consequently, the expectations of people were quite high.

Kenya has entered the second phase of Devolution and it is necessary to ask if it lived up to those high expectations. In general, it can be concluded that Devolution is working although its achievements are sometimes overshadowed by other shortcomings and challenges. However, the fundamental transformation of a country's governance system requires time and cannot be finalized in one day. Such a process requires constant learning and improvement. Therefore, it is important to take stock and define those areas which need reform and concrete action.

This publication aims to bring together views from different stakeholders who are involved in the Devolution process, for example, Members of the Senate, representatives of the Civil Society, and the Media. In their contributions, they identify the achievements and in particular the challenges with regard to Devolution in Kenya and give recommendations on how the country can meet these challenges in the forthcoming years. This second phase will be decisive for the future development and the success of Devolution.

I hope that this publication of Konrad Adenauer Foundation is a contribution to a better understanding of the status quo of Devolution, its challenges and their potential solutions.

Thomas Tödting
Director, Program on Devolution,
Konrad-Adenauer-Stiftung

The Role of the Senate so far, the future and what can be done better

The Senate under Chapter 8 and the Devolved structure of Governments under Chapter 12 are the most drastic changes that we have in the governance structure of the new Constitution.

The new entities have, by and large, created a buzz in the political circles; by the introduction of Bicameralism and 47 County Governments. The new structure is misunderstood, if not abhorred, by person(s) who hitherto were not familiar with it. The words in Article 96 *“and serves to protect the interests of Counties and their Governments”* are in my view strongly worded to distinguish the Senate from the usual legislative Role of representation and for historical reasons I shall elaborate hereinafter.

The said misunderstanding is not entirely unexpected as most people did not appreciate the paradigm shift from the overbearing centralized system of Government, where power was concentrated at the centre with no system of dispersal since we got independence 55 years ago.

The misapprehension on the Role of the Senate can largely be traced to the drafting and passing of the New Constitution in 2010. At that time, there was only one House – the National Assembly which had

to determine the Role of the new Senate. In the process of structuring a new Senate the members of the National Assembly (sitting at the time as a Senate under the transitional clauses of the new Constitution) were unable in my view, to comprehend the Roles of the Senate vis-a vis an obvious conflict of interest as to which positions they will vie for in the General Elections of 2013.

The Role of the Senate includes the Role of Parliament as envisioned in Article 94, but a special Role is provided for it under Article 96 of the Constitution. It is this Role that has been misinterpreted. In the process, those opposed to the Senate have forgotten that once a law is assented to, it is referred to as an Act of Parliament, underlining the unity of the legislature in its work. The misinterpretation of the Role of Parliament as a unit has led the clamour to amend the new Constitution to remove the Senate.

The debate as to whether it is necessary to have a Senate is fueled by the non-ending rivalry between the National Assembly and the Senate on legislative making. It is this rivalry that led to a dispute between the National Assembly and Senate in 2013 on the Role of the Senate under Article 96, 217 and 218 on the Division of Revenue Bill 2013. Although the dispute between the

Senate and National Assembly was resolved in favour of the Senate, the underlying issues have not been fully ironed out.

The Supreme Court in Paragraph 160 identified its Role as follows: *“The Constitution of 2010 was a bold attempt to restructure the Kenyan State. It was a radical revision of the terms of a social contract whose vitality had long expired and which, for the most part, was dysfunctional, unresponsive, and unrepresentative of the peoples’ future aspirations. The success of this initiative to fundamentally restructure and reorder the Kenyan State is not guaranteed. It must be nurtured, aided, assisted and supported by citizens and institutions. This is why the Supreme Court Act imposes a transitional burden and duty on the Supreme Court. Indeed, constitutional relapses occur in moments of social transition, when individual or institutional vigilance slackens.”*

Devolution being a new concept in Kenya, was bound to face many challenges.

The Supreme Court further stated as follows: *“Devolution was predicated on the understanding that even though equality of opportunity may not necessarily lead to equality in development outcomes inevitably, inequality of opportunity (which is Kenya’s historical experience) would necessarily result in inequality in outcomes. This is the logic behind giving every Kenyan and every region a fair and equal chance, to succeed or fail.”*

The above paragraph underserves the importance of devolution and a strong Institution that will ensure fair and equal distribution of resources.

The Senate is the only Institution with a special mandate under Article 96 to do so. A strong Senate will inevitably lead to a reversal of marginalization and inequalities.

The Supreme Court par observed as follows: *“Kenya has had a long but chequered history with decentralisation. The country has experienced all three main aspects of decentralisation: deconcentration, delegation and now, devolution. These have had political, administrative, and fiscal dimensions. Most of these efforts have been inspired by the fear of domination and discomfort with rising horizontal inequalities, on the one hand, and on the other, a desire to take resources and services closer to the people. In this respect, decentralisation has been a product of both fear and aspiration – an emotionally mixed venture; and this fact has been a major element in the country’s political tribulations.”*

The Senate of the Republic of Kenya carries a unique mandate. It equalizes all 47 counties irrespective of size or population. Each Elected Senator has one vote and all decisions of the Senate must be carried by at least 24 Senators or 50% of the Counties. Lamu being the smallest gets an equal vote with Turkana, Nairobi or Kitui. The allocation of resources by the Senate has seen counties that were hitherto, marginalized receive the largest allocation, irrespective of their political inclination. This aspect alone is enough to keep Senate intact for 100 years.

A fundamental question arises – is history repeating itself in so far as the clamour for the removal of Senate or the Role of the Senate in the new structure of Governance

Senate proceedings in Kenya



is concerned? The Supreme Court observed as follows: *“At independence, Kenya adopted the most radical form of decentralisation, which had Regional Assemblies, Regional Governors, and a Senate, to protect the process at the national level – the so-called majimbo system of government. However, this was soon undermined and subsequently abolished in the mid-60s by the first post-independence regime whose antipathy for this system was all manifest. Its abolition coincided with the expansion of the power and influence of the Provincial Administration (PA), a staunch colonial-era law-and-order institution. The collapse of the initiatives of political decentralisation was followed in subsequent years by attempts at administrative decentralisation, and various gradations of delegation and deconcentration.”*

The above paragraph demonstrates the central Role that Senate plays and continues to play in the Devolved structure of Government. Whilst the Senate has not fulfilled its legislative Role as expected, the Division of Revenue Bill and County Revenue Allocation Bill, remain the heart and cornerstone of the success of devolution. The allocation of shareable revenue, of over One Trillion Kenya Shillings (Kshs. 1,000,000,000,000), since 2013 to date can be credited to the Senate which consistently disagreed with the allocation done by the National Assembly.

Is there hope? The former Chief Justice Willy Mutunga had this to say in the Advisory Opinion: *“Devolution is the core promise of the new Constitution. It reverses the system of control and authority established by the colonial powers and continued by successive Presidents. The large panoply of institutions*

that play a Role in devolution-matters, evidences the central place of devolution in the deconstruction-reconstruction of the Kenyan state. Thus, a “Chapter 11-Only” approach would wrongly obscure the interlocking nature of devolution with other aspects and institutions of the Constitution, an element which is critical to its success.”

Senate has in the past five years played the central Role described above by consistently adopting a bipartisan approach in all matters concerning County Governments.

The Role of the Senate and by extension the Speakers of the Parliament under Article 110(3) was captured aptly in the Advisory Opinion as follows: *“For instance, it may be argued that although security and policing are national functions, how security and policing services are provided affects how county governments discharge their agricultural functions. As such, a bill on security and policing would be a bill concerning counties... With a good Speaker, the Senate should be able to find something that affects the functions of the counties in almost every bill that comes to Parliament, making it a bill that must be considered and passed by both Houses.”* This paragraph sums up Article 110(3) and its significance in ensuring that the Senate’s Role is not misinterpreted.

I have extensively quoted several paragraphs of the Advisory Opinion No. 2 of 2013, to demonstrate that there is no legal dispute or ambiguity in the Constitution on the Role of the Senate.

My reading of Articles 94, 96, 123, 217, 218 and 229 of the Constitution and the

Advisory Opinion confirms that no bill should be debated, passed in the National Assembly and assented to by the President without consideration by the Senate. It will take courage of the two speakers to elevate Parliament to the level where every decision made in Parliament becomes a true Act of Parliament.

In the last session, I, deputised Senator Kipchumba Murkomen in a Select Committee to consider possible amendments to the Constitution. We proposed several changes to the Constitution which would remove any ambiguities on the Role of the Senate. The Senate has little or no choice but to champion amendments on its Role as a House of Parliament.

In my view, the Role of the Senate in determining matters that concern the Counties and the Country at large cannot be over-emphasized. The Senate now and in future must continue advocating that Article 187 (2) of the Constitution must be followed to the letter to ensure resources follow devolved functions.

Senate has in the past years done its level best to ensure that Counties follow the tenets of the Constitution and Public Finance Management Act in so far as prudent use of resources is concerned. We may have failed in stemming wanton wastage and pilferage, but therein lies great opportunity for the Senate and County Assemblies to ensure there is value for money in the manner in which the Counties implement their Annual plans, County Integrated Development Plans and ultimately, the Budgets. This is one function the Senate cannot afford to relent on.

There will be need to make deliberate efforts by the two Speakers and both Houses to find a seamless working method to ensure that Article 110 (3) is adhered to without resulting to mediation or Court processes.

Senator Johnson Sakaja and myself have proposed a bill titled **Determination of the Nature of Bills (Procedure) Bill - Senate Bill No. 30 of 2018**, in an effort to put to life to the provisions of Article 110 (3) and the Advisory Opinion.

Article 94 obligates both Houses of Parliament to exercise their legitimate Role of representing the interests of the Nation in such a manner that upholds the trust reposed on the legislature by its citizens under Article 1. Needless to say, I do not foresee the people of Kenya voting to scrap the Senate in a referendum. Devolution is a Revolution in Kenya. Devolution and the Senate are tied together like Siamese twins.

Devolution will not be achieved without putting the interests of the Nation first. Sustainability, prosperity and success of the devolved structure will largely depend on sacrifice, devotion and promotion of the new system of governance.

*Mutula Kilonzo Junior
Senator, Makueni County
Senate Minority Whip*

8 Years on: Is Kenya's constitutional promise of Devolution a reality or is it a mirage?

Friday 27th August 2010 is a day that shall be remembered by many Kenyans particularly those like me who had been involved in the struggle for a new constitution. On this day, Kenya promulgated the Constitution of Kenya 2010 that they had voted for overwhelmingly during a referendum held on 4th of the same month. The iconic picture of former president Mwai Kibaki lifting aloft the new constitution before a mammoth crowd at Uhuru Park shall remain etched in our memories and serve to remind us of the journey we travelled before that day. For the second time in ten years, Kenyans were rated among the most optimistic people in the world; their hope being anchored on the promise for a better future grounded on Devolution.

Globally, Devolution of power and resources is a pivotal means of promoting and advancing democracy, participation and accountability. It enhances local development, and efficient and effective service delivery. It entrenches equity and inclusiveness in development and access to services. Further, Devolution enhances localized good governance by incorporating vertical separation of powers accountability and increasing the ambit of checks and balances. Devolution therefore presented a

panacea to our history of bad governance characterized by impunity, corruption, poor services, exclusion and marginalization.

8 years after the promulgation and five years of operation of Counties, there is much to write home about. Across the country, the landscape is changing. Towns that had hitherto been sleepy have become vibrant after basic infrastructure such as roads and drainage has been improved. Rural access roads are becoming passable thereby improving access to markets and other services. Parts of the country that were closed are brimming with a new lease of life courtesy of billions of shillings that have been disbursed to Counties.

In villages, new health facilities have been put up and are promoting the right to health care services. Efforts to equip health facilities; adequately staff and supply them with drugs and other essentials are delivering notable results in health indicators. Indeed, some Counties such as Makueni have made huge leaps towards universal healthcare. Sinking of boreholes, protection of streams, construction of dams and boreholes are among measures that are slowly but steadily addressing the perennial water problem in water scarce Counties.

New economic opportunities based on devolved functions have been created. There are new employment opportunities for the youth in business, agriculture and other sectors. For the first time, ordinary citizens are having a say in their development. Citizen participation in County planning and budgeting, being a requirement of the law, is promoting development effectiveness by ensuring that money is spent where it has the most impact in people's lives.

Many Counties have made notable steps to facilitate public participation including enacting laws and setting up dedicated units to spearhead it. As a result, there is more focused development programming; counties are solving problems unique to them by tapping into local opportunities and potential. For example, Nakuru County has prioritized revitalization of the pyrethrum industry that was at one point in history its economic mainstay while Makueni is tapping into its potential for fruit production and promoting value addition by providing infrastructure, capacity development for local farmers and market linkages.

Local revenue collection within counties has been optimized. Many Counties have come up with digitalized revenue collection systems that minimize pilferage and wastage. In addition, courtesy to civic education being provided mostly by civil society organizations, citizens at grassroots level are increasingly becoming aware of their duty to provide oversight and are

acting to hold government to account and promote prudent management of public resources.

Inclusion of women, youth and persons with disabilities has become a prominent objective being pursued at County level through such policies as Access to Government Procurement Opportunities (AGPO). Some Counties have even gone a step further to enact laws and policies for the empowerment of these special interest groups to keep with the global commitment of leaving no one behind.

In a nutshell, there is general consensus among the majority of stakeholders and the general public that Devolution is working. Without discounting the gains, we missed certain critical opportunities in the process of implementing Devolution that have slowed realization of its objectives. To start with, we failed to work deliberately and ensure that all enablers of Devolution are in place and concertedly reinforcing each other. As noted by Annette Omollo, the realization of the promises of Devolution would generally depend on a number of factors including but not limited to¹:

- Clearly defined and demarcated roles and functions of Governments at the national and sub-national levels accompanied with a seamless transition process, political will by the centre to decentralize power and resources;
- Strong institutional and human resource capacities of County Governments;

1 Annette Omollo: Devolution in Kenya, a critical Review of the Past

DEVOLUTION?

- Financial independence and probity of County Governments.

In addition and particularly with regards to promoting accountable governance; a well-informed public and organized Civil Society including media that is robustly engaged in governance and development processes and holding Government to account is requisite. It is my view that the transition process was rushed and uncoordinated. Thorough unbundling and costing of functions for County Governments was not done. This provided a shaky foundation for County development programming. At the same time, we failed to have a deep and honest conversation on the kind of political re-engineering we needed to steer Devolution to its success.

It can be noted that even though Governors head their Governments, most of them are at the beck of their party leaders and often fail to make independent decisions to the best interests of the citizens of their counties. Moreover, there has been general reluctance on the part of National Government to promote financial independence of Counties. Every year, there has to be some kind of fight between the National Treasury and the Commission for Revenue Allocation (CRA) regarding the amounts to be allocated for Counties.

The other important opportunity that has been missed relates to capacity building for Counties to take up their functions. It is my view that the National Government has not delivered on its obligation in this regard effectively. Third, we have failed to cultivate effective synergies between state and non-state actors geared towards pursuance of the objectives of Devolution. Most County

Governments have not undertaken a thorough stakeholder mapping exercise as to inform who to partner with in delivery of their functions. For example, Civil Society Organizations and Governments in many Counties appear to be working at cross purposes rather than in concert with each other. Often, this has led to unnecessary conflicts to the detriment of the greater good of the people. Proper horizontal relationships among Counties have also not been built.

The emergence of regional blocks, contrary to the manner in which they are being marketed, appear to be more political than economic. Last, Counties have so far missed the opportunity to make public participation more meaningful by providing civic education. When citizens are not well informed, their participation has little impact on development programming and is sometimes disruptive.

For missing these opportunities, a number of challenges continue to face implementation of devolution. Most notable of these include:

1. Weak financial and human resource capacity of Counties. Most Counties depend on transfers from National Government to execute their functions. Much of the money goes to salaries and other recurrent expenditure leaving little for development. In some Counties, there has been low absorption of development budgets leading to high roll-overs. Despite their bloated numbers, many of the County staffers were inherited from the moribund local authorities and they have not been able to move with the times.

2. Corruption and misuse of resources are affecting the capacity of County Governments to meet their obligations. This issue mainly regards procurement of goods and services, urban/spatial planning and asset management, treasury and performance-based budgeting, non-administrative service management and delivery and gender and youth policy implementation. The Auditor General continues to report on financial impropriety with very little action being taken. The County Assemblies have not been effective in their oversight role. Instead, some members of the assemblies are themselves directly involved in implementation of projects.

Rampant conflicts between County Assembly and County Executive have had a toll on planning, budgeting and legislation and the implementation thereof. Indeed, this is part of the reason for high roll-overs. It is common place to hear threats by members of County Assembly to impeach the Governor or a member of the County Executive on some flimsy grounds. At the same time, there is poor coordination and consultation between initiatives by National Government agencies and those of county government that has led to duplication and wastage of resources.

For example, the National Government Constituencies Development Fund and the National Government Affirmative Action Fund are involved in construction of markets, bodaboda shades and erecting street and security lights alongside county governments. Both Funds are also providing bursaries and so are the governments in most counties. Besides

the obvious wastage of resources through duplication, this also creates a fertile ground for corruption.

Increasingly, citizens are becoming less motivated to participate or engage with government departments. Already, there are open discussions to the effect that devolution may not have been the magic wand we thought it to be after all. This is a dangerous indicator for our journey to constitutionalism that requires urgent reversal.

Towards this end, the following may be necessary:

1. There is need for Counties to undertake a thorough human resource audit to form basis of addressing the staffing weaknesses. The intergovernmental relations technical committee should fast-track this process;
2. Counties should accelerate the process of finalizing laws, policies and guidelines to promote meaningful public participation. Counties should allocate adequate resources for civic education and public participation. At the same time, there is need for counties to strengthen collaboration with Civil Society. This would go a long way in supporting civic education and arresting of corruption and other upheavals, including impeachment threats;
3. Counties should establish County Government Accountability Office to help improve the performance, accountability and service delivery in the county. This office will be tasked with providing objective, fact-based and timely information in a bid to make the County Government more

efficient, effective, ethical, equitable and responsive while ensuring value for money and improved county government operations. Partnership with CAJ towards this end is highly recommended;

4. At the intergovernmental level, a political, policy and legal decision has to be made on how to expeditiously downsize, rationalize, align and restructure National Government ministries, departments and agencies to respect and accord with the devolved system in order to remove costly duplication and parallel governance/administrative systems, and also effectively implement in full, partial and shared (concurrent) devolved functions;
5. Counties should exploit the potential of Networking among themselves to share experiences and knowledge. Creating a platform for County Governments to exchange their opinion, challenges, issues and best practices would be useful;
6. A rigorous well-structured multi-stakeholder dialogue needs to happen on the appropriate system of intergovernmental relations on revenue sharing and taxation policy. Counties should forge strong partnerships with private sector and civil society to promote service delivery;
7. Proper and timely communication to the local residents and various stakeholders and proactive disclosure of information is necessary for realization of the promises of Devolution.

So, 8 years on, is Kenya's constitutional promise of Devolution a reality or is it a mirage? Devolution remains the most important gateway to Kenya's prosperous future. It behooves us all, whether in Government, in Civil Society or as private citizens to make it work.

As noted in the United Nations Secretary-General's *"Synthesis Report"* on the post-2015 agenda, many of the investments to achieve the Sustainable Development Goals (SDGs) will take place at the sub-national level and be led by local governments. Therefore, ***"Devolution must not stop at the combined authority at "county" level. It should go deep into addressing and building community capacity and engagement; enhancing local democracy and participation; widening opportunities for neighborhood level service delivery; putting communities in control through stronger local democracy and with fairer funding and more powers and helping to improve the social and economic vitality of their areas; creating partnerships with business and industry to identify needs, potential barriers to growth and development; and attracting new businesses, diversifying the local economy, providing business support to existing businesses."***

*Masese Kemunche
Programs Manager, Centre for Enhancing
Democracy and Good Governance (CEDGG)*

Public participation in Makueni County



Devolution: transforming challenges into opportunities

In a number of countries in Africa the transfer of (political and financial) autonomy to lower levels of Government has become a trend in the last two decades, for example, in Senegal, Nigeria, South Africa, Uganda, Ethiopia and Zimbabwe. However, the extent to which power has been given to regional or local units varies significantly. This trend has been strongly supported by a lot of international partners. The concept of decentralization has emerged as a way to ensure that different communities within a nation are not excluded and to foster socio-economic development, democracy, service delivery as well as equality among citizens.

The Kenyan Way

Although, the history of Devolution in Kenya goes back to the days of independence in 1963, the country decided to finally introduce such a devolved state structure with the new Constitution of 2010. With the promulgation of the new Constitution, 47 new Counties have been created as a new (sub-national) level of Government. In the subsequent elections held in 2013, Kenyans elected, for the first time, their County Executive (Governor, Deputy Governor) and the County Legislative Bodies (County Assemblies) as well as the Members of the Senate who serve as the protectors of County interests at the National level. Five years later many of those policy

makers were voted out. Nearly half of the Governors and 80% of the Members of the County Assemblies were shown the door by their voters. At the same time the country entered the second phase of Devolution.

Today a vast majority agrees that it brought positive change. Marginalized areas enjoy better infrastructure, increased economic development, improved access to healthcare and new ways to participate in decision making. On the other hand, several problems remain to be solved, such as capacities of County staff, corruption, funding, public financial management, civic engagement and intergovernmental relations.

However, those challenges do not necessarily have to become problems. If stakeholders are working on them they can be transformed into opportunities. Hereafter, I want to discuss two selected areas among others which are essential drivers for the future development of Devolution during the second phase until 2022.



a) Funding & public financial management

A serious decentralisation of power to lower levels of Government always requires sufficient funding. This rule applies to the Kenyan case as well since the success of the Devolution process greatly depends on adequate funding. Counties will only meet the high expectations concerning service delivery if there are enough resources; otherwise citizens will not support Devolution anymore.

Generally, Counties in Kenya rely on two kinds of funding: Firstly, on their share of the national revenue as well as grants. At the moment Counties highly depend on the transfer from the National Government. In particular the cumbersome disbursement of the devolved funds is a challenge for the Counties. Therefore, a system has to be put in place which ensures smoother and timely transfers.

Counties have limited rights to generate their revenues by imposing property rates (tax on immovable property), entertainment taxes, and charges for services or other taxes approved by Parliament. Most of the Counties do not use this potential source of funding because they are incapable of fulfilling their revenue collection goals.

Two possible explanations are that they either set themselves objectives that are too optimistic or they lack the necessary capacities. In any case, Counties are well advised to improve their performance. Furthermore, the public financial management of the Counties shows massive room for improvement in particular with regard to procurement

and the efficient use of public funds. The already scarce financial resources are not handled in an effective and sustainable manner. One of the reasons is corruption which costs Kenyans massive amounts of money every year which cannot be used for development or infrastructure. Another reason is the bloated wage bill of Counties. In the Fiscal Year 2016/17 Counties spent on average more than two thirds of their budgets for recurrent costs. Consequently, the funds for development stayed limited.

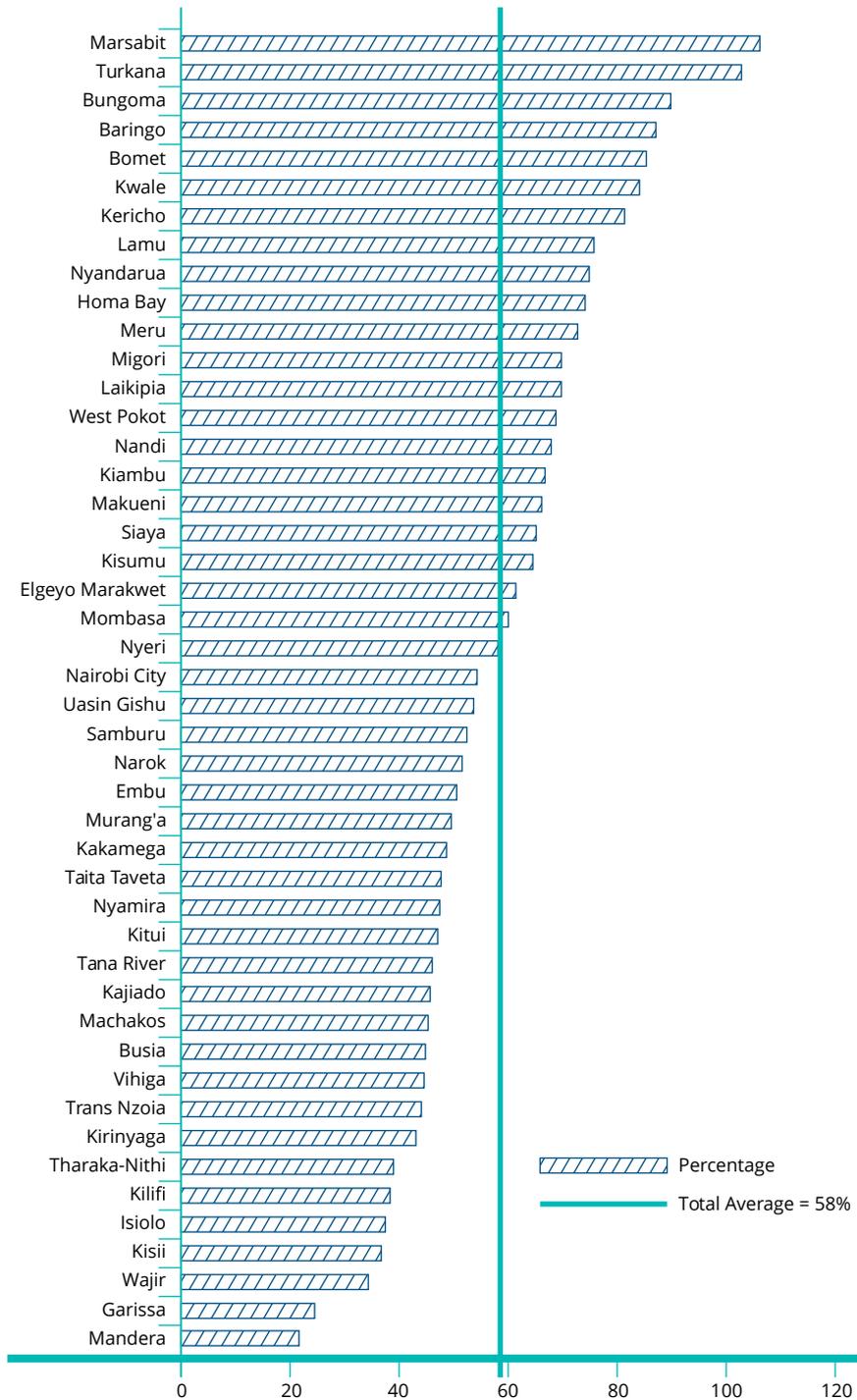
Lastly, when it comes to funding there has to be a quick solution for the County debts accumulated in the previous years. Some Counties are close to financial collapse and their ability to guarantee service delivery will be put into jeopardy if swift attention is not paid to the obvious.

b) Public participation & civic engagement

Traditionally citizens participate through elections. However, to limit participation to voting ignores other important venues of engagement, in particular at the local and regional level. Public participation is a vital governance requirement and is embedded in the Constitution and several laws concerning Devolution.

Despite the laws, acts of citizen participation and accountability at County level require institutionalised structures and procedures as well as education and information for the citizens. Firstly, many Kenyans are not aware of their constitutional rights or possibilities to engage in the County decision-making process, which prevents them from deciding on the future of their County. Training and empowerment of citizens on

Local revenue generation of the Counties FY 2016/17, Source: Controller of Budget



their rights and the use of information are essential particularly for issues addressing development planning. Civil Society organisations can contribute here and work as partners with the Local Governments. Many Counties have established departments or directorates for public participation in charge of civic education. However, the performance of Counties varies significantly, and, in many of them, public participation has remained a hollow phrase without real results and backing from County leaders. Such Counties ignore the fact that decisions with popular engagement and support are mostly more effective and sustainable. In this context, County Administrations need to implement their County Public Participation laws with the help of concrete policies and guidelines.

Two good examples for public participation are the County Integrated Development and the application of social audit instruments. The latter is a way to engage citizens and to guarantee accountability. The community scorecard, for example, is a tool that is not expensive, ensures citizen participation and helps Counties to identify shortcomings in service delivery. It can be used in all areas relevant to County Governments such as health, water, sanitation, agriculture or education. Although, the formulation of the CIPDs and the participation of citizens improved in comparison to the first phase, more has to be done. In particular the involvement of lower levels like wards or villages.

In general, County Governments as well as International Partners have to switch from fostering civic education to fostering civic engagement. Education should only be the basis for the engagement of the citizens

which constitutes the real goal. Informed citizens who do not engage are not bringing change.

Conclusion

Since the start of the Devolved Governance system many positive changes have taken place and it is justified to claim that generally Devolution is working. However, there remains challenges which have to be dealt with to ensure the success of the process. Such a deep and fundamental transformation of the state structure takes time and is a long-term process. It is up to all stakeholders to turn the current challenges into opportunities.

*Thomas Tödting
Director, Program on Devolution,
Konrad-Adenauer-Stiftung*

Hither & tither Devolution in Kenya

The Kenyan dream on Devolution

The Constitution of Kenya Review Act of 1998 (Cap 3A) summed up the quest² for a new democratic state with Devolved Governance for enhanced access to basic services, aspirations that Kenyans had been pursuing for many years pre-dating the onset of multi-party democracy in the 1990s as captured in the objects and purpose of constitutional review³, inter alia, that is:

.... guaranteeing peace, national unity and integrity of the Republic of Kenya in order to safeguard the well-being of the people of Kenya; establishing a free and democratic system of Government that enshrines good governance, constitutionalism, the rule of law, human rights and gender equity;promoting the peoples' participation in the governance of the country through democratic, free and fair elections and the devolution and exercise of power..... ensuring the full participation of people in the management of public affairs; and enabling Kenyans to resolve national issues on the basis of consensus ...

As the country embarked on a robust debate to define the *Kenya We Want*⁴, the facilitative organ of review, the Constitution Review Commission of Kenya (CKRC) collected and collated views from more than 35,000 Kenyans using diverse means, and in its final report, CKRC enunciated the views from the people to include:

Views from the People

- *...Government should be required*

to divide resource benefits between the national Government and the communities where such resources are found;

- *...Feeling of alienation from central government power should be addressed since power is concentrated in the national Government, and to a remarkable extent, in the president; power is also concentrated spatially in the capital; that local authorities have been*

2 Aspirations for a government based on the essential values of human rights, equality, freedom, democracy, social justice and the rule of law/Constitution of Kenya 2010

3 Constitution of Kenya Review Act of 1998 (Cap 3A), amended 2001

4 The Kenya We Want had been popularised by a people's constitutional review movement called Kenya Tuitakayo - Citizens Coalition for Constitutional Change aka 4Cs (established in 1994)

weakened; feeling of marginalisation and neglect, indeed, of victimization, for their political affiliation; feeling of unjust deprivation of resources; and feeling that community problems arise from government policies over which they have no control; and that devolution should give electoral representation at local and national levels, as well as control of the resources, local and national

- *...All councillors should be elected and none should be nominated*
- *...Mayors and chairs of local authorities should be elected directly by the people; ...Councillors should be required to have a set minimum educational qualifications;*
- *...There should be a certain proportion of women in local councils*
- *...Chiefs should be elected*
- *...Establish a council of elders to handle village administrative and development matters;*
- *...The provincial administration should be abolished entirely or retained only at the district level and below but not at the province level*
- *...Replace Provincial Administration with strengthened local authority administrations, or with elected bodies, to make them answerable to the people*
- *...The local community should control/regulate land;*
- *...Districts should not have 'tribal' appellations, e.g., Kuria, Kisii and Embu*
- *...Local communities should be involved in resource management; they should also benefit from resources developed locally, and taxes collected from citizens;*
- *...Central government powers and functions should be decentralised;*
- *...There should be an end to the colonial and post-colonial history of excluding communities at the grassroots from participating in local governance;*
- *...On public finance and revenue, people called for strengthening the independence and powers of the Auditor-General; better controls over expenditure of State revenue out of the Budget; greater transparency of the process; greater involvement of the public and parliament in preparing and approving the budget; more transparency over tax waivers; senior officers of the Kenya Revenue Authority to be appointed and vetted by parliament; establishing the Budget Office of Parliament; separating the two functions of Budget control and audit; tightening Parliamentary control of Government borrowing; constitution to include principles of fair and prudent taxation; office of the Governor of the Central Bank to be established by the Constitution and given security of tenure and independence of operations; systematizing the financial provisions; gathering them in one place; the nation's currency should have a national image, not an individual's portrait;*
- *...Revenue should be shared between the central Government and lower levels at certain percentages, between 10 and 20% to the central government.*
- *...On accountability and responsive representation of the people and participatory governance, the people's views affirmed the importance of the people and their institutions in promoting democracy and republican principles, values and practice; provide that the people of Kenya have the right to participate in the affairs of government either directly or through freely elected representatives; provide that it is the duty of public authorities to promote*

individual and community participation in the activities of society and to influence decision-making affecting them; establish appropriate mechanisms to ensure the accountability of the government at all levels and to afford people the opportunity to participate effectively in the governance of the state; establish mechanisms to facilitate decision-making by the people on constitutional issues whether through referenda or otherwise; require state institutions to conduct public enquiry before important decisions affecting the public welfare are made or implemented; guarantee the right of the people to individually or jointly petition; address complaints to public institutions and authorities including parliament, and to insist that these be acted on; provide that parliament enacts a law defining the role of traditional leadership, customary law and the customs of communities; create mechanisms that would enable and empower people to monitor the performance of elected representatives and to recall them if their performance is not up to expectation; adopt the Mixed Member Proportional system of electoral system

With a myriad of views expressed and collected, all pointing towards improvement of public accountability, good governance and delivery of services to the people, the CKRC summarised the demands to provide that on Devolution of powers, the new Constitution should provide for a four tier devolution structure based on the province, district, location and village;

provide that Nairobi as the capital territory be governed in accordance with special legislation; provide that other municipalities be governed in accordance with legislation establishing units of devolution; entrench the structure of Devolution; provide that upon the new Constitution coming into effect the provincial administration will stand abolished.

Synthesis of the public views

The objects of review and views from the people constituted legitimate public expectations and directives, and through the sovereign will of the people in the two national referenda of 2005 and 2010, with the latter enacting and adopting the constitution of Kenya 2010 for the people and the future generations⁵, a clear statement of how the people wanted to manage their public affairs had emerged.

With the collapse of the 2005 referendum document, largely on account of failure to disperse power and secure a meaningful devolution of government, a Committee of Experts collated views to inform a better draft, for a referendum question.

The CoE remained guided by the core objects of review and the people's views on a Devolved system of Government. The CoE received various expert input including that from the National Task Force on Devolution, established to build consensus on the form of a devolved system of governance that Kenya needed to adopt.

As elaborately explained in the submission by the public to the Task Force on

Devolution, as captured in the Sayari position⁶, that is, let resources follow functions when sharing revenue at National and County Government levels, and establish a competent and ethical human resource base oversighted by competent Public Service Boards.

Both the CKRC and Committee of Experts considered key questions, notably, the broad principles and values to guide Devolution and the operation of devolved units, including the general standards to be applied on such issues as allocation of resources, delivery of services and regulation of the relationship between the Governors and the governed. The question of relationship between the Devolved units and National Government regarding the Devolved power, with clarity on which powers may be exercised exclusively by the units or concurrently by both the units and the national government.

The Devolution as bringing on board elements of autonomy by which the devolved units operate, had to ensure that Kenya remained a unified homogeneous State. The vital consideration of financial arrangement between the centre and the units, more so the details on sharing resources and opportunities, the division of power in relation to raising, spending and transfer revenue, and the establishment of criteria for assisting less endowed units, be set clearly in the constitutive document. The manner in which the resources are

mobilised and spent goes to the heart of the viability of the devolution itself.

Despite political deals that watered down the chapter on Devolution, creating two levels of Government, down from the four-tier structure adopted by the National Constitutional Conference - Bomas, the public ratified it in a referendum of August 2010 as it provided a better hope than the then prevailing framework.

Constitutional and Legal Grounding of Devolution and Safety Guards

The 2nd Referendum of August 4, 2010 ushered in a new Constitution as promulgated by the president on August 27, 2010, repealing the former draconian mother law. The Constitution of Kenya 2010 (CoK2010) made tacit provisions on devolution: It recognises the sovereign power⁷ of the people of Kenya, providing that this can be exercised at national and county levels, either directly or as delegated to parliament and the Legislative Assemblies in the County Governments; and the National Executive and the executive structures in the County Governments

The Constitution provides that the Republic of Kenya shall be a multi-party democratic State founded on the national values and principles of Governance referred to in Article 10 including patriotism, national unity, sharing and devolution of power, the rule of law, democracy and participation

6 Position paper on devolution by Sayari Think Tank to the Task Force on Devolution, February 2010. Sayari is a Think Tank on Social and Economic Issues in Africa.

7 Article 1 of the COK2010

of the people. That the territory of Kenya is divided into 47 counties specified in the first schedule, and that the Governments at the National and County levels are distinct and inter-dependent and shall conduct their mutual relations on the basis of consultation and cooperation.

The constitution provides that the purpose and objects⁸ of the Devolution of Government are:

- *...to promote democratic and accountable exercise of power; to foster national unity by recognising diversity; to give powers of self-governance to the people and enhance the participation of the people in the exercise of the powers of the State and in making decisions affecting them; to recognise the right of communities to manage their own affairs and to further their development; to protect and promote the interests and rights of minorities and marginalised communities; to promote social and economic development and the provision of proximate, easily accessible services throughout Kenya; to ensure equitable sharing of national and local resources throughout Kenya; to facilitate the decentralisation of State organs, their functions and services, from the capital of Kenya; and to enhance checks and balances and the separation of powers.*

Further analysis of the Constitution reveals that the Devolution of Government must ensure that County Governments⁹ are based on democratic principles and the separation of powers; have reliable

sources of revenue to enable them to govern and deliver services effectively; and decentralises its functions and the provision of its services to the extent that it is efficient and practicable to do so.

To ensure that Devolution delivers to the people, a number of protection clauses and safe guards are provided. The protection clauses are inbuilt in the Constitution to ensure that the Government at either level of Devolution, that is, the National Government and County Governments, performs 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; assists, supports and consults and, as appropriate, implements the legislation of the other level of Government; and liaises with government at the other level for the purpose of exchanging information, coordinating policies and administration and enhancing capacity.

It is obligatory that government at each level, and different governments at the county level, co-operate in the performance of functions and exercise of powers and, for that purpose, may set up joint committees and joint authorities.

Knowing that conflicts are likely to occur and derail devolution, the constitution provides that in any dispute between governments, the concerned governments

8 COK2010 Chapter 11, Article 174

9 Each county government consists of a county assembly and a county executive

A polling station in Migori County



shall make every reasonable effort to settle the dispute, including by means of procedures provided under national legislation. National Legislation is expected to be enacted to provide procedures for settling intergovernmental disputes by alternative dispute resolution mechanisms, including negotiation, mediation and arbitration, and that parliament legislates to ensure that county governments have adequate support to enable them to perform their functions.

To avoid the situation that collapsed the Federal System of Government envisaged in the independence constitution by resource-starving Devolution, supportive clauses are inbuilt such as those that provide for revenue raised nationally to be shared equitably among the National and County Governments, and in addition, County Governments to be given additional allocations from the National Government's share of the revenue, either conditionally or unconditionally. Similarly, mechanisms to ensure that county governments operate financial management systems that comply with any requirements prescribed by national legislation, for instance, Public Finance Management Act, are provided. Further, the establishment of the Commission on Revenue Allocation [CRA] with a mandate to make recommendations concerning the basis for the equitable sharing of revenue raised by the National Government - between the National and County Governments.

The law ensures that no lacuna exists and a

County Government that fails to perform as per the law may temporarily be suspended and its functions assumed by the National Government for the period of suspension¹⁰. For a suspension to occur, a notice must be given to a County Government of any measures that the National Government intends to take; that permits the National Government to take only measures that are necessary; that requires the National Government, when it intervenes, to take measures that will assist the County Government to resume full responsibility for its functions; and provides for a process by which the Senate may bring the intervention by the National Government to an end.

The 2010 Constitution provided¹¹ that within five years after the effective date (promulgation date August 27) the National Government shall restructure the system of administration commonly known as the provincial administration to accord with and respect the system of devolved government established under this Constitution.

What has happened since 2010
As the Country prepared to usher in a new system of Governance based on Devolution, after the August 2010 Referendum, two institutions were set up to facilitate the transition. The Transition Authority (TA) and the Constitution Implementation Commission (CIC). Key legislations have been enacted to help bring to light the constitutional provisions. Key among these include the County Governments Act

10 Suspension may not last more than three months.

11 Section 17 of the Transitional and Consequential provisions, Sixth Schedule

number 17 of 2012, County Governments Public Finance Management Transition Act number 8 of 2013, Intergovernmental Relations Act number 2 of 2012, Urban Areas and Cities Act, No. 13 of 2011, National Government Co-ordination Act, No. 1 of 2013, and Public Service (values and principles) Act number 1A of 2015. The laws provide detailed framework through which Devolution of power is realised. However, some of the laws, for instance, the Coordination of National Government Act, has re-introduced the infamous and much dreaded Provincial Administration that Kenyans wanted to be done away with. The baptism of the outfit into coordination of National Government does not help matters much. This claws back some of the gains in the Constitution and practice after 2010.

On revenue allocation, the National Government consistently allocates less than 15% of the revenue generated nationally, contrary to the expectations. The National Government hides under the clause of 'recently edited financial year accounts' and these are always two to three years behind.

Usurpation of functions of County Governments by the National Government, for instance, the creation of Devolution Ministry where large sums of public funds are repositied and used by the National Governments to reward 'loyal Counties and Constituencies' negates the spirit and principles of Devolution.

Public Finance Management has become a farce. Corruption lingers in almost all levels of the devolved governments, competing with National Governments. This deprives the people of the needed resources to

undertake public service delivery. Local resources are yet to benefit the county governments. Instead, unresolved tension and conflicts have emerged in counties where enormous amounts of local resources are, for instance, oil in Turkana County and Ports Authority in Mombasa County.

Electoral outcomes at the County level, like at National level, have mirrored the prevailing interests of the deep state thus leaders who emerge display open ignorance on matters Devolution.

What needs to be done to fix devolution and deliver on its objects

For Devolution to work, key things that need to be done include:

- Total adherence to the principles of devolution by all, in word and practice;
- Public participation directly and through their reps in the Senate, the County Governments and other instruments of self-governance created by the citizens, form the foundational basis, for the exercise of accountable democratic Governance by the citizens. These need to be elaborated;
- In the design of policy and law, the standards of qualification, integrity, accountability and competence, at the national level, should apply to devolved levels of government;
- Strengthen and provide an active political link between the County Governments and the Senate, with regular consultations between the Senator and County Government provided for, giving the Senator for each County an observer status in the County Assembly;

- Enhance participation of the people in County affairs, with the County Government facilitating and holding regular forums involving community leaders, civil society and elected leaders at the Sub County level.

Conclusion

Devolution of Government remains a better system of Governance than the hitherto centralised system of governance. It however, has been choked due to devolution of bad habits of corruption, discrimination, intolerance and unethical leadership in a number of ways within a number of Counties. Nevertheless, the seeds of Devolution will germinate and blossom with effective implementation of the Constitution that faithfully adheres to the values and principles of Governance as set out in Article 10 and chapter six on leadership and integrity.

Boaz Waruku
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Covering Devolution since 2013 – Role of Media, the wins and the misses

I went on a working trip to Mandera for the first time in 2007 – by road. At that time, ‘civilised’ road infrastructure ended at Garissa. We were covering election fever and politicians in North Eastern Kenya would tell us that the entire province (N.E.) had only 35 kilometres of tarmac road. That was the road that led into Garissa town from Mwingi in today’s Kitui County.

Garissa district then, benefited from not more than 40 kilometres of tarmac road which began at its border with the then Mwingi district. As we were to learn, finding our way to Mandera from Garissa was an endeavour that could not work without sheer willpower on our part. If you were used to the amenities readily available in most modern urban centres you would be advised not to try - and most Kenyans have worked and retired without having ventured to those lands.

During the rough drive, you sat on the edge of your seat tightly clinging to anything you could find to support you as the vehicle rocked. After Wajir started to look for a road in the dry patched lands because nothing indicated that there was one. Apart from what looked like some clearing in the dry dust and tyre marks, there was nothing else- sometimes even tyre marks of a lorry that might have passed four days ago would have been cleared by the

powerful winds wheezing on the dusty lands. The expanse from Wajir to Mandera was a torturous wilderness that would be punctuated by herders leading camels in search of water and from time to time they would run in front of our vehicle begging for the scarce commodity.

When you arrive in that border town, as a person who works and lives in Nairobi, you would come back and tell friends that there was no town! It was the largest collection of huts made of polythene bags that you may have ever seen. It had a few semi-permanent structures and select permanent buildings belonging to the provincial administration, the ministries of health, education, and the police.

When we arrived we couldn’t find any meaningful accommodation and so we slept in a rickety boarding house that offered extra mats which formed beds on the dusty ground out in the compound. Most visitors preferred to sleep outside because of the heat. In the morning we washed only our faces, because of the scarce commodity that is water. This was despite the very dusty journey we had endured all the way from Garissa – 600 kilometres away.

Fast forward to 2015 when we next visit Mandera, only two years into devolution

and we are welcomed by an air-conditioned room in one of the new hotels in Mandera town. There is a County Government, and at the governor's office we see a well-manicured garden. It is actually landscaped with green grass and is being watered with sprinklers. It reminds you of other well-kept gardens you find in Kenya's capital city.

In this assignment in Mandera, we find a fairly admirable road network cutting across the now growing town. We see about three new hotels each with air-conditioned rooms. We are taken to a water project in Takaba, one of Mandera's major centers, the new County Government had sunk a borehole that is more than a 100 feet deep and is now the salvation of a quarter of the population of Mandera County. We are also shown new farming projects in the County; we visit a 25 acre irrigation project along River Daua at the border with Ethiopia. The place is grassy and you would be forgiven to think that you are no longer in arid Mandera. The farm is growing sun flowers, water melons, paw paws and other horticultural stuff. We are informed that some of the fruits being sold in markets in North Eastern urban centres come from this farm.

At the hospital, efforts by the new County Government have turned it into a dependable health centre even for non-Kenyan Somalis who come in droves from across the border. At schools, the County Government had been forced to hire four leavers to teach after teachers from 'Southern Kenya' refused to turn up following increased terrorist activity. Overall we find out that here, the County Government has no luxury of doing "only" its functions; it does all Government

functions including working with the County Commissioner to ensure security.

As a journalist and editor I am surprised that I had not seen 'us' in the media highlight all these. Even our correspondents in Northern Kenya had been accustomed to bringing us, in Nairobi, stories of insecurity, hunger and drought. At my desk whenever I called our men in Garissa and Wajir, I would talk of the state of security, the dry spell and its effects, hardly would I discuss farming. In fact our 2015 working trip to Mandera was to do an in-depth feature on escalating insecurity and terrorism following Garissa University invasion by terrorists (all of which was negative – what Media is accused of).

But the tone, the thrust and tempo had been set at the beginning....

Six months or so, after the first election under the new Constitution (election 2013), a new phrase arrived on the scene. It was called *devolving corruption*. It arrived through weekly commentators in the dailies who wrote that it appears that Kenyans had not only devolved national government responsibilities to the grassroots but had also devolved corruption. The commentators wrote that those who previously were based in Nairobi and plotted to raid Government coffers at the Capital had found their way into the villages and peri-urban centers where they would launch self-enriching schemes. Others wrote that that had been their fear all along, and that in the past **"they stole from one center that is National Government but today they will steal from 47 units"**. It was only months into the new County Governments and Governors were quickly approving budgets to buy four

The devolved governance system in Kenya: A better understanding of the status quo

Mandera



Mwingi



wheel vehicles to survive the bad roads in the villages, others had lined up county public services with their relatives. At the County Assemblies, the new Members had started to clamor for better pay. The office was considered an improved version of its predecessor the *Councilor* and so the new MCAs wanted better terms – they believed that they were legislators in small parliaments!

And so was the tone set, where, during the first five years of Devolution, coverage of new projects was little and far between. Today however, during the second term of Devolved Government, Media has been covering outstanding projects by County leaders; Prof Kivutha Kibwana of Makueni and Charity Ngilu of Kitui have received coverage on this. Kibwana most recently launched a maternity hospital and the function was covered live by KTN NEWS (however, commercial interests are usually not too far away – the Makueni Government paid for the coverage.)

What Media stakeholders have thought about our coverage since 2013

In a 2013 media monitoring report on the coverage of Devolution by the Media Council of Kenya (MCK) showed that media were yet to embrace development journalism and did not do well in showcasing success stories in the counties. It said the frequency of articles and clips that reported on successes from various Counties was very “minimal”. That print media provided the highest space for public discourse on issues of Devolution which constituted 12% of the articles and clips analyzed. TV stations accorded 7% while radio gave 4%.

MCK said the Media was able to raise a red flag on regional imbalance and ethnic based appointments done in the Counties, one such case highlighted by the media was the Nandi County appointments reported by all media platforms during MCKs period of analyses.

The challenges of Devolution highlighted by the Media ranged from misunderstanding of the concept of Devolution by both the leaders and the citizens, interference by some Government officials and departments that may not understand or support Devolution, financing/economic constraints, clear separation of duties and responsibilities by both the levels of Devolved Government especially the role of County Commissioners appointed by the executive and deployed to County stations.

From the sampled material, the MCK study concluded that the Media performed well in highlighting challenges and managing the expectations of citizens. It, however, went ahead to recommend that that should not only be the focus, but also be extended to reporting on success stories and comparison of progress between the regions.

That indeed formed our surprise over the Mandera experience in 2015. There was a lot of positives County Governments were doing but we were not showing. The trip happened two years after MCK had released its report and I thought they had been spot on. We needed to latch onto development journalism even as we highlight the negatives, for that gives a more balanced view of the whole concept of Devolution and how it was working in Kenya.

In August 2018, Kenya Correspondents Association launched a useful book that is aimed at guiding Media on how best to cover Devolution. The 42-page booklet is intended to help journalists to appreciate the issues they have been reporting since the advent of Devolved Government. Even though it is aimed at journalists and Media in general, in practice, the booklet is of considerable value to all those who are interested in Devolution - among which are State institutions concerned with the development of the Constitution, and to members of the public, whom Devolution is supposed to benefit, and who may wish to make their own assessments of how it is working.

For journalists and citizens anxious to understand and either report on or try to enforce the constitution, the little booklet has some useful tips. Apart from explaining clearly how the system is supposed to work, it sensibly proposes to journalists more use of the Access to Information Act (so far largely, and disappointingly, neglected by the Kenyan Media). The book outlines the budget processes (very fully spelled out in the constitution and the law). And it suggests some approaches for journalists (equally relevant for civil society) when analysing this often puzzling area. For example, comparing allocations to different government sectors, understanding where public revenue comes from as well as where it goes, trying to understand whether spending is guided by government policy, and using reports of the Auditor General and the Controller of Budget (one might add reports of NGOs that have been building capacity among stakeholders – Konrad-Adenauer-Stiftung being a good example).

Why Media and County officials need to work more closely

The introduction of the Devolved system of Governance by the 2010 Constitution, therefore, heralded a great beginning for the country; there is no question that the future of development lies in Devolution. Six years now since embracing the new dispensation, remarkable economic progress has been achieved in various parts of the country. The Media have a critical role in promoting the Devolution agenda — hence an urgent need to have increased and in-depth coverage of the County Governments if Kenyans are to hold them accountable for services.

But even as the Fourth Estate remains vigilant in monitoring the implementation of Devolution, there is a need for the County Governments to “devolve” information. Governors and their directors of communication should give space for journalists to operate by interviewing County officials. Once while working on the challenges of procurement at Machakos and Busia County Governments, I kept hitting a dead end whenever I tried to get interviews with the Governors themselves and their members of the executive committees.

In Machakos I had got, from inside sources, documents that showed inconsistencies at tendering, where the Government had paid for services not delivered. But getting a rejoinder from the Government itself did not happen. I ended up saying, “our efforts to contact Governor Alfred Mutua were futile”. I had been aided by his director of communications, who had given me all his contacts, but Mutua couldn't be reached. Upon publication of the story, his lawyers



sent us a demand letter! The matter, however, never got to court.

For Busia, I couldn't get the Governor, despite the fact that my inside sources were telling me he was around Busia town. He was supposed to respond to allegations that he was interfering in the procurement process. I also had letters signed by him which revealed unprocedural hiring of staff for the County Government. I instead interviewed his chief of staff on the matter.

The County Governments Act 2012 requires that Regional Governments use the media to create awareness on devolution and governance; promote citizens' understanding for peace and national cohesion; undertake advocacy on core

development issues such as agriculture, education, health, security, economics and sustainable environment; and promote press freedom. But County officials may need refresher courses on how media operates and what journalists want, so that they can put that Act into practice.

Media's self-censorship

As indicated earlier, the 2010 Constitution marked an important achievement in Kenya's history. It has considerably been perceived as a breakthrough in the Devolution of power and resources.

While Devolution is the key vehicle for addressing spatial inequities including public expenditure, media's watchdog role is lately being undermined by commercial



interests within majority of the Media houses. Kenyan Media has lately lorded over itself self-censorship measures that are driven editorial managers. Because of some unsubstantiated fear that those from 'above' may complain, several managing editors have been playing 'very careful' and thereby cannot air/publish a story that exposes corruption at a County Government.

Following the mostly negative coverage during the first term of Devolution, Governors seemed to devise a different way of restraining Media's pen and mic; commercial favours! Most Governors are now helping Media to censor itself by dangling advertisements whose worth runs in millions.

Since newsrooms have nowadays, mostly, been made aware of Media's commercial interests, the spirit of 'not touching' so and so has rained on journalists. There is therefore self-censorship!

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