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Acronyms and Abbreviations

A&RD	Agriculture and Rural Development
ACK	Anglican Church of Kenya
AMREF	African Medical and Research Foundation
ANC	African National Congress
ASAL	Arid and Semi Arid Lands
CAI	Community Aid International
CDAs	Community Development Assistants
CDCs	Constituency Development Committees
CDF	Constituency Development Fund
CDFC	Constituency Development Fund Committee
CEBF	Constituency education Bursary Fund
CFF	Christian Development Fund
CILOR	Contribution in Lieu of Rates
CKRC	Constitution of Kenya Review Commission
CSOs	Civil Society Organisations
CST	Central Sales Tax
DC	District Commissioner
DDC	District Development Committee
DDO	District Development Officer
DDPs	District Development Plans
DFID	Department for International Development
DFRD	District Focus for Rural Development
DO	District Officers
DPO	District Planning Officer
DRFD	District Focus for Rural development
DSG	District Steering Group
ECK	Electoral Commission of Kenya
ERC	Energy Regulatory Commission
FFC	Financial Fiscal Commission
FPE	Free Primary Education
GDP	Gross Domestic Product
GoK	Government of Kenya
GPT	Graduated Personal Tax
IGFR	Intergovernmental Fiscal Relations
KADU	Kenya African Democratic Union

KANU	Kenya African National Union
KES	Kenya Shillings
KIPPRA	Kenya Institute of Public Policy Research and Analysis
KLGRP	Kenya Local Government Reform Programme
KPLC	Kenya Power and Lighting Company
LAs	Local Authorities
LASDAP	Local Authority Service Delivery Action Plan
LATF	Local Authority Transfer Fund
LDA	Law of Administrative Decentralisation
LLG	Local Level Government
LPP	Ley de Participacion Popular (Law of Popular Participation)
MBL	Movimiento Bolivia Libre (Free Bolivia Movement)
MECs	Members of the Executive Council
MEND	Movement for the Emancipation of the Niger Delta
MNR	Movimiento Nacionalista Revolucionario
MoLG	Ministry of Local Government
MP	Member of Parliament
MTEF	Medium Term Expenditure Framework
NCC	National Constitutional Conference
NFD	Northern Frontier District
NPPP	Northern Peoples Progressive Party
NRDC	National Rural Development Committee
OTB	Organizaciones Territoriales de Base
PC	Provincial Commissioner
PCEA	Presbyterian Church of East Africa
PES	Payment for Environmental Services
REPLF	Rural electrification Programme Levy Fund
RMLF	Road Maintenance Levy Fund
SID	Society for International Development
SRDP	Special Rural Development Programme
UNDP	United Nations Development Programme
UPP	Unidada de Participacion Popular (Popular Participation Unit)
VAT	Value Added Tax
WB	World Bank

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Margaret Chemengich,
Chief Executive Officer

1 Introduction

ALBERT **MWENDA**

Since independence, Kenya has experienced episodes of political instability which have had adverse effect on the country's economic performance and social cohesion. For example, in 2008 Kenya witnessed violence following the disputed national elections held in December 2007. Kenya also experiences other failures from time to time. Such failures include — corruption, economic stagnation, inequalities and poverty. These failures and episodic instability can be linked to the quality of governance (Kimenyi and Meagher, 2004). Quality of governance is in turn dependent on institutions[1] . These institutions can take different forms ranging from the constitution, to local authority by-laws to self regulation in informal business setting. It is these institutions that collectively determine the governance framework in a country. Different governance frameworks will yield varying political, economic and social outcomes. As Kimenyi and Meagher (2004) note, these differences emanate from the differences in the rules, organizing capabilities, social and political principles captured in the governance concept. Devolution, the focus of this book is one such governance concept.

Devolution has been advocated as a political response to the ills plaguing fragile and plural societies, such as, conflicts, inequalities, rent seeking, economic stagnation, corruption and inefficient use of public resources. Besides, devolution is also implemented as a reaction to external pressure from organised groups (or separatists). For devolution to be effective, however, the criteria of subsidiarity[2] and consensus[3] must be observed (Dent, 2004; Kimenyi and Meagher, 2004). There are several ways in which devolution impacts governance. First, by distributing authority over public goods and revenues devolution makes it difficult for individuals or groups of official actors to collude and engage in corrupt practices. Second, where devolution of authority takes place along territorial and communal lines, it can foster effective cooperation within the devolved units. As a result, local communities are able to mobilize social pressure against rent seeking and corruption. Indeed, a growing number of countries have over the last three decades further decentralised administrative, fiscal and political functions of central government to sub-national governments. These countries include the United Kingdom, Italy and Spain. In many cases, devolution has also been driven by the need to bring government closer to the people.

Devolution, including other forms of decentralisation, however, may not always lead to improved governance and economic performance. For example, devolution may reduce the ability of the national government to redistribute resources and therefore the ability to assist the less developed sub-national units. In addition, devolution may lead to the capture of local governments by the political elites, especially if devolution rules and systems are not well designed, and hence allow the local politicians to use the local resources to consolidate their hold on to political power through patronage.

It should be noted from the outset that there are various forms of decentralisation. Differences among the frameworks for decentralisation of public functions are, however, not clear-cut.

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1 Institutions have been defined as structures of rules, procedures and organisations, whether state-provided or otherwise (Kimenyi and Meagher, 2004)

2 Subsidiarity is defined as the assignment of public functions to the lowest level of government that is competent to oversee their implementation.

3 Consensus refers to a situation where policy actions of government units reflect the consent of the people that they represent.

Instead, they comprise of a continuum – ranging from a centralised framework to the federal system. Devolution is one form of decentralisation framework that lies within the continuum. *Devolution* is generally defined as a process of transfer of political, administrative and fiscal management powers between central government and lower levels of government, primarily operating at city and region levels (Potter, 2001). It is not just a linear process of power transfer from national to sub-national level but also involves some degree of cooperation between the different levels of government. Other frameworks that lie in between are the *deconcentration* and *delegation* frameworks (see chapter two for definitions of these concepts of decentralisation). The level of decentralisation is determined by several factors. These include; (i) the degree to which the sub-national unit can exercise administrative powers, in terms of recruiting and controlling employees, responding to citizens' feedback and altering services and budgets to match local preferences; (ii) Ability of the local government unit to exercise political authority in terms of initiating policy and overseeing its implementation; and (iii) the local government influence on revenue and expenditure decisions.

Scholars have advanced political and economic rationales in support of decentralisation of delivery and financing of public goods. These arguments provide the theoretical basis for devolution and other frameworks of decentralisation. Political scientists present three major rationales for decentralisation. First, they argue that decentralisation enhances democracy by bringing government closer to the citizens. Second, by establishing different tiers of government, decentralisation provides mechanisms for protecting democracy through vertical checks and balances. Third, by distributing authority and responsibility for fiscal management and public service delivery, minorities are given a stake in the system and this helps in conflict management.

The key economic rationales for decentralisation are well articulated by Musgrave (1959) and Oates (1972). They argue that decentralisation may improve governance in public service provision by improving the *efficiency of resource allocation*. Further, they observe that sub-national governments are closer to the people than the central government and as a result have better knowledge about local preferences. Local governments are therefore better placed to respond to the diverse needs of the local people. In addition, decentralisation narrows down the social diversity and subsequently the variation in local preferences. This reduces the opportunities for conflicts among different communities. Tiebout (1956) notes that decentralisation promotes competition among the sub-national governments and thus enhances the chance that governments will respond to local needs. As a result, countries are able to attain higher levels of efficiency in the allocation of public resources.

Musgrave (1959) further states that decentralisation can enhance *productive efficiency* by promoting accountability, reducing corruption and improving cost recovery[4]. First, by reducing bureaucratic filters decentralisation minimizes the likelihood of conflicts between elected officials and civil servants. Second, hard budget constraints, usually set at the sub-national level, compel local governments to minimize the costs of delivering public goods and to optimize on cost recovery. Third, decentralisation motivates social cohesion, especially at the local level, which in turn fosters cooperation that is critical in sustaining pressure against corruption. Fourth, sub-national governments are better positioned to overcome information asymmetry and hence tailor policies and service provision according to local preferences.

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[4] Since the local government is closer to the people, then it is plausible that the local government has better information about local preference. As a result, local services match local demand and therefore households will be more willing to pay for services, thus improving cost recovery

Empirical evidence on the impact of devolution depicts mixed results and in some cases it is inconclusive. For example, a study of the federal state of India suggests that decentralisation promotes government responsiveness in service delivery, especially if the media is very active at the local level (Besley and Burgess, 2002). Another study of Italy indicates that devolution may exacerbate regional disparities in public spending and economic outcomes (Calamai, 2009). Azfar et al (2001) finds that local officials have limited authority to influence service delivery while citizens' influence at the local level is hampered by limited information. As a result, devolution does not achieve the desired effects of allocative efficiency.

Scholars have identified several factors that may determine the efficiency of decentralisation frameworks. First, the establishment of the *constitution and a legal framework* that spells out the role of each level of government, including the rules governing fiscal arrangements and public service delivery, and mechanism for conflict resolution (Azfar et al, 2004). Second, the *political framework* governing the electoral process at the sub-national levels facilitates the direct participation of the users of services in the elections of political leaders. As a result, locally elected officials are compelled to pay keen attention to the demands of electorate at the local level. The outcomes of devolution are also influenced by the electoral system. For example, proportional representation systems, in a bid to reduce conflict, may opt to increase the representation of the minorities and thus reduce the likelihood of unequal distribution of public goods. As Lijphart (1999) finds, democratically elected officials, however, may not always maximise the welfare all citizens. For example, majoritarian governments may choose to pursue programmes that maximise the welfare of their majorities at the expense of the others. Third, the success of devolution or other decentralisation frameworks will depend on the *fiscal decentralisation framework*, which stipulates how the authority to spend and tax is shared among the various levels of government (Azfar et al, 2004). The efficiency of a decentralised framework is high when the intergovernmental fiscal framework is welfare enhancing, incorporates incentives to encourage prudent fiscal management at all government levels and responsibilities to tax and spend at the sub-national levels is accompanied by adequate political authority. For example, Shah (2006) identifies matching grants and tax revenue assignments as incentives that may motivate the enhancement of fiscal effort at the sub-national levels of government. Fourth, to enhance the efficiency of decentralisation, *information* (relating to the costs, beneficiaries, procurement and public service delivery) should be shared with the media, general public and among the different levels of government. Fifth, the decentralisation framework must allow *citizen participation in service delivery* (Azfar et al, 2004). The authors identify several mechanisms through which the citizens can participate in service delivery. These are (i) Regular local elections – through which citizens can vote out errant local political leaders; (ii) Surveys to solicit citizens' feedback on improving service delivery; (iii) Public hearings and call-in lines –for soliciting feedback on local policies; (iv) Legal Recourse through which citizens can petition government; (v) Demonstrations (vi) 'Exit' – where citizens discontinue the use of services that they are dissatisfied with; (vii) Ombudsman – by lodging complaints relating to public service delivery. Sixth, for efficient outcomes of decentralisation to be achieved, there must be *adequate capacity in the form of human capital*, essential equipment and technology, and incentives to motivate government officials to produce the desired results.

A review of Kenya's history reveals that the country has for the better part of its independent life been a unitary state with a highly centralised government that has had an overbearing control over the sub-national governments and the other arms of government, namely the

Legislature and the Judiciary. The country has, therefore, not had any real experience with devolution for two reasons. First, the introduction of regionalism, popularly known as '*Majimboism*', in 1963 under the Kenya Independent Constitution, did not last long. The first government of the independent Kenya, under the leadership of Jomo Kenyatta, amended the Constitution soon after independence in 1964, effectively scrapping the regional governments and replacing them with the central government-controlled Provincial Administration and the local government system. Second, the local governments established under the Local Government Act cap 265 of the Laws of Kenya were not granted significant political, administrative and fiscal powers. Instead, central government retained control of the local governments through the administration officers (hired by the same central government).

This highly centralised Executive control of the country's public affairs is seen by many as the genesis of the country's governance and economic management problems. During the constitutional conference in 2003, devolution was advocated by some groups as one way of reducing the overly centralised power of the Executive. There was, however, no consensus on the forms of devolution that the country should adopt. For example, there was no agreement on the levels of devolution that were appropriate for effective governance. In addition, there were differences of opinion with regard to how the fiscal powers should be distributed between the central government and the sub-national units. It is against this background that the studies, the findings of which are presented in chapters two to five, were commissioned by the Institute of Economic Affairs (IEA Kenya) with the objective of shedding light on some the contentious issues with regard to devolution.

In chapter two, the author, Annette Omolo defines the concept of devolution and provides the rationale for devolution based on the theories of devolution and the experiences of other countries. Further, she assesses Kenya's efforts of devolution since independence with a focus on the '*Majimbo*' system of 1963/64 and the current local government system. Finally, the author draws lessons for future institutional design of a devolved system of governance. In conclusion, the author emphasises the need to entrench devolution in the constitution to shield the devolved system of governance from political manipulation. In addition, the author advocates for the enhancement of the institutional capacity and the need to ensure the financial and economic viability of the devolved units of government.

Chapter three presents country comparative case studies. In it Wallace Kantai seeks to draw lessons for devolution from countries with varying forms of devolution. The study draws lessons for Kenya based on successes, failures and current efforts at improving the effectiveness of devolution in the five case study countries, namely, South Africa, Nigeria, India, Papua New Guinea and Bolivia. In his concluding remarks, the author cautions that devolution should not be seen as the solution for all governance and economic failures. He urges against aligning devolution units along the lines of ethnic or religious cleavages, to avert conflicts, such as those that occurred in India. The author emphasises the need for careful thought in designing a formula for sharing national resources.

Finally, chapter four examines the policy, constitutional and legal framework providing for decentralised funds, including the local capacity to handle the decentralised funds. The author, Wachira Kiragu, further investigates the coordination mechanisms of the decentralised funds, the funds impact on local development and the role played by citizens in the management of these funds. Drawing on Kenya's experience with fiscal decentralisation and that of other countries, the author recommends the entrenchment of the fiscal decentralisation framework in the constitution to insulate it from political manipulation. In addition, Wachira advocates for the use of the principle of subsidiarity in the sharing of fiscal responsibilities (revenue and expenditure management) between central and sub-national governments. He goes on to say that sub-national governments should have clearly defined own sources of revenue. With regard to intergovernmental transfers, he recommends the channelling of such transfers directly to the sub-national governments that are governed by elected representatives of the beneficiaries. The author argues that its good practice to restrict the use of sub-national borrowings to the financing of development projects.

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2 Devolution in Kenya: A Critical Review of Past and Present Frameworks

ANNETTE **OMOLO**

Abstract

African countries have increasingly adopted devolution as a strategy to improve governance and remedy institutional deficiencies that highly centralized governments have engendered. These comprise bureaucratic inefficiencies, poor accountability and transparency, unequal distribution of resources and low levels of community participation in local development. Despite a general consensus for the need for devolution in Kenya, the debate on the nature and mechanisms for achieving this remains a highly controversial subject. This chapter presents a critical review of past and existing frameworks of decentralisation in Kenya. It provides logical explanations on the necessity for devolution whilst at the same time highlighting its inherent risks. The study adopts a diagnostic approach by investigating the Majimbo system and the Local Government system. It establishes that successful devolution efforts in the country have been impeded by three identifiable factors. The first obstacle is the pervasive problem of lack of political will to decentralize power. The second set of factors relate to the weak institutional capacities of the sub-national entities. For example, lack of financial independence, inadequate human resource capacity, poorly defined roles and overlap of functions between the various levels of government and other government arms. Finally, an underdeveloped community, unaware of its roles in demanding accountability from local institutions and participating in local development may limit the effectiveness of a devolved system of governance. Literature suggests that Kenyans have some legitimate concerns on the adoption of a devolved system. These are the economic viability of introducing several tiers of government and the risk of ethnic conflict associated with 'Majimboism'. Based on the successes and failures of the devolution efforts, the study recommends that effective implementation of devolution would best be achieved through a staggered and sequential process. Further, this process must as a priority create the right environment on three fronts. The first involves attaining a politically mature environment in which there is broad-based support and political will for implementing devolution. The second is through building infrastructure and institutional capacities of the proposed devolved units. Lastly, is empowering the community to undertake its civic responsibilities under a devolved system.

2.1 Introduction

In November 2005, Kenya held its first ever national plebiscite to ratify a new constitution for the country. The National Referendum was the culmination of a protracted process in the quest for constitutional reforms. This process initially involved setting up the Constitution of Kenya Review Commission (CKRC) to examine the existing constitution and draft a bill on a new constitution. A National Constitutional Conference (NCC) was then convened to deliberate, amend and adopt the draft Bill. The deliberations of the NCC, held in several phases at the Bomas of Kenya, culminated in an initial draft known as the *Bomas* Draft. There was, however, failure to arrive at a consensus between a section of the government and other Members of Parliament (MPs) on certain provisions. This led to the amendment and development of a final draft constitution by the government section opposed to the *Bomas* Draft. The draft popularly termed the *Wako* Draft due to the Attorney-General, Hon. Amos Wako's instrumental role in its crafting, was thus presented at the Referendum. Kenyans overwhelmingly rejected the proposed constitution thereby regenerating the constitutional review process.

Devolution of power was among the key contentious issues that precipitated the stalemate between the government and other policy makers and the ensuing rejection of the *Wako* Draft. The calls for an alternative system of government stem from the perceived failure of the overly-centralized systems that most African countries have operated since the early independence years to secure basic services for their citizens[5]. Consequently, decentralization is advocated as an alternative strategy to address the administrative inefficiencies, corruption and misuse of public resources that have characterized centralized governments (Barret, Mude and Omiti, 2007).

As Barret, Mude and Omiti (2007) further observe, the 1990s and millennium years have thus witnessed a steady advance of decentralization in developing countries. The progress has, however, been much slower in sub-Saharan countries such as Kenya due to a colonial and post colonial political heritage which favoured highly centralized systems. The result is that decentralization efforts have had more limited success than in other regions.

This chapter undertakes a critical review of the Kenyan efforts at achieving devolution since independence in an attempt to establish their fundamental strengths and weaknesses. It starts by defining the key concept of devolution and then delves into an evaluation of past and present attempts at devolution. Finally, it draws lessons from the analysis to inform future institutional design on devolution systems particularly in the wake of a renewed quest for a new Constitution. The study is primarily a desk review of existing literature.

2.2 Definition of the Concept of Devolution

A conceptual definition of devolution entails an understanding of the complex dynamics of decentralization from which devolution is premised. Scholars promulgate several definitions of decentralization but a central theme that characterizes these is the dispersion of decision-making governance closer to the people. Muia (2008a) asserts that decentralization is one way through which people's right to participate in governance is attainable. Further, he high-

[5] A centralized government is a form of government in which power is concentrated in the hands of a few executive offices and therefore people. It undermines the constitutional importance of courts, legislatures and regional governments (Ndulo, 2006a).

lights two central definitions of decentralization to emphasize the importance of the transfer of decision making power and management of affairs to a subordinate entity. Citing Ndegwa' (2002), Muia (2008a) argues that decentralization refers to the transfer of public authority and resources including personnel from national to sub-national jurisdictions. Rondenelli's and Nellis' (1986) as cited in Muia (2008a) define decentralisation as the transfer or delegation of legal or political authority to plan, make decisions and manage public functions from central government and its agencies to a cross-section of organizations. The organizations include subordinate units of government, semi-autonomous public corporations, regional development or functional authorities and local government or non-governmental organizations. Similarly, Oloo (2006) elucidates the linkage between governance and decentralization in defining the latter as the transfer of authority, responsibility and accountability from central to local government.

There are three fundamental dimensions of decentralization namely administrative, political and fiscal decentralization.

Administrative decentralization is the transfer of responsibility for the planning, financing and management of certain public functions from the central government and its agencies to field units of government agencies, subordinate units or levels of government, semi-autonomous public authorities or corporations or regional or functional authorities. The main objective of administrative decentralization is the strengthening of field administrative units of the civil service in a country, including capacity building efforts at national and local levels (Oloo, 2006).

Political decentralization entails a movement away from a monocentric to a polycentric structure of political power and takes two forms, horizontal, where institutions that promote separation of powers and accountability of the Executive for its actions such as the legislature and the courts are strengthened, and vertical decentralization, involving assigning powers to local government structures. The main objectives of political decentralization are greater citizen participation and higher levels of accountability to the citizens. This leads to institutional responsiveness in service delivery and low levels of corruption in government. Accountability to citizens increases in the face of reduced accountability to the central government (Muia 2008a; Oloo, 2006).

Fiscal decentralization involves the transfer of financial resources from the central government to autonomous local agencies. It may be done directly through assignment of tax powers to facilitate the decentralized agencies to implement their responsibilities. Alternatively, it may be done indirectly through financial deregulation where regulation of financial institutions is shifted away from the major capitals. It is important to note that fiscal decentralization is rarely designed in isolation but accompanies both administrative and political decentralization (Oloo, 2006).

The types of decentralization systems namely de-concentration, delegation and devolution derive their identity from the three dimensions (i.e. political, administrative and fiscal decentralization).

De-concentration is administrative decentralization where the central government disperses responsibilities for certain functions to regional branch offices that implement decisions made at the centre. It also involves delegation of authority by central administration to public servants in the field to make administrative decisions on behalf of central administration. The field officers may be responsible in varying degrees for government policy within their territories (CKRC, 2002a; Oloo, 2006). This means that at one extreme, de-concentration may take the form of transfer of functions without concomitant transfer of authority to make decisions on how the delegated functions will be undertaken. On the other extreme it could involve the vesting of decision making discretionary power to the staff. The latter gives them the leeway to plan, make decisions or adjust the implementation of central directives to local conditions within guidelines specified by the centre. The CKRC (2002a), however, points out that there are no legal guarantees for the exercise of transferred powers. Kenya has practiced de-concentration for the most part in the administration of government services. The District Focus for Rural Development (DFRD) strategy is a good example of de-concentration.

In *Delegation* the responsibility for decision making and service delivery is passed by central government to semi-autonomous organizations not wholly owned by government. The organizations can include local government, parastatals, the private sector and NGOs (Muia, 2008a).

Devolution is a political arrangement where political, administrative and fiscal power is distributed to semi-autonomous territorial and sub-national units (Muia, 2008). In this regard, devolution is broader than de-concentration as it encompasses more than just the transfer of administrative powers. In addition, the authority to make public policy decisions in the political, administrative and fiscal spheres is conferred on the sub-national entities by law. The powers are, however, often determined by legislation rather than vested in the Constitution (CKRC, 2002a). Thus, while de-concentration manifests low autonomy and central accountability, devolution on the other hand is characterized by high autonomy and downward accountability (Oloo, 2006). This implies that in devolution, the sub-national entities are not directly accountable to central government although they have to work within statutes and rules set by it (Muia, 2008a).

Since the powers and structures of devolution are provided in the ordinary law, they are more easily amenable to modification or repeal than federal arrangements and herein lies one main distinction between federalism and devolution. Federalism is the formal articulation of decentralized governance within a nation's constitution (Barrett et al, 2007). The linkage between decentralization and federalism stems from determining to what extent and the type of services for which central authorities should transfer responsibility and resources to local levels in order to most effectively serve the nation. Both the notion of federalism and decentralization are based on the principle of subsidiarity which holds that a central authority should play a subsidiary role performing only those tasks that cannot be effectively undertaken at a more local level. For instance the economies of scale regarding the production of military and defense services favor national provision and central governments are also better placed to correct inequalities in resource endowments and capabilities across regions (Barrett et al, 2007).
Another distinction between devolution and federation is that in devolution the local unit remains linked to the central government and other units in the political system through arrangements of mutual support and reciprocity. Further, the center always grants the autonomy (Oloo, 2006). As the CKRC (2002a) elaborates, in a federal system the central and regional governments are not subordinate to each other but coordinate.

In federalism therefore there are two distinct governments in a country, a central government and a state government at the periphery or local level. The constitutional and legal sharing of power between the two ensures overlap of functions is avoided. Usually each local unit is differentiated from others through a common history, culture, economic organization and viability, politics and linguistic characteristics. The local unit could be a country in its own right with capacity for self-reliance or could favour union status with others to reap an advantage of economies of scale (Kibwana, 2002).

The basic characteristics that devolved governments should embody are firstly, that the local units should have autonomy and independence from the centre. Secondly, the units ought to have clear and legally recognized geographical boundaries over which to exercise authority and perform public functions. Thirdly, they should be accorded corporate status and the power to raise sufficient resources to carry out functions. Lastly, the local governments should be perceived by the people as belonging to them. This means that in their provision of services, they satisfy the needs and remain subject to the control, direction and influence of the locals (Oloo, 2006).

This study therefore adopts the term devolution as encompassing the political, administrative and fiscal dimensions of decentralization. Devolution is also commonly used to refer to situations in which formerly unitary states distribute power to other territorial units as was the case of Kenya at independence.

2.3 The Rationale for Devolution in Kenya

African states with centralized systems of government have suffered multiple symptoms associated with poor governance. Ghai (2006) citing a World Bank (1992) analysis on governance, enumerates these symptoms as firstly a failure to make a clear separation between what is public and private. This engenders a tendency to direct public resources for private gain. Secondly, the system does not establish a predictable framework of law and government conducive to development, and encourages arbitrariness in the application of rules and laws. Thirdly, the system fosters excessive rules, regulations and licensing requirements which impede functioning of markets and encourage rent seeking. Fourthly, it encourages the setting of priorities inconsistent with development and non-transparent decision making.

Ghai (2006) argues that the afore-mentioned factors combine to create an environment hostile to development since the authority of government over their people is progressively eroded. The resultant effect is reduced compliance with decisions to which the government responds through populist measures or coercion. Economic costs rise due to escalating corruption and the diversion of resources to address internal security (Ghai, 2006).

Ndulo (2006a) argues that the unprecedented economic decline and mismanagement is further fueled by unhealthy state and civil society relations. The relations are characterized firstly by the erosion of boundaries between the state and civil society and secondly, by limited participation in governance by the citizenry. Finally, the preferential access to power and resources is determined by religious, ethnic or geographical considerations.

This state of affairs in majority of centralized African states ignited the quest for an alternative system of government.

For a long time it was believed that the pervasive rise of conflict in post-colonial Africa was a factor of ethnic heterogeneity. The last decade has, however, witnessed growing consensus among scholars (Chabal and Daloz, 1999; Nasong'o, 2002) that ethnic loyalties and parochial identities are not the only root cause of conflict. Instead scholars advance the argument that the political conflicts are often precipitated by political competition over state resources within a context devoid of effective political institutionalization. The low levels of institutionalization engender conditions where resource allocation is skewed in favour of the self-aggrandizing activities of incumbent regimes and their supporters. Subsequently, the discriminated social groupings are forced to mobilize to articulate their interests, resulting in political antagonism that has invariably led to conflicts (Nasong'o, 2002).

A clearer perspective of the inter-ethnic conflict over resources necessitates delving into the colonial history of Africa. Colonialists interested in maximizing economic gains neglected to develop democratic institutions. Their divide and rule policy heightened ethnic divisions which were manifested during the struggles for independence and continue to impact ethnic relations today (Kimenyi, 2002). Dependency theorists (Rodney, 1973; Samir 1976,) show how the connection between the "centre" (the metropolitan colonial powers) and the "periphery" (the colonies) created a dependent and unequal relationship. This occurred not just between the colonies and the powers that ruled them, but also within the dependent colonies themselves. The effect was a situation referred to as "the development of underdevelopment". In Kenya for instance certain regions were developed economically at the expense of others because of the colonial and political influence.

The significant negative effects of this continued to be felt immediately after independence when in January 1964, Kenya faced imminent civil war. Residents of the former Northern Frontier District (NFD) united under the Northern Peoples Progressive Party (NPPP) demanded recognition of their right to self-determination. They were also seeking unity with the Somali Republic. The secessionist war was the culmination of decades of neglect, marginalization and discrimination under British colonial rulers (Whittaker, 2008). At the root of the conflict were grievances over historical injustices and regional discrimination. The grievances included failure of the colonialists to provide enough water for the Somali stock and to ensure good routes and markets for the essentially stock-trading pastoral community (Mahasin, 1995).

It is therefore factually evident that the nationalist movement that swept Kenya into independence was not a unified movement though it had overwhelming support. Rather it was fragmented into distinctive groupings due to the uneven political and economic development of the different ethnic groups. For instance, the Kikuyu were the earliest politically conscious community forming the Kikuyu Central Association to agitate for African representation and land reforms (Gertzel, 1970). Settler economic needs had provided economic opportunities to the Kikuyu who were proximate to the Scheduled Areas that the colonialists were developing[6] (Kanyinga, 2006). The Kikuyu later developed some collaboration with the Luo and the Luhya who had also taken up agitation for similar reforms. The activities, however, took on a more parochial expression focusing more on political change at the local level. This can also be attributed to governmental emphasis since the 1920s upon district political associations and official discouragement of political organization in the 1950s (Gertzel, 1970).

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6 The colonial state attempted to provide political and economic security to the settlers by creating a dualized and segregated land use system. Native reserves were created for occupation by resident ethnic groups and scheduled areas for the settler community. This provided the basis of inequalities in land which in turn gave impetus for inequalities in other spheres. Proximity to the capital city Nairobi and the White Highlands scheduled for the settler economy provided the Kikuyu with opportunities for investment and capital accumulation

Thus, when national parties were permitted in 1960s, members went to the legislative council but were not bound by any common policy. Rather, they were committed to the demands of a local base that emphasized tribal interests and connections (Gertzel, 1970). Gertzel further asserts that land and economic interests is what motivated the tribal alignments. The Kikuyu and the Luo were able to cooperate politically because they did not regard each other as a threat to their land. In contrast, the coastal tribes and the Kalenjin in Rift Valley feared domination and were suspicious of the objectives of the Kikuyu and their allies (Gertzel, 1970).

Shortly after independence, the government determined to preserve national unity, sought to establish a unitary state with power concentrated at the center. It also considered a single party system crucial for political stability. The effect was the creation of institutions where the head of state held immense power over all public policies. This was further compounded by the fact that there were no constitutional limitations to constrain the central authority in its exercise of power (Kimenyi, 2002).

The excessive centralization of power meant that the leader of the ethnic group that captured the state had control over an enormous amount of resources. As a result, allocation of state resources has not followed universally acceptable principles. Pertinent principles such as economic criteria, merit or a basic needs approach were often overlooked. Instead, resources have been allocated on such subjective criteria as regionalism, ethnic consideration, political loyalty and the idiosyncratic disposition of the individual ruler (Nasong'o, 2002).

Oates (1999) postulates that there are political pressures or even constitutional constraints that limit the capacity of central government to provide higher levels of public services in some jurisdictions than others. Together, these prevent central programs from generating an optimal pattern of local outputs. The analysis of development statistics in Kenya demonstrates how a centralized system can promote imbalanced growth and resource distribution within different regions in a country. Table 2.1 presents children's enrolment figures from the 1970s to 2001 in the country's eight provinces. Central province was the leading province in enrolment levels in the 1970s during the Kenyatta administration. Subsequent years, however, show a steady decline from (24.5%) in 1970 to (13.3%) in 2001. By contrast, school enrolment levels in Rift Valley show considerable increase from (14.2%) in 1970 to (26.1%) in 2001 during Moi's tenure which ran from 1978 to 2002. Enrolment rates in other provinces generally remained constant and marginalization is highly visible in some cases e.g. in North Eastern.

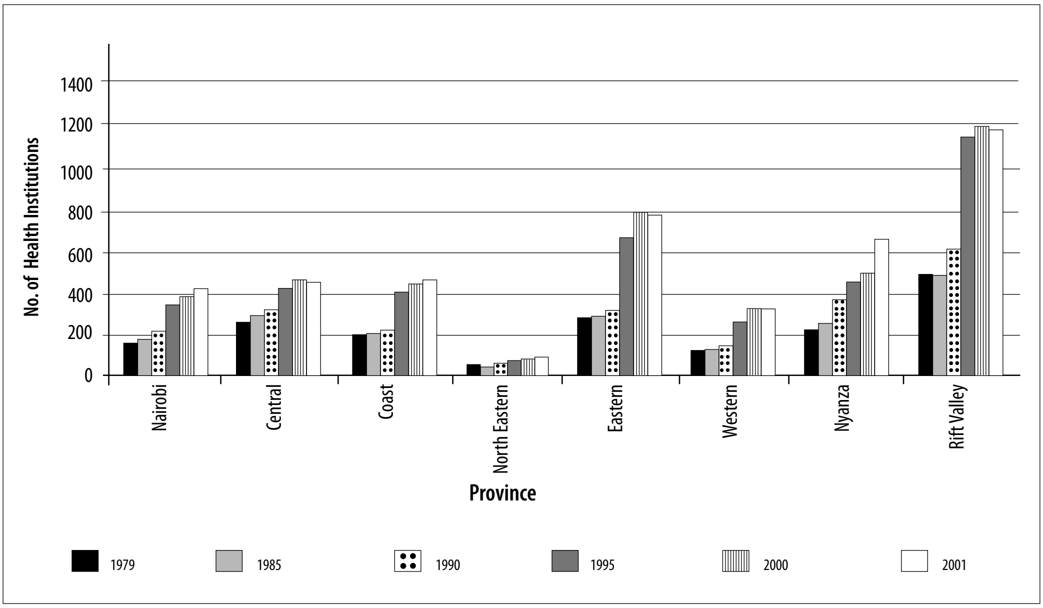
Table 2.1: Percentage (%) Primary School Enrolment by Province 1970 to 2001

Year	**Province**							
	Central	Coast	Eastern	Nairobi	Nyanza	Rift Valley	Western	North Eastern
1970	**24.5**	5.5	20.2	4.3	16.4	**14.2**	14.6	0.3
1975	**19.4**	5.4	18.9	2.9	20.9	**17.3**	15.0	0.2
1980	**17.7**	5.9	19.4	2.5	20.3	**19.4**	14.5	0.3
1985	**17.6**	6.4	18.1	2.6	19.3	**21.7**	13.9	0.4
1990	**16.3**	6.7	18.9	2.7	18.1	**22.9**	13.8	0.6
1995	**17.2**	6.4	18.4	2.8	17.8	**22.8**	14.1	0.5
2000	**15.0**	6.5	19.1	2.8	17.1	**25.6**	13.1	0.8
2001	**13.3**	6.9	18.5	2.8	18.5	**26.1**	13.2	0.7

Source: Adapted from Kanyinga, 2006, pp 366

The imbalance is also present within the health sector. Figure 2.1 is a graphical representation of the development of health institutions by province from 1979 to 2001. Each column represents the number of health institutions for that particular year. The overall percentage growth for each province is captured in table 2.2. As seen in the graph, Rift Valley records the highest number of health institutions. Nairobi, Eastern and Western Provinces registered the highest growth in the number of health institutions, whilst Central had the least growth (119%). It is not possible to account for all factors responsible for the growth rates here. Nevertheless, the marginalization of Central province is immediately evident from the mid 1980s.

Figure 2.1: Number of Health Institutions by Province



Source: Adapted from Kanyinga, 2006, pp 366

Table 2.2: Percentage growth of health institutions by province (1979 – 2001)

Province	Overall Growth (%)
Nairobi	243
Central	119
Coast	183
North Eastern	181
Eastern	234
Western	246
Nyanza	177
Rift Valley	183

Source: Adapted from Kanyinga, 2006, pp 366

The data presented in Table 2.1 and 2.2 as well as Figure 2.1 reflect a link between political power and ethno-regional development. The figures should be assessed against the background of change of government. As earlier discussed the colonial government laid the foundation for ethno-regional development disparities. Central, parts of Rift Valley that constituted the White Highlands and Nairobi provinces were considerably developed to meet settler needs. The post-colonial administrations adopted this thinking. Thus Central province was well of in the development of infrastructure when the Kikuyu were at the helm of power. Change of administration in the late 1970s witnessed the shift of balance in regional development with Rift Valley province recording increases in enrolment levels and number of health institutions. The implication of this is that some regions have had fewer opportunities in terms of access to basic services than others (Kanyinga, 2006).

Critics further argue that a centralized system of government suffers informational disadvantages that negatively impact its capacity to provide an effective and balanced distribution of services (Barret et al, 2007). This occurs predominantly where the distribution of resource endowments within nations is heterogeneous. Additionally, where the needs, constraints and aspirations vary across communities the central government is limited in its knowledge on the specific intricacies of each region. The concept of rural development is grounded on the foregoing logic. Barkan and Chege (1989), argue that rural development proceeds most rapidly where there exists a process of consultation and bargaining between the rural groups and the state. In such a process the macro-policy objectives of the state and the self-defined needs of rural residents are adjusted to each other

Under the highly personalized centralized system, institutions of government were weakened to become mere instruments of support to the ruling party. The electoral process for instance was exploited to serve it, and there were no effective separation of powers. The effect was that Parliament, the Judiciary and other constitutional offices became subordinate to the Executive and there were thus few institutions for accountability. Further, merit as criterion for appointment or promotion in the civil service was replaced by ethnic, political or monetary payments. In this context, social groups were marginalized or suffered privation because they were seen to be opposed to the government (Ghai and Cotrell, 2007).

Marginalization of communities therefore presents one of the strongest cases of advocacy for devolution. It must be noted, however, that calls for ethno-regional equity in Kenya as elsewhere in Africa, have historically been made by representatives of 'have not' groups or regions. At the advent of Moi's administration, there were calls to end the corruption that marked the Kenyatta era. These were accompanied by a new development theme, the *Nyayo* philosophy which promoted equitable development. It essentially emphasized the need for poorer regions to catch up with the relatively prosperous areas and equal opportunity for all. Barkan and Chege (1989) point out that the intention was to reduce disparities between Kenya's principle ethnic groups. Inequalities in the distribution of personal income remained neglected. Consequently, there were substantive efforts to redirect the flow of resources from Central province to the less developed regions. These constituted the non-Kikuyu regions of the Rift Valley and to some extent western province. The new president also began to reduce Kikuyu representation in the Cabinet and other public offices reducing Kikuyu dominance in public sector. The recruitment of permanent secretaries which is the most influential position in the civil service provides evidence of past regional imbalances. The incumbent administration's tribesmen and those likely to provide strategic political support were favoured as shown in table 2.3.

Table 2.3: Distribution of Permanent Secretaries during the Kenyatta and Moi Regimes by Ethnic Group

Ethnic Group	Kenyatta Regime			Moi Regime						
	1966	1970	1978	1979	1982	1985	1988	1994	1998	2001
Kikuyu	30%	38%	24%	30%	30%	28%	22%	25%	11%	9%
Luhya	13%	8%	5%	11%	13%	12%	6%	14%	11%	13%
Luo	13%	13%	10%	4%	7%	8%	13%	4%	7%	9%
Kalenjin	4%	8%	5%	11%	10%	20%	22%	25%	29%	35%
Kamba	17%	8%	14%	7%	10%	12%	13%	21%	4%	4%
Kisii	4%	8%	0%	7%	3%	4%	3%	4%	7%	4%
Meru	4%	8%	14%	11%	10%	8%	3%	4%	7%	9%
Miji Kenda	9%	4%	10%	4%	7%	4%	6%	11%	14%	13%
Other	4%	4%	19%	15%	10%	4%	13%	7%	11%	4%
Total	**23**	**24**	**21**	**27**	**30**	**25**	**32**	**28**	**28**	**23**

Source: Adapted from Kanyinga, 2006, pp 385-386

The hierarchy of patronage often begins at the highest level of politics. It extends to the lower levels of public service including junior staffing and is characterized by unequal representation of other groups. Control over government ministries translates into the control of essential resources (Kanyinga, 2006).

Land has been among the essential resources at the center of inequality in Kenya. It is virtually impossible to separate present inequalities in land ownership from the colonial land policies. The land regime established by the colonialists' vested ultimate ownership and control of land in the State. This was achieved through the 1902 and 1915 Crown Lands Ordinance in which Crown Lands included almost all land in the territory. Indigenous occupants and users had no ownership rights over land. Rather than reverse the property regime at independence, the post colonial government simply renamed Crown Lands as Government Land. The powers previously enjoyed by the governor were transferred to the Presidency. In effect, the Executive arm of the State through the presidency and commissioner of lands has the exclusive power to make decisions on the administration, disposal, and use of public land without reference to public representative organs such as the National Assembly. Land rights activists argue that the state monopoly over land undermines the democratic management of resources and violates the principle of transparency in governance. In so doing it institutionalizes abuse of power and encourages corruption. Administration of land under the Local Authorities has also been affected by the same authoritarian and unaccountable management practices (Kenya Land Alliance -KLA, 2004a)

Political influences, abuse of power and mismanagement have thus played a big role in creating inequality in land distribution in the country (Syagga, 2006). There have been situations where contrary to the provisions of the law, land has been allocated by officers without the authority to do so in particular the provincial administration and politicians. For the most part, Land has been a resource to be dished out to politically correct people for personal enrichment. The irregular allocation of land has not only created inequalities but interfered with protected lands with ecological integrity, cultural relevance or strategic location (Syagga, 2006). Such lands include forests and wetlands, such as the current Mau Forest debacle the country is grappling with today. Illegal allocations in urban areas have not only resulted in loss of public utility land such as playgrounds and road reserves but to increased spread of informal settlements in which Kenyans live in squalid conditions. Continued land policies in the country have done little to correct the historical imbalances of the colonial land management system that neglected non-high potential areas (Syagga, 2006).

It is for the afore-mentioned reasons that land rights activists have argued for the creation of an independent body with constitutionally guaranteed powers to hold land in trust for Kenyans. This would curtail the use of land for political patronage and rewards (KLA, 2004a; Syagga, 2006). The proposed institution should provide for effective checks and balances within its structure in the form of decentralised semi-autonomous and elected divisions at local levels (KLA, 2004a).

Kenya's colonial heritage has yet again been vilified for propagating ethnic nationalism. In the pre-colonial period, there were no pure ethnic groups. For instance, prolonged contact between Bantu and Kalenjin speakers produced new societies culturally identified today as the Luhya. Similarly, but to a lesser degree, several Luhya clans are of Maasai origin e.g. the Abamuli of Bunyore, the Banyala of Bunyala and the Abashimuli of Idakho. The colonial argument that there were perpetual inter-clan and inter-ethnic rivalry is further undermined by the then prevailing political, economic and cultural situations. In Central for instance, the Kikuyu formed extensive trade, cultural and family relations with the neighbouring Maasai and with the Kamba. Interdependence and cultural fluidity were even more pronounced in Coastal Kenya among the Pokomo, Oromo and Mijikenda (Ogot, 2000).

The drawing of colonial boundaries brought to an end the co-existence of the traditional societies with colonial policies confining communities in exclusive native reserves. This was not only to create room for commercial agriculture as earlier mentioned, but also for ease of political control and access to cheap labour. The borders embraced ethnic specific territorial jurisdictions and thus helped foster ethnic identification. In addition, the colonial policy diverted attention of Africans from national politics and instead promoted tribal politics (Jonyo, 2002). The post-colonial government's decision to retain the colonial districts has made it difficult for Kenyans to live in multi-cultural and multi-ethnic societies that would encourage diversity and interaction (Ogot, 2000).

The effect of the fore-going continues to be felt to date particularly in our electoral processes. Indeed in parliamentary and presidential elections political parties sell not only ideologies or policy options but ethnic sentiments. Ethnicity has often been hyped up to exacerbate divisions or as a sympathy winning card by politicians. This has resulted in the decline in political competition, suppression of political dissent, corruption and electoral malpractices in order to maintain the status quo. This trend has engendered widespread political cynicism among disadvantaged ethnic groups making it difficult to achieve any meaningful national participation. The result has been demands for self determination at the local level.

Another contributory factor to the argument for devolution of power is the imbalance of power an incumbent president wields in an election. This arises from the disrespect for the principle of separation of private resources from public. (Jonyo, 2002; Omukuda, 2002).

Scholars (Barkan, 2006; Nasong'o, 2002; Kriegler, 2006) thus concur that unless African countries undertake major institutional reforms they are unlikely to achieve stability and economic growth. Devolution of power to other existing political and economic institutions is thus heralded as the starting point for any meaningful and lasting reforms (Ndulo, 2006a; Kimenyi 2002).

The arguments for devolution are thus grounded in the political and economic benefits it presents. One important political contribution that a well constructed sub-national system offers is the enhancement of a democratic culture. Ndulo (2006a) states that by creating a number of governments below the national level, devolution multiplies the opportunities for political participation. Barrett et al (2007) and Oloo (2007) further point out that the community not only engages in the local political process but are able to demand effective provision of services. This is because when things go wrong, physical proximity makes it easier for citizens to hold local officials accountable for their performance (Ndulo, 2006a). In empowering communities to manage their own resources more effectively, devolution simultaneously strengthens local institutions. Further, by affording the local community opportunity to participate in the planning and implementation of development projects devolution enhances their sense of ownership of the projects (Barrett et al, 2007; Oloo 2007). Devolution ensures that varying interests of stakeholders are balanced, and that decisions are made in a rational, informed and transparent fashion. The decisions contribute to the overall efficiency and effectiveness of the institutions (Private Sector Corporate Governance Trust, 2002).

Devolution creates sub-national entities which provide an additional accountability mechanism by reducing the concentration of power at the centre thus hindering its arbitrary exercise.

Another key political advantage a devolved system of government has over centralized systems is that it is more inclusive. It provides channels for the expression of regional sentiments and encourages national policies to become more sensitive to regional variations. This, as has been illustrated in the case of Kenya, is a limitation of the centralized system. Further, devolution provides minority parties which might otherwise be excluded from political power the opportunity to exercise policy influence.

Devolved levels of government have their raison d'etre in the provision of goods and services whose consumption is limited to their own jurisdictions. Since outputs of such goods and services are tailored to the particular preferences and circumstances of their constituencies, decentralized provision increases economic welfare of the constituents. This is because, the level of welfare is often higher if consumption occurs at each jurisdiction than if any single uniform level of consumption is maintained across all jurisdictions (Oates, 1999).

Another key economic benefit of the devolved government is its ability to effectively promote productive efficiency in the provision and use of public services and the allocation of resources. The core idea is that sub-national governments by virtue of their proximity to the beneficiaries of policy outcomes can allocate and extract resources more efficiently than central government. This is because, they have better access to local information, are more directly accountable to local constituents and can more effectively identify and articulate regional needs (Barrett et al, 2007). Donahue (1997) in his assessment of Tiebout's (1956) economic model of decentralization argues that collective choice is less error prone.

In terms of poverty alleviation, Barrett et al (2007) argue that devolution provides a more effective governance framework for advancing pro-poor policies. Since the sub-national institutions are likely to be more familiar with the local circumstances and cost conditions, they are better equipped to distribute resources more equitably. In so doing, they target poverty more efficiently.

Another argument advanced in favor of devolution is that by introducing inter- jurisdictional competition, it extinguishes the opportunities for bribery and rent seeking. Such opportunities are often created by the lack of competition that a central government monopoly supply of public goods and services presents (Barrett et al, 2007). Devolution encourages innovation in the delivery of services as individuals have greater incentive to participate in all aspects of community life and to seek solutions to individual and collective choices (Kimenyi, 2002).

Despite the sound arguments for adopting a system of devolution, it is not without risks. If not properly designed and implemented, devolution leads to the translation of central government bureaucracies, inefficient utilization of resources and lack of accountability at the sub-national level (Barrett et al, 2007).

Devolution may facilitate elite capture by local government and the persistence of anachronistic institutions based on patron-client relations. If devolution rules and systems are poorly designed, there is a risk that politicians at the local level could use resources at their disposal to perpetuate themselves in power. They accomplish this by skewing allocations in favour of their kinsmen, supporters, sycophants and all manner of political hangers-on to purchase political loyalty (Barrett et al, 2007; Nasong'o, 2002). For instance, the legitimacy of the Constituency Development Fund (CDF) has been compromised by the power vested upon the MP to singlehandedly select members of the CDF Committee (CDFC).

By moving allocative decisions further out of the limelight, devolution risks permitting greater levels of corruption and mismanagement of resources (Barrett et al, 2007). This is prevalent, as this study demonstrates where community members lack awareness as to their roles and the capacity to execute them. The risk of corruption is higher in the absence of mechanisms to enable the community effectively monitor and evaluate usage of funds.

Some scholars (Kimenyi, 2002) argue that to reduce inter-ethnic conflicts, devolution must of necessity involve the creation of autonomous ethnic governments. Based on geo-ethnicity[7] each government would have an ethnic group as its unit of collective choice. This argument, however, remains controversial since devolution may in actual effect undermine national unity and could inflate ethnic, religious and cultural diversities. It has the potential to lead to even greater marginalization of minorities and minorities within minorities (CKRC, 2002a). The fact that the colonial government succeeded in heightening ethnic divisions through restrictive community interaction may provide a strong justification against ethnic governments.

Devolution may also diminish the power and value of the national government to redistribute resources which creates a drawback to the less developed units. This may result in dependency and eventual instability where dependency is chronic (CKRC, 2002a).

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[7] Geo-ethnicity is a term that describes a situation where each ethnic group is identified with a certain territory

The debate on the devolution of powers in Kenya has revolved along similar lines. With the revival of the constitutional review process, several issues remain outstanding which oblige a systematic analysis of Kenya's historical and present experiences with devolution. The aim of the analysis is two-fold, firstly to determine whether efforts at decentralising power have translated into the benefits that should accrue from devolution. Secondly, to identify successes and shortcomings of these attempts at devolution, as a foundation for ultimately charting an effective and acceptable way forward for democratic governance in Kenya. The next section therefore interrogates Kenyan efforts of devolution since independence.

2.4 A Historical perspective of devolution in Kenya

2.4.1 The Majimbo System

The highly centralized bureaucracy which Kenya inherited at independence from the colonial administration had chiefly been sustained through the institution of the provincial administration. The administration was established to facilitate direct rule and govern alongside the civil service (Kanyinga, 2006). The administration is singled out from the outset because it has historically been a setback in the effective realization of devolution of powers. The provincial administration had three major functions in the colonial era namely the control, coordination and mobilization of the public for development. In the exercise of all three functions it acted in an Executive capacity as the agent of the Governor. It thus ensured the Governor had direct communication with and control over the districts (Gertzel, 1970). The colonial government used the administration to undermine the quest by African political leaders to consolidate the nationalist movement. The leaders on their part were vehemently opposed to the excessive authority, influence and power that the administration wielded. Immediately after independence they sought to diminish its powers.

As earlier mentioned, the Nationalist movement that propelled Kenya into independence was itself characterized by internal tensions. These arose from fear among the smaller tribes of domination by the numerically larger and more politically and economically developed tribes. Eventually, two main rival parties emerged, the Kenya African National Union (KANU) and Kenya African Democratic Union (KADU). KANU comprised the numerically larger Kikuyu and Luo ethnic groups, whilst the smaller groups from Rift valley, Coast and North Eastern coalesced around KADU. The basis for the division was that KANU favoured open competition for resources, supremacy of Parliament and a strong central government whilst KADU favored regional autonomy (Omolo and Barasa, 2008). The fears and tensions persuaded the minority-based KADU to demand a quasi-federal division of power that would leave an African majority government less omnipotent than its colonial predecessor (Gertzel, 1970).

The result was regionalism which KANU only acquiesced to as the price of independence. The nature of regionalism or Majimbo as it was popularly termed was a political system in which power was devolved to semi-autonomous regional units. The units were presided over by weak governments which in practical terms resembled local authorities' government (Gertzel, 1970; Kibwana, 2002). Regional governments were entrenched in the Kenya Independence Constitution of 1963 which elaborately defined the regional structure (CKRC, 2002a; Kibwana 2002). The Independence Constitution provided for three structures. The first was the devolution of certain tax and financial powers to seven newly created Regional Authorities. The second vested control of Trust Land in the County (formerly African District) councils. Thirdly, it set up a bicameral legislature with a House of Representatives and a Senate. The Senate was to represent district interests (Gertzel, 1970; Oloo, 2006). A regional assembly composed of elected members was established at regional level with the responsibility to make laws. The legislation could be done either unilaterally or in consultation with the central government. The Assembly elected a president from amongst themselves and each region had a Civil Secretary, formerly Provincial Commissioner (PC). The PC was appointed by the Public Service Commission and was in charge of civil servants. Thus the provincial administration formerly used as an instrument of penetration and control of localities was made responsible to the Regional Executive Authority (CKRC, 2002a; Oloo, 2006).

Regionalism is often viewed as a halfway house between a centralized state and a federal state. This is because it is adopted where fear and mistrust exist towards full fledged centralism by a minority group (Kibwana, 2002). At the same time there lacks the political will to realize full blown federalism. The system of devolution Kenya inherited at independence was referred to as semi-federalism largely because it lacked political will and financial independence from the centre (Kibwana, 2002). Regionalism was therefore never operationalised by the ruling party KANU after it won the elections. KANU in fact took a series of steps during the first year in office to undermine the success of its implementation.

Firstly, the Central government retained a much closer control over the civil service at the regional level than the Constitution allowed. It used the civil secretaries who were former provincial commissioners to maintain a more direct line of communication with the regions. Though KANU had demanded the abolition of the administration during the colonial period, after independence, it became one of its most important assets for fighting regionalism. Although the civil secretary was constitutionally responsible to the Regional Authority, he remained in practice the agent of central government. He enhanced central government control and ensured acquiescence in the central government's decisions. The full decentralization of the administration was therefore avoided. When the former unitary state was restored in 1964, the administration was also reinstated to its former position as agent of the Executive. It became directly responsible to the president performing the functions for which it was formerly responsible, control and development (Gertzel, 1970).

The provincial administration amassed enormous powers during the Kenyatta administration. The unlimited authority granted to the administration made them virtually lords in their own realms provided they administered their spheres efficiently on the regime's behalf. As (Barkan and Chege, 1989) point out, one measure of power of the PCs was in their length of tenure. Indeed, some held office throughout the fifteen year period of the Kenyatta administration. While policy was determined at the centre it was coordinated at the field led by the PC. The PC not only maintained law and order but facilitated the work of staff posted to each province and district by the respective ministry.

Secondly, the government delayed the full implementation of the financial provisions laid down in the Constitution. It retained central control over regional finances beyond the date of June 1964. This date had originally been set as the period when the regions would assume full responsibility for their own finances. Thirdly, the transfer of certain services from the central government to the regions was never realized. The services were still in the hands of the government when the Constitution was amended in 1964. Finally, the government sought public support for their intended constitutional amendment to abolish regionalism and introduce a unitary state through public rallies held across the country. The government concurrently wooed KADU opposition members to cross the floor ultimately resulting in the voluntary dissolution of the party. The government was thus able to garner the support needed to make the amendment to dismantle Majimboism. This ultimately paved way for a Republican system of government and one party state in December 1964.

There are several reasons that explain the failure of the Majimbo system to effectively take root in the country. Firstly, there was no joint consensus amongst the political class as to why the system needed to be put in place. KANU accepted Majimboism for expediency purposes whilst KADU advocated for the system due to self-interest. KADU hoped that they would retain power even if a majority took over hence allay their fears of oppression. The system was thus an imposition of the colonial government in collaboration with KADU on a reluctant party that eventually secured power over the state.

Secondly, based on the foregoing, Majimboism was therefore not based on a principled stand, sound philosophy or political theory (Kibwana, 2002: Oloo, 2006).

Thirdly, scholars have pointed to the socio-political and economic environment in which the system was introduced as being a key factor to its failure. Majimbo was alien to the Kenyan historical past which had previously been run as a highly centralized unitary colonial state. The shift to Majimboism was therefore a radical change that would have perhaps succeeded if introduced piecemeal. Added to this is the fact that there were no success stories from other former colonies from which the country could emulate. As Oloo (2006) illustrates, Nigeria, and to some extent Uganda and Congo who had attained independence before Kenya were experiencing difficulties implementing the system. Their experiences contributed to the negative attitude the ruling elite had towards the system.

Fourthly, on the outset it appeared that the failure of the government to operationalise the system was based on financial implications or challenges of supporting a two-tier system. In reality, however, KANU was concerned about the restrictive provisions of the Constitution on its powers. The government had to share revenue with the regions by remitting a percentage of tax revenues on an equitable basis. It also had to decentralize the role of the Public Service Commission in employment, deployment and management of personnel matters. The government saw these provisions as curtailing its role of having the only and final say in economic management (Oloo, 2006).

Finally, there was broad-based belief that regionalism would fuel national disintegration and it therefore lacked the support of majority of Kenyans. Indeed the controversy surrounding the devolution debate to date has mainly revolved around the term Majimboism which remains ambiguous and a source of tension to the public. They have not understood the kind of system that politicians imply when they refer to Majimbo, thus are suspicious of its intended political goals. This is particularly in light of its historically divisive record and failures. As Kagwanja and Mutunga (2001) point out, Majimboism has been associated with conflict and bloodshed in the Kenyan psyche. This perception stems from the occurrence of the ethnic clashes of the 1990s in the Rift Valley and Coastal provinces.

After its official collapse in 1964, advocacy for Majimbo resurfaced in the run up to the 1992 multi-party general elections. Politicians in Rift Valley and allied to the ruling party KANU construed multi-party politics as a challenge to their domination of the political system in the country. They urged their supporters to arm themselves and drive out from their midst, members of tribes allied to the opposition. Their logic was that it would strengthen their dominance in their ancestral land. The ensuing tribal clashes were partly attributed to these inflammatory remarks made at the infamous Majimbo campaign rallies in the Rift Valley province (Omolo and Barasa, 2008). The politically ignited land clashes are however a manifestation of deep-rooted grievances which cannot be glossed over in a reform process (KLA, 2004b).

Devolution as a system of governance has often been misrepresented in the country to mean expulsion of persons from their areas of residence to their ancestral lands. This misconception has greatly contributed to paranoia over its re-introduction. The Majimbo Constitution of 1963 prohibited discrimination and emphasized that Kenyans had a right to live anywhere in the country. The fears of expulsion that are associated with Majimboism especially after the occurrence of ethnic clashes, however, remain realities.

The reasons are that the history of Kenya is fundamentally one of land dispossession. The plight of communities disinherited from their ancestral land due to colonial land policies remains unresolved. Demands for redress have thus served as rallying points for political agitation by affected communities (KLA, 2004b). Consequently, individual and private property holders who acquired land during the settlement process after independence and who have settled in these areas over the years fear expulsion. The fears and lack of trust between communities is perhaps the greatest obstacle to the acceptance of devolution in the country.

2.4.2 The Local Government System

The country's most substantive experience with devolution is through the Local Authorities (LAs). This aside, it must be pointed out from the outset that the LA system in Kenya is an inadequate example of devolution. This as this study will demonstrate is because they have little autonomy vis-à-vis central authority. Indeed as Ndulo (2006a) observes most African independence constitutions did not provide for elected governments that were accessible to the people at the local level. The local government systems that were established were centrally controlled through the Ministry of Local Government and power remained consolidated at central government. LAs exercised only powers delegated to them by central government. This is the context within which the local government system in Kenya must be understood.

The LAs are established under the Local Government Act 265 of the laws of Kenya to provide certain services to the community within their areas of jurisdiction. As this analysis will demonstrate, legal provisions alone are however not a guarantee for the effective implementation of devolution. The same legalizing authority can devise strategies that have the effect of weakening or negating the same powers surrendered to a sub-national entity. This can be achieved either through counteracting clauses or strengthening other arms of government in conflict with the local body.

The current local government system has evolved considerably through several distinct phases after the colonial era. The first is the post-colonial period under the Majimbo Constitution, immediately followed by the post independence period under the Republican Constitution. The last phase is under the Kenya Local Government Reform Programme (KLGRP) that ushered in the Local Authority Transfer Fund (LATF) and the Local Authority Service Delivery Action Plan (LASDAP).

The LAs were set up during the colonial period during which they were fairly independent enjoying significant revenue sources such as the poll tax. LAs carried out responsibilities for the central government in the field including provision of primary education, health care, roads, maintenance of markets and construction of slaughter houses (Muia, 2008b; Oloo, 2006).

At independence, municipal and county councils were established with a significant measure of autonomy under the jurisdiction of the regional assemblies created by the Federal Constitution. This reduced central government's influence over the LAs particularly because the regions were mandated to allocate them grants from revenue sources such as the Graduated Personal Tax (GPT) (Muia, 2008b). The autonomy, however, did not take root as the Majimbo system was short lived

The enactment of the Republican Constitution in 1964 marked the beginning of the decline in autonomy and performance of LAs in service delivery. The powers previously exercised by the regional assemblies were transferred to the minister for local government leading to dominance and control of LAs by central government. The minister acquired power to upgrade existing authorities, create new ones, establish local government electoral areas, and nominate members to the councils without consulting local residents. He could further dissolve local government councils and call for fresh elections or unilaterally appoint a Commission to run the affairs of the authority. In 1969, the government further diminished the importance of LAs by hiving off key functions namely the provision of primary education, healthcare and roads. The responsibilities were transferred to central government ministries, leaving provision of minor services like feeder roads, markets and slaughterhouses to the county councils. This served to raise dependence of the local community upon the central government (Oloo, 2006).

The central government further undermined the financial base of LAs by taking over sources of revenue such as the GPT which it abolished in 1974. It introduced a Service Charge in 1988 intended to benefit the LAs, but as the collecting agency did not remit the revenues to the respective LAs. The deprivation of resources prompted poor management and service delivery by the councils (Muia, 2008b; Oloo, 2006).

The sphere of LAs operations was further curtailed by the provincial administration which played a key role in the field including the supervision of the operations of LAs. The LAs came under the direct influence of the District Commissioner (DC) who was nominated by the minister for local government to sit in the councils. The intervention of the central government in council affairs through the provincial administration has ensured that the government is the actual dispenser of patronage at the field level as opposed to LAs. Placing the superintendence of the LAs under the central government has curtailed their growth as autonomous entities. The provincial administration has continued to wield power and authority in the divisions through offices of the DOs and chiefs, making the administration act as the local government (Muia, 2008b; Oloo, 2006).

The current Constitution does not provide for decentralization in any form or make much reference to the local government system except to vest Trust lands in county councils (Oloo, 2006). Nevertheless, the Local Government Act Cap 265 specifies the structure, power and functions of LAs. There are various types of councils created by the Act including city, municipal, town, county and urban councils. The Act does not specify the criteria the minister for Local Government should use to declare a LA. The existence of the councils based on the prerogative of the minister continues to be an issue of contention (Muia, 2008b).

In terms of administrative structure and functioning, the authorities are governed by the elected councilors who in turn elect a mayor from amongst themselves. Management is undertaken by administration officers who are mostly civil servants appointed by the central government's Public Service Commission. This is another area of controversy as councilors feel they should have operational control over the chief officers. Councilors are given the mandate by the public through elections to run council affairs, nonetheless all significant decisions have to be approved by the ministry of local government. Further conflict surrounds the issue of whom between the mayor and town clerk should wield executive powers. Since the public through councilors elect the mayor, councilors argue that the mayor should be held accountable for decisions. Presently, the mayor plays a ceremonial role with no powers over clerks. The Executive clerks are seen as not being directly answerable to the local leaders and communities (Muia, 2008b).

Under the Act, the services that LAs are to provide are more diverse than they originally were at independence. LAs are expected to provide facilities and services necessary for local and national development. These include primary education, health care, water supply, sewerage and drainage facilities, construction and maintenance of roads, markets, abattoirs, fire protection, street cleaning and lighting, garbage collection and cemeteries (Oyugi and Kibua, 2006). Muia (2008c) assessing roles and responsibilities of central and local government, provides a distinction between two types of functions that LAs should traditionally serve. These are mandatory and permissive functions. The mandatory functions include provision of primary education, healthcare, road maintenance and burial of the destitute. He observes that in Kenya the only mandatory function LAs undertake is the burial of the dead destitute. All the other functions are permissive as the central government assists LAs in their provision. This is critical because it makes it difficult to hold LAs accountable, which as identified in the theoretical framework is a distinct feature of devolution.

The persistent poor performance and rising debt burdens led to the constitution of a Commission of Inquiry (the Omamo Commission) into the affairs of LAs. Its findings were that poor service delivery was due to a myriad of reasons. One major factor was lack of self-determination and planning powers which were centralized at government ministries. Another debilitating problem was inadequate resources including lack of managerial and technical expertise further compounded by bloated councils. Others were lack of supervisory capacity of central government over the 175 authorities, erratic creation of councils and lack of uniform application of the Act throughout the country. Finally, failure to protect local government powers and finances in the Constitution exposed the system to manipulation, high-level corruption and unchecked power by the minister of local government (CKRC, 2002a).

These shortcomings led to the introduction of the KLGRP in the early 1990s. Its objectives were to restructure the local public sector, improve local public expenditure management and strengthen local level accountability mechanisms (Oyugi and Kibua, 2006). It is under the KLRGP that the LATF was established in 1998 under the LATF Act (No. 8) and the associated LASDAP. The fund constitutes 5% tax of all revenue collected under the Income Tax Act. Its main objective is to enable LAs improve local service delivery, improve financial management and accountability systems and reduce LAs outstanding debts. To access the funds, LAs have to meet certain conditions under the LASDAP. The LASDAP is a three-year rolling programme of activities setting out LAs priorities for improving provision of local facilities and services. It requires LAs to follow planning procedures and adhere to accountability mechanisms for using the LATF (Cifuentes, 2008; Oyugi and Kibua, 2006).

The LATF and LASDAP have had some impact in the generation of revenues by the councils. They have also improved action planning as well as achieved a measure of community involvement in the identification of projects. The LATF has a performance based component where 40% of allocation is dependent on the resources LAs have mobilized and a debt repayment plan. To receive the service allocation of 60% LAs must meet some set budget conditions. First, the local budget must allocate at least 50% of the service delivery amount to capital projects and not more than 60% of the total budget for personnel expenses. Second, LAs must submit budgets by set deadlines, failure to which they are penalized. In this way LATF provides an incentive for LAs to improve their financial management (Oyugi, 2008a; Muia, 2008b).

The LASDAP allows the authorities to plan the use of local resources in consultation with the community. The process provides opportunities for promoting greater community involvement in the local planning process. It also instills a sense of ownership of the projects that is vital to the success of their implementation and sustainability. LATF funds are often published in the papers which together with public availability of approved list of projects enhances transparency and accountability. The LASDAP also encourages LAs to address the needs of the poor (Muia, 2008b; Oyugi, 2008a).

The benefits of the LA system notwithstanding, several studies conducted to determine whether the LATF and LASDAP process have achieved the intended objectives reveal that there are outstanding problems that continue to hamper the operations of LAs. Some of the findings are:

- There are still low levels of financial management capacity as attested by their failure to forecast revenues and inability to collect revenues. This has led to salary arrears and inability to offset statutory payments which has raised council debts. Moreover, the presence of too many agents collecting tax gives the citizens the impression that there is too much tax being demanded from them.

- The councils spend more on personnel salary than on actual capital expenditure

- The LATF Act stipulates a number of regulations that are based on planned expenditure rather than actual expenditure. The practice on the ground, however, shows that deviations are substantial which raise questions on the credibility of the budgets.

- The government has not put in place an adequate monitoring and evaluation system to track resource utilization by the authorities. LAs therefore lack follow up and sanctions or penalties to get them to improve their systems.

- There is a dearth of technical and managerial staff to man LAs leading to poor performance. Remote areas continue to suffer negative effects of absorbing staff transferred from other areas on disciplinary measures. The staff is generally poorly motivated due to low remuneration.

- A number of weaknesses have been identified in the LASDAP process. They are:
  a) Lack of awareness amongst community members of their roles and responsibilities;
  b) Weak and selective involvement of the community for instance the community is not privy to the tendering and procurement processes;
  c) Community members lack the capacity and funds to manage the projects handed over to them. The effect is poor maintenance of the completed projects, resulting in their eventual deterioration;
  d) Lack of funds to facilitate community outreach on project planning or management
  e) Lack of political will amongst councilors to facilitate empowerment of the community as an informed public means lesser opportunities for corruption;
  f) Ineffective planning and weak human resource capacity by LAs which impede the success of the LASDAP initiative.

- Duplication of effort and lack of development integration. The provincial administration and the local councils are yet to harmonize their roles and relationships. Further, there is duplication of roles between some of the other devolved funds introduced by the government such as the CDF which undertakes activities in health and education, areas which LAs also pursue. Provision of bursaries by the Constituency Bursary Fund and the council has led to occasions where some individuals have been recipients of both funds. The government has withdrawn the provision of bursary from LAs stipulating that councils wishing to provide bursaries should raise their own revenues. Perhaps this is an attempt at streamlining the activities of all decentralised funds system which is a step in the right direction (Oyugi, 2008a; Omolo, 2009; Muia 2008b).

In spite of the many challenges, LAs continue to occupy a critical space in the local arena. Since they pose less threat to political sectarianism and ethnic strife while pursuing their developmental goals, they are favoured as a more promising form of devolution. As Muia (2008b) asserts, local governance units offer machinery for tapping local opinion and turning it into appropriate development activities. In so doing, they offer legitimacy to people-led governments as well as a suitable way of striking a balance between local and Central government interests. The areas of concern then are what reforms are necessary for the country to achieve an effective, efficient, responsive and democratic local government and secondly what role will they play in a devolved governance structure?

2.5 Conclusion

Having examined Kenya's experience with devolved systems of governance, this study draws several conclusions on their fundamental weaknesses.

Much of interethnic conflict in Africa has been due to competition for resources in the absence of strong democratic political institutions. The centralized State has greatly contributed to the skewed development of regions. Strong arguments for devolution are therefore based on its principle advantages of ensuring equitable distribution of resources and participation of the local community in their development.

Kenya's first experiment with Majimboism failed because its adoption was not based on a sound principle of political governance. It consequently lacked political will for successful implementation. The regions lacked financial independence from the centre critical for their sustainability. The socio- economic environment in which Majimbo was introduced was politically immature and unprepared for the radical change from the centralized system colonialists had nurtured. There was also belief that regionalism would fuel national disintegration, thus it lacked public support.

The capacity of LAs to deliver satisfactory service provision has over the years been eroded by a strong central government that exercised control over decisions and administrative operations of LAs. Lack of financial independence and resources, overlap of roles and conflict with central government and its arms are major obstacles to the autonomy of LAs. Other difficulties are interference by the political wing of the council and a poorly developed human resource base. Failure to integrate development activities with other decentralised funds and lack of capacity of the community also hamper efficient operation of LAs.

The study also concludes that devolved funds such as the CDF have registered some significant achievements in poverty alleviation and equitable distribution of resources. These funds, however, have institutional weaknesses that should be addressed to ensure their effective operation. The funds exhibit strong tendencies towards elite capture. This has led to unequal distribution of resources within the sub-national units and lack of community support for the devolved structures.

The next section discusses how the weaknesses identified in the devolution frameworks that the country has experimented with can be addressed. The discussion is subsumed within the context of adopting a devolved system of governance.

2.5.1 Matters to consider in the institutional design of a devolved system of governance

Devolution should be seen as part of structural public sector reform that seeks to address some of the governance malfunctions that a centralized system has not been able to rectify. The analysis in this study does not therefore disparage the centralized system. Rather in highlighting its weaknesses, it seeks to establish why Kenyans have lost hope in a centralized system's ability to achieve national development. Devolution is a movement towards more participatory form of government that enhances the government's responsiveness and accountability to the electorate. It would, however, be myopic to treat it as a utopian model that would automatically secure equitable development, or remedy corruption and bureaucratic inefficiencies. In other words, the country cannot rely entirely on one type of system as the superior version to solve its democratic ills. It is important that institutional reformers pay keen interest to three overriding factors that could enrich the process of state building through devolution. These factors identified by Barret et al, (2007) as pertinent in the realization of the benefits of devolution relate to the establishment of appropriate political, institutional and socio-economic environments. The following section of this chapter examines each systematically.

The Political Environment

Kenyans continue to place high hopes albeit naively in law reform to pave way for rapid improvement of less than desirable socio- economic and political state of affairs. Indeed, the law does play a central role in governance. As Oyugi (2002b) and Ghai (2006) point out, however, legislation is not in itself sufficient in achieving the objectives for which it is often advanced. The legislating authority often times manipulates legal provisions for different purposes either to evade or build obstacles deliberately. The aim is often to circumvent implementation of the law. For instance, the government introduced simultaneous provisions in the Local Government Act that give the minister for local government unregulated right of intervention in local government matters.

In other cases, legislation is only symbolic - to buy off domestic and international pressure but is often backed with little intent to implement it. This was the fate of the Majimbo Constitution of 1963. More recently, the current constitutional process which began in 2000 was a result of pressure upon the former KANU administration by internal and external forces (Ghai and Cottrell, 2007). The process took five years during which it was characterized by delaying tactics and stand-offs due to dissimilar motives among politicians. Some legislators simply wanted the former administration out of power. Some members of the opposition used the process as a tool to fight the government while others propagated views based on tribal biases and sectarian interests.

Despite the prolonged review, the process still failed to produce a new Constitution when Kenyans rejected the Wako Draft. As earlier noted, the rejection stemmed mainly from the considerable watering down of the concept of devolution as initially captured in the Bomas Draft. This was accomplished chiefly through retaining executive authority within the Presidency. The resultant effect was that district councils would exercise power bestowed on them on behalf of the President. These powers could be recalled, suspended and abolished as provided in Section 204 of the Draft. The elimination of the regional and local levels was a further attempt to limit the extent to which sovereign authority of the local people would be exercised. These amendments would effectively alter the devolution concept as presented in the Wako Draft to a case of delegation (Oloo, 2006).

What is evident from the foregoing is that constitution making is highly political because it is the main access route to state power. Personal considerations often dominate over national interest (Ghai and Cottrell, 2007). Devolution is particularly sensitive because it is often forced upon a government that is reluctant to cede power. Lack of political will is therefore by and large the greatest obstacle to devolution. Is achieving it then a mere pie in the sky?

To surmount the challenge of political will, it would be essential to entrench devolution in the Constitution. This would give it a strong foundation of legitimacy that would make it difficult to repeal. To avoid the danger of provisions that a reluctant government may seek to introduce to neutralize the law, the legal stipulations must not be broad. They should be precise and detailed in showing how the devolution of powers will be implemented at each level. Articulating fiscal decentralization is critical to ensure that sources of revenue necessary to support performance of functions assigned to sub-national units are available. This requires the further drafting of an Act of Parliament, preferably a Devolution Act. The Act should specify the strategies for achieving devolution, the units of devolution, and the procedures and mechanisms of operation for the units.

The greater challenge however lies not in the entrenchment of the law but in how to arrive at broad political consensus and support for it. Such a consensus will ensure the provisions are not frustrated but upheld and implemented because politicians appreciate the sound rationale behind devolution. This would most successfully be achieved as already stated, through putting in place administrative and other accompanying measures that ensure effective implementation of the law. More importantly, however, it would be accomplished through the gradual transformation of political culture. For instance, political competition is presently founded on a culture of communal logic, where the principle point of reference is the tribe. It needs transformation to a culture based on a strong party system with well established norms and traditions. This would ensure that ideology and not ethnicity determines the direction of voting in competitive elections.

A good starting point would be in implementing the Political Parties Bill 2007 which seeks to strengthen the party system. The bill addresses campaign finance legislation, rules on party membership and regulation of coalition parties among other democratic measures. Its successful implementation requires that the office of the Registrar of political parties be strengthened to independently enforce the legal powers vested in it. Deregistration of parties that do not comply with registration standards or rules of financial disclosure are areas the Registrar must have power to enforce.

In the wake of recurrence of election violence in 2007 at a scale that significantly shook the political environment, reformers need to consider several factors. Firstly, whether devolution to ethnic based regional governments would solve the persistent problem of ethnic clashes or exacerbate tribal alienation. The colonial experience has shown that tribal districts were effective in limiting interaction across tribes although the comparison might be biased given that they pursued a system of divide and rule.

Secondly as (Ndulo, 2006a) argues, wrongly structured sub-national entities pose political dangers if they provide opportunity for mobilization on the divisive basis of ethnicity. The consequences may be political oppression, intolerance and at the extreme secession. The precarious nature of ethnic relations in the aftermath of post- election violence suggests that what may be desirable is some measure of accommodative politics. This necessitates electoral reform where political candidates will be called to make broad-based ideological appeals to different ethnic groups in a system akin to preferential voting. Rather than marking their favourite candidates only, voters rank candidates in the order of choice i.e. one for their favourite and two for second choice. The system aims at ensuring that a candidate gains not just a plurality but absolute majority of votes thus enhancing legitimacy of elected members. It also encourages politicians to campaign for the second choice votes of electors. Thus, it provides candidates with an incentive to pool votes across ethnic lines to demonstrate their capacity to represent groups other than their own. In the Kenyan context, politicians would be inclined to moderate their political rhetoric on potentially divisive issues and focus on broadening policy positions. Alternatively, the introduction of a threshold of a minimum that a party must attain within a constituency or other electoral arrangements that avoid the tyranny of a majority should be considered.

From a cogent perspective therefore, the country may not be ready for a radical change towards political devolution. It may initially need to focus on strengthening institutions such as political parties and other bodies that enhance accountability and separation of powers both at the macro and micro level. The electoral system is presently undergoing reform and must be given ample room to establish structures not only at the national level but the grassroots that would eventually enable it effectively undertake regional elections under a devolved system. It would only be prudent to pilot an election at one regional government level when the country is in due course ready to adopt full scale political devolution. Defining the judicial structure and strengthening its infrastructure at the micro level is another critical factor.

II Building institutional capacity of the devolved units

The Bomas draft proposes a devolution structure with four levels of government, namely national, regional, district and location government. Care must be taken to structure devolution in a way that its positive potential is maximized and the negative potential minimized. Thus, in selecting an appropriate unit of devolution, three critical pitfalls must be avoided. Firstly, assigning political functions to levels where there is no financial responsibility or policy-making power. Secondly, creating a mass of interlocking bureaucracies at the regional level runs the risk of making government less transparent or accountable. Thirdly, is to minimize as much as possible the multiplication of government departments unnecessarily. This not only fragments government functions but can impede development and make the regions costly and inefficient (Ndulo, 2006a). Both the Bomas and the Draft constitution identify the district as the principal unit of devolution. Indeed, the provinces may be too large to promote effective citizen participation and the location governments lack the requisite capacity. District governments would thus be the optimum unit for devolution. The next section assesses the capacity of the districts for self-reliance.

a) Financial and economic viability of district governments

For the effective realization of assigned functions the devolved units must have the requisite resources namely financial, human and infrastructural capacity. Districts as presently constituted have limited capacity that would facilitate effective leadership, planning and management under a devolved system. This was confirmed by an empirical study (Muia, 2008b) to determine the economic viability of districts as ideal units of devolution. The study undertook a strengths, weaknesses, opportunities and threats analysis of three districts at different stages of development. The districts namely Nairobi, Kakamega and Kajiado have various strengths and opportunities that could be exploited for development and self-governance. These would, however, require a strong economic base and heavy investment. At the same time, apart from Nairobi, the other districts sampled lack the capacity to exploit available resources. This can be attributed to high levels of illiteracy, high poverty incidence and related low purchasing power resulting in underdeveloped human resource capacity. Overall, there is poor infrastructure at the districts level including poor road networks and inadequate water and electricity supply (Muia, 2008b). The slow pace of rural electrification and the poor state of roads hints at shortcomings with the Rural Electrification and Roads Maintenance Levy Funds. These shortcomings need to be investigated and addressed in order to accelerate the development of infrastructure at the grassroots.

Critics (Imendi, 2009) further argue that devolution sets regions with poor resources, weak market bases and capital towards further economic decline. Financial arrangements under the Bomas draft specify that the national government would be responsible for collecting major sources of revenue. The districts would then impose taxes or levies to be specified in an Act of Parliament. From the afore-mentioned empirical study, it is evident that districts have an inadequate revenue base to sustain themselves. In rural areas especially, there are few working class citizens, hence fewer thriving businesses from which to levy taxes for income generation and sustenance of recurrent expenses. As earlier observed with LAs, the high debt arrears they face are the outcome of their inability to collect revenues due to them. They also lack competent and reliable staff to effect and manage the collection. As an immediate solution, the councils should diversify their sources of income generation and collect taxes they can competently manage e.g. market gate charges. The national tax collector should deal with the more complex taxes and levies.

It may well be argued that the government can avail resources particularly if institutions like the provincial administration are abolished. The Bomas draft proposes the setting up of a Consolidated and Revenue Fund for each devolved government into which all money received by that government would be paid. Transfer payments from the central government to the sub-national units would thus supplement the revenue generated by the latter. This, as Muia (2008b) observes would greatly reduce the revenue available to the central government because a proportion would revert to the control of the sub-national units themselves.

In the recent past the government has multiplied the number of districts to presently stand at 254 thereby creating even smaller units. Such units would obviously lack the capacity to spend all the monies they are entitled to. This means the ability of the new districts to operate autonomously under a system of devolution would be compromised. It may be necessary to merge such units should the country opt for a devolved system of governance. Institutions charged with delineation of boundaries such as the Boundary Review Commission should be given autonomy under a new constitution. The constitutional powers would ensure their roles are not usurped by other arms of government. It will also ensure that districts are created based on rational criteria.

Even as districts present the best unit of devolution, their infrastructural capacity must be strengthened for them to achieve self-reliance and operate efficiently and autonomously. The devolved funds are geared towards poverty alleviation at the grass roots level and should therefore improve infrastructure at the districts level. They are however constituency based. If district governments are the ideal units, reformers need to consider what the place of the constituency would be within the devolved structure.

b) Rationalization of Roles and Functions

Whilst governance largely remains a political process, there must be legal articulation of the roles to be played by the politicians and the technical implementers.

The Bomas Draft is silent about the administrative leadership at the district level. As Oyugi (2002b) points out, the district administrator as identified in the draft is a political figure since he holds an elective office. It is vital that the district be manned by technical professionals responsible for line ministries. This requires that a chief administrator be appointed to co-ordinate administrative activities and his or her roles clearly designated from those of the political head. The political head should not be granted powers to appoint professionals to serve in line ministries. The effect would be to imbue that office with patronage power which negates the whole purpose of moving away from a centralized system of government. This is the situation currently pertaining with the CDF where MPs as appointing authorities wield considerable patronage power within the committees. Committee members thus find it hard to challenge MPs on the implementation of the fund. The leeway given to the MP to appoint committee members has also led to lack of community support for projects.

For LAs, the law should clearly define their mandatory and permissive functions (Muia, 2008c). It should also confer operational autonomy with fiscal, political and administrative control that is vested in the Constitution. Constitutional recognition would enhance the status of LAs as service delivery instruments and ensure powers exercised by the central government particularly the minister of local government are reduced. Roles of councilors should be clearly set out in legislation to resolve the conflict between them and the technical officials. Consequently, councilors should not be involved in the administration of funds which should be left entirely to a team of qualified technical staff.

To avoid duplication of functions and consequently finances legislation on devolution should streamline the roles played by the provincial administration and LAs. Instead of abolishing institutions like the provincial administration forthwith they can be phased out gradually to ensure proper handover mechanisms and preservation of institutional memory. The education sector is another area that requires review, for instance, what roles do the city education officer and the provincial director of education serve? As Muia (2008c) has reflected, should the public continue funding both the office of the mayor and a provincial commissioner in charge of Nairobi?

There must also be a rationalization of the functions of all decentralised funds to avoid duplication in areas of expenditure. Legislation should thus be instructive on how practical coordination on the ground would be undertaken. The CDF Act 2003 for instance provides for coordination among government departments in the implementation of projects. Practical experiences, however, reflect minimal consultation by the CDFC of crucial government offices e.g. the ministry of public works office, resulting in substandard works. Forums like the District Steering Group (DSG) are platforms through which implementers of decentralised funds should present their budgets to integrate development activities at the regional level. The funds have a high susceptibility to misuse due to ineffective checks and balances at the local level. Horizontal accountability to other organizations could mitigate such plausible abuse.[8]

c) Human Resource capacity

Equally critical to the success of devolution is the personnel available to implement the assigned functions. These should be persons with knowledge, skill and experience to manage and coordinate functions at the local level. As already highlighted, one of the factors that has hampered the effective performance of the devolution structures is poor human resource capacity. In this regard therefore;

i. Resources should be channeled towards capacity building of the LA staff. Strategies for motivating them e.g. recognition awards should also be pursued in order to improve performance. Councilors play a major role as members and chairs of committees. They should, therefore, meet a minimum level of qualifications to be eligible for election. Councilors should not receive emoluments as full time staff, but be provided with attendance allowances for the committees on which they sit. This would encourage more professionals to serve in Local Authorities. The committee meetings should be held periodically with a defined duration to limit the number of ad hoc meetings that could be exploited as income generating opportunities.

ii. Building the capacity of CDFC members and all the project management committees would be costly. It would thus be more appropriate to hire qualified professionals from the labour market to manage the funds especially for key positions, such as, Treasurer. Presently, CDFC committees lack the technical capacity to manage the funds disbursed for project implementation resulting in wastage and misappropriation of funds.

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[8] Horizontal accountability is an imperative in a devolved system of governance for it entails the existence of state agencies that are legally enabled and empowered to take actions that span from routine oversight to criminal sanctions in relation to actions or omissions by other agents that may be qualified as unlawful (Ackerman, 2004).

iii. Provisions on employment must be addressed with careful consideration. In Uganda, the tendency to employ persons native to the districts has led to demands by marginalized groups for transfers to other districts or creation of new districts. This has resulted in an unending chain of marginalization and quest for autonomy (Ndulo, 2006a). In Kenya, public sentiments recorded by CKRC (2003c) that at least 75% of the personnel should be hired from within the locality would be impractical to apply. This is because remote rural areas suffer high levels of illiteracy that would affect their human resource base and therefore their capacity to function effectively. It also conflicts with human rights principles on freedom from discrimination and equal opportunity in employment. There must be a deliberate policy to train skilled personnel to run local governments

III Socio-economic Environment

Devolution as Barrett et al (2007) have argued cannot be introduced into an information or managerial capacity vacuum. The local population must be politically mature, have access to adequate information and be aware of their rights and channels by which they can exercise them. The communities should have the wherewithal to impose standards and demand accountability and performance from their local leaders.

The most commonly cited form of accountability is the electoral process. As scholars (Agrawal and Ribot, 2000; Ackerman, 2004) have pointed out elections are not always sufficient to guarantee accountability. Not only are they periodical but the best crafted systems can be circumvented by politicians. Democratic governance expands the sphere of participation beyond formal elections to involve society in deliberations over the design and operation of fundamental services, such as, schooling and health. This therefore requires empowerment of citizens to undertake societal accountability[9].

Only when citizens can exercise accountability can devolution be said to have achieved its stated aims. Devolution thus precludes decentralization of powers to actors who are only accountable to themselves or superior authorities (Agrawal and Ribot, 2000). For instance, decentralized funds have been disbursed to the Kenyans at the grassroots who lack the managerial capacity to handle the funds. As are a result they are unable to engage in effective implementation and monitoring. The imperative to empower local communities on their civic roles and responsibilities as a key ingredient in building an effective system of devolution can therefore not be gainsaid. Some strategies that can be pursued to achieve community empowerment are to:

a) Enshrine mechanisms for citizen participation in the Constitution which should include stipulation of the powers the community can exercise in holding public servants accountable. This necessitates the legal review of the CDF and LATF Acts to specify the nature, level and mechanisms for community and other stakeholders' involvement.

b) Institute collaborative mechanisms between the government, civil society, and private sector in building community capacity. Establishing relationships that encourage free sharing of information is a prerequisite for the realization of this.

c) Support civil society organizations to organize advocacy campaigns to educate citizens on

[9] It involves non electoral yet vertical mechanisms of control that rest on the actions of a multiple array of citizens associations (Ackerman, 2004).

how to conduct audits, evaluate projects, detect and expose corruption.

d) Use already existing community and leadership structures such as Community Based Organizations (CBOs) as an avenue to reach the community. CBOs can be facilitated to train communities on funds administration and management. The training should be done before funds such as the CDF are released to project management committees for implementation.

e) Support civil society organizations to undertake production and periodic circulation of magazines and newsletters that create awareness on devolved structures.

f) Establish media partnerships through which talk shows and documentaries can be used as forums to engage the community in discussions on local governance. The use of radio spots, short dramas, or other creative avenues to inform them on their roles can also be explored.

g) Economically empower poverty ridden communities who lack basic needs, such as, food and shelter. Devolution in context where citizens cannot demand accountability would only lead to the capture of resources by a few elites or cronyism[10]. Social development loans, such as, the women and youth enterprise funds are therefore very critical in the interim for empowering vulnerable segments of the communities.

h) Address reservations raised by Kenyans on the high risk of devolution fuelling tribal sentimentalities. Devolution should therefore be introduced in environment where citizens have understood its intricacies with resultant broad based acceptance. A politically immature and easily misinformed community would only provide opportunities for corruption and be easily incited towards ethnic violence. This calls for regular public education campaigns to foster patriotism and nationalism to eliminate the ethnic suspicion, prejudices and animosities that have built up over the years. The campaigns should address peace, human rights and environmental education to name a few.

i) The draft land policy when implemented should address the land and resource conflicts at the centre of ethnic tensions. The Civil society proposes that the policy recommendations in the Draft Land Policy should be entrenched in the Constitution. Key recommendations are that victims of historical injustices and marginalized groups need to be identified and corrective measures taken. This implies that certain sections in the current constitution e.g. section 75 on sanctity of property should be reviewed to allow for redress of historical injustices, land redistribution and restitution.

In support of Orvis (2006) rationale, political institutions that endure must be widely recognized, accepted and valued not only by key leaders but by the bulk of the population. Accordingly every effort should be made in designing the system to ensure it will not be a source of ethnic tension and conflict. If a devolved system of governance is based on coercion then it will fail to provide meaning to the citizenry.

For a devolved system of governance to succeed it must evolve systematically and sequentially.

10 Context where only a few benefit by virtue of their strategic affiliation to the ruling elite

It would appear then that what could best work for the country is what scholars have termed as staggered devolution where the country implements devolution in phases rather than full scale radical implementation. This periodic phasing would enable a learning curve where the country adopts what works successfully, perfects weaknesses and discards the untenable. Kenya does appear to be on the right path with the implementation of the decentralized funds. They are progressively addressing poverty alleviation, equitable distribution of resources and development of infrastructure at the grassroots. Despite their significant achievements, the funds have institutional weaknesses that should be addressed to ensure their effective operation. The funds should thus be improved upon along the lines suggested in this framework.

The successes and failures of the decentralised funds should further instruct steps towards constructing a devolved system of governance. This is not to say reform should be delayed to the point where the crisis is deep and resources exhausted. As Batley (2004) points out, if reform takes place in a context of rapidly declining resources it will be extremely difficult to recover from the spiral of decline. The reforms must be consistent and progressive with periodic benchmarks established.

Constitutional reformers and Kenyans must bear in mind that good government will not proceed spontaneously from the good will of bureaucrats and politicians. It is the fruit of an arduous, often conflict ridden and sacrificial process of institutional design at the centre of which lies the accountability of public officials. Accountability can only be achieved through institutionalizing powerful mechanisms that hold public officials responsible for their actions as servants of the people.

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3 Lessons for Devolution: A Country Comparative Study

WALLACE **KANTAI**

Abstract

There are important lessons for Kenya to be learned in the experiences of other countries with devolved forms of government, including historical lessons and the practicalities of devolution. This study examines these experiences in comparable countries – Nigeria, India, Papua New Guinea and South Africa. It looks at the manner in which these countries evolved their devolved systems, as well as how they manage the crucial matter of fiscal decentralisation. It also takes a close look at the example of Bolivia. While Bolivia may be distant from Kenya both geographically and culturally, the process it underwent in the 1990s holds important lessons for Kenya. The paper explores the case for devolution; why different states have opted for it as well as some of its theoretical underpinnings. These include fiscal, historical, conflict management and ethnic considerations. It looks in detail about the historical evolution of devolution in the countries under study, looking at how they underwent the process under which they reached their present structure. It then looks at the detailed process of Bolivia's devolution, especially in the 1980s and 1990s, with special emphasis on the laws and the players. Finally, the structure and workings of fiscal decentralisation are studied, and lessons for Kenya drawn out. The conclusion realised is that the process and practicalities of devolution are complex matters, and all the countries under consideration are still very much works in progress.

3.1 Introduction

Starting in 2006, the South African township of Khutsong has been the scene of battles between the residents and the governments of both Gauteng and Northwest Provinces. Schools were shut for days on end, politicians, including the most senior members of the African National Congress were booed and, in some cases, stoned. Petrol bombs were even thrown. This was not brought on by the hangover of apartheid years, or the lack of services delivered by the government. The unrest, amongst the most serious to hit South Africa since the end of apartheid, was because the Merafong City Local Municipality, which includes the township of Khutsong, was to be transferred from the West Rand District Municipality in the wealthy Gauteng Province to the Southern District Municipality in the relatively impoverished Northwest Province. The move, which some angry citizens characterised as 'demortheid' – a sinister version of 'apartheid dressed up as democracy' – was geared towards enhancing administrative efficiency (Morwe, 2007).

What the Khutsong episode revealed is the limits of devolution, and how it can go wrong even for a country that has developed the concept in as detailed a manner as South Africa. As Kenya looks at its devolution options, it will help to undertake a comparative study of how it has been done in other countries, especially those at similar levels of development. What are the experiences, the lessons learned and the mistakes made?

Evidence from several countries indicates the devolving state powers to sub-national institutions and entities, is done for different reasons and with different motivations. While one would expect that the push for devolution would be after a carefully considered analysis of the pros and cons, experience informs us that, more often than not, political and historical factors play a significant part in the decision to devolve, and in the nature and type of devolution then set up. Theoretical analysis of devolution proceeds from both ends. For example, in the analysis of fiscal decentralisation undertaken by Oates, he emphasises that the 'basic issue is one of aligning responsibilities and fiscal instruments with the proper levels of government' (Oates 1999). In an analysis of Nigeria's system, Metz (1991) says that 'given the territorially delineated cleavages abounding in Nigeria and the historical legacy of divisions among ethnic groups, regions, and sections, the federal imperative was so fundamental that even military governments that were characteristically Unitarian, hierarchical, and centralist, attached importance to the continuation of a federal system of government' (Metz 1991). Metz goes on to add that 'the federation began as a Unitarian colonial state but disaggregated into three and later four regions. In 1967 the regions were abrogated and twelve states created in their place. The number of states increased to nineteen in 1976, and to twenty-one in 1987. In addition, in 1990 there were 449 local government areas that had functioned as a third tier of government since the late 1980s' (Metz 1991). In the case of Papua New Guinea, 'At the time of independence in 1975, Papua New Guinea embarked on a series of policies which, among other things, aimed to overcome two of the legacies of the colonial experiences: the high degree of centralisation of political and administrative power, and the great geographical inequality of wealth and distribution of government services within the country. These policies were embodied in the creation of a national planning system with mechanism of redressing spatial inequalities, and the creation of a decentralised political system to provide a basis for wider participation in the political process' (Kulwaum, n.d).

3.2 The Case Studies

While the countries under consideration in this paper may seem to be quite different from each other and from Kenya, there is a reason why the lessons they offer should be noted when it comes to deciding on the course that devolution will take in Kenya. In the cases of India, Nigeria and Papua New Guinea, the nature of their ethnic makeup, where groups were forced to live within a shared border mainly by the colonial experience, and with ethnic considerations intruding upon political and economic decisions, the positive and negative manner they undertook to devolve both political and economic powers is of great import to us in Kenya. South Africa is also important to us because its outsize influence on the continent means that we cannot ignore it. Also, the proximity of the historical decisions made (the provinces were only delineated in 1994, and South Africa's devolution process can very well be viewed as work in progress) means that we can view, almost in real time, the decisions that they are making, the reasoning behind them, and learn from any mistakes they may commit. Bolivia, while being distant geographically as well as in political terms, nevertheless makes the perfect case study of devolution being carried out at a time of relative peace and stability. In effect, the Bolivian case study is one of 'voluntary' devolution, as opposed to the process that was forced upon the other countries by independence (India, Papua New Guinea and Nigeria), civil war (Nigeria) or political revolution (South Africa). One presumes that the Kenyan process will similarly be 'voluntary'.

3.2.1 The history of devolution

It would be useful to look at how devolved government evolved in some of the countries under consideration.

Papua New Guinea

Papua New Guinea has the reputation of being one of the most ethnically diverse countries in the world. With more than eight hundred and fifty ethnic groups among a population of just six million, it is evident that Papua New Guinea is a country ripe for a form of government that will enable the administration, and proper representation, of such a diverse populace. Part of the reason for Papua New Guinea being so diverse is its geography. It is exponentially more difficult to govern a country composed of dozens of islands and a mountainous, rain forested interior, which makes communications and transport difficult. Papua New Guinea Books Useful Articles and Information (Kulwaum, n.d).asserts that 'this topography of the land presents major challenges for the Papua New Guinea government, especially with respect to its capacity to provide in some equitable manner the quantity and quality of goods and services required by the people'. Added to this is a chequered colonial past that meant different portions of the country were governed under different regimes, with different policies, meaning that the country is effectively a clobbered-together entity. According to Kulwaum (n.d), 'Prior to colonial occupation, its people did not regard Papua New Guinea as a nation. This western construct was only achieved in the late nineteenth century, with its boundaries defined by the colonial powers, who ruled over it for more than a century. Colonialism has thus mediated in defining not only internal relationships between tribes but also Papua New Guinea's external relationships with its neighbours'. The constituent parts of Papua New Guinea have been governed by Germany, Japan (as an invading power of the island of Bougainville during the Second World War) and Australia (under a League of Nations mandate after the First World War). Besides, the country has also attracted interest from other colonial powers and regional powers.

Prior to independence (finally granted in 1975), the question of the administration of the country was obviously one of the most urgent and important in confronting the colonial power and the set of leaders that was coming in. Part of it was the fact that devolution and empowerment of the constituent parts of the new nation were among the more important promises inherent and explicit in the drive towards independence, and this was something that needed to be delivered for the new, post-independence government to have any legitimacy. The key to delivery of devolution on the part of the new government was the Organic Law on Provincial Government and Local-level Governments, enacted in 1977. In this law, the principle of devolved government was codified, and it is important to quote its provisions to this end. In it, the people of Papua New Guinea resolve to

'(a) to make such changes as are necessary now contained in this Organic Law for the purposes of—
  (i) maintaining our identity as a sovereign united nation; and
  (ii) promoting equal opportunity and popular participation in government at all levels; and
  (iii) providing especially the basic human needs for water, health, education, transportation, communication, accommodation and social order through economic self-reliance; and
  (iv) promoting responsible citizenship through self- management, control and accountability for one's actions; and
(b) to establish Provincial Governments and Local- Level Governments (LLGs) in order to achieve the goals referred to in Paragraph (a).

This law notwithstanding, Papua New Guinea has had to face, throughout its independent history, secessionist movements, the most serious being that from the island of Bougainville. Bougainville had always had a secessionist movement, intermittently active and dormant, partly due to immense deposits of copper and gold, and a different colonial history (having been occupied by American, Japanese and Australian forces during WWII). From 1988, the movement exploded into all-out civil war, which was only resolved after a New Zealand-brokered agreement in 2000. Part of the agreement allowed for an autonomous Bougainville government, which was another wrinkle in the fabric of Papua New Guinea's devolution pattern.

According to Francis Fukuyama, 'many outside observers, and many residents of Papua New Guinea, have noted that the Papua New Guinea state is weak and ineffective in delivering basic government services in large parts of its territory' (Fukuyama, 2007). Further, the author notes that 'the Papua New Guinea state suffers from both excessive scope and insufficient strength' (Fukuyama, 2007). This is similar to the situation obtaining in Kenya. 'The government lacks the capacity to deliver many basic public services like education and health, particularly in remote rural parts of the country. Hence the simultaneous reduction of state scope (through privatization) and increasing state strength in basic public goods provision should in principle yield much better public services and economic growth'(Fukuyama, 2007).

Fukuyama identifies several factors within the Papua New Guinea political system that begin to mirror the system in Kenya. He also identifies these factors as possible impingements to governance reform in the country and the effectiveness of the devolution framework.

The first one is that of the fact that the political system is a quasi-Westminster one, and Fukuyama says that 'The primary manifestation of this weakness' (of having a Westminster system) 'is, of course, the absence of strong national political parties, which are the primary vehicle by which other Westminster systems generate strong government. Voters vote for members of parliament based heavily on wantok[11] loyalties, which leads to government majorities being formed on the basis of highly unstable coalitions based on personality and patronage networks' (Fukuyama, 2007).

Another pertinent weakness is the issue of lack of proper delegation. Just as to a significant extent in Kenya, political processes impact inordinately on the functions and performance of the executive. 'Another source of state weakness in Papua New Guinea lies in a general failure of delegation throughout the system. In a well-functioning Westminster system — indeed, in any type of well-functioning democracy — the legislature sets general policy guidelines and hands off implementation to the executive, which should be home to a competent, professional, and stable bureaucracy. There is of course a lot of argument as to where to draw the line between political and administrative issues, and there have been many controversies over charges of excessive or insufficient executive branch discretion in developed democracies. But the principle of delegation to an independent administrative realm is fundamental to the working of the system, and generates a large literature on agency problems incurred when agents do not do the bidding of principals.' (Fukuyama, 2007)

'In Papua New Guinea, the administrative boundary is much more blurred, and the efforts of legislators to reach into the executive realm, weakens the ability of the latter to act cohesively. There is of course a chicken-and-egg problem here: part of the reason that politicians get involved in administrative issues in the first place is the fact that bureaucratic capacity was always weak and unable to deliver important services. Yet the years since independence have seen a progressive undermining of the administrative structures bequeathed to Papua New Guinea by Australia by politicians eager to expand their own discretion' (Fukuyama, 2007). This is similar to what happens in Kenya. In what can be seen as a pointer to potential stumbling blocks on the road to devolution, Fukuyama says that 'case in point was the 1995 Organic Law, whose ostensible purpose was to decentralize power, but whose actual impact was to increase the power of local MPs at the expense of provincial governments. Many people charge that the law recently passed by parliament to move authority from provinces to districts represents a similar power grab on the part of national politicians, whose influence is much greater at a district than a provincial level'(Fukuyama, 2007).

In another similarity with the Kenyan political system, 'lack of political accountability characterizes the system as a whole, and therefore the relatively weak demand for equitably distributed public goods. Electoral democracy is deeply rooted in Papua New Guinea, but it is largely seen as a contest over the distribution of rents that are then available for distribution back to the narrow constituencies that are responsible for electing members of parliament. In many districts, elections resemble a lottery in which politicians have a small chance of winning big. The competing *wantok* groups would rather have a ten percent chance of walking off with 100 percent of the winnings, rather than surety that they would have a smaller, proportional share of the whole pie. As a result, the state's failure to provide basic public goods for a large proportion of its citizens is not punished at the ballot box, which in turn gives politicians small

[11] The translation of 'wantok' is 'someone who speaks my language' – implying familial or tribal ties.

incentive to fix problems that do not affect their immediate constituencies. While there are individual reformist politicians in Papua New Guinea, there is no strong national reform party for which one can vote if one wanted to move beyond the older form of clientilistic politics' (Fukuyama, 2007).

We can be forgiven for continuing to quote Fukuyama on the issue of weaknesses in the political system as they impact on efforts at reform. He points at, inter alia, factors such as lack of capacity for monitoring local projects at national level; 'severe lack of basic administrative capacity and infrastructure at the district and Local Level Government (LLG) levels, particularly in remote areas', meaning that 'any devolution of power from the provincial to the district level may lead to services not being provided, or a de facto increase in the power of the national MP for the district'; and 'confused and unclear reporting lines between LLG, district, provincial, and national levels of government' (Fukuyama, 2007).

One final observation is that 'there is a fair amount of cynicism among many long-time observers of Papua New Guinea about the political class as a whole, and a belief that virtually all politicians are corrupt or narrowly self-interested' (Fukuyama, 2007).
On the other hand, we must not get carried away in finding similarities between the situation obtaining in Papua New Guinea and that in Kenya. Fukuyama is clear that two factors – the relative strength of local communities against the weakness of central government, as well as the lack of a dominant ethnic group – mean that the emergence of a strongman in Papua New Guinea is highly unlikely.

South Africa

The former name of the Republic of South Africa, which lasted from 1910 to 1961, was the Union of South Africa, and this appellation is a significant pointer to the genesis of the South African form and model of devolution. South African history is one that is pockmarked with the struggles for land, freedom, and from the late 19th century onwards, for the stupendous wealth found underground in terms of gold, diamonds and other valuable minerals.

The nature of white settlement and economic activity had, by the end of the 19th century, led to the existence of three distinct regions. These were the Cape (the area flowing north from Cape Town, where white people led by Jan van Riebeeck, first landed in 1652), the Transvaal (in the north, roughly from Johannesburg-Vereeniging northwards to the Rhodesian border) and the Orange Free State, the redoubt of the Afrikaner people who were pushed northwards after the Great Trek of the early 19th century. There was also the balmy coast region of Natal, whose beauty belied a vicious struggle for control between the dominant Zulu and an ascendant British occupying force.

South Africa, from colonial times has been a country where the collisions of nationalist ambitions have defined the history of the country. From the first clash between whites and blacks subsequent to the Dutch landings at the Cape of Good Hope in the 17th century, through the wars occasioned by the expansion of the Nguni speaking peoples (especially the Zulu and the Xhosa), the mfecane led by Shaka Zulu at the beginning of the 19th century, and the Anglo-Boer war – the Union of South Africa, proclaimed on May 31 1910 (Wilkins and Strydom, 1978), stitched together common enemies into 'one of the most disparate and fragmented nations in the world' (Sampson, 1987). 'It was not only that the blacks were segregated from the whites. The Indians in Natal never mixed with the blacks or the whites while the coloureds in the Cape were shunned by their white cousins, and looked down on the blacks. Also, the two dominant white groups – the English-speaking businessmen and the Afrikaner politicians – went their separate ways with a legacy of distrust' (Sampson, 1987). This distrust, perhaps born out of a history of victimhood among the Afrikaner people, and the legacy of colonial development led directly to the institution of the apartheid policy after 1948. The experiment in Grand Apartheid, beginning under Prime Minister Hendrik Verwoerd in the 1960s, took the concept of apartheid to its logical conclusion. Verwoerd's theory of apartheid stressed above all that the blacks were not part of the South African nation, but a group of separate tribal nations – Zulu, Xhosa or Sotho – which would gain dignity and self-respect outside the white man's world. 'The Bantu is neither a backward black Englishman nor a backward black Afrikaner,' as Schalk Pienaar, one of his most articulate intellectual supporters, put it in 1960. 'He is not even a backward black Bantu. He is a Zulu or a Xhosa or a Sotho or what you will. A nation in her own right. Pienaar and many other Afrikaners projected the blacks in their own image, as proud tribes that did not want to be assimilated.....and as black Africa moved towards independence they saw a new justification: The black nations of South Africa can become free even as Ghana is today' (Sampson, 1987). The policy then instituted involved the creation of separate 'states' for the black population of South Africa, along tribal lines. These rump entities – which eventually numbered ten[12] – were never viable, and the only result was the provision of opportunities for corruption for the leaders chosen for these homelands.

The rest of white South Africa, meanwhile, was put under a form of devolution, which involved dividing the country into provinces based on the four 'nations' that had united in 1910 – the Cape, Natal, the Transvaal, and the Orange Free State.

The 1994 revolution kept the provincial form of government for the sub-national entity, but subdivided the existing provinces, as well as absorbed the former homelands. Nine provinces were instituted – Limpopo, Gauteng, the Northwest and Mpumalanga (covering the former Transvaal); the Western, Northern and Eastern Cape (from the former Cape Province); Kwazulu/Natal, and the Free State (shorn of its 'Orange' appellation).

The process of devolution had to take into consideration the interests of all groups. To protect minority interests, the constitution-making process decided on 'a bill of rights; the 'devolution of power to regional and local government levels'; 'autonomy of authority' at lower levels of devolved power; 'checks and balances' such as a bicameral parliament, and president and prime minister coming from different houses; and, finally, proportional representation' (Butler, 2007).

Nigeria

The federation of Nigeria is the most populous country in Africa, with a population approaching 140 million by the first decade of the twenty-first century. Nigeria, just like Papua New Guinea, has a tremendously diverse population, with hundreds of ethnic groups speaking many languages and dialects. Some of the areas found within the territory of modern-day Nigeria contain Black Africa's earliest-recorded political entities, including Kanem-Bornu, the Oyo Empire, and Benin. In the north were the Islamic kingdoms including bits of Songhai (for

12 The ten entities are Bophuthatswana, Venda, Kwazulu, Transkei, Ciskei, KwaMashu, Lebowa, KwaNdebele, QwaQwa and Kangwane.

a time under the great Askia Muhammad). Later, came the Hausa state and the Calabar.

When the British invaded, they instituted a policy of indirect rule (pioneered by Frederick Lugard and in some ways modelled on the Raj in India). This, kept many of the traditional rulers in the Nigerian territory, and solidified the concept of tribe and differentiation. Nigerian territory was divided into the northern and southern territories (roughly corresponding to the Muslim, and Christian and traditional religious regions), as well as the Lagos colony.

It is important to recount this history, as it gives important pointers as to the later development of the Nigerian nation, its federal system of governance, and the ethnic relations that had such a huge impact on the unity of the country. As was common in British colonies, the different regions were developed in different ways. Resources put into areas such as education and agriculture varied by region, meaning that by the time of independence in 1960, some regions, and their corresponding ethnic groups, were far ahead and better prepared for political and economic leadership than others. In practice, the federal system instituted at independence was quite far-reaching. The size of Nigeria, and the considerable differences among its three major regions in outlook and wealth, necessitated the development, by trial and error, of a federal system with local autonomy for the regions before full independence for the whole could be reached.

Alhajj Sir Abubakar Tafawa Balewa's government was overthrown, and the military took over power, in 1966. The previously civilian-led regions had military governors imposed on them. When, in May 1967, one of these governors, that of the Igbo-dominated Eastern Region, Lt. Col Chukwuemeka Odumegwu-Ojukwu, declared independence as the Republic of Biafra, the Nigerian Civil War broke out, and this went on for three years. The tragedy of the civil war, in which more than a million people (mostly civilians) died and which precipitated the first television-age humanitarian crisis (admittedly closely followed by that in Bangladesh), necessitated a re-think of the shape and form of the federal government. Nigeria was re-divided into twelve states, to reduce the overwhelming impact of the 'Big Three'. During the succession of military rulers in the 1970s, the states were increased in number to nineteen. Different constitutional provisions and amendments increased the number of states as the years went by – in 1976, 1987, 1991 and 1996 – to the current number of 36 together with the Federal Capital Territory of Abuja (Mahmoud, 2002).

India

India is the second most populous nation in the world, with a population now in excess of a billion people. It is a country whose people famously worship thousands of gods, and, in territory, it stretches from the frigid roof of the world in the Himalayas to the sweltering coasts of the Bay of Bengal. Multi-religious, remarkably multiethnic, and with a fractured history of disparate development, occasional murderous purges between different ethnic groups – and especially different religious groups; as well as the truly brutal split between India and Pakistan, have meant that fashioning a functioning nation out of such a polity is one of the most difficult political tasks in the world. Yet out of this unpromising set of circumstances flourishes the world's largest democracy[13].

[13] Here democracy is measured in terms of voting numbers. In the 2009 elections, well over 700 million people voted across the country.

The most logical system of government for such a country then, is a federal one. The development of the Indian federal system owes itself to the combination of traditional rule in pre-colonial India, and the establishment of the British Raj. Princely states had been present all over modern Indian territory for hundreds of years, and these Maharajas – as they were known – controlled vast areas equivalent in size to many modern-day medium-sized countries. When the British invaded and decided to impose an administration over the vast country (it must be remembered that pre-1947 India included the modern states of Bangladesh and Pakistan), they realised that there was no way a thin cadre of civil servants shipped in from the United Kingdom could effectively police a country that was so large and diverse. The model adopted, then, was one of ruling and administering largely through the princes and Maharajas, and the 'Indirect Rule' thus fashioned was one that was to be adopted in places such as Nigeria and Uganda.

Upon independence and the Partition in 1947, the federal system was adopted largely intact, though with a debate on how exactly to reform it. The answer, reluctantly adopted by the ruling Congress Party under Jawaharlal Nehru in the mid-1950s, was to organise the federal entities along linguistic lines. The logic given was that 'Linguistic homogeneity provides the only rational basis for reconstituting the state, for it reflects the social and cultural pattern of living obtaining in well defined regions of the country' Muni, 1996). Whereas this made prima facie sense, the obvious danger of fomenting conflict, especially when these linguistic unions coincided with ethnic and religious majorities, was obvious. The recurring purges in India are a testament to the difficulty of managing ethnically-delineated sub-national administrative units.

3.2.2 The Process of Decentralisation – The Case of Bolivia

This is one of the most important chapters of this book. Part of the purpose of this chapter is to see how other countries' devolution processes and systems have functioned, and what lessons this holds for Kenya and the debate about devolution, the reasoning behind it, the process and how it would actually function. In this respect, the case of Bolivia is an important one as Boliva is one of the few countries in the world where the devolution process has occurred after the formation of the state in its current form. Also, the Bolivian devolution process did not occur in a time of great crisis or transition, as happened in some of the other countries under review (South Africa – the transition from apartheid; India and Papua New Guinea – independence; and Nigeria – independence and military rule). The Bolivian process took place over a time of relative peace (although at a time of economic change), and was ostensibly geared at poverty reduction. This mirrors Kenya's obsession with devolution for the purpose of 'bringing development closer to the people'.

The case of Bolivia, then, will be examined both from its historical development and through the lens of the process it underwent, and also from the perspective of the end result. It is hoped that this may provide pointers for Kenya as we look at undertaking a similar process.
Bolivia is a South American country nestled in the Andes mountains, whose population is 60 percent native-American. Its poverty level is approximately 60 percent. Bolivia's ethnic makeup, colonial and postcolonial history, as well as its economic performance over the years means that, like many South American (especially Andean) countries, issues of how to treat its native population have crept into the political discourse. In the case of Bolivia, the election of Juan Evo Morales Ayma in 2005 was historic in that it brought a native American to power for the first time in the country.

The process of decentralisation in Bolivia was carried out through the ***Ley de Participation Popular*** (**LPP – or Law of Popular Participation**). The genesis of the passing of the law, in 1994, was a continuing push for greater recognition by the constituent communities of the Bolivian population, as well as for participation in decisions impacting them. The background to this was the push for democratisation and the poor performance of the Bolivian economy[14]. Two other factors – the strong push by native American populations for recognition, and the pressure from outside countries – played a significant part in the passing of the LPP, and the subsequent working of the decentralisation effort.

According to Miguel Centellas, 'The LPP was more than a result of playing out of "political" forces or the search for "economic" solutions to problems of administrative efficiency. Rather, the law was part of a larger package of reforms aimed at fundamentally restructuring the Bolivian state in ways that are revolutionary' (Barbery Anaya 1997; R. Mayorga 1997 as cited in Centellas, 2000). 'This reform package included the Ley de Reforma Educativa (Law of Educational Reform), *Ley de Capitalización* (Law of Capitalization), Ley de Pensiones (Law of Pensions), Ley de Reforma Administrativa (Law of Administrative Reform), Ley del Servicio Nacional de Reforma Agraria (INRA, Law of National Agrarian Reform), and changes to the constitution. Each of these dramatically reshaped the political, economic, and social reality of the country' (Centellas, 2000).

An indication of the background and motivation for the passing of the LPP can also be found further in Centellas' analysis. According to him, 'Bolivia's decentralization fundamentally altered the democratic development of the state through a process of "structural change"' (Centellas, 2000). The LPP cannot be understood merely as a decentralization reform - it is something more. The LPP was, according to Barbery (1997), a change as dramatic in scope as the 1952 National Revolution.

A better approach to understanding Bolivia's decentralization is to focus on the role it played within the broader context of democratization. The authors of the LPP described their effort as aimed at improving the quality of democracy in Bolivia. The goals of political or fiscal administrative efficiency were only secondary. These were often sacrificed to the goal of democratic deepening. To understand Bolivia's decentralisation process better, we first need to understand the democratic transition itself...The democratic transition changed the political landscape of Bolivia; it opened up possibilities and challenges to those who wished to decentralize' (Centellas, 2000).

Postero (2006) argues that 'The LPP was created in the context of international pressures to decentralise, during a time in which many other Latin American countries were also doing so. Nonetheless, one cannot see the LPP as simply the imposition from without of a neoliberal prescription assumed to be universally valid. Rather, it was the product of a long history of seminars, dialogues and theorising carried out by Bolivian intellectuals and politicians concerned with the specific problems of Bolivian society...The LPP was intended to correct several major problems that were the legacies of earlier government policies. The first was the continuing imbalance between the rural and urban areas...The LPP was intended to correct this lack of equilibrium by constructing the state in such a way as to give indigenous citizens access to local power' (Postero, 2006).

14 See Pearson Education -Infoplease, (2009) for the claim that Bolivia had the lowest GDP per capita at this time in South America.

The process of decentralisation can be traced to 1982, according to Centellas, after the re-establishment of civilian rule following the exit of the military. 'After the return of civilian rule in 1982, Bolivian civil society began mobilising support of political decentralisation. The most organised and vocal proponents of decentralisation during this decade were the *movimientos cívicos* (civic societies), which called for decentralisation at the departmental level. These organisations, spearheaded by the *Comité Cívico pro Santa Cruz* (a vanguard of regionalism for much of the modern period), called for the nine departments to hold direct election of their prefects and a departmental legislature. In essence, this proposal called for de facto (if not also de jure) federalisation of Bolivia. Such demands were presented at the December 1992 Tarija conference, *"Actores sociales y descentralización."* The Tarija conference, which was sponsored by EMSO-Regional (an organ of the Ministry of Planning), the *Comité Cívico de Tarija*, and ILDIS, discussed various means for decentralization' (Centellas, 2000).

With this in mind, what path was taken during the LPP process? The government of Gonzalo Sánchez de Lozada, elected in 1993, began planning and carrying out the decentralisation reform in earnest. Centellas states, 'Very early in his administration, Sánchez de Lozada gathered a diverse group of young academics to join the newly formed *Unidad de Participación Popular* (UPP - Popular Participation Unit)... It was this group that began working on actual drafts of the decentralization reform package... They were heavily influenced by the work (or were members themselves) of a new, academically oriented political party, the *Movimiento Bolivia Libre* (MBL - Free Bolivia Movement)... Shortly after its birth as a political party, the MBL members (known as *emebelistas*) organized a conference in Chuquisaca that included many Bolivian intellectuals who were not members of the party. The result of the conference was the publication of a book, *epensando el país* ("Rethinking the country" 1987), which underscored the reality of post-transition Bolivia: the proletariat and popular movements had been defeated by forces of modernity' (Centellas, 2000).

One of the criticisms aimed at the Sanchez de Lozada-led process was its supposed secrecy. 'This criticism of the secrecy of the UPP's work is not easily dismissed. Other social and political actors shared this criticism as well. Much of the UPP's work—often conducted under the careful and direct guidance of Sánchez de Lozada himself—did not involve consulting either, the *comités cívicos*, the labour sector, or political parties (including many members of the governing Movimiento Nacionalista Revolucionario (MNR) itself). A great reason for the lack of inclusion in the debate was the mistrust most of the UPP's social scientists and *Sánchez de Lozada* himself had of each of the other three sectors (*comités cívicos*, labour, and political parties). The *comités cívicos* were seen as representing exclusively elite urban interests. The labour sector (most especially the Central Obrera Boliviana – Bolivian Workers' Centre) still clung to a traditional corporate, hierarchical, and Marxist paradigm of political organization. This solution had proved unmanageable during the 1982-85 economic crisis. Finally, the political parties were seen as a separate class in itself. This class was strengthened by the electoral system (which requires that all political office-holders be members of political parties) and a familial system of state-patronage sharing' (Centellas, 2000).

According to a paper authored by Jette for the UNDP, 'The decentralization reform process in Bolivia took a new course with the adoption in 1994 of the Law of Popular Participation (LPP), a piece of legislation that encompasses a comprehensive set of territorial, political, administrative and fiscal aspects (Jette, 2005). In summary, this law has brought about two critical transformations:

1. The full transfer to municipal authorities of significant responsibilities and sources of revenue, together with the creation of a large number of new municipalities spanning urban/rural areas throughout the country.

2. The legal recognition of rural and urban grassroots territorial organizations (*organizaciones territoriales de base*) and the creation in each municipality of a Vigilance Committee (*Comité de Vigilancia*) whose members are elected by these organizations and which hold the right to participate in planning processes and to audit municipal budgets'(Jette, 2005). The Bolivian process is also important in another respect – *the decentralisation process did not just involve governments at national and sub-national level – it also expressly recognised, and gave participation to, non-governmental organisations*.

The LPP reorganised the country into 314 municipalities (later increased to 327 municipalities). Prior to this, 'municipal governments formally existed only in urban centres of more than 2,000 inhabitants' (Jette, 2005). It also 'shifted the regional development money to the municipalities for a total of 20 percent of national budget money. This was divided across all the municipalities according to population. The money was to be used for local development, especially in the areas of education infrastructure, health and sports, local roads and micro-irrigation' (Postero, 2006). Jette also emphasises the same thing: 'each municipality has been entitled to receive automatically a share of national resources. Known as the principle of co-participation (coparticipación), 20 percent of all national state revenues are now distributed among local governments according to their population, on a per capita basis. These transfers complement municipalities' own sources of revenue which stem mainly from property and vehicle taxes. Municipalities own the local infrastructure in education, health, irrigation, roads, sports and culture, and they hold the concomitant responsibility for maintaining these facilities, and investing in new ones. The provision of social services as such has not been decentralized to the municipal level, but municipalities have the ability to request health and education local authorities for a ratification or change. Public utilities (water, electricity and telecommunications) are supplied by private providers, users' cooperatives or municipal enterprises, with a strong push from national authorities towards privatization, especially in large cities' (Jette, 2005).

Elections under LPP were then first held in 1996, with elaborate rules on party lists, as well as affirmative action with respect to women. The elections are also held under the principle of proportional representation.

The explicit recognition of grassroots organisations is also a feature of the LPP. 'According to the law, grassroots territorial organizations –peasant communities and indigenous organizations in the rural areas, neighbourhood associations (*juntas vecinales*) in the urban centres hold the right to propose, request, control and supervise the provision of public works and public services at the local level. On the other hand, they have an obligation to participate and cooperate in the implementation and administration of these projects and services' (Jette, 2005).

Continuing with the legal framework for the implementation of the devolution mechanisms, Jette (2005) says that 'The decentralization legislative framework was complemented in 1995 by the Law of Administrative Decentralization (LDA) which regulates the functioning of the nine departmental Prefectures (Prefecturas), an intermediate level of administration between central government and municipalities. The Prefectures are in charge of formulating departmental development plans and executing public investment in the areas of roads construction, rural electrification, irrigation, research and extension, environment, tourism, and others. This is done concurrently with municipalities. The Prefectures, by delegation from central government, are also responsible for supervising and administering human resources and budget line items assigned to personal services in the areas of education, health, and social assistance'.

In terms of popular participation in politics (which is an important thing – all too often people feel that political processes are beyond their control and interest), Jette (2005) says that citizens have been initiated into politics and administration in large numbers. This, in practice, means that political decisions at the local level have a great degree of popular support. Postero (2006) says that the LPP 'established a new system for citizen participation in decisions about how the...revenue sharing funds should be spent. Under the law, mayors and councils were to make yearly development plans based on petitions of constituent population groups called *organizaciones territoriales de base* (OTBs, territorial grassroots organisations). The OTBs were to canvass their members' needs and make proposals for the city's yearly budget and then act as watchdogs through the *comites de vigilancia* (oversight committees) to make sure the budget was properly implemented. As President Sanchez de Lozada suggested, this was to be 'the most important redistribution of political and economic power since the 1952 revolution,' which would correct the central, statist bias and channel state attention and monies to the whole country.'

3.2.3 How Does Devolution Work?

After this introduction into how different forms of devolution evolved in some of the countries in our study, the next important question is that of how devolution actually functions in these countries.

India

India's federal constitution came into effect two and a half years after independence, in January, 1950. The country has a bicameral legislature – the Lokh Sabha, or House of the People, and the Rajya Sabha, or Council of States, with 545 and 250 members respectively (Pan India Network, 2009). In this, it resembles many other federal states in which one house of the legislature is given over to proportionate representation, with the other having representation based on the federal units (a congruous set would perhaps be the House of Representatives and the Senate in the United States of America). India is composed of twenty eight states and seven federally-administered union territories. According to Rao and Singh (2006), 'all the states have elected legislatures and chief ministers in the executive role, though state governors exercise some powers. Because many Indian states are quite large, with the largest dozen being comparable in population to larger European countries, devolution of powers to the states without any further decentralization below that level still represents a relatively centralized federation. In practice, devolution to both the states and substate (local) government bodies was weak before the 1990s' (Rao and Singh, 2006).

Each state in India has legislatures that are chosen through democratic elections, and the Chief Ministers wield considerable powers as the chief executives of the individual states. Due to their powers and prominence in the politics of the country, they also wield considerable influence (as distinct from power), meaning that some of them graduate from state leadership to national leadership (a good example would be the career of P.V. Narasimha Rao, who rose from leadership in Andhra Pradesh – including stints as a member of the state cabinet and as Chief Minister – to national leadership and the Prime Ministership in 1991).

As a summary of the powers respective to the state governments and at national level, it also helps to quote Rao and Singh (2006) at length – 'What distinguishes federalism from general decentralization is the assignment of inextinguishable powers to sub-national governments. Assignments include important non-fiscal dimensions, but control over how public resources are raised and spent represents a crucial aspect of any federal system. The Indian Constitution assigns the powers and functions of the Center and the states, in Union, State and Concurrent Lists. All residuary powers are reserved to the Center. The assignments are fairly typical of federal nations. The functions of the central government relate to those of defence, those required to maintain macroeconomic stability, promote international trade and relations, exploitation of major minerals, and those having implications for more than one state. The major subjects assigned to the states include public order, public health, and agriculture. In practice, the states assume a significant role for subjects in the concurrent list, including education, transportation, and social insurance'.

The Indian judicial system operates mainly at the state level, with High Courts in each of the states and a Supreme Court at Federal level.

South Africa

South Africa has nine provinces and a central government, with the central government headquartered in Pretoria. The individual provincial governments have a broad range of responsibilities, including provision of social services (the term 'service provision is a loaded political one in South Africa, and was at the heart of the Khutsong protests that's detailed above). Each provincial government has a legislature headquartered in the provincial capital, and the province is headed by a Premier. The Premier is assisted by a cabinet of Members of the Executive Council (MECs). The South African experience with provincial government is similar to other countries in that provincial leaders tend to become national leaders. There is however, an exception in this case, in that the nature of the anti-apartheid struggle led to some of the luminaries of this getting into provincial government as opposed to national government, and being outsized influences on the same (a good example is Mbhazima Shilowa, who was the long-term Premier of Gauteng, South Africa's richest province, and a leading light in the anti-apartheid struggle in the 1980s).

Dispute resolution when it comes to inter-province matters is up to the Mediation Committee, which is composed of nine members from the National Assembly and one each from the nine provincial delegations in the National Council of Provinces.

Papua New Guinea

The main issue in Papua New Guinea's experience of devolution, some of which led to the aforementioned secessionist problems in the country, revolves around how the nation's cultural diversity can be reconciled with the need to institute political unity. This is a key question for a country such as Papua New Guinea, where ethnic diversity and the remoteness of its individual population centres means that national cohesion cannot be taken for granted.

Fukuyama looks at the process of devolution from a donor-funding perspective (that is the aim of his paper) and points to a very important factor that sometimes gets overlooked in the push for both reform and seeking resources for the process. He says that 'Decentralization, civil service downsizing, and anti-corruption drives have all be urged upon countries and paid for with donor funds. The problem with this approach is of course that when demand for reform comes from external sources, political actors within the country fail to take ownership of the process, and the reforms themselves fail to reflect the internal on-the-ground conditions needed for success' (Fukuyama, 2007). He seeks a solution that may be a bitter pill for some donors to accept: 'A different approach would be for donors to concentrate on doing what they know best, that is, by generating and making available information on how the governance system is actually functioning or, more particularly, not functioning. It would not be up to the donors to act on this information, but rather up to local politicians to use it to advance their own political careers. Policy debates could be based more on evidence than on advocacy. If no one takes up this opportunity and challenge, then no reform will happen; but donors should not fool themselves that they could succeed in pushing forward institutional change in the absence of local demand for reform'. (Fukuyama, 2007)

Nigeria

The Nigerian experience of devolution and federalism has been compounded by two major factors – the successive military governments at national level between the 1960s and 1990s, and the distorting influence of oil on the national economy (leading to such issues as corruption on a truly grand scale, as well as latter-day rebel and secessionist movements such as those in the Niger Delta).

Nigeria, as earlier stated, has 36 states and the Federal Capital Territory of Abuja, as well as 774 local governments. It has been argued that some of the states were created for political reasons[15].

In Nigeria, part of the problem animating the federalism/devolution debate is the fact that emphasis in many occasions has been placed on distributive, as opposed to developmental policies. Often, the easy money gained from international oil sales is the much sought-after prize, as opposed to building up the wealth of the country.

3.2.4 Fiscal Decentralisation in Practice

It is fairly evident that the success or failure of devolved political systems (whether real or apparent – which in political systems can have the same effect) depends on two crucial factors – political, and economic. We shall consider the two factors in order, to see what the issues are and what lessons we can draw out for a proposed devolved system.

When it comes to the economic factor, the key element devolution stands or falls upon is fiscal decentralisation. How do the centre and the devolved units relate to each other when it comes to money? This simple question belies the difficulty of resolving matters close to the heart of devolved states – (i) who has the right to tax citizens and businesses? (ii) on what basis will revenues generated be shared between the centre and the devolved units, and between the units themselves? (iii) how does the national polity deal with regions and devolved units that

15 Mahmoud (2006) for example says 'Many of these states are hardly economically viable and had been created for dubious political considerations'.

generate much more wealth than others? In other words, 'control over how public resources are raised and spent represents a crucial aspect of any federal system' (Rao and Singh, 2006).

Different countries deal with these issues in different ways, some more successfully than others. Developing countries, though, such as the ones under consideration, have special problems dealing with the questions revolving around fiscal decentralisation. This is because they are attempting two very difficult processes simultaneously – national development (however defined) and the equitable distribution of this development (again, however the term 'equitable' is defined). Sometimes, the two processes can be mutually inimical (such as when it is felt that some regions are developing much faster than others, or when political sentiment is such that natives of economically privileged regions feel that wealth generated 'at home' should stay there).

It is thus crucial to consider the workings of fiscal decentralisation in practice, beginning with India.

India

For the purposes of this chapter, again the work of Rao and Singh (2006) is crucial, as it addresses this very issue in India in the context of lessons for other developing countries. As they say in their paper, 'India is an interesting candidate for study, because of its size, diversity and institutional complexity. While every country has specific institutions, so that lessons from case studies must be applied with caution, the discussion in this article may be seen as contributing to the broader research project of understanding the dynamics of federal systems, especially in developing countries' (Rao and Singh 2006).

India is an important case study for other reasons apart from its size and relative diversity. Due to the economic reforms carried out in 1991, leading to the end of the 'License Raj', the socialist-oriented, centralised market planning mechanism that had governed the Indian economy for decades came to an end, and the manner in which the different polities in the country related to each other was redefined. The 1991 reforms were important, because the adoption of market oriented reforms redefined the role of the State and this has necessitated a re-examination of fiscal arrangements between different levels of government. In fact, there have been opposing forces at work. While on the one hand, the transition from centralized planning and market based resource allocation has enhanced the role of sub-national governments in delivering social and physical infrastructure, increasing trend in regional inequalities has necessitated greater central role. 'Inter-regional distribution of incomes has shown increasing inequality during the 1990s' (Rao, 2000).

Another important reason to study India is that, beside the expected two tiers of federalised government, India, constitutional reforms in the early 1990s entrenched the third tier of devolution – the local authorities – in the constitution. This necessitates a rather complex three-way coordination of the federal relationship – between the national government in New Delhi, the state governments and the third-tier local governments.

The most important element of the fiscal decentralisation of India is the principle of separation, meaning that 'taxation categories are exclusively assigned to either the Center or to the states' (Rao and Singh, 2006). Rao and Singh (2006) continue 'Most broad-based taxes have been assigned to the Center, including taxes on income and wealth from non-agricultural sources, corporation tax, taxes on production, and customs duties. A long list of taxes is assigned to the states. However, only the tax on the sale of goods has been significant for state revenues. The separation of income tax powers between the Center and states based on whether the source of income is agriculture or not has opened up avenues for evasion of the personal income tax. Also, although taxes on production (central excises) and sale (state sales taxes) are separate, they tax the same base, historically causing cascading of rates and effectively crowding out state taxes. Finally, the states have been allowed to levy taxes on the sale and purchase of goods but not services. This has also led to tax evasion' (Rao and Singh, 2006).

According to (Pandey, n.d), sales tax form the backbone of the states' revenues. 'In India with respect to Sales Tax Federalism, the Constitutional amendment in 1956, gave the States power to impose sales tax (through the Central Sales Tax Act, 1956, enacted by the Sixth Constitutional Amendment which introduced Entry 92A in List I of the Seventh Schedule authorizing Parliament to levy tax on the sale or purchase of goods [other than newspapers] in the course of inter-State trade). The revenue from this tax was assigned to the States by amending Article 269 of the Constitution. Thus, sale within the State (Intra-State sale) is within the authority of State Government, while sale outside State (Inter-State sale) is within the authority of Central Government. Accordingly, the Central Sales Tax (CST) is levied on sale or purchase of goods in the course of inter-State trade and commerce. The power to levy the CST and revenue from this tax is, however, assigned to the State occasioning the movement of goods from one State to another (i.e. the exporting State)' (Pandey, n.d).

Taxation responsibilities in India are according to the 'List' system enumerated in the Constitution. 'The union List includes among others, taxes on income other than agricultural income, excise duties, customs and corporation tax. The State list includes land revenue, excise on alcoholic liquors, tax on agricultural incomes, estate duty, taxes on sale or purchase of goods as well as taxes on vehicles, professions, luxuries, entertainment and stamp duties' (Pandey, n.d).

In practice, though, 'the result of India's assignments and implementation of tax and expenditure authorities has been a substantial vertical fiscal imbalance, with well over a third of state expenditures having to be covered by transfers from the Center'.

Local and state governments also tend to have less sophisticated tax-and-spend mechanisms, and thus budgetary shortfalls will likely be seen at devolved level before they are seen at national level. Also, devolved entities do not have the authority to print money, and thus cannot print themselves out of financial constraints. A similar issue is seen now in the Eurozone in Europe, where central banking authority has passed from national governments to a supranational entity, meaning that tools hitherto available to governments during downturns have now been taken away. The present economic downturn is revealing the severe stresses inherent in such a situation.

In India, this has been recognised, and according to Rao and Singh (2006), 'the Constitution recognized that its assignments would create imbalances – both vertical, among different levels of government, and horizontal, among different units within a sub-central level. Therefore, it originally provided for the sharing of revenues from certain centrally levied taxes (particularly the personal income tax) with the states, and grants to the states from the Consolidated Fund of India. The tax shares of the Center and of each state are determined by the Finance Commission, which is appointed by the president of India every five years. In addition, the Finance Commission is required to recommend grants to states as needed. So far, twelve Finance Commissions have made recommendations, mostly accepted by the central government. However, the functioning of these commissions has been criticized for being too restricted in scope, and for using methodologies for determining transfers that were deficient in their consequences for equity and incentives. More specifically, on the last point, the use of grants to fill revenue-expenditure gaps claimed by the states has created "soft budget constraints" for the states, and obvious disincentives to maintain fiscal discipline' (Rao and Singh, 2006),

Another notable feature of the fiscal decentralisation model in India is the manner of 'Centre-state' transfers. These can be vertical, with the line institutions (such as ministries) dealing directly with each other in funding and implementation of projects. There are also grants given from the centre for the implementation of development plans, as handled by the Planning Commission of India.

Nigeria

The major issue in the story of Nigeria's fiscal federalism is how to deal with the enormous oil wealth generated in the country, and how to avoid the obvious distortions in the economy that this can create or has created?

Anderson (2007) has identified four principal federal revenue bases in Nigeria – oil and gas income, Value Added Tax, corporate income tax and licences and fees.

At the state level, there is the personal income tax. The Nigerian constitution provides that all federal revenue goes into the Consolidated Revenue Account. According to Anderson, however, there is a second account – the Federation Account – from which revenues are shared between the federal government and the states.

Anderson (2007) has identified *four major fiscal challenges* that Nigeria faces, namely:
- managing a petro-economy with its swings and the eventual depletion of the resource;
- providing regional and vertical equity in the distribution of fiscal resources;
- promoting coordination of major policies within the federal system; and,
- ensuring transparency and probity in the management of public finances.

The issue with oil in Nigeria is that it accounts for almost 90% of government revenue. An added challenge is that most of this oil is exported, meaning that revenue then flows into a central government fund from where it is distributed. The problem with such an outsize influence on revenue from just one commodity, and that commodity being oil, can be obvious, but it helps to quote Anderson at length to understand it: on 'the problems associated with such a huge dependence on oil revenues:

First, it poses issues of *political accountability* because the federal government raises its revenues from such a narrow base and most states contribute very little to national or their own revenues. Only 6 of your 36 states produce petroleum, with 4 being the most important. Thus the large majority of states turn to the federal government for the vast majority of their revenues and most of those revenues are effectively collected in other parts of the country. The public, for its part, pays little of the cost of government programs.

Secondly, it can be a *source of major tensions* between the producing regions and other regions of the country.

Thirdly, it appears to have led to an *underdevelopment of alternative revenue sources* because it is easier to tax oil than citizens. This has longer-term implications for your economy.

Finally, it creates problems of *stability* in public finances tied to a resource whose value swings widely and that will deplete over time. This poses *short-term issues* about the central government's ability to manage cyclical pressures on the economy as well as *longer-term issues* about the sustainable level of public services. This issue has compelled a number of countries— Russia is probably the best federal example—'to be very aggressive in developing revenue stabilization funds. My understanding is that you have largely succeeded in this regard, with the policy of basing budgets on a $40 a barrel price. But this type of policy inevitably gives rise to conflicts over the appropriate level of spending, as well as over the control and purposes of the stabilization funds. Even with this policy, you have had rapid fiscal expansion of about 12 per cent a year in real terms, driven by higher oil revenues' (Anderson, 2007).

Ozo-Eson (2005) also succinctly captures the problem brought about by such heavy dependence on oil. He says 'the centralisation of oil wealth and the resultant over-dependence of all states on the revenues therefrom has accelerated the national degeneration into the resource curse and Dutch disease conundrum. What we have done by this process is that we have shielded the states from a hard budget constraint, thus encouraging them to merely 'raid the commons'. Incentives for developing own tax bases and resources are thus stultified to the detriment of overall growth and development

Some Nigerian states, such as Cross River State, have tried diversifying away from the golden handcuffs of oil revenue by branding themselves as premier locations for the setting up of foreign company operations, and also turning themselves into free trade zones or 'mini-Dubais' (or at least what Dubai used to be) to generate their own income. As an example, over US $ 350 million has been spent to develop the Tinapa Resort – a shopping and entertainment complex – in Calabar. Whether this will attract the requisite interest and revenues remains to be seen.

An important element in the Nigerian fiscal decentralisation framework is that of the derivation principle, which states that, when revenues are collected in a certain sub-national jurisdiction, significant proportions of it should be retained in that jurisdiction. This is obviously one of the issues at the core of managing a federal nation, since management of different resource allocations and levels of development can make or break such an entity. According to Suberu (2001), 'the derivation principle dominated revenue-sharing practices and politics during the early stages of federation in Nigeria. In the late 1950s and early 1960s, for instance, all export duties on agricultural commodities and import and excise duties on tobacco and motor fuel were simply returned to the region of production or consumption.' Suberu (2001), however, says the obvious – 'it tended to make the rich regions richer and to arouse invidious opposition and resentment from the less well endowed regions.'

This obviously became a problem as soon as oil revenues became a significant part of the Nigerian economy. In addition, the derivation principle got significantly downgraded, the oil producing regions felt short-changed. Suberu (2001) argues that – 'the systematic downgrading of the derivation principle has fuelled criticisms from the ethnic minority elites in the oil producing states who see the decline of derivation as just another expression of oppression and domination of minorities in the Nigerian federation.' This ethno-political interpretation is echoed by at least two noted students of Nigeria's revenue-sharing policies, who argue as follows: 'Derivation was defeated because the oil wells were located in a few southern states with little political clout.' (Adebayo, 1990) 'The speed with which the derivation principle paled into insignificance with changes in both the source of revenue and its location left no one in doubt that revenue allocation is a political power game' (Suberu, 2001).

The politics of the derivation principle first came to international attention with the judicial case, and subsequent execution, of Ken Saro-Wiwa in 1995 (for demanding oil wealth gained from Ogoni lands to revert back to the Ogoni) and has continued with the activities of the Movement for the Emancipation of the Niger Delta (MEND) – a ragtag but fairly effective rebel group. In 1999, when a new Constitution was enacted, the derivation principle was set at 13%, but MEND's activities clearly show that this may not be enough. Part of the problem is that offshore oil sources (estimated at 40% of the total) are excluded from the deal, so Niger Delta inhabitants may feel short-changed.

South Africa

The challenge for South Africa when it comes to the issue of fiscal decentralisation is the legacy of apartheid. The massive under-spending in social services, especially for the poor and black population (which for a long time meant the same thing) necessitated the pledge by the African National Congress (ANC) government to undertake grand social service projects, such as the provision of housing units, and basic services such as water, electricity, education and infrastructure. The need was obvious. Even the most casual visitor to the country can see the stark difference between the fabulous wealth of Dainfern and the squalor of the settlement of Diepsloot, just a few miles away if passing by northern Johannesburg,

As social services mostly fall under the ambit of provincial and local government and yet the political pressure is felt by the ANC as a whole (which controls the national government as well as most provincial governments) the tug between the two is inevitable.

According to Yemek (2005), 'The Constitution deals with various aspects of intergovernmental fiscal relations (IGFR), including the decentralisation of revenue and expenditure assignments to sub-national governments, which acts as a disciplinary force by establishing a closer link between the raising and spending of money. Based on the Division of Revenue Act, which annually allocates national revenues to each of the three spheres of government, the South African intergovernmental fiscal system provides a framework of fiscal arrangements aimed at ensuring that government responsibilities are met, while the right level and mix of public services are delivered to enhance the socioeconomic rights of citizens, especially the disadvantaged. Yemek (2005) goes on to add that 'The IGFR system determines the way in which taxes are allocated and shared among the various levels of government, and how funds are transferred from one level to another. Intergovernmental relations, both vertical (between levels of government), and horizontal (within levels), are important for the efficient and effective delivery of public services. In addition, the Constitution provides that a nonpartisan Financial and Fiscal Commission (FFC) should advise parliament and sub-national governments on a variety of issues in intergovernmental fiscal relations. These include taxing powers, the allocation of revenue between tiers of government, the grants system and borrowing powers' (Yemek, 2005).

The South African Constitution, adopted in 1996, is clear on the respective responsibilities of each tier of government, and their respective fiscal responsibilities. Schedule 4 in the constitution is lengthy in the responsibilities conferred to the provinces, but among the more important ones are education (excluding tertiary education), administration of environmental affairs, health, housing, disaster management, public transport, and welfare. Since this list contains many of the demands made by impatient citizens, the management of decentralised funds is a crucial issue for the provinces.

The national government collects income and corporate taxes, Value Added Tax (VAT), and customs and excise taxes, while provincial governments have little room for tax collection. Transfer mechanisms from the national government to provincial government are set out in the Constitution. According to Yemek (2005), 'The two main instruments for national transfers are unconditional shares and conditional grants. These transfers follow the recommendations of the FFC, which annually proposes the amount to be allocated to each tier of government. The principles of equity and need are supposed to drive the distribution of the shared revenues between different sub-national governments.

3.3 Some Final Thoughts

It is evident, based on the lessons from countries as diverse as South Africa, India, Nigeria and Papua New Guinea, that devolution (or decentralisation, or federalism, or whatever appellation is most expedient) is an issue fraught with history and practical challenges.

All the countries under review came to their federated status through the historical bringing-together of disparate regions, as opposed to a centralised state choosing to break itself up into federal sub-sections. The challenge has been to maintain a semblance of national identity and unity, while at the same time acknowledging the diversity embodied in the federalism. In this, India and South Africa seem to be working well enough (with the important caveat of the Kashmir question in India), while Papua New Guinea is on the other end of the scale. Nigeria falls somewhere in-between, with a strong Nigerian identity (at least to the outside world), while internal questions such as those in the Niger Delta remain unresolved.

3.3.1 Lessons for Kenya

The prime purpose of this paper, as stated at the beginning, is to study how other countries have dealt with the question of devolution; how they have undertaken the process; and the pitfalls within these processes. The countries that we have undertaken to review in this paper were chosen for the lessons they can offer. Papua New Guinea, Nigeria, South Africa and India have multiple ethnicities, and part of the way they have chosen to manage these differences is partly through the tool of devolution. Whether they have managed this is arguable, especially if each is considered individually. There is also the issue of how each country manages the effort of nation-building in such an environment. Bolivia, on the other hand, is an important country to consider because of its attempt at devolution in peacetime. While most of the others went through their devolution processes at times of great transition, Bolivia is similar to our situation in that they managed to go through the process without war or independence processes being the push.

What are some of these lessons, then?

The first, and perhaps most important lesson, is that devolution is not a magic bullet that will resolve all problems. Listening to some of the rhetoric that accompanies the debate around devolution, one gets the feeling that the protagonists and opponents frame devolution as being the system that will resolve all of Kenya's problems, or at least those around issues of economic growth, equitable distribution, and redressing the ills of the past. The Nigerian experience shows that, especially in a situation of unequal natural resource allocation, devolution only serves to exacerbate economic problems. When one considers issues like the derivation principle one can see where potential problems may lie.

Second, in a situation of natural cleavages – whether ethno-language or religious – it may be wise not to institute devolution units that adhere too close to these. In the case of India, the 1950s agreement by the Nehru government to have states formed along language lines only served to foment religious conflict because in most cases these language groupings also formed opposing religious groupings. The truly horrific purges that have taken place in India since independence – such as the Ayodhya massacres in 1992, the assassination of Indira Gandhi by Sikh nationalist extremists in 1984 and the violence that followed – show some of the fallacy behind this thinking. Kenya needs to be particularly careful in this regard. The attempts at ethnic cleansing in the 2008 post election conflict show that, for some, certain regions in the country should be ethnically 'pure', regardless of settlement and economic patterns that have been going on over decades. For a country such as ours, where your surname, the language or dialect that you speak or do not speak and your accent may betray your roots, and the temptation for some regional demagogues to 'purify' devolved regions may be hard for them to resist.

The other obvious lesson is that on how (or how not) to share the economic output of a country that is, as many others, endowed differently in different regions. Nigerians have struggled with the derivation principle from the very beginning, arguing about whether to recognise the origin of economic gains, and what percentages to retain in the regions where these gains have originated. Of course, the most convenient is to have most of the economic output delivered to the centre, which then decides, according to pre-agreed principles, how to distribute these gains. However, as the Nigerians have shown us, this is the surest route to massive corruption, as those who control the economic taps have the most to gain from skimming off from the top. Also, those whose regions generate the most (especially if Kenya was to discover hydrocarbons or other natural wealth) would have quite a bit to say about their regions being disfavoured in the distribution of this natural wealth. Also, how does a decentralised system account for periods of stress? If the drought and subsequent famine that have stalked Kenya for much of the 2000s – most acutely throughout 2009 – were present at a time of a decentralised entity, would food producers in places such as the Rift Valley, Central and Western Provinces demand that certain quotas of food be retained in their regions? Also, given the fact that many resources consumed in the big cities tend to be produced in other regions (Nairobi's water is harvested in Central Province, most of the country's electricity is generated in Eastern Province along the Tana), how would these be reconciled? Would the regions demand compensatory payment for these resources? (There is an interesting movement called Payment for Environmental Services (PES) that deals with just such issues).

Related to this is how to share tax revenues. In all the countries under review, the biggest share of tax revenue (and some of the most significant) goes to central government, with regional government being involved in the collection of one or two taxes (in the case of India, this being sales tax). Because government tends to be a top-heavy institution, this tends to bring in the question of how to deal with this – the most obvious way being with having central government make transfers to the regions. However, this is not always the best option. First, is the fact that he who pays the piper calls the tune. If central government bankrolls the region, power will surely centralise despite the best protestations of everyone. Secondly, regional governments the world over tend to be repositories of patronage. They tend to be bloated in terms of personnel, and thus fairly expensive to run. If this is the case, and they cannot make ends meet due to constrained tax capacity, would central government countenance funding an institution that perhaps only serves the interest of some regional political elites? In other words, if by funding a regional government, the central government would only be creating, maintaining and perpetuating political patronage in the regions, would central government feel obliged to do so?

The Papua New Guinean experience as quoted by Fukuyama – of lack of capacity in the regions, leading to lack of service delivery – is also something that we must be wary of. If central government was to allow regions to operate independently, this lack of capacity may lead again to differentiated development, leading to complaints about some regions being favoured over others.

How do we manage the transition process? India suffered genocide during the Partition with Pakistan at independence in 1947. Nigeria went through the horror of the civil war as it contemplated the management of its ethnic makeup against the national ambitions of a new nation. It took the deaths of millions of people to reach a stalemate in *that* particular debate. Transition processes are some of the most fraught in any period of political change, but especially at a time of transition between a unitary system and a federal one. How does the country deal with ethnic minorities? How do the regions deal with what are now federal assets within their regional borders (from hard assets such as headquarters to moveable assets such as police and the like)?

All the above said, however, we must acknowledge that there are some **advantages to devolution**, as shown in our case studies. One of the biggest, but perhaps least celebrated, is that devolved regions tend to serve as training grounds for national leadership. One of the banes of centralised government, as is evident in Kenya, is that national 'leaders' tend to be callow, untested figures, often in the first term of any kind of elective position. Due to this, the level of leadership displayed tends to be of the most puerile sort. As evident in places like India, having local and regional tiers of leadership means that we can winnow our leaders through these tiers before they ever present themselves for national leadership positions. This can only be a good thing for the country.

If devolution and its processes are properly handled, then other intangible benefits can accrue to the country. Bolivia benefited immensely from its process being an inclusive one, and the outcomes were predicated on popular participation at all levels. These are important lessons for Kenya. Much closer to home (although outside the ambit of this paper) is the fact that initiatives such as the Constituency Development Fund have, for many citizens, brought home the link between the taxes they pay and the services they receive.

Unspoken in all this, and outside the purview of this paper, is the big issue that often goes unspoken in Kenya. Well over 50% of Kenya's economic output is concentrated in the Nairobi region. Unfortunately, none of our countries under study has a similarly skewed economy (Gauteng Province – that encompasses Johannesburg and Pretoria – can be used as an example, but it is not quite congruent). How do we treat Nairobi? We may decide to go the Nigerian – Abuja (or Australian – Canberra, or American – Washington DC) way, and declare what is at present Nairobi Province to be a Capital Territory, where the normal rules that apply to the other provinces do not apply. Even if we do this, however, while retaining the federal capital there, and with companies still opting to take advantage of historical developments and developed infrastructure, it would still be a difficult issue to handle. Would federal decisions still defer to Nairobi? Would a Nairobi Governor (or executive mayor) be so primus that in all practical senses, s/he would not be inter pares in relation to counterparts from the rest of the country?

Finally, and again, outside the purview of this paper, is how a devolved Kenya would relate to a rapidly integrating East Africa. How would the devolution experiment progress if (we assume) all actors are sincere in wanting an East African Federation (leaving for the moment Muammar Gaddafi's quixotic quest for a 'United States of Africa')?

What is evident through all this is that the process of devolution, regardless of its motivation, is one that needs to be undertaken with a full understanding of its costs, implications and risks, and what it can and cannot deliver. Other countries have gone through the process, and it is evidently important for Kenya to learn the right lessons as we contemplate our own process.

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4 Fiscal Decentralisation: Fostering or Retarding National Development in Kenya?

KIRAGU **WACHIRA**

Abstract

The history of fiscal decentralisation in Kenya can be traced back to the independence period, particularly, the Majimbo system and the Sessional Paper No 10 of 1965 entitled African Socialism and its Application to planning in Kenya. Fiscal decentralisation encompasses the planning process and structures for public finance management across the different levels of government. It defines how and in what ways public expenditure is organized between different levels of government. Fiscal decentralisation is usually motivated by political concerns like the need to promote democratic governance or as a response to pressures from regional groups for more participation and control in the political process. There are four main principles that guide fiscal decentralisation. These are expenditure responsibilities, revenue assignment, intergovernmental fiscal transfers and sub-national government borrowing. The Constitution of Kenya does not in principle establish fiscal decentralisation. Fiscal decentralisation, however, operates at the Local Authorities (LAs) level (which is the only comprehensive fiscal decentralisation system in Kenya) as governed by the Local Government Act Cap 265 which meets the four principles of fiscal decentralisation described above. The Local Authority Transfer Fund (LATF) is a typical intergovernmental fiscal transfer from central government to LAs. Besides, there are other funds that are not managed exclusively under the local government system. These funds are established by separate statutes and management under the central government institutions. This chapter analyses these funds because they offer useful lessons that could help in the improvement of the country's fiscal decentralisation framework. These funds include: the Roads Maintenance Levy Fund (RMLF) the Constituencies Development Fund (CDF), the Constituency Education Bursary Fund (CEBF), the Free Primary Education (FPE) Fund, and the Rural Electrification Program Levy Fund (REPLF). Fiscal decentralisation in Kenya has been supported by several frameworks that have gone through progressive transformation. Two of the main frameworks are the Special Rural Development Programme (SRDP) and the District Focus for Rural Development (DFRD). Although the legal and policy frameworks establishing fiscal decentralisation and the various government grants provide for citizens' involvement, they do not create platforms for substantial and formal engagement by citizens at all decision making levels. In addition, there is minimal knowledge, skills and institutional capacity at the grassroots level to handle fiscal decentralisation Despite the challenges in operationalising and implementing the decentralised funds, there has been notable positive impact on development especially in the area of education, health, water and sanitation, transport infrastructure, and improvement of livelihoods. This study recommends that in order to maximize the benefits of fiscal decentralisation, there is need to apply various best practices. These include a comprehensive framework for fiscal decentralisation, autonomous sub-national units and regular policy monitoring and evaluation.

4.1 Introduction

Kenya has over the years been creating and refining programmes that have collectively helped to shape the current fiscal decentralisation framework. Some of the programmes that have influenced the design of the country's fiscal decentralisation framework are the Special Rural Development Programme (SRDP) and the District Focus for Rural Development (DFRD). Kenya has also experimented with a plethora of decentralised funds and government grants such as Local Authority Transfer Fund (LATF) and Constituencies Development Fund (CDF), among others. In addition, the local government system has provided another channel for local development financing. All these initiatives collectively define Kenya's fiscal decentralisation framework. Such efforts at fiscal decentralisation, however, have faced conceptual and implementation challenges such as in adequate accountability mechanisms, corruption, poor planning and lack of harmonization with other government development funds. Despite the challenges, fiscal decentralisation is an effective tool and framework to empower communities through democratisation, enhanced local development and reduced poverty incidences. Indeed, the ongoing constitutional debate has strongly proposed that fiscal decentralisation be institutionalised in the constitution. The main challenge however remains in determining appropriate model of fiscal decentralisation for Kenya.

This chapter starts by outlining the conceptual framework for fiscal decentralisation. The author then proceeds to assess past and present frameworks for establishing fiscal decentralisation. This chapter also provides an assessment of the local capacity and readiness of the local communities to handle the funds at the grassroots as well as the role citizens have played in the management of these funds. Further, the author examines the coordination mechanisms of the different funds as well as the impact of the decentralized funds on development at the grassroots. Finally, the author recommends alternative models and best practices for fiscal decentralisation in Kenya

4.2 Conceptual framework for fiscal decentralisation

Fiscal decentralisation can be defined as the devolution of policy responsibilities from central government to local governments in respect of spending and revenue collection decisions (Neyapti, 2003). Neyapti (2003) and Oates (1999) argued that fiscal decentralisation has been viewed as an appealing feature of economic reform programmes based on the following arguments: i) that decentralisation of spending increases economic efficiency since local governments have better information about local preferences , ii) that decentralisation is expected to boost accountability and transparency in service delivery and, iii) that if local accountability exists, taxpayers are likely to cooperate better, with local governments. Tanzi, (2000), however, observed that effectiveness of fiscal decentralisation in improving allocative efficiency depends on factors such as the size of country, the extent of privatization in the economy, the ability of local governments to raise revenue, transparency as well as local administrative and institutional capacity.

According to Basta (2000) and Neyapti (2003), fiscal decentralisation can take many forms including a) self-financing or cost recovery through user charges, b) co-financing or co-production arrangements through which the users participate in providing services and infrastructure through monetary or labour contributions c) expansion of local revenues through property or sales taxes, or indirect charges d) intergovernmental transfers that shift general revenues from taxes collected by the central government to local governments for general or specific uses and e) authorisation of municipal borrowing and the mobilisation of either national or local government resources through loan guarantees. In many developing countries, local governments or administrative units possess the legal authority to impose taxes, but the tax base is so weak and the dependence on central government subsidies so ingrained, that no attempt is made to exercise that authority.

The basic economic argument for fiscal decentralisation is that it can provide greater economic efficiency in the allocation of resources in the public sector for example through matching preferences of constituents across different jurisdictions (Oates, 1999). However these gains in efficiency are enhanced if the taxpayers are mobile because they can migrate or sort themselves out among the jurisdictions that best match their preferred tax-expenditure package (Tiebout, 1956). As Martinez-Vazquez and Mc Lure (2003) observe, if preferences for public goods differ across regions or individuals, the level of welfare achieved through a uniform provision of public goods by a central government is inferior to that which can be attained by a decentralized provision which allows for differences across jurisdictions.

Musgrave (1959) observed that fiscal decentralisation has three main objectives which are efficiency, income redistribution and macroeconomic stability which are widely accepted as the overarching government policy. Most measures of fiscal decentralisation across countries, such as, shares of expenditures and revenues of sub-national governments in the general government budget are positively correlated with the level of economic development generally measured by per capita incomes (Martinez-Vazquez and Mc Lure (2003) quoting Oates, 1972).

Fiscal decentralisation has various advantages. In principle, decentralised decision making usually brings government closer to the people. This, as Kaiser (2006) observed, helps in the reduction of information asymmetries, enhances transparency and accountability, allows for a better matching of local preferences and makes government more responsive through inter-jurisdictional competition for investment and the hearts and minds of inhabitants and taxpayers. In addition, fiscal decentralisation facilitates the exploitation of local innovation, increases the legitimacy of the state and promotes democratic governance by involving previously marginalized stakeholders such as the poor, women and minority ethnic groups.

Fiscal decentralisation is usually motivated by political concerns like the democratisation process during reforms or as a response to pressures from regional groups for more participation and control in the political process. Gituto (2007) argues that fiscal decentralisation is also viewed as a means for improving service delivery (e.g. the establishment of the CDF). It also enables the citizens or beneficiaries to relate the services with money paid for the services through taxes or user charges.

Fiscal decentralisation enables those with knowledge and awareness of the local preferences and development needs to make the fiscal decisions that are relevant and sensitive to regional diversity. This is because different regions have diverse preferences and needs therefore the centralised system that is usually applied uniformly and is inflexible may not be relevant across all regions. For example all district development plans follow similar theme across all regions without appreciating the unique regional concerns and therefore ends up not addressing the needs of the intended beneficiaries.

Fiscal decentralisation, however, may also be associated with significant risks or disadvantages. For example, disparities in local revenue capacity may constrain public services, especially in poorer areas. Local capacity constraints as well as lack of clarity in the roles and responsibilities of central and sub-national entities may limit the provision of public goods in needy areas. Weak bottom-up accountability and political economy factors such as elite capture by state institutions may marginalize particular stakeholders and make local expenditure decisions less pro-poor (Kaiser, 2006). In addition, there is potential for conflicts between the central government and the devolved units over issues such as management of local development and investment projects, the process of implementation of national policy plans and strategies. Conflict may also arise in the administrative processes such as hiring of staff and payment of salaries and allowances of the elected leaders in the sub-national governments.

4.2.1 Principles and instruments of fiscal decentralisation

The fundamental step in fiscal decentralisation is for the government to develop a decentralisation strategy detailing the purpose, objectives, criteria and instruments for decentralisation. This, however, is not all that is required for a functional decentralised framework. To attain an effective and efficient fiscal decentralisation strategy and framework, certain underlying core principles must be put in place (United Nations Development Programme – UNDP, 2003). These principles include; clarity in expenditure and revenue assignment, establishment of fiscal transfer systems and mechanisms and arrangements for sub-national borrowing. The following section discusses these principles in detail.

Clarity in the assignment of expenditure and revenue responsibilities

This principle requires that states establish clear guidelines for the apportionment of expenditure and revenue collection responsibilities to the various levels of government. Martinez-Vazquez and Mc Lure (2003) observed that a stable and meaningful decentralisation requires a well defined institutional framework in the assignment of expenditure responsibilities among the different levels of government together with the sufficient budgetary autonomy to carry out the assigned responsibilities at each level of government.

Assignment of expenditure is fundamentally preceded by the assignment of responsibilities in a decentralised system. Commonly accepted objectives of fiscal decentralisation include an efficient allocation of resources via a responsive and accountable government, an equitable provision of services to citizens in different jurisdictions, and macroeconomic stability and economic growth (Martinez-Vazquez and Mc Lure, 2003). Martinez-Vazquez and McLure (2003) identified several criteria to guide the expenditure assignment by the central government.

The first criterion relates to **efficiency** which requires government to endeavour to satisfy the needs and preferences of tax payers. Such needs and preferences are best achieved through the "subsidiarity" principle. Under the principle of subsidiarity, the responsibility for the provision of services should be at the lowest level of government compatible with the size of the "benefit area" associated with the services. For example, the benefit area for sanitation services is the local community, while in the case of defence the benefit area is the entire nation. In order to realise efficiency in the provision of public services, therefore, consumption benefits should be linked to costs of provision via fees, service charges, or local taxes.

The second criterion focuses on **redistribution and stabilization** (UNDP 2003). This is best pursued by the central government. According to this criterion, expenditures undertaken by government for equity or income equalization reasons, such as social welfare or low income housing should be handled by the central government. In addition, expenditures undertaken for the stabilization of the economy such as massive investment or unemployment compensation are best managed by the central government. In this regard, local or regional governments do not have capacity to sustain independent programs of this nature because they would attract the needy from other areas while they will have to tax their (potentially mobile) residents more heavily. Implementation of these responsibilities, however, would be best managed by local governments which may have informational and other comparative advantages.

The third criterion emphasizes that there **is no single best assignment of expenditure responsibilities** (UNDP, 2003). For example, some public services such as primary education and primary health services could be considered to be of a local nature by the size of their benefit area. Due to their relevance in welfare and income redistribution, however, they may also be considered a responsibility of the central government. In addition, what is considered best assignment at one point is likely to change over time with changes in costs and technological constraints as well as changes in preferences. In order to avoid instability in intergovernmental fiscal relations, it is critical to always establish concrete expenditure assignment to ensure effective public service delivery. This normally requires policy decision.

The fourth criterion requires states to have **clear and stable assignments** of expenditure and responsibilities. For stability and effectiveness of fiscal decentralisation, there should be clear, specific and formal assignment of expenditure responsibilities that are backed by law. The process of assigning expenditure responsibilities is usually multi faceted whereby the various levels of government may be involved concurrently in the provision of the same wide service delivery area (such as health care), but in different ways e.g. local government being responsible for the direct provision of health care services, and central government in defining policy guidelines and overseeing standards and overall management of health care services nationally (UNDP, 2003). In fiscal decentralisation, the principle of subsidiarity determines which level of government does what. Under the principle, the government functions are assigned to the lowest level of government that is capable of efficiently carrying out such functions and where benefits of the service would be more felt by the beneficiaries. This ensures efficiency in service delivery at the level where beneficiaries are. For the principle of subsidiarity to work well, however, there has to be well defined boundaries and authority for the local government.

In regard to revenue assignment, Martinez-Vazquez and Mc Lure (2003) citing Musgrave (1959) argue that for conceptual purposes, the functions of government should be separated into three functions: macroeconomic stabilization, income redistribution and resource allocation. The stabilization function encompasses government operations that ensure the achievement of high employment and price stability while the distribution function aims to achieve an equitable distribution of income. The allocation function ensures that resources are used efficiently. The three functions are helpful in guiding the tax assignment to the various levels of government.

The function of **macroeconomic stabilization** is usually assigned to the central government since the sub-national governments cannot affect the macroeconomic conditions within their boundaries. In addition, the sub-national governments have limited borrowing power as well powers to print money and therefore are unable to finance debts(Darby et al, 2003)These powers are critical for macroeconomic stabilisation. The taxes with the most potential stabilizing effects are the corporate income tax and the progressive individual income tax; the former because profits fluctuate more than general economic conditions and the latter because of the stabilizing effects of graduated rates (including tax-free amounts) (Martinez-Vazquez and Mclure, 2003). It is therefore more appropriate for sub-national governments to rely on revenue sources that are relatively insensitive to macroeconomic conditions. These include taxes on consumption, such as general sales taxes, excises, and property taxes.

The **redistribution function** is also primarily assigned to the central level of government. The tax instruments that are most commonly used in the attempt to reduce differences in incomes are the corporate income tax and progressive individual income taxes. The sub-national governments' use of these taxes may not achieve the intended goals of income redistribution, but may distort the geographical allocation of resources. For example, progressive taxation targeting the rich may drive out capital and high income individuals. This therefore suggests that the corporate income tax and progressive individual income taxes should be assigned to the central government.

In regard to resource allocation function, Musgrave (1959) (as quoted by Martinez-Vazquez and McLure, 2003) argues that policies of sub-national governments should be permitted to differ in order to reflect the preferences of their residents. Decentralisation of taxing and spending power therefore allows sub-national governments to tailor schemes that match the demand of their constituency which will increase efficiency ultimately because local governments have better information about their residents' needs than the central government.

Sarwar (2004) argues that the assignment of revenue raising and expenditure setting powers of sub-national governments is usually determined by several considerations. The first is **efficiency** which involves determining which level of government can most efficiently provide a service to certain communities or jurisdictions. Second, **cost effectiveness** which requires governments to select the option that minimizes the costs of collecting a tax and maximises its revenue potential. Third, **equity and redistribution** consideration requires that governments spread the burdens and benefits of taxes across jurisdictions. Fourth, the provision of local public goods ought to be based on the principle that the lowest possible public entity should provide the service and be the one to charge the fees for its provision. Fifth, f**iscal efficiency and equity** which requires government to minimize the costs of the levying and administering the tax while at the same time imposing high costs for evasion. The sixth consideration is promotion of internal common market by lowering distortions within the economy of a country for free movement of goods, capital and people.

For each level of government to meet its expenditure responsibilities, there is need for it to have a certain proportion of responsibility and power to receive or collect revenue mainly through taxes. The principle mainly provides for the determination of the assigned revenue sources especially for the local governments. Local governments are usually assigned those taxes that correspond to the services that they provide. For example, business fees, user charges and local land rates, among others.

Intergovernmental fiscal transfer instruments

Local governments face some common problems in respect of intergovernmental fiscal relations. The first one relates to lack of revenues or 'own sources' available to local government units, as well as their high dependence on transfers and grants from the national government. This may be due (as observed above) to an absence of sources or a lack of legal authority to tap them. Second, the significant disparities in size and capacity of sub-national governments, leading to horizontal imbalances and further pressure on the national government to find an equitable formula to equalise among the sub-national units. Third, local governments lack the capacity to carry out its assigned functions unsupervised and unassisted. Fourth, the difficulty of finding the right balance between fiscal discipline, hard budget constraints, autonomy of local government and appropriate oversight by higher orders of government.

As a result of these problems mentioned above, sub-national governments often have budgetary deficits. The system of intergovernmental transfers is therefore used to offset the deficit by offering grants to sub-national governments with revenue shortfalls (Basta, 2000). Such grants can be broadly classified into two categories: non-matching and selective matching as described in figure 1 below. Oates (1999) argued that there are three potential roles for such grants - the internalization of spill over benefits to other jurisdictions, fiscal equalization across jurisdictions, and an improved overall tax system.

Non-matching transfers:

Non-matching purpose transfers may be either selective (conditional) or general (unconditional).

Selective non-matching transfers grant a given amount of funds without requirements for local matching by the sub-national government so long as they are spent for a particular purpose.

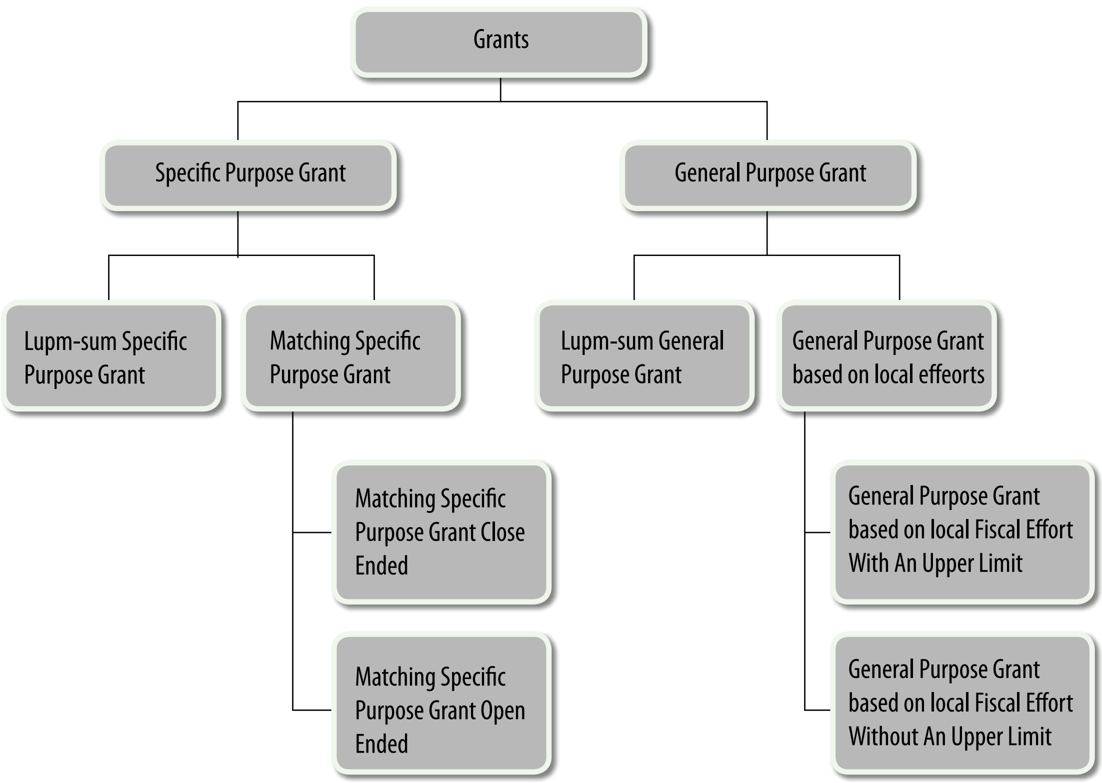
In the case of **non-matching grant that is unconditional or general,** no constraints are put on how it is spent and unlike conditional grants, no minimum expenditure in any area is expected (Oates, 1999). Since the grant can be spent on any combination of public goods or services or to provide tax relief to residents, general non-matching assistance does not modify relative prices and rarely stimulates local spending. Oates (1999) further argued that unconditional grants are typically the appropriate vehicle for purposes of fiscal equalization. The purpose of these grants is to channel funds from relatively wealthy jurisdictions to poorer ones. Such transfers are often based on an equalization formula that measures the "fiscal need" and "fiscal capacity" of each province, state, or locality. These formulae result in a disproportionate share of the transfers going to those jurisdictions with the greatest fiscal need and the least fiscal capacity.

Selective (Conditional) Matching Transfers:

According to Oates (1999) selective matching grants or cost-sharing programs require that funds be spent for specific purposes and that the recipient match the funds according an agreed measure. Such a subsidy has two effects: (a) income effect – the subsidy gives the community more resources, some of which may go to acquire more of the subsidized service; (b) price or substitution effect - since the subsidy reduces the relative price of assisted service, the community acquires more for a given budget. Therefore both effects stimulate expenditures on the supported services.

Such transfers as indicated in the figure 1 below can be open-ended (no limit on matching funds) or closed-ended. Matching transfers may distort local priorities and may be considered inequitable since richer jurisdictions can raise matching funds more easily. The latter problem can be offset, by varying matching rates with jurisdictional wealth. Conditional grants limits on local autonomy and diminish the chances to take into account the preferences of the local consumer/taxpayer. If the transfer policy prioritizes the funding of the general public services provided by the local government, then unconditional grants are more appropriate. If the purpose of the transfer is to support or develop the supply of a specific type of public service (public good), then the conditional grant (especially the matching grant) is more efficient/effective (UNDP, 2003).
The Local Authority Transfer Fund (LATF) could be categorised as a lump-sum specific purpose grant that is conditional to the extent that part of the money is transferred upon fulfilment of certain conditions. The Constituency Development Fund (CDF), Constituency Education Bursary Fund (CEBF), Roads Maintenance Levy Fund (RMLF) could be categorised as a lump-sum specific purpose grants.

Figure 4.1: Grants Allocations Systems



Adopted from DFID, 2006

The central government, however, will always maintain control over local governments through such fiscal transfer schemes. Intergovernmental fiscal transfers serve some of the following purposes:

i) "Vertical" fiscal balance which involves providing additional resources to the local level, so that there is a balance between the fiscal needs and resources available to different levels of government. Vertical balance is achieved through assignment of new financial resources to the local government, developing the system of national shared taxes and increasing the volume of resources dedicated to equalization as well as those allocated as unconditional grants, at the national level (UNDP, 2003).

ii) "Horizontal" fiscal balance through ensuring fiscal balance in resource allocations between sub-national units at the same level of government. Horizontal balance is achieved through an equalization system such as equalization grants, the distribution of national taxes based on the number of inhabitants and any other type of formula not based on the source of collection (UNDP, 2003).

iii) The funding of specific national priorities; or

iv) Ensuring that the effects of inter-regional spill-overs or externalities are counter-acted.

Although the design of the fiscal transfer depends on the policy objectives that it seeks to achieve, there are core principles that should guide the allocation, transfer mechanisms and design (Department for International Development – DFID, 2006). The principles include:

i) Preservation of budget autonomy: A transfer system should ensure that local government authorities retain the power to determine their own budgets within the constraints provided by the national priorities.

ii) Equity and fairness: The transfer mechanism should enhance and support a fair allocation of resources across all the sub-national governments.

iii) Stability: the provision of the transfers should be predictable over time.

iv) Simplicity and transparency: Transfer formulas should be simple and transparent, and should pursue one objective at a time.

v) Incentive compatibility: The transfer system should not create negative incentives for local revenue mobilisation, and should not induce inefficient expenditure choices.

vi) Focus on service delivery: Transfer formulas should focus on the demand (clients or outputs) rather than the supply (inputs and infrastructure) of local government services. The variables used in the transfer calculations should be sound and independent from manipulation by sub-national governments and always current to ensure responsiveness to the dynamic community needs. Such variables include: population, geographical coverage, equity, poverty index, fiscal capacity and efforts and regional cost variations.

vii) Avoid "equal shares"[16]: Reliance on the "equal shares" as a major allocation criterion should be avoided in the design of an allocation formula.

16 "Equal shares" refers to the principle whereby all local governments at the same level, regardless of their size or characteristics, receive the same size of transfer.

viii) Avoid sudden big changes: The transfer system should avoid sudden big changes in funding for local governments during the introduction of the new transfer mechanism.

ix) Grants should be announced in a timely manner corresponding to the local budget cycle.

Sub-national government borrowing

There are situations where the expenditure responsibilities exceed the local revenue sources and fiscal transfers to the sub-national governments. Consequently, the sub-national governments end up in deficits and debts. The sub-national governments, therefore, may need to borrow extra resources in order to meet the budget deficit. Such borrowing should only be allowed to finance capital expenditure (e.g. financing of development projects like infrastructure) and not for financing recurrent expenditure (e.g. financing administrative costs like salaries). The approval of the central government is however necessary for such borrowing to ensure prudent debt management.

Sarwar (2004) observed that the ability of lower orders of government to borrow money raises some critical issues. There is an attendant moral hazard in respect of the need to impose fiscal discipline on their ability to be self-sustaining. Whether or not a sub-national government resorts to borrowing is determined by at least two distinct issues: (a) the existence and sophistication of local credit markets in each sub-national unit and the sources of capital available to sub-national governments, and (b) the legal and political autonomy as well as authority given by the national government to its sub-national units to borrow privately. The ability of sub-national governments to access financial markets and external financing is considered a desirable practice if it is well-regulated by the federal government (putting in place constraints such as 'ceilings' on debt) and respects the macro-stability of the country. This is considered to have good revenue-raising potential.

4.2.2 Principles of measuring fiscal decentralisation

Although there is no single formula for measuring the success of fiscal decentralisation, there are certain parameters that would be appropriate. These include:

i) Percentage share of total government spending channeled to sub-national government expenditure in a country (Ebel and Yilmaz, 2002). In principle the sub national governments would incur more expenditure than the central government.
ii) The extent to which expenditure and revenue raising responsibilities lead to sub-national government's greater self determination.

4.2.3 Potential shortcomings of fiscal decentralisation

Fiscal decentralisation is associated with several shortcomings, which would require central government intervention. Central government intervention may, however, inhibit fiscal autonomy, responsibility and accountability of sub-national governments. Thiessen (2001) and Darby et al (2003) have made arguments regarding potential shortcomings for fiscal decentralisation. Firstly, fiscal decentralisation may result in social inequity in the event that resources and revenue collection powers are unevenly distributed. Secondly, fiscal decentralisation may affect macro stabilisation —which is the responsibility of central government — should situations arise where there are no adequate revenues at the national level to facilitate such stabilization. Thirdly, fiscal decentralisation usually results in increase in fixed costs for running each decentralised unit. This may increase the tax burden of the beneficiaries especially in low income societies.

4.3 Assessment of past and present frameworks supporting Fiscal decentralisation

Fiscal decentralisation in Kenya dates back to the independence time with the "majimbo" system which had granted significant recognition and responsibilities to the regions (which were earlier referred to as the provinces). The system had also granted power to the LAs to collect taxes and the responsibility for the maintenance of schools, health facilities and minor roads (Chitere and Ireri, 2008). Due to the merger of the then opposition party Kenya African Democratic Union - KADU (who were the proponents of Majimbo system) in 1964 with ruling party Kenya African National Union – KANU (who were proponents of centralized system) the centralized system of government was entrenched. To avert any backlash due to departure from majimbo system, the government sought to demonstrate its commitment to local planning and development management through the establishment of development committees at the district and provincial levels (Maina, 2005). These committees were to facilitate coordination of development activities and provide assistance in decision making.

In 1965, the government developed the famous *Sessional Paper No. 10 of 1965 on African Socialism and its Application to the Planning in Kenya*. The paper gave credence to its core objectives of political equality, social justice and human dignity which would not be sacrificed nor compromised whatever the economic pursuit (Republic of Kenya, 1965). Further, the paper stated that planning would be extended to the provinces, districts and municipalities so that that each administrative unit would progress. The paper acknowledged the disparities in terms of development between different provinces by categorizing them as either developed or under developed. It also stipulated that investment of money would first be concentrated to the developed areas that would yield the largest increase in net output since they were endowed with abundant natural resources, good land and rainfall, transport and power facilities and people receptive and active in development.

In order to ensure equity among the provinces, the paper provided that the government would develop a formula for grants-in-aid, educational and health allocations to take into account the needs and incomes of each province and district (Sessional Paper No 10 of 1965 paragraph 133-135). This paper formed the basis of the development of the 1966-1970 National Development Plan which had concentrated more in developing few sectors of the economy. This policy direction was not sustainable and therefore called for a development strategy that focused on the whole economy as well as increasing all people's participation in the nation building (Onjala, 1995). In this regard, the government changed its development strategy by focusing on the development of rural areas to achieve a stable economic development through improved education levels and creation of employment opportunities. As a result, two policy instruments were introduced so as to accelerate development in the rural areas. These were the SRDP and district planning (which formed the basis for the establishment of DFRD). This paper will consider the two frameworks and their effectiveness in facilitating fiscal decentralisation or decentralisation.

4.3.1 Special Rural Development Programme (SRDP)

The Special Rural Development Programme (SRDP) was established in 1971 as part of the outcome of the 1966 Kericho Conference which had recommended that a development programme aimed at combating unemployment and poverty needed to be started in the rural areas (Onjala, 1995). Borrowing from the principle of community development, SRDP aimed to increase rural incomes and employment opportunities, develop methodologies for inducing self generating rural development activities elsewhere in the country. In addition, the programme was to help in improving the capacity of civil servants operating in the rural areas, and develop rural planning techniques appropriate for the Kenyan context and through the establishment of an administrative structure, institutionalize rural planning and management (Alila and Omosa, 1995). The SRDP was managed by the Ministry of Finance and coordinated by a central committee known as National Rural Development Committee (NRDC). The NRDC worked through the district and provincial development committees which in turn served as avenues for local communities to channel their input.

Despite its successes, the SRDP was faced with several problems key among them being shortage of suitably trained and experienced local administrators and poor coordination of activities across ministerial lines. Others included: the disagreement between civil servants and university based researchers, inability of government planners to prepare integrated area-specific plans, and the tendency of donors to shape the plans so as to fit their own interests (Alila and Omosa, 1995). Despite the challenges, the SRDP formed the basis for decentralisation planning, provided opportunity for the development of the rural management systems and provided key components for the current development of district planning system. Besides, the SRDP committee led to the formation of the District Development Committee (DDC) and the establishment of Rural Development Fund (Alila and Omosa, 1995).

The SRDP coordination has gone through progressive transformation that has resulted in the creation of the current Rural Planning Directorate at the Ministry of Planning and National Development and Vision 2030. The main objective of the Directorate is to promote rural development through appropriate policies, programmes and projects that enhance capacity for growth, facilitate effective decentralisation of planning and budget process from the sector Ministries to the districts through the DFRD strategy This is done through the preparation of District Poverty Assessment Report, District Poverty Reduction Strategy papers, the Medium Term Expenditure Framework (MTEF), District Development Plans and District Socio-Economic Profiles (Republic of Kenya, 2009).

4.3.2 District Focus for Rural Development (DFRD)

District Focus for Rural Development (DFRD) was established in 1983 although its initiation can be traced back to the early 1970s. The DFRD was initiated as a result of the report of the Republic of Kenya Commission of Inquiry on Public Service Structure known as the Ndegwa Report. The report had revealed that the planning mechanism and process extended only to the provincial level and that the field units of various Ministries and those of the provincial administration were not integrated (Alila and Omosa, 1995). The report recommended that in order to realize development in the rural areas, the process of making and implementing development plans would need to be extended to district and division level where the governments would be in real contact with the local realities and concerns of the local people. In order to strengthen planning and implementation at the district level, the report recommended the following measures (Chitere and Ireri, 2008):

(i) The need to link the operations of the provincial administration and the professional staff at the Ministries with the administration taking an effective role in integrated development effort

(ii) Need for creation of posts of District Development Officers (DDOs) and District Planning Officers (DPOs)

(iii) Need to make the district the focal planning unit

(iv) Need for the creation of DDC where provincial administration and the field officers from development oriented Ministries would work together in the coordination of planning of projects and monitoring their implementation.

Alila and Omosa (1995) further observed that the membership of the DDC was to include a district commissioner (DC) as chairperson, a DDO, heads of ministerial departments, area members of parliament (MPs), the chairperson of LAs and officials of KANU (the then-ruling party).

The DFRD programme has since then gone through progressive changes to its current form. The DFRD has guided the development planning, budgeting and financing at the local and national level. The DFRD as an instrument of decentralisation, however, has conceptual challenges which by and large have hindered participatory fiscal decentralisation. First, as an institutional framework, the DFRD is composed of 75 percent government officials with the chair persons being provincial administrators across all the levels thus negating the principle of decentralisation and active and full participation of beneficiaries. In addition, the lack of a legal framework to entrench the framework meant that the programme operated at the whims of the executive. The programme also lacked institutional mechanisms to facilitate effective coordination with the LAs. Second, the development of District Development Plans is not based on local baseline data and it's done mainly by the technical staff at the Ministry. Third, most of the planned development projects are funded by donors while the government mainly funds the recurrent expenditure. Since donor funding is uncertain, implementation of planned district development projects is often disrupted.

As a strategy for decentralised development management, therefore, the DFRD approach has not met its formal objective of democratising local development. Structures put in place do not promote meaningful citizen participation and do not empower local people since citizens have no way of sanctioning the DDC, which is made up mostly of central government-appointed civil servants (Chitere and Ireri 2008)

4.4 Assessment of constitutional and legal framework for fiscal decentralisation in Kenya

In principle, fiscal decentralisation in Kenya is not established or provided for in the Constitution of Kenya. Without such a constitutional framework, fiscal decentralisation has by and large depended on the enactment of laws in Parliament as well as executive policies and directives. This could be understood from the principle that Kenya does not have a constitutional devolved system of government with semi autonomous regional/local units which then would require constitutional framework for fiscal decentralisation. As highlighted above, the three forms of decentralisation (political, administrative and fiscal) need to be integrated for effective decentralisation to exist.

Currently, the only legal framework that meets the basic criteria of fiscal decentralisation in

Kenya based on the four principles (expenditure responsibilities, revenue assignments, intergovernmental transfers and sub-national borrowing) above is the fiscal arrangement between the central government and the LAs as established and implemented under the Local Government Act Cap 265, Local Authority Transfer Fund Act, No 8 of 1998 (and the related regulations) and Local Government Loans Act Cap 270.

Parliament and the Executive, however, have created funds in the form of grants (governmental transfers which do not meet the criteria of fiscal decentralisation) for poverty eradication and local development that are managed at the local level (constituency, district or local authority level) by various committees established by different statutes. These funds are the CDF, the FPE Fund and the CEBF. There are other funds established for local infrastructure development that are managed and disbursed through semi-autonomous governmental agencies. Such funds are the Rural Electrification Programme Levy Fund (REPLF) and the Road Maintenance Levy Fund (RMLF) which is partially disbursed through the LAs.

The assessment of fiscal decentralisation (using the four principles) in the following section, therefore, will focus on the legal and policy framework relating to fiscal management of the LAs as well as their fiscal relations with the central government. In addition, the next section will assess the legal and policy frameworks establishing the grants (government transfers) for local development and poverty alleviation.

4.4.1 Legal and policy framework for fiscal transfers through local authorities

As stated above, the only comprehensive fiscal decentralisation in Kenya is found in the fiscal relations between the central government and the LAs. LAs are established through the Local government Act Cap 265 primarily to provide services at the local level within their jurisdiction. They are governed by locally elected leaders (Councilors) and managed by the technical officers who are appointed by the Ministry of Local Government (MoLG) or seconded by other Ministries. LAs have established geographical coverage and defined jurisdiction where they exercise their power. This makes them ideal for the creation and implementation of fiscal decentralisation. In assessing fiscal decentralisation through the LAs, it is critical to consider how the legal and policy framework relates to the four principles of fiscal decentralisation.

Expenditure responsibilities

The LAs are assigned service delivery functions that are of local nature such as provision of education services, water and sanitation, environmental management, waste disposal, health care services, sports and recreation, business licensing, provision of market facilities, physical planning, roads maintenance, housing, public lighting and provision and maintenance of bus parks, among others. To a large extent, there is clear sharing of functions and responsibilities between the LAs (which provide actual services) and the central government which mainly deals with policy development and guidance. The LAs, therefore, are given the mandate to spend finances in meeting their functions and responsibilities. For accounting and planning purposes, however, LAs expenditures are mainly categorized as civic expenses, personnel, operations, maintenance, capital expenditure, debt resolution and loan repayments.

There are many functions that the central government has not ceded to the LAs, reflecting variance with the principle of subsidiarity. Such areas include health, education and roads where the central government still provides services up to the lowest local level. For example, central government is in charge of most of local primary and secondary schools, dispensaries and health centers, maintenance of classified roads through the DDCs. Therefore, the central government at the lowest local level engages in service delivery which according to the principle of subsidiarity should ideally be the function of the LAs. In addition, it is not clear what the distinct role of LAs is especially in regard to service delivery as there are overlaps with the central government.

Revenue assignment

In order to finance their functions, the LAs are assigned various sources of own local revenue which account for about 60 percent of their total revenue while the central government retains others. LAs are usually assigned revenue sources such as property rates, vehicle parking fees, market fees, Contribution in lieu of Rates (CILOR) which they receive from central government as a compensation for properties in which the latter occupies, plot rents, game park fees, house rents, cess, single business permits and licenses and others sources like planning fees, advertising, public health and environment charges, among others.

The central government on the other hand raises its revenue from the Income Tax, Value Added Tax, withholding tax, import and export taxes fees and licenses and from various government investments. In 2007/08 financial year, the LAs collected revenue from their own sources amounting to KES 13,716,186,753 with the major sources (especially for city and municipal councils) being property rates (KES 3, 328,865,164), vehicle parking (KES 1,770,106,055) and singe business permits (KES1, 959,687,981) (Republic of Kenya, 2008a)

The LAs, however, do not have full autonomy to determine the amounts to be charged or levied for services delivered. This, to a large extent negates the principle of fiscal decentralisation. They are required to seek authorisation from the Minister for Local Government. There is also disparity between LAs in the urban areas and those in the rural areas due to differences in available revenue capacity which creates inequalities and imbalances between them. In addition, there is no mechanism to compel central government to pay CILOR to the LAs. As a result, the central government as at 2007 was in arrears of CILOR amounting to KES 4.5 billion, which would have boosted the revenues of LAs (Republic of Kenya, 2008a). A committee chaired by the MoLG with members representing relevant Ministries has been formed to look in to the issue and reconcile the financial statements relating to the same. The collection of own revenue has been a major challenge for the LAs. Town Councils for example (which represent 35 percent of the LAs by number) on average manage to collect only 5 percent of the Local revenue therefore heavily depending on LATF allocation for financing budgetary commitments (Republic of Kenya, 2008a). Some of them like Moyale, Mount Elgon and Samburu County Councils did not receive any revenue from property rates in the financial year 2007/8 and they do not expect to receive any such revenue in 2008/9. This implies that a revenue base which has potential to support budgetary commitments have been neglected (Republic of Kenya, 2008a).

Inter governmental fiscal transfers

In the current fiscal decentralisation mechanism (especially in revenue assignment), the LAs do not have the capacity to fully finance their budgetary commitments. It is therefore imperative to have intergovernmental fiscal transfers to finance the deficit. Consequently, the Central Government has established two major fiscal transfer grants which are the LATF and a percentage of the RMLF. In the financial year 2007/8, the Central Government transferred KES 8.25 billion to LAs through LATF and KES 1.48 billion from RMLF (Republic of Kenya, 2008a).

The monies from the funds are put in a basket fund that in addition is composed of local revenue generated by the LAs. An assessment of LATF will be done in this section while the RMLF will be done in section 4.3.2. Generally, the fiscal transfer grants from the Central Government have spurred performance of the LAs despite the structural and management challenges faced by the LAs.

Local Authority Transfer Fund (LATF)

The Local Authority Transfer Fund (LAFT) was established in 1998 through the Local Authority Transfer Fund Act No 8 of 1998. This was a result of reforms initiated in the local government under the Kenya Local Government Reform Programme (KLGRP). The LATF Act provides for granting of funds to all LAs nationwide to supplement the financing of the services they are obliged to provide under the Local Government Act, Cap 265. In addition to the Act, the fund is governed by the 1998 Local Authority Transfer Fund Regulations under Legal Notice No. 142. The Fund was initiated in 1998 within a backdrop of near collapse of most of the LAs due to poor governance as well as financial mismanagement. This led to chronic indebtedness, limited revenue base and inability to deliver services. The fund was established against this background to reduce outstanding debts, improve service delivery to the public as well as financial management and accountability.

According to the LATF Act, 5 percent of the national income tax is allocated to LATF of which 0.5 percent is applied to the costs of administering the fund. The fund is disbursed to LAs based on an objective and transparent formula. The formula uses the population size as the criterion for apportioning the funds. The amount allocated to the fund has risen from KES 1 billion in 1999/2000 to KES 7.5 billion in 2006/07, KES 8.25 billion in 2007/08 to KES 9.25 billion in 2008/09 (Republic of Kenya, 2008a). The release of the funds is conditional to efficiency levels attained by the LAs. In this regard, the following are the funds disbursement thresholds and the conditions that must be met by all LAs for the funds to be released.

(i) 60 percent of the budgeted funds are released if the council submits required budget and meets current statutory creditor obligations.

(ii) 40% is released upon the submission of the following documents by the council:
- Statement of actual revenues and expenditures
- Statement of debtors, creditors and debt repayment plan
- Abstracts of accounts
- Revenue enhancement plan
- Local Authority Service Delivery Action Plan (LASDAP)

The money granted under LATF supplements the LAs own source revenue to provide services within their jurisdictions. To ensure prudent use of own resources and grants, the Act incorporates additional requirements that each LAs budget must meet prior to the release of LATF funds. In this regard, the LAs should:

(i) Not spend more than 55 percent of total expenditures on personnel
(ii) Allocate a minimum amount to the capital budget (equivalent to 65 percent of the LATF service delivery amount)

On a positive note, the conceptual framework of LATF is noble and has transformed the operations of the LAs through improved service delivery and enhanced transparency and accountability. As a tool of fiscal decentralisation, the fund is the only of its kind that is decentralised to a sub-national government with well established boundaries, defined jurisdiction and managed by locally elected leaders. The population and performance based criteria in the allocation of funds ensures that there is equitability in regard to financial obligations and responsibilities of various LAs. As a result, LAs like Nairobi City Council and Mombasa City Council receive the highest LATF allocation as they have a very large population that they service. Being city authorities, they also have significant financial obligations. The transfer mechanisms for fiscal decentralisation through LATF framework is progressive in that it determines through legislation the total amount allocated to the fund (i.e. 5 percent of national income tax revenue) and the basis of the calculation of what is transferred to the LAs as opposed to leaving at the behest of executive policy directives. It also determines the distribution of the resources between the qualifying LAs through setting a formula for allocating resources to each Local Authority. In addition, the LATF framework sets the guidelines followed in the management of the funds and conditionalities to be met prior to the release of funds to any Local Authority. These guidelines and conditionalities help to instil financial discipline, accountability and participatory engagement of the beneficiaries (through development of LASDAP).

Despite the good intentions of the LATF framework, there are some challenges with its conceptual framework. First, the disbursement of service delivery funds as stipulated by the LATF Regulations is based on planned as opposed to actual expenditures. According to the LATF capital ratio (planned expenditure on capital as a ratio of the total amount allocated to each Local Authority for service delivery) regulation, each Local Authority should allocate at least 65 percent of their service delivery account allocations on capital projects. According to a research done on performance of LAs using the capital expenditure performance ratio (ACPER), 138 of the 175 LAs spent less than their planned expenditures of Capital (Oyugi, 2008) Of the 138 LAs 42 of them spent less than 50 percent of their planned expenditures. This implies that out of 175 LAs, only 36 LAs spent 100 percent or more of their estimates on capital expenditure making them technically the only LAs that met the capital expenditure ratio criteria (Oyugi, 2008). Since the LATF capital ratio is based on planned expenditures, the planned expenditures are usually substantially different from the actual expenditures. As a result, LAs manage to get away with the regulation without any penalty and get allocated the funds which they usually re allocate to other activities. For example, according to LATF annual reports, 13 LAs which had budgeted to spend considerable amounts on capital expenditures were not penalised and ended up reallocating the funds to other areas (Oyugi, 2008).

Second, whereas LATF regulations require the development of LASDAP, there is no allocation of monies for capacity building of community, committees involved in project identification and management at community level. This, impacts negatively on the effective implementation of the fund.

Third, the legal framework for LATF does not provide for a planned and structured mechanism to engage and motivate the LAs to match their local revenue collection with the transferred amounts. As explained above, one of the pillars of fiscal decentralisation is the revenue assignment between the various levels of government. Ideally, fiscal decentralisation ought to provide stimulus and motivation for the LAs to generate or raise their own resources to supplement the transferred monies. This is not the case with the LATF. The legal framework for LATF does not provide for a criteria or formula for particular amount of money to be allocated based on the realisation of an agreed percentage of local revenue. Analysis from LAs reports for financial years 2000/1-2002/3 on the estimates and actual revenue realisations indicates that on average, LAs manage to realise 65 percent of their revenue estimates (Oyugi, 2008). Of the 175 LAs, only 63 LAs managed to collect on average more than 75 percent of their revenue estimates while 39 LAs realised on average less than 50 percent of their revenue targets (Oyugi, 2008). Since LAs are assured of the LATF allocation upon compliance with the required documentation, they often may not feel compelled to be strategic in local revenue generation.

Finally, although LATF's objective was to provide resources to enable the LAs repay their outstanding debts, the level of indebtedness is still very high. The total level of outstanding debt is approximately three times the LAs own revenue with 13 of the LAs accounting for over 80 percent of the debt (Republic of Kenya, 2007a). This level of indebtedness exists despite the LATF regulations that require the LAs to submit their annual statements of accounts, statement of debtors and creditors and debt repayment plan. It is therefore evident that the LATF framework does not have any mechanism to deny LAs funding should they continue to incur debts that they do not repay or have no capacity to repay (Republic of Kenya, 2007a). The only penalties that are provided for in the LATF regulations relate to late submission of the required documentation or submission of incorrect figures. The imposition of penalties does not deal with continued indebtedness which negates the very purpose for which the fund was established.

Box 4.1

CASE STUDY:
Effective LASDAP preparation process by Olkejuado County Council

Olkejuado County Council could be rated as having one of the best processes of developing and managing LASDAP. The Local Authority has a LASDAP Committee or locational development Committee made up of nine members consisting of men, women, youth, religious organizations and business committee. The Community Development Assistants (CDAs) carry out needs assessment in the various locations. The assessments are analysed and presented to stakeholders who identify priorities which are then presented to the full council meeting which then ratifies the projects. The Ward level meetings are convened by department of social services with the help of chiefs and councillors to raise awareness and solicit views from the community. Public notices to the community are done through word of mouth, media and public notices in social places and by individual letters.

Prioritisation of projects

Prioritisation of projects is based on the needs of the whole county council. A project considered beneficial to all or majority in an area is given priority. Wards that miss out in particular financial year are considered in the following financial year. In most other LAs, the available funds are split between wards irrespective of the adequacy of the allocation for a proposed project

Management of the funds

All departments are involved at different stages as follows:

a) Social service department conducts public awareness, needs analysis and selection of committee members.

b) Engineering department is involved in design and inspection of projects.
c) Account's department oversees and coordinates project financial expenditures and implementation.
d) Unlike other authorities, the role of the councillors is limited to holding consultative meetings and budget approval during full council meeting. This has pre-empted use of funds for political patronage.

Civil society support

The council reported the highest number of civil society organisations (CSOs) engagement through building linkages and partnerships at the district level to enhance capacity for project implementation. Some of the CSOs involved are SNV, Neighbourhood Initiative Alliance, Christian Development Fund (CFF), African Medical Research Foundation (AMREF), , Red Cross, Kajiado Community Trust Fund and the K-REP Bank as well as churches like the Catholic, the Presbyterian Church of East Africa (PCEA) and the Anglican Church of Kenya (ACK).

Public response to LASDAP

Respondents acknowledged the benefits brought about by LASDAP as:
a) Development in their respective areas,
b) Civic awareness on the different roles and avenues where locals could positively contribute towards development in the LAs,
c) Proper project identification, planning, implementation and monitoring for further growth, and
d) Reduced level of corruption and misappropriation of funds.

Source: Adopted from Actionaid International Kenya, (2006, pp 30)

Sub-national government borrowing

In order to finance the budgetary commitments, the LAs have borrowing powers granted under section 222 of the Local Government Act, Cap 265. In addition, the Local Government Loans Act Cap 270 establishes the Local Government Loans Fund from which the LAs can borrow finances. The major challenge, however, is that the policy and legal framework granting powers to the LAs to incur such debts does not adequately differentiate between borrowing to finance development expenditures and borrowing to finance recurrent expenditures. In principle, the LAs should be discouraged from borrowing monies to finance their recurrent expenditures.

Due to high indebtedness that characterized most LAs in 1998/9 (which stood at KES 23 billion) LATF was established to enable them repay their outstanding debt. Currently, the outstanding debt by the LAs stands at KES 13.6 billion. Statutory creditors such as NSSF, KRA, NHIF, Superannuation fund and provident fund account for 60 percent of the outstanding debts. Non statutory creditors currently account for 40 percent of the debts such as pending bills, salary arrears, and remittances to SACCOs and other debts (Republic of Kenya, 2007a).

The reporting by the LAs, however, usually excludes the long term borrowing and the debts owed by their subsidiaries, such as, the water companies (Republic of Kenya, 2007a). This suggests that there is a need for the Central Government to review the borrowing powers and processes of the LAs to ensure prudence in financial management (Republic of Kenya, 2007a).

LAs should also prepare and publicize comprehensive reports covering all the outstanding debts including those owned by their wholly owned subsidiaries. Further research should be conducted to establish the causative factors for the LAs perpetual indebtedness as well as the requisite remedial measures.

4.4.2 Assessment of policy and legal framework providing for other grants transferred to fund local development in Kenya

In a bid to meet the regional and local development needs across the country, the central government has initiated several development programmes and grants (such as the CDF, the CEBF and the FPE) that are transferred to the districts and constituencies. The creation of such development grants has been as a result of lack of structured and institutionalized fiscal decentralisation policies, laws and processes in Kenya. The policy and legal framework for these grants do not comply with the principles of fiscal decentralisation outlined above. This notwithstanding, it is important to consider their policy frameworks and operation in a bid to explore the best practices and strategies for fiscal decentralisation and local development.

The management of public finances in Kenya is governed primarily by the Constitution of Kenya and several acts of parliament such as the Government Financial Management Act Cap 5 of 2004 and Exchequer and Audit Act Cap 412, among others. Besides, there are specific Statutes and policies that govern the management of several decentralized funds. The analysis in this chapter will be restricted to the Constitution of Kenya and the Statutes and Policies establishing the grants.

Constitutional Framework

All expenditures of public finances are fundamentally governed by the Constitution of Kenya (1992). Section 99 (1) of the Constitution provides that all revenues or other monies raised or received for the purposes of the government of Kenya are paid into and form a consolidated fund from which no withdrawal can be made unless authorized by the Constitution or by an Act of Parliament (including an Appropriation Act) or by a vote on Account passed by the National Assembly. There are two ways that the creation of the fiscal grants is anchored in the Constitution:

i) An Act of Parliament can be established to provide for the establishment of a fund and charge of such withdrawal to the consolidated fund. For example The CDF Act No 11 of 2003 provides for the establishment of the fund with a charge of at least 2.5 percent on the national revenue annually and the LATF Act No 8 of 1998 provides for the establishment of the fund with a charge of 5 percent on the national revenue annually.

ii) A fiscal grant such as the FPE grant and the CEBF can be established through government policies. Financing would then be provided under the annual budgetary allocation authorized by an Appropriation Act of Parliament as provided by section 100 of the Constitution.

The Constituencies Development Fund (CDF)

The Constituencies Development Fund (CDF) is established by CDF Act No 11 of 2003 as amended by the CDF (Amendment) Act, 2007 and the CDF Regulations 2005. The objective of the fund is to ensure that a specific portion of the national annual budget is devoted to the constituencies for purposes of development, and fighting poverty at the constituency level.

The budget ceiling for each constituency is determined as follows:

a. 75 percent of the net total CDF allocation divided equally among all constituencies (minus 5 percent for emergency and 3 percent for administration costs).

b. 25 percent of the net total CDF allocation divided by the national poverty index multiplied by the constituency poverty index

Since its initiation, the CDF has grown from KES 1.26 billion in 2003/04 financial year to KES 9.8 billion in 2007/08 financial year (Republic of Kenya, 2008b). The legal framework entrenching CDF is a hallmark in regional development. It has provided for an elaborate institutional framework with clearly defined roles and responsibilities for each level of management and coordination of the fund. The few administrative and management problems of the fund notwithstanding, the CDF law has made good attempt to legislate the local level development process that has all along remained the preserve of executive policies and prerogative. The CDF framework is a good example of a delegated form of fiscal decentralisation since it permits citizens or beneficiaries to identify and determine their own development priorities and make expenditure decisions that reflect their needs, preferences and mutual benefits (Obuya, 2008). It has to an extent supplemented the government's efforts in provision of basic services such as education, health and water to poor communities across the country.

Although the fund has registered a number of successes, its conceptual framework has some foundational challenges that have resulted to it not meeting the intended objective. First, save for the allocation of funds based on the constituency poverty index, the framework does not provide for any integration with other development plans such as district development plans or LASDAP. Second, the Act does not impose a mandatory requirement for long term development planning at the constituency level (for example a 5-year Constituency Development Plan). As a result, the implementation of the fund has been marked with uncoordinated and haphazard initiation of local projects without any regard for constituency development statistical data and information as well as long term projections. There have, however, been few Constituencies that have developed five year strategic plans under the leadership of their respective MPs. For example, Ijara and Ganze constituencies. Third, the conceptual framework does not provide for an institutionalised implementation of the fund at the local level. One of the principles of fiscal decentralisation is that the lowest unit where expenditure responsibility is allocated should be an institution with certain defined control and authority or jurisdiction and a level of operational autonomy. This is not the case with the CDF since the funds channelled to the constituency which is not an administrative unit but an electoral unit. As a result, the fund is managed by a committees, such as, the Constituency Development Committees (CDCs) and Project Committees. The members of these committees are appointed by the area MP. The committee members (usually being the cronies of the MP) usually do not have autonomy and often serve at the behest of the area MP. The implementation of the fund is therefore not institutional driven but largely influenced by the area MP.

The law gives the Members of Parliament an upper hand in the management of the fund. In principle, it negates the principles of separation of powers where the legislators become development agents and implementers of development programmes as opposed to law making and representation of the people. In addition, the law does not incorporate checks and balances to ensure accountability by the MPs. Save for the provision regarding the categories of members of CDCs, the MP has absolute power to appoint whoever he wishes leaving the constituents or beneficiaries with no recourse. Thus, some of the MPs have appointed illiterate cronies who have no knowledge or experience in development or community planning. This has negatively impacted on the effective utilization of the fund for local development.

Fourth, the Act provides that during the first year following the commencement of a new term, the area MP should hold locational development forums in every location and thereafter once every two years. The forums are meant to enable the beneficiaries to discuss and identify development priorities in their area. The requirement is meant to ensure community participation in development as well as increase accountability and transparency. The Act, however, does not provide for any mechanism to enforce the requirement, therefore, denying the beneficiaries opportunities to participate in projects and needs assessment.

Fifth, even though the CDF Board is mandated to receive and address complaints and disputes emanating from the implementation of the fund, it does not have the mandate to take any legal action regarding mismanagement of the fund save for remedying any anomalies relating to administrative issues. Consequently, MPs usually evade legal actions during their term in office.

Sixth, the conceptual framework of the fund puts more emphasis on capital projects such as building or construction of physical infrastructure like health centres and dispensaries as well as schools. The CDF law limits recurrent expenditures like purchase of drugs or remuneration of staff to run the facilities. Consequently, they have to depend on the central government to provide the necessary personnel and other recurrent expenditures. The CDF planning process and the central government planning and budgeting process are disjointed. As a result, various Ministries do not provide for recurrent expenditures for the CDF funded projects. This has resulted in the proliferation of projects that have been completed but lay idle or underutilized due to inadequate provision of recurrent expenditure (Institute of Economic Affairs - IEA and Kenya National Commission on Human Rights - KNCHR, 2006).

The Free Primary Education (FPE) Fund

The Free Primary Education (FPE) programme was established in 2003. The objective of the fund is to increase accessibility, quality and affordability of basic education (mainly primary schooling) in Kenya. It targets children from formal public schools across the country. FPE is a commitment by the government to realise Universal Primary Education and Education for All by 2015 (this is one of the Millennium Development Goals). The fund comprises an allocation equivalent to KES 1,020 per child per annum with the amount disbursed to the district based on the number of pupils enrolled in public primary schools within that area. The first allocation of KES 650 is for the purchase of teaching and learning materials; the second allocation of KES 370 is for general purpose expenses such as operations and maintenance. Communities are expected to participate in the management and implementation through school committees while respective head teachers and school committees make procurement decisions.

The policy framework establishing FPE Fund ensures that the financing of basic education is calculated based on the cost per student per annum which removes any discretion on school administrators in determining what to allocate to a child. In addition, the framework deals directly with the school as opposed to going through the different levels of education administrators thus avoiding bureaucracy and potential obstacles.

The policy framework is, however, not established through legislation. In addition, the size of the pool allocated per given year for free basic education is not pre-determined as is the case with CDF and LATF. The existence and the size of the FPE fund therefore depends on the good will of the executive. Should there be a serious budget constraint, the budgetary allocation can easily be scrapped off or reduced in size.

The fixing of the amount (at KES 1,020) that goes to each child is not responsive to inflation. The value of that amount vis-a-vis the cost of the materials to be purchased does not always match. As a result this strains the schools management as they seek alternative ways of meeting the financial shortfall.

The Constituency Education Bursary Fund (CEBF)

The Constituency Education Bursary Fund (CEBF) was established during the fiscal year 1993/4 through a Presidential decree. CEBF aims to mitigate the poor and vulnerable groups against the high and increasing cost of secondary education, therefore increasing its affordability and accessibility. It also aims to increase enrolment in and completion of secondary school education therefore reducing inequalities. The fund targets orphans and girl child as well as those from poor households and urban slums.

Students send their applications to the Constituency Bursary Committees on recommendation of their respective school heads and local administrators. At the constituency level, CEBF is coordinated by Constituency Bursary Committees, which evaluate potential beneficiaries, coordinate and disburse the funds, and prepare reports to the Ministry of Education. Local community leaders are represented on CEBF committees. In order to bridge the inequality gap, a minimum of KES 500,000 is allocated to constituencies in Arid and Semi Arid Lands (ASAL). The minimum annual allocation per beneficiary by school category is as follows: KES 5,000 for day schools; KES 10,000 for boarding schools; and KES 15,000 for national schools.

CEBF is, however, not governed through any legal framework. In addition, it is not based on a fixed share of the national budget like CDF and LATF. Allocations therefore vary depending on the Ministry of Education's annual allocations from national budget, the number of students enrolled in secondary schools within each constituency, national secondary school enrolments and poverty indices. This leaves the noble idea to operate at the behest of the executive.

The local communities do not have opportunities for participation in determining the allocations and ensure that only needy and deserving cases are granted the bursary.

The Rural Electrification Programme Levy Fund (REPLF)

The Rural Electrification Programme Levy Fund (REPLF) was established in 1998 through sections 129 and 130 of the Electric Power Act, 1997. The purpose of the fund is to finance electrification of rural and other marginalised areas. The eligible programmes for funding relate to the design, construction, equipping and operation and maintenance of rural electrification projects identified by communities.

The institutional framework of REPLF comprises the Ministry of Energy, the Energy Regulatory Commission (ERC), Kenya Power and Lighting Company - KPLC (the implementing agency), DDCs, CDCs and local community committees for specific projects.

The framework governing the fund is provided for by the law which makes it secure and to a large extent sustainable.

Although the programme is funded by government, the managing agencies, that is, Rural Electrification Authority, the KPLC and the Ministry of Energy have almost absolute power to determine when and where the rural electrification will take place. The beneficiary communities usually come in at the implementation stage when the major decisions have already taken place.

The Roads Maintenance Levy Fund (RMLF)
The RMLF was established in 1993 through the Roads Maintenance Levy Fund Act. RMLF caters for the maintenance of public roads, including local authority unclassified roads. The fund is derived from a fuel levy on petroleum products and transit toll collections. It is administered by the Kenya Roads Board. RMLF targets maintenance of roads under the control of the Ministry of Roads and Public Works, Kenya Wildlife Service and the District Roads Committees. According to the RMLF Act 60 percent of the fund's annual allocation goes to international and national trunk roads as well as primary roads; 24 percent to secondary roads; and 16 percent to rural roads. The latter portion, which is managed by district road committees, is shared equally among constituencies within a district. The framework governing the fund is anchored in law and the sharing of monies within constituencies is shared equally. This ensures that allocation of funds to constituencies does not depend on political patronage. The law also provides for the participation of the beneficiary communities in the formulation of district development plans that guide the rehabilitation of the roads at constituency level.

4.5 Assessment of the role played by citizens in the management of decentralised funds and the development grants

The purpose of fiscal decentralisation besides addressing development concerns is to facilitate and enhance democratic participation of citizens in identifying their development priorities. As a result, the conceptual framework establishing most of the decentralised funds impose a requirement for the participation of the local communities or the beneficiaries in the management of the funds, projects identification and monitoring. Citizens have diverse opportunities to play a significant role in the management of the funds. At the national level, citizens through their elected leaders determine the broad policy issues like the size of the aggregate allocation and the formula for apportioning each decentralised fund as well as broad management issues regarding fiscal decentralisation (Robinson, 2004). In this regard, citizens are increasingly becoming conscious of their civic duty to use competitive electoral politics to compel local and national leaders to deliver on policies commitments.

The CDF Act provides for the consultations on needs and projects identification to be held in every location in the constituency. It also provides that the membership of the CDCs should be made up of residents from the constituency. In relation to procurement of goods and services, the Act requires that such procurement be done within the constituencies so as to facilitate local economic growth and development. In addition, the CDF funded projects are those that provide benefits to the residents of the constituency. Such projects include dispensaries, schools and other public utilities that are managed by the communities themselves. The local residents therefore have been involved to a large extent in the implementation of the projects. In the case of LATF, the LAs are required to prepare the LASDAP. The preparation of LASDAP involves local communities, residents or the beneficiaries, right from the ward level whereby they are invited to the project identification and planning meetings as well as the selection of local LASDAP committees. The Local Government Act also empowers the local citizens who reside within the jurisdiction of a Local Authority to access annual statement of accounts, annual plans as well as end of financial year development and financial reports.

For FPE, the Ministry of Education guidelines provide that the implementation of the programme is a partnership between the government, parents and the local communities. Communities are required to monitor the implementation of the fund. The guidelines also provide that parents be represented in the school management committees that are charged with the responsibility of implementing the two major school accounts under the FPE fund. In addition, parents are required to sign on behalf of their children upon receipt of reading materials distributed under the fund. The guidelines also require that statement of accounts regarding the fund at the school level be accessible to the parents so that they can engage in informed monitoring and evaluation of the fund.

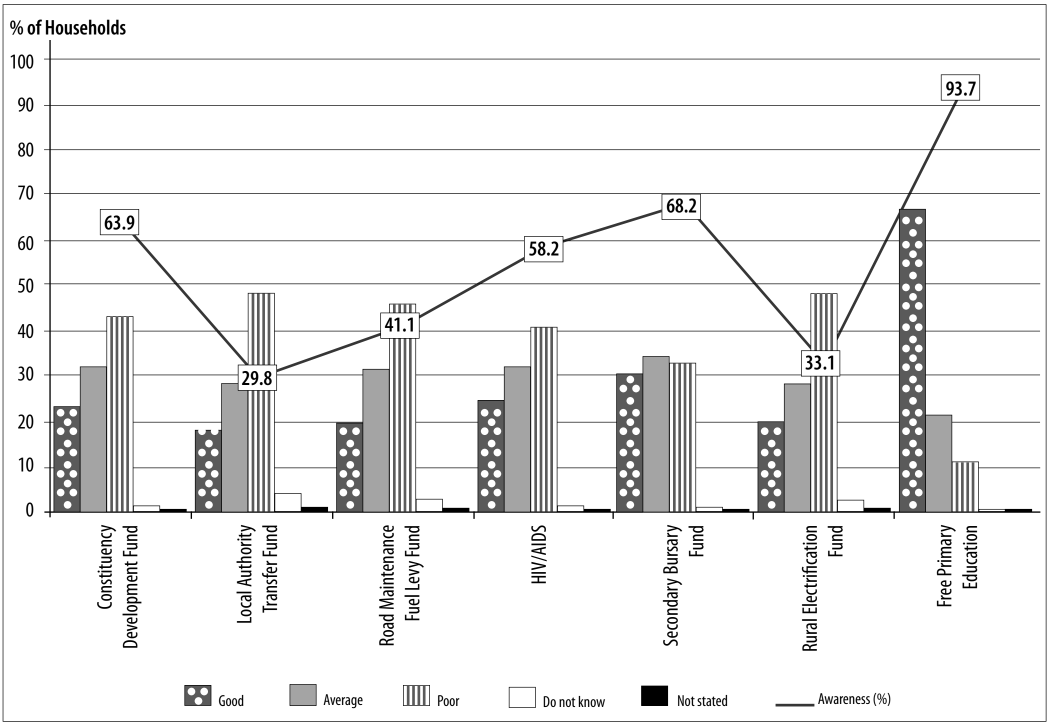
For CEBF, the guidelines provide for minimal direct community participation in the decision making process. The guidelines, however, provide that the committee members save for the government officials be representatives of various institutions involved in the management of the fund within the constituency. The beneficiary communities in the constituency can only participate in the process through advocacy by monitoring and evaluating the implementation of the bursary fund.

With regard to the RMLF, the citizens, especially the local communities, participate in the decision making process through the development of the respective District Development Plans (DDPs). They identify and prioritise the construction, rehabilitation and maintenance of classified roads within their localities.

For REPLF, local communities or residents within a district participate in the identification of areas, regions or local institutions within their localities where the rural electrification programme should be initiated. In addition, the communities participate in the development of DDPs where they identify priority rural electrification programmes and projects.

Despite the framework and guidelines for the decentralised funds providing for the citizens participation, the subsequent implementation has yielded mixed results. Some areas have realised success while others have not. According to research conducted by Kenya Institute for Public Policy Research and Analysis (KIPPRA), respondents were asked to rate their participation in the management of decentralised funds. The survey found that, generally, participation is very low in the various funds, particularly in decision-making processes (KIPPRA, 2005). Only 32.8 percent of the respondents were involved at the level information sharing or attendance of barazas. Less than 10 percent of the respondents attended meetings to discuss specific issues and less than 5% felt that they were involved in decision-making. Over 90% of respondents indicated that they were not involved in the setting of the development agendas for their areas (KIPPRA, 2005). As indicated in the figure below, of all the funds that were investigated the FPE had the highest levels of awareness followed by the LATF. This could be attributed to increased publicity on the funds.

Figure 4.2: Household awareness of decentralised funds



Adapted from KIPPRA survey 2005

In addition, communities are less aware about the laws, regulations or the policy guidelines governing the various decentralized funds (for example only 21% of respondents were aware of CDF regulations) which affect the level of participation in decision making process and demanding for accountability (Maina, 2005).

It is evident from the above analysis that the regulations and policies governing decentralized funds do not provide for the participation of the beneficiaries in the selection of the committee members save for LASDAP committees. It therefore follows that communities are led by appointees of either the area political leaders (MPs or Councilors) or by the government. Consequently, this has hindered the realization of the key objective of fiscal decentralisation which is empowerment of local communities in making decisions on who would manage the funds transferred to them.

The current frameworks for the management of the various decentralised funds, limit the space for citizens to influence their management. Although in some instances citizens have been involved in projects identification, they do not determine the amount of allocation for the identified projects. Besides, there have been notable irregularities in the procurement of goods and services where tenders have been awarded to the cronies of the political elite (Mapesa and Kibua, 2008).

One of the significant roles that the recipient citizens have played in the decentralized funds is in the area of monitoring and evaluation of the local projects. Management and implementation of decentralized funds has by and large become a performance benchmark for the elected leaders (Chitere and Ireri, 2008). Citizens who are aware of the management issues of the decentralized funds have been able to raise concerns about the mismanagement of the projects or the funds during the implementation period consequently getting interventions from the central government (Robinson, 2004).

4.6 Assessment of local capacity to handle decentralised funds and development grants

The process of fiscal decentralisation makes an assumption that the local beneficiary communities have the capacity to engage in the management and implementation process of the decentralised funds. Whereas, fiscal decentralisation should not be pegged to local communities' capacity to handle the funds, its effectiveness will depend on how well they participate in the entire process.

Chitere and Ireri (2008) identified five criteria for assessing capacity at grassroots level. Below we use these criteria to evaluate communities' capacity to participate in the management of decentralized funds in Kenya.

(a) Technical knowhow and skills on projects management and implementation as well as financial management,
(b) Understanding community based development planning, monitoring and implementation,
(c) Institutional arrangement and respective leadership for management of the funds,
(d) Civic competence regarding assertiveness and demand for accountability and
(e) Ability to influence decision making processes at the local level.

The central government has made attempts to enhance the communities' local capacity by posting technocrats to assist as advisors in the management of the devolved funds. For example, the seconding of a fund manager to each constituency by the CDF Board and the involvement of line Ministry officials in the design of CDF projects has enhanced the local capacity.

Communities at local level have a good understanding of their development needs, concerns and priorities at their level. They, however, have insufficient understanding of the policy guidelines and regulations due to their complexity and technical language. This is partly due to low literacy levels especially in the rural areas and the informal settlements (Kanyinga, 2006). In addition, local communities also have limited capacity to engage with and demand accountability from their councils (ActionAid, Community Aid International-CAI and 4Cs, 2003). Further, there is lack of knowledge and capacity to engage in project planning at the community level (Chitere and Ireri, 2008).

In regard to institutional arrangement and leadership, the institutions that handle decentralised funds at local level are weak, ill equipped or inadequately structured. The committees are also prone to manipulation by local political leadership which is part of the membership. For CDF, the leadership is appointed and by and large controlled by the sitting MP which interferes with institutional continuity of development programming (Mapesa and Kibua, 2008). With regard to LATF, the LAs which use and manage the fund are characterized by poor governance, poor financial management (especially in revenue collection and expenditure management) and poor planning (Oyugi, 2008). As a result, their capacity to implement comprehensive development within their jurisdictions is hampered. Also, there is a significant knowledge gap in respect of capacity of local committees, particularly in project planning and financial management. This is either due to selection of unqualified and inexperienced committee members or lack of continuous capacity building programme at the grassroots (Mapesa and Kibua, 2008).

As noted earlier on in this chapter, the conceptual framework for the decentralised funds and government grants gives very little real power to the beneficiary citizens to influence the decision making process in the identification of priority projects and the management of the devolved funds (Robinson, 2004). The MPs, central government and the LAs have absolute decision making power and influence regarding the decentralised funds which contradicts the principle of community empowerment in fiscal decentralisation.

4.7 An investigation of coordination mechanisms of decentralised funds and government grants

The effectiveness of fiscal decentralisation depends on the efficiency of the coordination mechanism and harmonisation of the various decentralised funds and grants. The coordination mechanism for each fund involves management at the national and local levels as well as coordination between the central government and the devolved or sub-national governments or levels. As the government engages on creating or enhancing the devolved funds, it will be critical to evaluate how the funds are coordinated in order to identify the potential areas of creating synergy as well as areas where there is conflict in the coordination. This paper will consider some of the areas of conflict in the coordination of the devolved funds' areas of conflict that require interventions.

The legal and policy frameworks establishing various decentralised funds do not provide for coordination or harmonisation of the funds. Each of the funds is created to operate on its own even though there are opportunities to enhance efficiency by establishing linkages between the funds and better coordination of the funds. The absence of coordination mechanisms has resulted in conflicts between funds. The genesis of these conflicts can be traced to the current disjointed frameworks for fiscal decentralisation. Below we cite two examples which illustrate possible sources of conflicts that may be attributed to lack of an effective coordination mechanism.

Areas of conflict in the management of the decentralised funds

a) MPs are the patrons of the CDCs while at the same time they are members of the CEBF committees. This creates potential for conflict especially when the MPs seek to exert their influence and interfere with the management of the committees and directives of the Ministry of Education.

b) There are times when LAs through LATF, partner with CDCs through CDF to jointly fund projects. Conflicts usually arise where each entity is reporting on the extent of funding of the project which leads to double accounting (Obuya, 2008). Sometimes there are no clear distinctions between CDF funded projects and LATF or other donor funded projects (Maina, 2005).

Areas of synergy in the coordination of the decentralised funds

Below we highlight three examples to illustrate how better coordination of decentralised funds could create synergy and thus enhance efficiency.

a) In the areas of infrastructure development like the construction of health, water and education facilities and road network, the CDF, LATF and the District Development Plans allocations finance similar projects but rarely do they co-finance projects where they are operating in the same locality. This divergence stems from the planning process. In case of the district, the planning is done through development of District Development Plans from which the central government budget allocations for the district is based. In the case of LATF, the planning is done from the Ward level to the Local Authority level through the development of LASDAP. Irrespective of their working concurrently in the same localities, the District Development Plans (DDPs) and LASDAP are not integrated and funding under each is not coordinated. For CDF, there is no requirement for long term planning therefore projects priority list is generated without any regard to future development planning. An area of synergy therefore could be the developing one master development plan either at constituency level or district level that would guide or be the reference document for all development planning for the Constituency or Local Authority.

b) Since the various devolved funds have various cross cutting areas of convergence, there is likelihood of duplication and corruption. Besides the joint development planning, the three systems described above could embark on harmonised funding system for joint projects or coordination of programmes for the beneficiaries in the same locality. The CDF Act allows for joint funding so long as the funding relates to a complete part of a project or a distinct phase of a project. In regard to coordination of programmes, there is potential for synergy in bursary allocations under CEBF, LATF and CDF especially for secondary education.

c) The DDC and the District Projects Committee are chaired by the area District Commissioner while the Chair persons or the Mayors of the LAs in the district are members of the District Projects Committee. As a result, there is potential for synergy and collaboration through institutional collaboration and information sharing within CDF, LATF and district development planning and implementation.

4.8 Assessment of impact of fiscal decentralisation and government grants for local development

There is usually an assumption that fiscal decentralisation automatically leads to local communities' empowerment, enhanced accountability and increased development (UNDP, 2003). For real impact of fiscal decentralisation to be realised at the grassroots, however, central government must provide leadership in the creation of the appropriate environment. Some of the pre-requisite for an effective fiscal decentralisation framework comprise political commitment to national development, the strength and effectiveness of national institutions, literacy rates, gender balance and prudent public expenditure management (UNDP, 2003). At the same time, the impact of fiscal decentralisation is realised if the local sub-national governments focus and maximise on their objectives and have adequate resources with which to deliver the services. The purpose of fiscal decentralisation is to facilitate development, poverty reduction and improvement of standards of living at the lowest level where citizens are. This therefore is the reason why fiscal decentralisation usually focuses on service delivery in areas like education, health, water and sanitation, food security and roads infrastructure.

There is inadequate research that has been done to evaluate the impact of fiscal decentralisation on development and poverty reduction in Kenya. From the available sources, however, it is evident that devolved funds and grants have to a certain extent had impact on development and poverty reduction ((Mapesa and Kibua, 2008, Republic of Kenya, 2007a and Obuya, 2008). In certain aspects they have not made sustainable impact. In order to assess the extent to which the funds have made impact, an analysis of the pertinent development or poverty reduction indicators which are derived from the millennium development goals will be necessary.

In line with the principles of fiscal decentralisation discussed in this paper, it is important to briefly assess the expenditure responsibilities of the LAs and the resulting implications. As noted in table 1 below, the single largest expenditure item for LAs is personnel. In addition, the LAs spent 18.7% of their allocation on development expenditure (capital expenditure and Maintenance) in 2007/8 financial year. This would imply that the resources allocated for service delivery are minimal which negatively impacts on local development.

Table 4.1: Local Authority expenditure structure:

Planned and reported actual expenditure FY 2007/8, planned FY 2008/9 (KES)

Expenditure classification	**Planned 2007/08 Ksh"000,000"**	**Actual 2007/08 Ksh"000,000"**	Actual % of Planned	**Planned 2008/09 Ksh"000,000"**	Increase
Civic expenses	1,273	1,236	97.1%	1,855	50.1%
Personnel	9,868	9,047	91.7%	10,264	13.5%
Operations	3,843	4,008	104.3%	4,484	11.9%
Maintenance	1,140	808	70.8%	3,055	278.4%
Total recurrent expenditure	**16,123**	**15,098**	**93.6%**	**19,658**	**30.2%**
Capital Expenditure	3,746	3,469	92.6%	4,808	38.6%
Debt Resolution	3,200	4,229	132.1%	3,106	(26.6%)
Loan Repayments	12	13	114.5%	7	(50.2)
Total Expenditure	**23,080**	**22,809**	**98.8%**	**27,577**	**20.9%**

Source: Adapted from Republic of Kenya (2008a: pp 11)

In relation to the expenditures incurred by various types of LAs, County Councils and Municipal Councils spent in FY 2007-08 an average of 70% of their budget on recurrent expenditure and approximately 17% on debt resolution (table 2 below) which implies that they had little funds for financing development programmes. It is important to note that most LAs including the Town Councils depend heavily on LATF allocations as the primary source of revenue to finance their budgets.

Table 4.2: Relative expenditure pattern by Local Authority (LA) type, FY 2007/8 (%)

Expenditure classification	Nairobi City Council	Municipal Councils	Town Councils	County Councils	Average
Civic Expenses	1%	4%	9%	12%	5%
Personnel	46%	43%	34%	30%	40%
Operations	12%	19%	18%	23%	18%
Maintenance	0%	5%	5%	6%	4%
Total recurrent expenditure	**59%**	**70%**	**66%**	**71%**	**66%**
Capital Expenditure	15%	14%	17%	17%	15%
Debt Resolution	26%	16%	17%	12%	19%
Loan Repayments	0%	0%	0%	0%	0%
Total Expenditure	**100%**	**100%**	**100%**	**100%**	**100%**
% of Total Expenditures	**35%**	**30%**	**7%**	**28%**	**100%**
Number of LAs	**1**	**45**	**62**	**67**	**175**
Average Expenditure per LA (KES Millions)	**8,070**	**151**	**25**	**95**	**130**

Source: Adapted from Republic of Kenya (2008a: pp 13)

In relation to capital expenditure allocations, roads take up the largest share of LAs expenditure (which is mainly the allocation from Roads Maintenance Fuel Levy Fund) followed by other projects that are not classified. Education, vehicles and water and sanitation had the third, fourth and fifth highest budget items, respectively (Table 3 below). Not all LAs spent money on the budget specified budget items. For example, Bungoma Municipal Council, Butere Mumias County Council, Busia County Council and Meru South County Council did not spend any amount on education during the financial year while Maragua County Council spent KES 55,000 only out of KES 17,621,138 allocated for capital projects. This could be attributed to the fact that there are no minimum thresholds specified in law or policy for specific projects as is the case in the CDF.

In addition, most of the projects on the ground are thinly spread with little and often inadequate allocations across the projects. This significantly reduces the realization of the intended objectives of the projects (LATF Annual Report 2007/8)[17].

[17] It should be noted that the LATF Annual Report 2007/8 referred to had not been authenticated or audited by an external auditor by the time this publication was sent to print.

Table 4.3: Actual capital expenditures distribution by project type FY 2007/8

	Actual Ksh"000,000"		% Distribution		Average Project Cost Ksh"000,000"
Project type	No[18]	Amount KES	No	Amount	KES
Roads	662	1,300	18%	37%	2
Others	487	468	13%	13%	1
Education	932	368	25%	11%	0.4
Vehicles	107	300	3%	9%	3
Water & Sanitation	521	295	14%	9%	0.6
Public lighting	77	146	2%	4%	2
Health	315	127	8%	4%	0.5
Markets	122	116	3%	3%	0.9
Council Premises	109	98	3%	3%	0.8
Equipment	114	79	3%	2%	0.6
Administrative support	109	74	3%	2%	0.6
Bus parks	67	67	2%	2%	1
Housing	17	19	0%	0%	1
Sports/recreation	41	13	1%	0%	0.3
Solid Waste	29	11	1%	0%	0.3
Slaughter slabs	11	4	0%	0%	0.3
Grand total	**3,720**	**3,469**	**100%**	**100%**	**0.9**

Source: Adapted from Republic of Kenya (2008a, pp 15)

While assessing the impact of fiscal decentralisation on development, it is important to take into consideration the operating mechanisms of the various fiscal transfers. For example, although LATF is an intergovernmental fiscal transfer fund, its two core purposes, that is, to reduce outstanding debts and to improve financial management and accountability and to provide budgetary support for personnel and operational costs, do not directly relate to local development. Evaluation of its impact on local development should therefore be narrowed down to the specific monies that are apportioned to development. This, however, would still pose a challenge as LATF funds are lumped together with other revenue generated locally by the LAs. A better approach would be to assess the impact of the overall budget of LAs on local development as this would give a more comprehensive picture of the impact since LAs do not keep separate accounts for LATF. In addition, the success of LATF heavily depends on the effectiveness and efficiency of the supporting structures and operationalisation of governance, accountability and management of the LAs.

The assessment of the impact of fiscal decentralisation will focus on the analysis of the key sectors that relate to development indicators as identified in the Kenya Vision 2030 (Republic

[18] Number of projects undertaken during the year.

of Kenya, 2007b). These are education, health, water and sanitation, transport infrastructure, improvement of livelihoods and environment management.

Education

Access to basic education facilitates the improvement on literacy levels which contributes to poverty reduction. The CDF, LATF, CEBF, and FPE have significant budgetary allocations targeted at improving availability and access to education services. The CDF allocates about 32 percent of the entire allocation to provision of education services with some constituencies spending more than 45 percent of their allocation on education (Maina, 2005) The CDF and LATF have contributed significantly to the development of education infrastructure and facilities like new schools, class rooms, laboratories, workshops and purchase of desks and bursary allocation which has greatly enhanced the availability and quality of learning facilities (Republic of Kenya, 2007a and IEA and KNHCR, 2006).

The FPE fund has increased the access and affordability of basic education which has seen increase in enrolment rates across the country. According to government statistics, following the introduction of FPE in 2003, the enrolment of children increased from 5.9 million in 2002 to 7.42 million in formal public schools in 2004 (Republic of Kenya , 2005). A perception survey conducted by KIPPRA indicated that FPE fund recorded the highest rating for impact, with over 90% reporting a positive impact (Obuya, 2008). Besides, the bursary support allocations granted under CDF, LATF and CEBF have enabled the poor and needy students afford the expensive secondary and post secondary education. This support from the decentralised funds has increased literacy levels thus reducing poverty.

Although there is remarkable impact on literacy and development, the funds have been marred by lack of transparency and discipline in management resulting in reduction of the available resources for development (UNDP, 2003). An observation from constituency based CDF allocations on education support shows that most of the education funding goes into non-academic infrastructure (such as school gates, fences and modernising class rooms) as opposed to academic infrastructure, such as, laboratories, workshops and libraries (Republic of Kenya 2008c). There have been reports of corruption and wastage of resources in the implementation of the funds for example where school management committees buy cheap and substandard learning or teaching materials, multiple awards of bursary allocation from all funds due to collusion between beneficiaries, school management and committee which have negatively impacted on the development and provision of education services (Kimenyi, 2004).

Health

Provision of quality, accessible and affordable health services contribute to improved health care, including reduction of mortality rates and disease burden. The CDF and LATF have budgetary allocations to finance development of health facilities and necessary equipments. Health sector is usually the second highest budgetary allocations through decentralised funds after education (Alila and Omosa, 1995). The funds have reduced for example the distances that one would have to travel in search for basic health care services.

The CDF framework, however, does not allow for the support of recurrent expenditure for any of the funded projects. In addition, the implementation of health projects supported by CDF is hardly harmonised with Ministry of Health's plan for development and management of health facilities. As a result, there have been many health facilities constructed through CDF but stay idle as there are no personnel or necessary resources to support the recurrent expenditure (Maina, 2005).

Without the essential of recurrent expenditure to facilitate the purchase of drugs and recruitment of personnel the realisation of improved health care through decentralised funds may not be realised. In addition, the resources allocated per constituency are not sufficient to provide the required services.

Water and sanitation

Water is a basic life supporting necessity. Improved access to clean and safe drinking water as well as appropriate sanitation is core to development. The CDF has contributed significantly in the digging of boreholes, dams and water pans especially in the arid and semi arid areas, piping of water as well as provision of repairs and maintenance of community water services (Chitere and Ireri, 2008). These gains notwithstanding, the cost of providing water and sanitation services at community level is very expensive therefore the funds allocated have been inadequate. Consequently, access to water services has remained a major challenge especially to the poor.

Transport infrastructure

The CDF and LATF have contributed notably to the construction, repair and maintenance of the rural access roads especially the non classified ones that do not benefit from the Roads Maintenance Fuel Levy Fund. Some of the constituencies have gone to the extent of acquiring graders for maintaining their roads. In addition, the Roads Maintenance Fuel Levy Fund has contributed immensely in the rehabilitation, construction, repair and maintenance of most of the national and local classified roads. This has facilitated the movement of people and goods.

Improvement of livelihoods

The decentralised funds and grants have contributed significantly to the improvement of livelihoods and standards of living through job creation especially the employment of unskilled labour in the funded projects and those supplying goods and services to the projects. These funds have also provided support to the local economic activities as evidenced by vibrancy of local shopping centers due to initiation of community based projects (Maina, 2005).

Environment management

The devolved funds have not committed sufficient funding for environment management. For example, under CDF, a constituency is only allowed to allocate not more than 2 percent of the total allocation to environment projects.

Despite the positive contributions made by the decentralised funds, the mismanagement of the funds and corruption has reaped off a lot of resources destined for development. There have been reports of nepotism and tribalism in selection of committee members and allocation of funds for development as well as cronyism where leaders seek to reward their political supporters, wrong prioritization of project or initiation of projects that are not preferred by the local residents or beneficiaries, over pricing of goods and services procured (Robinson, 2004). All these have negatively affected development at the grassroots. In addition, the frameworks that govern the decentralised funds do not mainly relate to or seek to create synergy with the national development plans. Despite the significant resources allocated for fiscal decentralisation, their lack of harmony with other development projects funded by government or non government entities slows down the development process. In addition, the funds allocated are not adequate to allow heavy capital investment that would facilitate trade and development at the local level which would stimulate local economic growth and development.

4.9 Recommendation on alternative models and best practices for fiscal decentralisation in Kenya

From the foregoing, it is clear that fiscal decentralisation can be a tool for economic development and democratization. The challenge with the Kenyan model of fiscal decentralisation is that it not comprehensive, lacks coordination mechanism and autonomy from political interference. In addition, it is not self sustaining as it is highly controlled by the central government. Therefore in order to make fiscal decentralisation effective and efficient, the following recommendations would be instrumental in the transformation process:

Comprehensive decentralisation system

Fiscal decentralisation should be viewed as a comprehensive system rather than piecemeal system. It should go hand in hand with political and administrative decentralisation. Therefore, the framework and the process of fiscal decentralisation should be integrated in the Constitution of Kenya. In addition, the persons managing the decentralised funds must be elected by the local citizens and must have administrative control over the services that they are charged to deliver.

In addition, the local communities' participation in decision making process in fiscal decentralisation especially at the local level should be integrated into the legal framework. The participation should be a two way process. The communities should be represented in the decision making forums and the managers of fiscal resources at the local level should hold public forums to report to the communities on the progress in financial management as well as projects planning and implementation.

Expenditure responsibilities

The principle of subsidiarity should be integrated in sharing out the functions between the central government and the sub-national governments. In principle, the central government should be involved in formulation and management of national policies as well as national natural resources such as lakes, ocean, national forests and national physical resources such as highways and metropolitan cities, among others. The sub-national governments on the other hand should be involved in policies and service delivery at the local level. In this regard, service delivery in areas such as education, health, water and sanitation, roads and agriculture should be managed by the sub-national governments except the national institutions such as national hospitals and universities. Expenditure responsibilities should therefore be matched with the assigned functions.

The sub-national budgets should be integrated with the national budget and there should be a legal process of consultation and cooperation between the levels of government in developing the budgets. In addition, expenditure responsibilities should be specified in the law.

The law must also assign Capital Investment Responsibilities whereby responsibilities for capital infrastructure should be placed at the level of government responsible for the delivery of the specific services including the operation and maintenance of those facilities.

Revenue assignment

The revenue assignment between the levels of government should follow the various functions and expenditure responsibilities assigned. The sub-national governments should have a certain level of fiscal autonomy. This means that they should access to revenues that are certain and predictable. The revenue base for sub-national governments should be expanded to include user fees or service charges for each responsibility assigned. There should, however, be mechanisms to ensure mandatory efficient and effective revenue collection by the Local Governments which currently has been a challenge with the LAs. Such mechanism could include requirements for the sub-national governments to meet the agreed revenue collection targets before receiving certain percentage of intergovernmental transfers.

In principle, the sub-national governments should have own revenue sources to finance the services, such as, the formalized grants — that is grants which are objectively provided for and guaranteed in the law and therefore predictable. Martinez-Vazquez and McClure (2002) argues that there should be an elaborate revenue sharing mechanism between the sub-national governments and the central government through an agreed formula. The sub-national and central governments could also operate a tax sharing mechanism which spells the proportions of revenue from specific national taxes (originating from within their boundaries) that would be assigned to the various levels of government. Local governments should be allowed to raise their revenue through bond issuance whereby they issue non-guaranteed or limited liability debt to finance investment in public utilities. These "revenue bonds" should be repaid from revenue proceeds associated with tariffs set at full cost-recovery levels (Martinez-Vazquez and McClure 2002)

Table 4.4 below summarizes the recommendations on fiscal autonomy relating to revenue assignment.

Table 4.4: Fiscal Autonomy in sub-national governments

Own taxes	Base and rate under local control.
Overlapping taxes	Nationwide tax base, but rates under local control.
Nontax revenues	Fees and charges. Generally, the central government specifies where such charges can be levied and the provisions that govern their calculation.
Shared taxes	Nationwide base and rates, but within a fixed proportion of the tax revenue (on a tax-by-tax basis or on the basis of a "pool" of different tax sources) being allocated to the sub-national government in question, based on (1) the revenue accruing within each jurisdiction (also called the derivation principle) or (2) other criteria, typically population, expenditure needs, and/or tax capacity.
General purpose grant	Sub-national government share is fixed by central government (usually with a redistributive element), but the former is free to determine how the grant should be spent; the amounts received by individual authorities may depend on their efforts.

Specific grants	The absolute amount of the grant may be determined by central government or it may be "open-ended" (that is, depend on the expenditure levels decided by lower levels of government), but in either case central government specifies the expenditure programs for which the funds should be spent.

Source: Anwar Shah, 1994, quoted in Martinez-Vazquez and McClure, 2002: pp 23

Intergovernmental fiscal transfers

All intergovernmental transfers and related financial grants such as CDF, CEBF and FPE should be disbursed to sub-national governments that have elected representatives of the local beneficiaries. The transfers should be based on the identified budget deficits within sub-national governments. In order to ensure that the transferred grants are utilized for local development, a local development allocation model should be applied in categorizing the various expenditure items, and the quantum of finances that should go into those items. The central government should develop a mechanism for fiscal monitoring and evaluation to ensure that the resources transferred to the local levels are prudently utilized.

Sub-national government borrowing

The power of sub-national governments should not be generalized. Instead, they should only be allowed to borrow money to finance development capital projects and especially the ones that have the potential to spur local development and increase revenue base as well as overall collection. There should be mechanisms to ensure that sub-national governments that are highly indebted are not allowed to borrow further unless the central government approves it in special circumstances. For example, in cases where the borrowed monies would be utilized to develop revenue base to repay the pending loans.

The central government should facilitate capital investment at the sub-national level. All types of sub-national borrowing should therefore be closely regulated by the central authorities. Besides enforcing the debt limits established by the law, there should be a certification process of the conditions for any bond issues. The central government as a general policy should not act as guarantor of regional and local government debt issues (Martinez-Vazquez and McLure, 2003)

There should be an established sub-national development funding mechanism to cater for long term capital investment. This should be done through creation of an autonomous institution with direct and final responsibility for borrowing and investment projects. The institution could be funded by both the central and local government through bond issues in the capital market.

National fiscal decentralisation institutional management framework

There should be an institutional framework for management of certain specific matters related to fiscal decentralisation. In this regard, the Fiscal Decentralisation Commission should be established to deal with matters related to revenue allocation among the sub-national governments such as allocation formula and models, monitoring and evaluation of implementation of fiscal decentralisation, technical assistance and oversight in the management of intergovernmental fiscal transfers, handling conflicts between sub-national governments or between sub-national governments and the central government.

The sub-national authorities should have considerable autonomy from central government while at the same time being accountable to local citizens for the public goods and services that they deliver.

The central government should have the capacity and mechanisms to monitor and evaluate decentralisation. The central government must set uniform rules and standards regarding financial management systems, expenditures and borrowing parameters and ensure strict compliance by each devolved unit as well as maintain regular and comprehensive financial and systems audit.

There should be different intergovernmental systems applicable to urban and rural devolved units. This ensures that the systems take cognizance of capabilities on expenditure responsibilities, borrowing and provision of services

Fiscal decentralisation should integrate well the real taxing powers to the devolved units to ensure local sustainability and beneficiaries' involvement and ownership of the devolved unit as well as have the basis of demanding for accountability.

The devolved units' systems should be less complicated and easy to work with and comply with. For example, the central government should not apply all its complicated financial management systems to the devolved units. This will ensure ease in compliance.

Fiscal decentralisation should be effectively linked with the broad national plans and goals to avoid wastages and misallocation of resources at the devolved unit level. For example, development planning and the subsequent budgetary allocation should be harmonised at the various levels of government through consultations and pursuit of similar plans.

All thematic or sector based allocations and fiscal transfers should be harmonized and centrally managed or disbursed. For example, all funds allocated for education bursary within a given devolved unit should be managed by one institution or be jointly administered by the respective receiving agencies. This should also apply for roads, water and health services among others.

For greater decentralisation of fiscal arrangements, incentives can be put into place to use resources more efficiently. These may include greater autonomy for local governments in administrative matters as well as in the execution of their budgets. Sub-national governments can be given greater incentives for raising own-source revenues by being given authority to levy buoyant taxes, greater use of formula-based fiscal transfers, and the reduction of investment in vertical programs in favour of local development initiatives planned and financed by local governments.

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Devolution has been advocated as a political response to the ills plaguing fragile and plural societies, such as, conflicts, inequalities, rent seeking, economic stagnation, corruption and inefficient use of public resources. Kenya is such a country and as a result devolution has been proposed in subsequent drafts of the proposed constitution. The debate on the nature and shape that devolution should take has been clouded by differing positions which have been at times devoid of the facts. While contending that the form of devolution is purely a political choice, there is need to clarify what the implications would be.

It is against this background that the research papers contained herein have been published. The papers look at various models of administrative and fiscal devolution already established in independent Kenya and identify the different successes and failures; establish comparative models of devolution that Kenya could adhere to based on best practice case studies of other countries; create an appreciation of the institutional, economic, political, social and historical problems in Kenya for which varying levels of de-concentration and or devolution of power and resources may be a useful and effective response; review and make recommendations on the policy and legislative framework for fiscal and administrative devolution to enhance its effectiveness and efficiency; and seek to facilitate public and the legislatures understanding of devolution theory and practice.

IEA-Kenya anticipates that the knowledge generated will be instrumental in designing an effective and efficient system of devolution in Kenya.

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