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Economic and Administrative Implications of the Devolution Framework Established by the Constitution of Kenya

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Acronyms and Abbreviations

ASAL	Arid and Semi Arid Land
CDF	Constituency Development Fund
CoB	Controller of Budget
CRA	Commission on Revenue Allocation
ECD	Early Childhood Development
FPE	Free Primary Education
IAS	International Accounting Standards
IFRS	International Financial Reporting Standards (IFRS)
IPSAS	International Public Sector Accounting Standards
KNBS	Kenya National Bureau of Statistics
LATF	Local Authority Transfer Fund
MoA	Ministry of Agriculture
MoE&MR	Ministry of Environment and Mineral Resources
MoFD	Ministry of Fisheries Development
MoH	Ministry of Housing
MoL	Ministry of Lands
MoLD	Ministry of Livestock Development
MoMS	Ministry of Medical Services
MoPHS	Ministry of Public Health and Sanitation
MoPW	Ministry of Public Works
MoSFSP	Ministry of State for Special Programmes
MoWI	Ministry of Water and Irrigation.
MoYAS	Ministry of Youth and Sports
NHIF	National Hospital Insurance Fund
NSSF	National Social Security Fund
PTR	Pupil-teacher ratio
REPLF	Rural Electrification Fund
RMLF	Road Maintenance Levy Fund
ROK	Republic of Kenya
UNDP	United Nations Development Programme

1 Introductions

The Constitution of Kenya was formally promulgated into law on 27th August 2010. The new constitution introduced major changes in the country's governance framework. A key departure from the earlier system of governance is the shift from a highly centralised to a decentralised governance framework, comprising of two levels of government — the national government and 47 county governments. Previously, the Executive, through the President and the Cabinet, exercised significant political, administrative and fiscal power control over both the national and sub-national governments. This is expected to change with the establishment of the county governments.

Decentralisation, as envisaged in the Constitution of Kenya will entail sharing of political, administrative and fiscal responsibilities between the national and the county governments. Political decentralisation involves the transfer of political authority to the local level through the establishment of sub-national governments as well as electoral and political party reforms. Administrative decentralisation refers to the full or partial transfer of functional responsibilities to the sub-national units of governance. Functions that are typically transferred to the sub-national units include health care services, garbage collection, among others. Fiscal decentralization refers to the transfer of financial authority to the sub-national governments by reducing the conditions on the intergovernmental fiscal transfer of resources and granting sub-national units greater authority to generate their own revenue. It is the assignment of these three dimensions of power which determine the level of decentralisation.

Generally, frameworks for decentralization of public functions differ from one country to another depending on how political, administrative and fiscal responsibilities are shared between the national and the sub-national governments. Decentralisation is seldom implemented in its pure form; instead, decentralization frameworks often comprise a wide range of possible combinations of political, administrative and fiscal power-sharing between the national and sub-national governments. These frameworks comprise of a continuum, ranging from a highly centralized to a federal one. Other frameworks that lie in-between are commonly categorized as de-concentration, delegation and devolution.

The new decentralised framework of governance, set out in the Constitution of Kenya, can be categorised as devolution since it increases reliance upon sub-national levels of elected governments, with greater political autonomy. This is a departure from the past where decentralization was primarily through either de-concentration — that is, transfer of administrative responsibilities to nonelected central government officials at the regional offices; or delegation — transfer of managerial responsibility to a unit outside the usual central government structure.

2 Political and Administrative Framework for Devolution

The two-tier devolved system of governance, set out in chapter eleven of the Constitution, establishes the national government and county governments as distinct governance entities. The county governments will comprise of County Executive Committees and County Assemblies. Each County Executive Committee will comprise of the County Governor, the Deputy County Governor and other members, not exceeding ten, appointed by the County Governor, with the approval of the County Assembly. The County Executive Committees will be headed by the County Governor assisted by the Deputy County Governor. The County Governor shall be elected by majority votes of the voters registered in a county, while the Deputy County Governor will be nominated by the County Governor prior to the election. The County Assembly, the legislative arm of the county government, will consist of ward representatives and other members nominated by political parties in proportions that will ensure gender balance and representation of marginalized groups. The County Assembly will be headed by a Speaker, elected by the County Assembly from among persons who are not members of the County Assembly.

The functions of the County Assembly include: a) approval of plans and policies and enacting laws that are necessary for the governance of the counties, b) exercise oversight over the County Executive Committee, and c) ensuring that the interests of the voters are well represented in the County Government. The County Executive Committees, on the other hand, will be responsible for the implementation of policies and laws approved by the County Assembly, as well as the management and coordination of the county administration and departments. The county administration and departments will be in-charge of the day-to-day operations of the County Government, and will be supervised by the County Executive Committees.

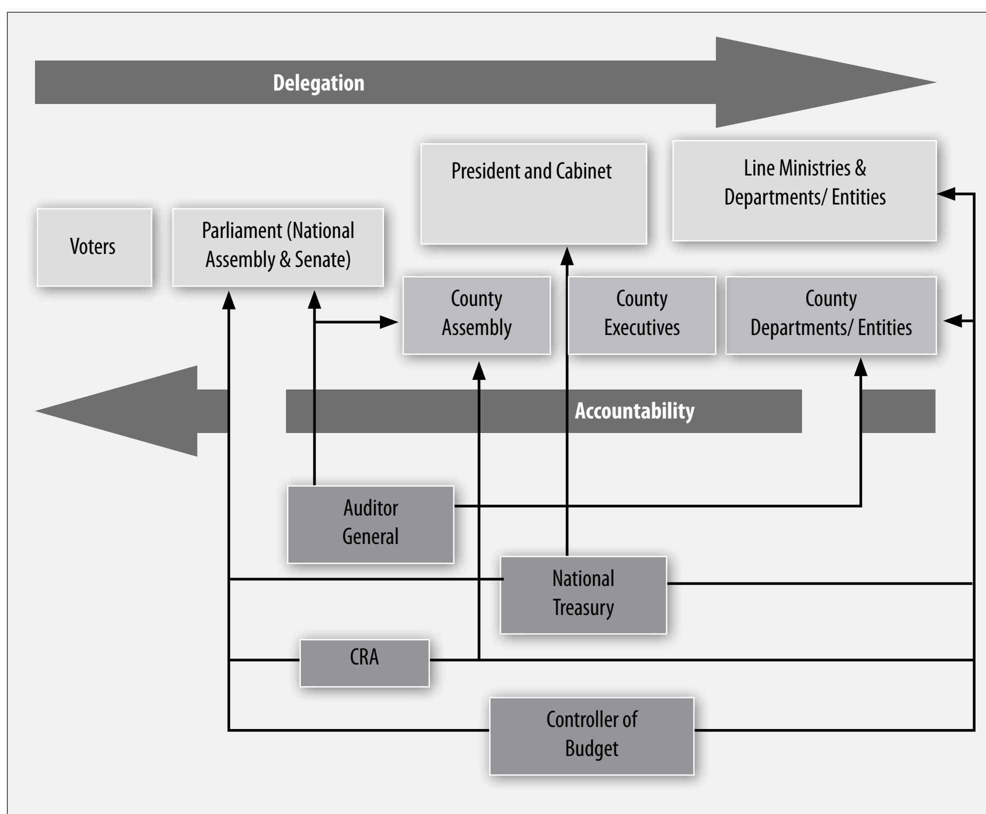
As depicted in Figure 1, the county governments are substantially outside the direct control of the national government. They are, however, subject to national policies and laws approved by Parliament. The line ministries and departments of the national government will have no supervisory powers over the county governments. This is a departure from the past practice, with regard to intergovernmental relations, where the national government, through the Ministry of Local Government, had supervisory powers over the local authorities. This reflects a considerable shift toward political and administrative control by locally elected officials.

Of the three arms of the national government – the Parliament, the National Executive and the Judiciary, only Parliament and the Judiciary will have some oversight and/or arbitration responsibility over the county governments. Parliament shall exercise control over the county governments directly or through independent constitutional offices such as the Controller of Budget and Auditor-General. The national government comprises of the

Parliament, the National Executive and the Judiciary. The powers of the National Executive will be exercised by the Cabinet, which comprises of the President, the Deputy President, the Attorney General and Cabinet Secretaries. The Cabinet will supervise the national government line ministries and departments. Members of the Cabinet will not be members of Parliament. Another major departure from the past is the establishment of a bicameral Parliament, comprising of the National Assembly and the Senate. The National Assembly will represent the interests of the constituencies and special interests; while the Senate will represent the interests of the counties. Whereas the Constitution empowers the National Assembly to enact legislation and exercise oversight over national revenue and expenditure, approval of Bills relating to the counties and oversight of county budgets has to be done jointly with the Senate.

The Constitution introduces new institutions that will bring about changes in economic management as well as political and administration structures. The following section analyses the implication of these institutional changes within the new devolution framework.

Figure 1: Organisational Structure of the Devolved Government



Source: Author's construction based on the Constitution of Kenya, 2010.

2.1 Implication of the Devolution Framework on the Distribution of Functions and Fiscal Responsibilities

A well designed decentralization framework is the one that ensures that, the functions assigned to the sub-national governments are backed by the necessary resources to support their implementation. With regard to the assignment of functions to the county governments, a change that marks a significant departure from the past is the transfer of the management of the agricultural, health and housing services from the national government to the county governments[1] (see Table 1). The national government is only assigned the responsibility over the national policy relating to agricultural, health and housing services; a responsibility that will have minimal financial implication. Ideally, therefore, budgets that were previously allocated to the ministries in charge of these services, less the component for supporting policy coordination, should be transferred to the county governments.

Other services assigned to the county government do not reflect significant departure from the past since, under the old constitution, the local authorities assumed responsibilities for the delivery of these services, anyway. These include services relating to:

- Domestic trade;
- County transport, including street lighting and parking;
- Pre-primary education, village polytechnics and childcare; and
- Control of drugs and pornography.

Table 1: Functions where County Governments are Assigned Significant Responsibility

Functions	Ministry in Charge	Budget 2010/11		Remark
		Service delivery	Policy coordination	
Agriculture	MoA, MoLD, MoFD	30,057	4,126	Policy coordination assigned to national government
Health	MoMS, MoPHS	41,824	13,332	Policy coordination and referral hospitals assigned to national government
Housing	MoH	3,960		
Total		**75,840**		

MoA – Ministry of Agriculture **MoLD** – Ministry of Livestock Development **MoFD** – Ministry of Fisheries Development
MoMS – Ministry of Medical Services **MoPHS** – Ministry of Public Health and Sanitation **MoH** – Ministry of Housing.

Source: RoK, 2010a, Printed Estimates of Recurrent Expenditure, 2010/11; RoK, 2010b, Printed Estimates of Development Expenditure 2010/11; and Constitution of Kenya, 2010.

Article 203 of the public finance chapter of the constitution sets the annual transfer from the national government to the county government at a minimum of 15 per cent of the national revenue based on the most recent audited accounts. In the national budget for the financial year 2010/11, projected total revenue was Ksh. 688.5 billion. If 15 per cent of this was to be

1. Fourth Schedule, Constitution of Kenya, 2010.

transferred to the county governments, a total of Ksh. 103.3 billion would be available for transfer to the county governments (see Table 2).

Table 2: Proposed Minimum Grant Transfers to County Government to Match the Functions Assigned to the Counties

	Ksh. Billions (2010/11)
Revenues available for county governments (15% of national revenue)[2]	103.3
Expenses in respect of agricultural, health and housing services transferred to county governments	75.8
Balance	27.5

Source: RoK, 2010a, Printed Estimates of Recurrent Expenditure, 2010/11; RoK, 2010b, Printed Estimates of Development Expenditure 2010/11; and Constitution of Kenya, 2010.

It should be noted that, the estimated expenses, presented in Table 2, do not include the cost of administering the county assemblies and executives as well as the county level bureaucracy. These expenses, including other services devolved to the county government, such as domestic trade services, pre-primary education, village polytechnics and county transport, as well as services delivered jointly by the national government and county governments, will have to be financed from the balance of Ksh. 27.5 billion[3]. Evidence shows that local governments' administration costs averaged 30 per cent of the overall budgets for the local governments (RoK, 2010c). Assuming, therefore, that administration costs for county governments will average 30 per cent of the total budget, then the transfers to county government, at 15 per cent of the national revenues, seem to match the responsibilities assigned to the sub-national governments. At the proposed level of grant transfer to the county, it is clear that there is no scope to retain the staff of the provincial administration to operate alongside the county administration. The option available to the Government is to explore ways of absorbing the staff of provincial administration within the county administration. This would require some preparatory work. First, the Government must commence the process of taking stock of skills available within the provincial administration with a view to identifying those that can be absorbed in the county governments. Second, the Government should develop and provide appropriate training to prepare these staff for redeployment in the county governments.

In the initial stages of the implementation of the devolution framework, if guidelines are not provided to the county governments, with regard to allocation of resources, it is plausible that certain critical services that have been devolved to the counties, such as health and agriculture, may be denied adequate funding. This could result in the disruption of service delivery with serious implication on the country's socioeconomic development. Since the funds available for distribution to the county government are finite, and fiscal capacity of the new counties is unknown, at the outset, the criteria for transfers to county governments must incorporate conditions with regard to the minimum that must be spent on decentralised essential services (health, agriculture and housing), as well as administration and capital

2. This figure is based on the 2010/11 projected national revenue.
3. See Table 3 for a list of services that will be delivered jointly by the national and county governments.

projects. This will ensure that the county governments do not overshoot their budgets or disrupt delivery of essential services due to inadequate funding.

Table 3: Shared Responsibilities

Shared Functions	Expenditure Vote
Economic Policy and Planning, including stats	MoSFPND&V2030, MoF
Energy	MoEne
Tourism	MoTOUR
Public Works	MoPW
Sports	MoYAS (Sports)
Environment	MoE&MR, MoFW
Land management	MoL
Casinos & betting, national monuments, cultural activities, Public entertainment and amenities	MoSFNH&C, OVP&MoHA(Casinos & Betting)
disaster Management and fire fighting	MoSFSP, MoDNK&OAL
Water resources and international waters; Water and sanitation	MoWI (WRMA, WSRB, Hqs, flood control, NWCP)

MoSFPND&V2030 – Ministry of State for Planning and National Development and Vision 2030; **MoEne** – Ministry of Energy; **MoTOUR** – Ministry of Tourism; **MoPW** – Ministry of Public Works; **MoYAS** – Ministry of Youth and Sports; **MoE&MR** – Ministry of Environment and Mineral Resources; **MoL** – Ministry of Lands; **MoSFNH&C** – Ministry of State for National Heritage and Culture; **OVP&MoHA** – Office of the Vice President and Ministry of Home Affairs; **MoSFSP** – Ministry of State for Special Programmes ; **MoDNK&OAL** – Ministry of Development of Northern Kenya and Other Arid Lands; **MoWI** – Ministry of Water and Irrigation.

Source: Authors construction based of Fourth Schedule of the Constitution of Kenya, 2010.

2.2 Public Finance Management Framework

The Constitution of Kenya 2010 introduces significant changes in the public finance management framework. First, it creates new institutions with varying powers and responsibilities over the public finances management, at the national and sub-national level. For example, Article 215 establishes the **Commission on Revenue Allocation (CRA)**, with the responsibility to make recommendations on the criteria for equitable sharing of national revenue and other matters relating to financial management by county governments. Other constitutional offices established under chapter 12 of the constitution, with implications on the decentralised framework of governance include: a)the **Controller of Budget (CoB)** to oversee the implementation of the national and county budgets by authorizing withdrawals from public funds; b) **Auditor-General** to audit the accounts of all entities funded from public funds, including national and county governments; c) **Salaries and Remuneration Commission** to regularly review and set remuneration and benefits of all State officers and public officers within the national and county governments.

Second, the Constitution splits the national budget approval process into two phases. Phase one will entail the division of revenue. Every year, at least two months prior to the commencement of the financial year, two bills – *Division of Revenue Bill*, containing

proposals on the division of revenue between county and national government; and *County Allocation of Revenue Bill*, which sets out proposals on how revenues allocated to county governments will be shared among the counties – shall be presented to Parliament for approval. It should be noted that, the division and allocation of revenue should adhere to the criteria approved by Parliament every five years. Article 217 (7) of the Constitution sets the previous criteria for the division of revenue **Reversionary Position** in the event that the Senate and the National Assembly do not agree on the criteria for division of revenue. Phase two of the budget approval process commences after the division and allocation of national revenues, and involves consideration and approval of estimates of revenue and expenditure of the national government by the National Assembly. Unlike in the past, where revenue and expenditure estimates were prepared and approved simultaneously, under the new Constitution, the revenue estimates will be prepared and approved before the expenditures. The former system, where revenues and expenditures were approved simultaneously, created a perception that revenues were elastic and often created pressure for more revenue, leading to higher deficits. The proposed shift, where revenues will be determined first, imposes a hard budget constraint on expenditures and could help to contain the budget deficits.

Third, the constitution clearly separates the ex-ante budget controls from the ex-post budget controls. The Constitution assigns the responsibility over ex-ante budget controls to a new office of the Controller of Budget. The ex-ante control function is, however, restricted to control of expenditures through authorization of withdrawals from public funds.[4] Under the old Constitution of Kenya, this role was played by the Controller and Auditor General, who also doubled as the auditor of accounts of public sector institutions. The rationale for creating the office of the Controller of Budget is to ensure compliance with parliamentary authority prior to the commitment of expenditure, removal of the possible conflict of interest (where the Auditor-General audited expenditures which he authorized) and to detect mischief and corruption early.

The Controller of Budget will exercise control over expenditure of national and county governments. This is a new office and will require representation in at least all the counties given it has responsibility over the national and county government spending. This, therefore, presupposes that there must be adequate budgetary allocation for the office of the Controller of Budget to facilitate the establishment of offices in at least all headquarters of the county governments and for the recruitment of adequate and competent staff to manage those offices. At the outset, therefore, the Government must provide a special budget line for the development and staffing of the office of Controller of Budget. There is also an urgent need to define, in law or regulations, how the powers of the Controller of Budget are to be exercised. For example, the laws and regulations should define the thresholds of approval, the process of approving expenditures as well as the mechanisms for resolving disputes between the Controller of Budget and other State offices.

The Government must also guard against expansion of the mandate of the Controller of Budget beyond approval of withdrawals. It has been argued that the scope of work for the Controller of Budget, as set out in the *Controller of Budget Bill*, should be expanded to

4. Article 228 (4) of the Constitution of Kenya, 2010.

include internal controls. It is further argued that Article 228 (6) of the Constitution suggests that the functions of the CoB were not restricted to approving withdrawals from established public funds, but could include controls over other aspects of budget implementation internal controls. If this had been the intention, the Constitution ought to have been explicit. Article 225 of the Constitution indicates that financial controls, other than control over withdrawals and audit, are to be exercised through the **National Treasury**. If the role of the Controller of Budget is expanded to include internal controls, confusion and overlap of roles may occur.

With regard to the ex-post controls, the Constitution sets up a **'single chief' model** of the Supreme Audit Institution, as opposed to the collegial and judicial models. Ex-post audit function is to be directed by a single chief official, the Auditor-General. The Auditor-General's relationship with Parliament and County Assemblies is a reporting one. The office of the Auditor-General will rely on the national and county legislatures to enforce its recommendations. The legislatures are, therefore, very central to the success of this model of overseeing ex-post controls. Where the legislatures are weak, the model is ineffective and prone to political challenges. There are three key political challenges that ought to be addressed in order to ensure the success of the Auditor-General's office. First, there is need to protect the independence of the office. Although the opportunities for the Executive influence in the appointment of the Auditor-General has been minimized by involving Parliament in the appointment, fixing the term and providing security of tenure for the office, the office has not been granted financial autonomy. The National Executive will exercise control over the Auditor-General's budget, and hence influence what gets audited and reported as well as the scope of audit work. The office should be granted more financial autonomy through the proposed 'Public Accounts and Audit Law.[5]

Second, there is need to enhance the capacity of the office to impose its recommendations on the National and County Executive. Evidence from the past political dispensation shows that political impunity got in the way of implementation of the recommendations of the office. As a result, audit recommendations were either delayed or ignored and offending officials were seldom sanctioned.

Third, although Article 201 underscores the importance of public participation and transparency in the management of public finance, these provisions have not been entrenched in the process of audit of public finances. For example, the channels of communication between the Auditor-General's office and the legislature, Civil Society Organisations, media and the public have not been well defined. Through Parliamentary Standing Orders or an Act of Parliament, the legislature must provide for opportunities for non-legislative actors to present evidence as provided for in Article 201. In addition, the legislature must specify: a) the scope of audit reports and modalities for reporting to the State and non-state actors; b) the process of considering audit reports in parliament; and c) the regularity of follow up meetings, which should be open to the media and the public.

5. Fifth Schedule of the Constitution of Kenya, 2010 provides for the enactment of the Public Accounts and Audit Law by 2014.

2.3 Implication on Macroeconomic Management

Key objectives of the Public Sector are primarily: (i) **macroeconomic Stabilization;** (ii) **equitable income distribution; and** (iii) **resource allocation where markets fail** (Musgrave, 1959). Decentralisation theories suggest that, for countries to attain the most efficient outcomes from decentralization, the first two objectives should be assigned to central government, while the latter objective should be assigned to the sub-national governments (Oates, 1972). There are several arguments provided to support this assignment of public function between central and sub-national governments. Sub-national economies are small and open and, therefore, assigning them the responsibility to stabilize markets would be ineffective. Excessive decentralisation also reduces the central government's control over a significant share of taxes and expenditure. This effectively diminishes the central government's ability to influence macroeconomic outcome. Notwithstanding the limitations of sub-national governments in delivering on the first two objectives of the public sector, the activities of the local government may have implications on the macroeconomic stability of the national economy. For example, if allowed to engage in uncoordinated borrowing to support expansionary fiscal policies, sub-national governments could trigger inflationary pressures, and thus, compromise the national policy objectives.

With regard to income distribution, local level redistribution of income through progressive tax, subsidies and direct provision of goods and services, asset redistribution (in favour of the poor) could trigger demographic shifts. Such demographic shifts would result in revenue loss whilst simultaneously increasing expenditure. As a result, local government objectives would, therefore, be untenable. Hence, this role is best assigned to the central government and not the sub-national units.

Decentralization is said to improve governance of public service delivery by improving the efficiency of resource allocation — **allocative efficiency** or improving **production efficiency** by enhancing accountability, reducing corruption and improving cost recovery. Allocative efficiency is determined primarily by two factors: (i) the degree of involvement by local communities, and (ii) the capacity for the beneficiaries to hold politicians and those in charge of implementation accountable.

The devolution framework, as set out in chapter eleven and other related sections of the Constitution, adheres largely to international best practices. For example, responsibility over national planning, monetary policies, redistribution of resources and macroeconomic management has been assigned to the national government.[6] Services with national scope such as foreign affairs and international trade have been assigned to the national government. Activities with significant externalities such as management of environment and natural resources (e.g., international water and water resources) have been assigned to national government. Services whose central management offers significant economies of scale benefits, such as defence, have also been assigned to the national government. Many functions, however, cannot be neatly categorized as local or national, but require

6. See Fourth Schedule of the Constitution of Kenya, 2010.

a combination of centralization and decentralisation (Ahmad et al., 1997: 25). This may explain why the county and national governments will share responsibility over many services under the new constitutional dispensation.[7]

2.4 Assignment of Revenue

One key consideration in the design of devolution framework is the assignment of revenue responsibility to the national and county governments. Article 209 assigns the national government responsibility over most of the taxes with sizeable tax bases. These include: income tax, value added tax, customs duties, and excise tax. The four taxes make up approximately 83 per cent of the national revenue collected by the national government.[8] The county governments have been assigned responsibility over taxes with immobile and narrow bases, such as property and entertainment taxes. In addition, county governments have also been empowered to raise revenue by imposing charges on services provided at the local level. These sources of revenue offer little scope for counties to grow their revenue. This suggests that counties will rely heavily on the central government for financing the bulk of their budgets. Centralisation of revenue from these taxes can be justified on the grounds of the need to retain the ability to stabilize the economy, redistribution of national resources, highly differential tax bases across the counties, mobility of tax base, and the need to take advantage of the potential economies of scale in tax administration. The Kenya Revenue Authority (KRA) has over the years developed the competence and capacity to collect tax efficiently, and if allowed to collect taxes on an agency basis, could realize more tax revenue than if the counties governments were to collect taxes directly. The KRA should, therefore, be allowed to collect taxes on behalf of the counties on an agency basis, particularly in the initial stages of the implementation of the devolution framework when counties are unlikely to have the requisite capacity to collect taxes and fees.

2.5 Location of County Headquarters

Consensus on the location of county headquarters has remained elusive in a number of counties. Whereas the first schedule of the Constitution specifies the 47 counties to be established in Kenya, it does not specify the location of the county headquarters and neither does it provide guidelines on how county headquarters will be determined. County headquarters are important because these are the centres where county governments will sit. The Ministry of Public Works, which has been tasked to develop the necessary infrastructure for county governments, has not made much progress in rolling out the necessary infrastructure because there has not been consensus on the location of headquarters for some of the counties. Some of the counties where decision on the location of the county headquarters has remained elusive include Kiambu, Laikipia, Taita Taveta, Baringo, Elgeyo/Marakwet, Murang'a, Kilifi and others. This can be attributed primarily to two factors. The first one is the lack of clear criterion and guidelines on the process of choosing county headquarters. Second, the debate on the location of county headquarters has been penetrated

7. See Table 3 for a list of services where responsibility is shared between the national and county governments.
8. Based on the National Budget for the fiscal year 2010/11 (See RoK, 2010, Estimates of Revenue, 2010/11).

by individuals and groups with vested interests that seek to influence the decisions in favour of narrow partisan interests. There is a danger that some counties may be located in areas where the necessary infrastructure and amenities are non-existent, and the topography might impose high cost for infrastructure development.

The Government should, through legislation, provide the criteria and guidelines on the process of determining the county headquarters. Some of the criteria for choosing a location for county headquarters should include: (i) availability of basic amenities such as electricity, water, transport and communication networks; (ii) cost of construction and renovation of available infrastructure; (iii) favourable topography and availability of land for expansion; (iv) availability of some infrastructure e.g., public offices; (v) social impact arising from the need to resettle some households in order to acquire land for expansion; and (v) favourable weather and environment.

3 Devolution and Inequalities

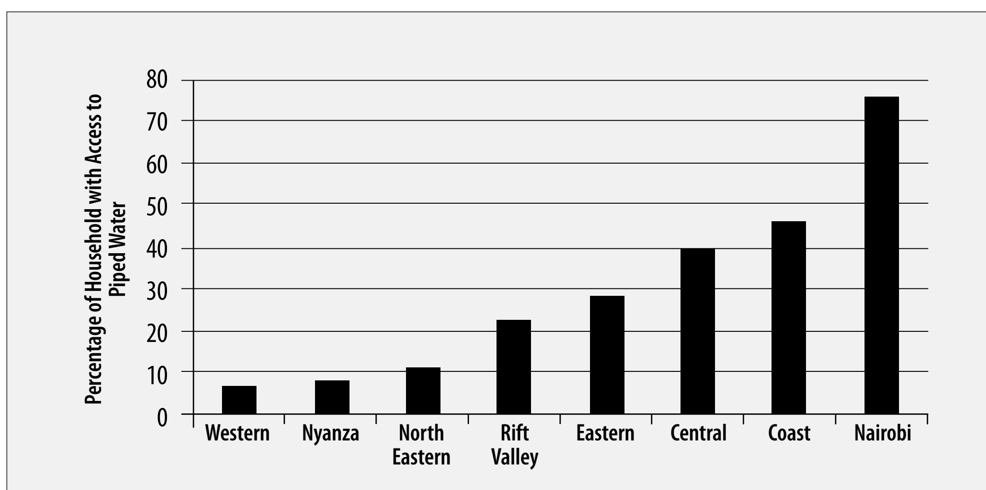
A major challenge that the country will face in implementing devolution is how to narrow the regional disparities in income, resource endowments, and economic development. Indeed, a key objective of devolution, provided for in Article 174 (g), is that of ensuring equitable sharing of national and local resources throughout Kenya. Vision 2030 also identifies regional inequalities as a key policy challenge (RoK, 2007).

Whereas democratic decentralization usually helps to reduce poverty that arises from inequalities between regions, it is less successful in reducing poverty that arises from inequalities within regions. This is so because it tends to provide remote regions that have suffered from under-representation, with more voice and resources, especially if the system includes mechanisms for redistributing resources from the prosperous to deprived areas. On the other hand, local elites may capture most of the power and benefits that decentralization provides, thus reducing the opportunities for improving the welfare of the poor (non-elite) (Manor, 2003 as cited by UNDP, 2003). The extent of the capture of local government by local elites depends on levels of social and economic inequality within society, prevailing political culture and political capabilities of the poor. In such cases, Rao and Walton (2004) as cited in UNDP (2003) argue that, top-down approaches, that are **rules and rights based**, may be the most effective. Alternatively, decision makers and development practitioners could support indirect strategies that encourage poor people to develop political capabilities. Political capabilities of the poor can be developed in three ways by: (i) the State (policy makers and politicians) engaging directly with organizations of the poor, (ii) lobbying, negotiating and exerting political pressure on the State for pro-poor policy outcome, and (iii) third party alliances with organizations of the non-poor. The Constitution entrenches the requirement for the government to involve citizens in the planning, implementation and oversight of public service delivery. By operationalising the constitutional provisions for public participation in service delivery, the risks capture of county government by local elites can be minimized.

3.1 The Challenge of Regional Inequalities

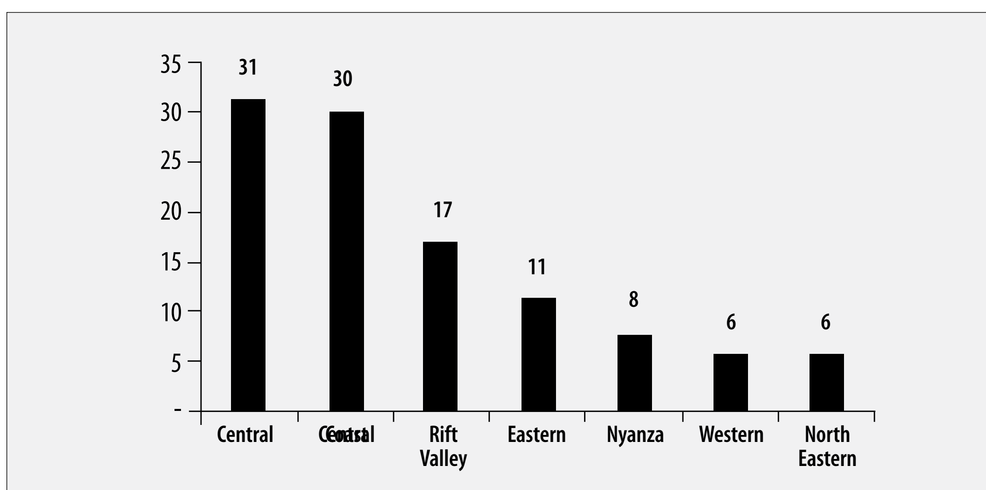
Evidence shows that access to public services such as healthcare, education, transport, water supply, electricity, among others, has direct impact on the welfare and economic development of a society. Further, regional disparities in quality and quantity of public services delivered may lead to disparities in socioeconomic wellbeing among regions (Aschauer, 1989; Calderon and Servin, 2008; Khandker *et al*., 2009a; Khandker *et al*., 2009b; World Bank, 2009). In Kenya, there are significant regional disparities in access to essential services such as water, electricity and others (Figures 2 and 3). As a result of these disparities, there are notable regional variances in socioeconomic outcomes. For example, Western and Nyanza provinces have relatively poor access to safe drinking water. Consequently, they also have worse-off health outcomes, registering relatively higher prevalence of diseases associated with unsafe drinking water such as diarrhoea and intestinal worm infestation.

Figure 2: Regional Disparities in Access to Piped Water by Provinces



Source: Kenya National Bureau of Statistics (KNBS), 2010. The Kenya Population and Housing Census, 2009.

Figure 3: Proportion of Households with Access to Electricity, 2009



Source: Kenya National Bureau of Statistics (KNBS), 2010. The Kenya Population and Housing Census, 2009.

Generally, regions with low population density and vast geographic coverage, such as North Eastern province, parts of Coast province and the North Rift, tend to have poor access to essential infrastructure services, such as roads and electricity. With regard to education services, Kenya's Pupil-teacher ratios (PTR) at both the primary and secondary levels compares very well to other countries in the region (RoK, 2010c). There are, however, significant regional disparities in the distribution of education infrastructure and the pupil-teacher ratio across the country (Table 4). For example, Coast and North Eastern provinces, covering more expanse geographic territories, have fewer Early Childhood Development Centres (ECD), secondary and primary schools than Central, Nyanza and Western provinces, with relatively smaller land areas (see Table 4). This means that pupils in Coast and North

Eastern provinces have to walk longer distances to get to school and this could act as a deterrent to school attendance. The PTR and class sizes are indicative of the efficiency levels in the utilization of financial and human resources and quality of service available in the education sector by region.

Table 4: Distribution of Educational Institutions by Provinces, 2007

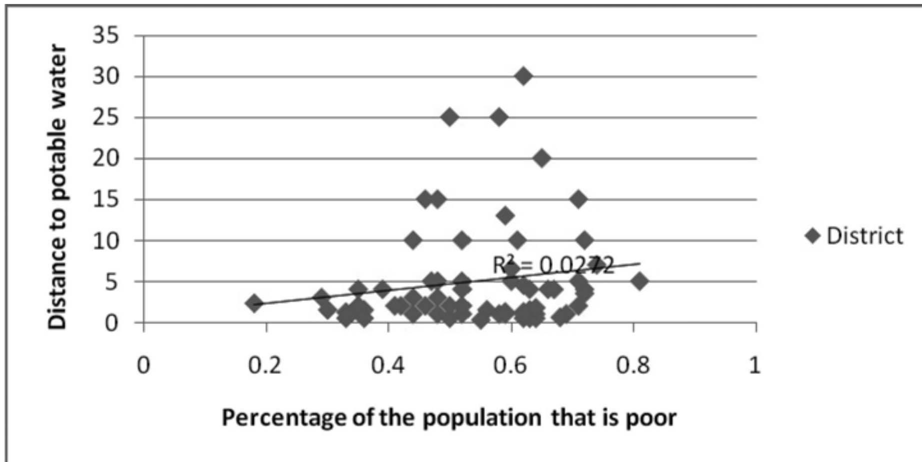
Province	ECD	Primary	Land Area Sq. KM	Primary - PTR	Secondary - PTR	Pop Density Per Sq KM	Pop per Pri Sch	Pop per ECD Sch
Coast	3,279	1,698	82,816	53	24	40	1,931	1,000
Central	4,421	3,189	13,220	39	21	331	1,373	990
Eastern	6,667	5,028	153,473	39	22	38	1,158	873
Nairobi	2,619	1,235	696	48	17	4,033	2,273	1,072
R. Valley	9,492	7,165	182,539	43	23	48	1,218	920
Western	4,314	2,566	8,264	53	24	526	1,693	1,007
Nyanza	6,098	4,818	12,547	45	23	403	1,048	828
N.Eastern	372	405	128124	63	22	9	2,732	2,974
National	**37,263**	**26,104**	**581,679**	**43**	**18**	**61**	**1,361**	**953**

Source: KNBS, 2007, KIHBS; MoE, Education Management Information System (EMIS), 2009

Significant regional variances are also notable in the access to other essential services such as health and agricultural services. For example, evidence shows that there is skewed distribution of health facilities across the districts (RoK, 2010d).

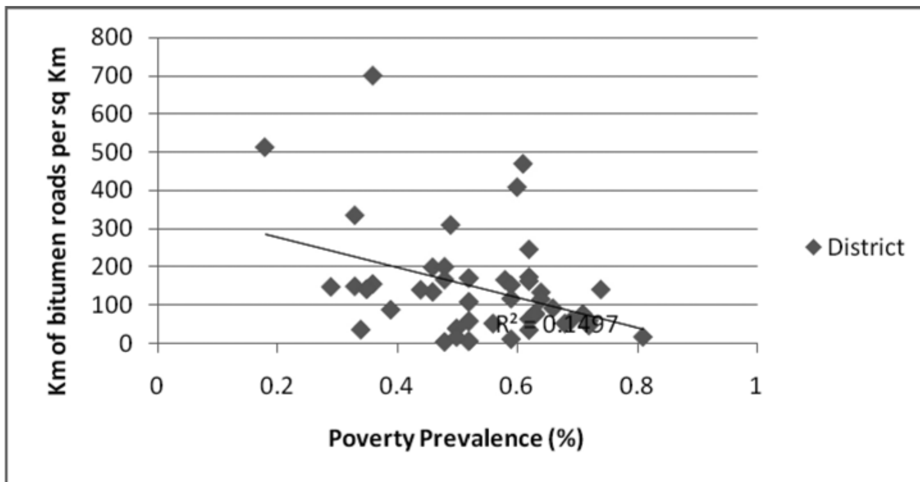
In Kenya, data available confirms that there is a strong link between volume and quality of infrastructure stocks and economic growth and poverty prevalence. For example, districts with better access to potable water and higher density of bitumen roads have lower poverty prevalence (Figures 4 and 5). Therefore, the disparities in access to essential services, if not addressed, may hinder national economic growth and threaten national cohesion and peace. This remains a key challenge even as the country embarks on the implementation of the devolution framework of governance as set out in chapter elen of the Constitution of Kenya 2010.

Figure 4: Relationship between Access to Potable Water and Poverty Prevalence



Source: Author's construction based on KNBS, 2007 (KIBHS 2005/6) and KNBS, 2010. The Population and Housing Census, 2009.

Figure 5: Correlation between Density of Bitumen Roads and Poverty



Source: Author's construction based on KNBS, 2007 (KIBHS 2005/6) and The Population and Housing Census 2009.

Generally, public investment in the delivery of essential public goods and services in Kenya seems to lay emphasis on distributing public funds to all regions rather than aggregate growth impact of such investment. For example, decentralized funds such as Constituency Development Fund (CDF), Local Authority Transfer Fund (LATF), Free Primary Education (FPE) fund, Road Maintenance Levy Fund (RMLF) and Rural Electrification Fund (REPLF) are distributed equitably across districts on a per capita basis. As a result, decentralized funds are spread too thinly across districts and constituencies. In the end, some districts get allocations that have no real impact on the economic growth or the welfare of the local population. Besides, due to budget constraints, most districts and constituencies allocate resources to low priority, but less expensive projects at the expense of higher priority but more expensive

projects. To avoid this inefficient allocation of public funds, investment decisions must be based on sound economic rationale and not regional equalization criteria.

Evidence shows that decentralized funds, even though some of them are shared on the basis of population and other poverty profiles and socioeconomic indicators, the ASAL districts that are vast get lower allocation per square kilometre (Tables 5 and 6). These resources, even though shared equitably across the districts and various sectors within the district, may yield different results for different regions, depending on where and how they are spent. First, regions that are different in many aspects may be tempted to replicate development activities. Second, regions with vast geographic coverage (e.g., ASAL regions in north eastern province, north rift and coast province) tend to spread their resources too thinly in a bid to cover all parts of the districts. The end result is low productivity. Given this skewed distribution of development finance that tends to favour the leading regions, a few public policy questions emerge. Is this trend necessarily bad? Would increased investment in infrastructure and public services in the lagging areas automatically lead to a higher growth and less income inequality? The policy responses are not clear-cut and further studies may be required in order determine how public investment should be structured in order to reduce regional inequalities.

Table 5: Relationship between Land Area and CDF Allocation for Selected Districts, 2003/04 – 2007/08

	District	Land Area (Sq. KM)	CDF Allocation to Roads in KSh (2003/04 - 2007/08)	CDF Allocation in KSh. per Sq Km (2003/04 - 2007/08)
Urban District	Nairobi	696	1,071,090,697	1,538,923
	Mombasa	230	524,583,541	2,280,798
	Kisumu	919	443,264,225	482,333
ASAL District	Tana River	38,466	387,922,096	10,085
	Taita Taveta	17,128	568,869,754	33,213
	Moyale	9,390	140,114,846	14,922
	Marsabit	61,296	356,820,224	5,821
	Garissa	34,874	134,518,543	3,857
	Wajir	56,698	599,979,513	10,582
	Mandera	26,474	457,766,470	17,291
	Turkana	68,388	495,619,780	7,247
	Samburu	21,127	280,149,236	13,260

Source: KNBS, 2009. Economic Survey, 2009 and the Constituencies Development Fund Board (CDFB)

Table 6 Cumulative Public Spending on Rural Electrification Program (REP) per Sq KM and Land Area by District, 2003/04 – 2008/09

	District	Land Area (Sq. KM)	Spending on REP per Sq. KM (KSh.), 2003/04 – 2008/09
Urban Districts	Nairobi	696	182,644
	Mombasa	230	296,087
	Kisumu	919	202,078
High Potential Rural Areas	Embu	729	215,185
	Murang'a	930	288,710
	Maragua	868	332,081
	Vihiga	563	341,741
	Kuria	581	228,399
	Gucha	698	363,037
	Rachuonyo	945	192,868
	Nyamira (Kisii North)	896	583,036
	Kisii Central	649	618,336
ASAL Districts	Tana River	38,466	9,197
	Marsabit	61,296	1,866
	Isiolo	25,698	6,780
	Wajir	56,698	4,292
	Garissa	44,952	3,869
	Turkana	68,388	2,516
	Samburu	21,127	9,275

Source: Rural Electrification Authority (REA) and KNBS, 2009. Economic Survey, 2009

Counties will face three problems of financing development programmes within the devolved framework of governance. First, there is the risk of counties adopting similar templates for development of the sub-national regions without due regard to the unique characteristics of the local regions. Second, the national and county governments will face the challenge of narrowing the regional inequalities that already exist. Third, the country will face the challenge of balancing the need to finance development programmes across all counties and avoiding the temptation to spread available resources thinly across many sectors (or projects) and across the vast ASAL regions.

If the policy objective is to motivate higher growth levels in the lagging regions (e.g., ASALs), then the solution may not lie in distributing funds for development programmes thinly to the lagging regions. *The World Development Report* of 2009 cautions countries that, any attempts to spread out economic activity in pursuit of balanced economic growth, could discourage economic growth (World Bank, 2009). The report, however, observes that development can still be inclusive even if resources are not spread widely, in that population

located far from economic opportunity can benefit from concentration of wealth in a few places. For this to happen, the report recommends a mix of policies. For example, with regard to lagging regions within nations, especially regions that are sparsely populated, the report advises countries to desist from spreading expensive infrastructure into such regions or to give firms incentives to relocate to such places. Instead, countries should focus on the provision of basic services, such as education and healthcare at strategic locations and encourage population to move to such locations. This would reduce the cost of providing these basic services. Rwanda's '*umudugudu*' programme offers useful lessons for Kenya (Republic of Rwanda - RoR, 2007). The programme aims at resettling the population of Rwanda in villages, and by so doing release more arable land for farming. The essential infrastructure such as roads, water and sanitation, electricity and others are then provided at the village. As a result, it is cheaper to provide the services in the villages.

In order to discourage a common approach to development across the counties, the national government could incorporate conditions in some of the transfers (e.g., the equilization fund) that target to promote the financing of specific policy priorities in selected counties.
In circumstances where the lagging areas are densely populated, government policies should focus on encouraging mobility and facilitating access to markets by providing connective infrastructure. The connective infrastructure would facilitate movement of labour and products to and from the markets.

4 The challenge of Infrastructure and Capacity Gaps

Evidence shows that, Kenya may not have the necessary capacity and infrastructure to permit the administration of programs in ways that make it possible to achieve the expected efficiency gains from decentralization (RoK, 2010c). Capacity for managing decentralized funds has been noted to be lacking or weak in most regions of Kenya (RoK, 2010c; Kibua and Mwabu, 2008). For example, most local authorities in Kenya do not have the capacity to maintain up-to-date books of accounts. In addition, the current system of local governments is characterized by weak accounting and reporting. In a survey of 15 local governments, it was found that none of the local governments maintained all the books of accounts internally (Ministry of Local Government, 2007). Most of them contracted third parties to prepare their accounts. Due to the weak capacity for preparing books of accounts and other management accounts, the quality of the reports is low. In most cases, the reports, in particular the abstract of accounts, are prepared to meet the requirements for the Local Authorities Transfer Fund (LATF). Majority of the local authorities are not aware of the International Accounting Standards (IAS), International Public Sector Accounting Standards (IPSAS) and the International Financial Reporting Standards (IFRS). Evidence also shows that, although there has been an improvement in the number of local governments audited, audit of the local governments' accounts has been slow, normally reflecting a delay of three to four years. Other decentralized funds, such as the Constituencies Development Fund (CDF) and Economic Stimulus Programme (ESP) fund face similar challenges. To encourage county governments to submit accurate reports on time, fiscal decentralization regulations should include provisions that make disbursement of a portion of the grants contingent upon submission of accurate reports. This would discourage county governments from submitting inaccurate reports just to comply with the law.

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. There is need to ensure that the necessary administrative capacity, for example, exists prior to shifting fiscal responsibilities downwards. Where such capacity does not exist, it must be established, a process which requires time and resources.

There is a risk that grants may suffer the 'flypaper effect', where grant money 'sticks where it first lands' (i.e., recipients tend to spend it rather than pass it on to taxpayers). This normally happens when there are restrictions on how much a sub-national government should spend on administration. In addition, heavy reliance on central government financing may also increase bailout expectations that undermine fiscal discipline.

A recent public expenditure review revealed that, lack of an effective monitoring and evaluation framework for LAFT limited the capacity of the Government to effectively monitor the use of the fund (RoR, 2010c). There is need for an improved national framework for

evaluation and coordination of devolution framework. The responsibility of evaluation and coordination of devolution framework should be assigned to a central body reporting to the Senate, preferably the National Treasury, since it has the competence and institutional capacity to coordinate the operations of county governments. This will contribute significantly to the reinforcement of decentralization and local democratic deliberation by coordinating actions and resources, facilitating sharing of information and lessons learnt across boundaries and backstopping the local units (especially those with limited capacity). Success of most public functions requires cooperation between levels of government and coordination of their activities. A fiscally decentralized system offers opportunities for greater participation of citizens in monitoring and evaluation.

5 Intergovernmental Fiscal Relations

5.1 Sub-national Borrowing and Macroeconomic Stability

Evidence shows that, where sub-national governments are allowed to borrow without restriction, there is a danger that decentralization may not yield the desired outcome since inefficiency may set in and debt levels could grow to unsustainable levels (Ter-Minassian and Craig, 1997). Substantial deficits of sub-national governments, particularly the larger sub-national units, if financed from foreign finance or by private domestic finance, can undermine the conduct of monetary policy and can crowd out the private sector. Sub-national governments' deficits can adversely affect macroeconomic stability and lead to intergenerational inequity in the longer term.

Evidence suggests that, sub-national governments that have borrowing autonomy tend to be dependent on grants (Rodden, 2002). In Kenya, fiscal indiscipline at the sub-national level, and related excessive borrowing and punitive penalties on debt arrears, has resulted in unsustainable debt levels at the sub-national level. As Table 7 shows, outstanding statutory debt increase accounted for 60 per cent of total local governments' outstanding debt in 2008, up from 51 per cent in 2007. The four largest local governments — Nairobi City, Mombasa Municipal Council, Kisumu Municipal Council and Nakuru Municipal Council — account for a significant proportion of the outstanding debt, estimated at 73.6 per cent of total outstanding debt in 2007/08.

Table 7. Profile of Local Governments' Debt by Type of Debt, June 2004 – June 2008 (KSh Millions)

Debt Type	2004	2005	2006	2007	2008
KRA	243	269	285	192	196
NSSF	364	417	518	1,628	1,530
NHIF	348	322	309	485	341
Superannuation Fund	1,996	1,990	2,325	2,233	4,059
Provident Fund	615	1,663	1,663	2,022	2,004
Total Statutory Debt	**3,566**	**4,661**	**5,100**	**6,560**	**8,130**
SACCO	382	837	824	379	685
Salary Arrears	1,195	920	1,367	1,725	1,424
Other Debts	8,290	3,805	3,267	4,276	3,317
Total	**13,433**	**10,223**	**10,558**	**12,940**	**13,554**

Source: Republic of Kenya (RoK), 2008. LATF Annual Report, 2007/08; p 18

Given that the Constitution assigned sub-national governments taxes with limited bases and has also set limits for intergovernmental fiscal transfers to the counties, sub-national borrowing, if not well regulated, could easily get out of control. To ensure that fiscal indiscipline does not continue under the new constitutional dispensation, it is important that, at the outset, appropriate safeguard measures are put in place. Ter-Minassian and Craig (1997) identify four approaches used in the management of **sub-national borrowing**. In the first approach, no legal restrictions are imposed on the sub-national units with respect to borrowing. Borrowing by sub-national governments is restricted by the market forces. The second approach is the cooperative approach, which involves negotiation between the central and sub-national governments to arrive at negotiated limits for sub-national borrowing. The third approach is the rules-based approach, which entails setting of rules to determine the borrowing thresholds. These could be set in statutes or administratively. The fourth approach is the direct centralized control through annual limits or authorization. According to Oates (1972), sub-national borrowing yields better result where there is coordination between central and sub-national government.

Ideally, countries should not use 'template approach' that seeks to standardize the management of the sub-national borrowing. Sub-national units that demonstrate the ability to put borrowed funds to good use and repay their debts should be given more flexibility to determine the borrowing thresholds. This would motivate sub-national governments to exercise prudence in the management of sub-national debt. On the other hand, borrowing by local governments that have limited fiscal capacity for revenue mobilization, and to repay loans, should be subjected to strict central government control.

Article 212 of the Constitution of Kenya 2010 empowers the legislature to exercise control over sub-national governments. From experience around the world, and from the current Kenya's local government system, it is very clear that the sub-national governments have varying capacities for borrowing and servicing debt. The government should, therefore, consider setting up a sub-national borrowing framework that allows some flexibility and at the same time checks possible fiscal indiscipline. The legislature could set different fiscal rules for different categories of counties. The fiscal rule should be less restrictive to allow policy space to help counties wade out of the effects of an economic shock or depression, but tight enough to discourage creative accounting and fiscal indiscipline. Some flexibility in the sub-national borrowing regulations could help a county government wriggle out of some rough economic times. Even though flexibility could open up the sub-national borrowing regulations to manipulation by politicians, it is important to have some escape clauses that counties could use when faced with economic shocks or depression. A system of rewarding fiscal target achievers and punishing non-achievers could enhance effectiveness of the fiscal rules (Schick, 2003: 17). Those counties that demonstrate ability to maintain fiscal discipline should be allowed more flexibility in managing their debt portfolio. This would require an objective system of measuring performance across county governments. Parliament could consider engaging services of an independent evaluator to review budget actions and highlight actual or potential violation.

Sutherland *et al*. (2005) underscores the importance of enforcement mechanisms that will ensure that the fiscal rules are enforced. The necessary information for measuring

performance must be credible and readily accessible. Counties that consistently fail to meet set fiscal targets should be put under the most stringent sub-national control regime. These enforcement mechanisms can be overseen by the National Treasury or through an intergovernmental committee, comprising of representatives from the national government and the county governments. For example, in Australia, the Australian Loans Council coordinates borrowing by the Federal and the State governments. Care should, however, be exercised to ensure that whatever mechanisms the country adopt for coordinating sub-national borrowing, the national government does not lose control over the macroeconomic environment. In addition, the sub-national borrowing oversight mechanisms should take into account the country's unique circumstances.

A good sub-national borrowing framework should also include debt reporting requirements to ensure up-to-date debt register. These reports should be submitted in Parliament at regular intervals. Indeed, Article 211 of the Constitution empowers Parliament to, through legislation, impose reporting requirements. This law should be put in place as soon as practicable. This law should define the frequency of reporting, the content and format of the report, as well as sanctions for failure to comply with the reporting requirements.

5.2 Management of Intergovernmental Fiscal Transfers

Countries that seek to assign more responsibilities in public service delivery to the sub-national units of governance should ensure that the fiscal powers decentralized to the units are adequate for the purpose of carrying out expanded mandate. If sub-national governments are obligated to provide additional services, or are given the right to legislate in new areas, without receiving sufficient resources from the national government, the result is not real decentralization but rather buck-passing. Well-designed transfer programs can provide a guaranteed level of social services without discouraging sub-national governments' own tax efforts. It is important, therefore, to assess the adequacy of revenues — own revenue and intergovernmental transfers. Tax bases vary significantly across counties. Therefore, the success of decentralization will largely depend on the design of grant transfers from central government. Grant transfers must, therefore, incorporate features for incentivising better performance — through conditions and matching requirements.

The laws and regulations governing intergovernmental fiscal relations should include conditions to incentivize fiscal discipline and better fiscal performance. Local governments could set their own revenue targets below the available capacity since there are no incentives to encourage better revenue collection. Decentralization theory suggests that, central government transfers that have no matching conditions could encourage local governments to be lax in their own revenue collection.

Article 217 of the Constitution of Kenya 2010 offers an opportunity to the legislature to elaborate the criteria for allocating national revenue among counties every five years. At the point of determining the criteria for allocating revenue to the county governments, the legislature should consider including conditions for incentivizing good fiscal performance. Where the law and regulations include matching requirements, the framework for

intergovernmental fiscal transfers should incorporate special measures to ensure that the matching requirement does not exacerbate horizontal inequalities among local governments, by preventing the poorer local governments from accessing the matching grant. Another way of encouraging local governments to collect more revenue is to include some conditions in the **Division of Revenue** criteria that require some degree of matching of county grant from local governments' own source revenue. Presently, the Local Authorities Transfer Fund (LATF) laws and regulations do not require the local governments to match the central government grant or part of it with contributions from own revenue source. Evidence suggests that, the lack of matching conditions in the LATF regulations may be locking the local governments' potential for own revenue collection (RoK, 2010).

There is need to back up the fiscal decentralization and management framework with accountability mechanisms to motivate good fiscal performance and penalize poor fiscal performance through conditional grants. Articles 202 and 204 of the Constitution provide for the transfer of revenue to the county governments, with or without conditions. For conditions on intergovernmental transfers (discussed above) to be effective in incentivizing good performance by sub-national governments, they must be set ex-post (on actual expenditure) as opposed to ex-ante (on planned expenditure). The current LATF regulations on personnel expenses are set ex-ante.[9] As a result, the regulation that is intended to cap local governments' personnel expenses has been rendered redundant and ineffective. Often, local governments underestimate the budget for personnel expenses to meet the LATF conditions. Once the LATF funds are disbursed, the local authorities reallocate funds from other activities to finance their personnel expenses (Oyugi, 2008). As a result, actual expenditure on personnel costs for a number of local governments differ significantly from their planned levels. Based on the experience of several developing countries, International Monetary Fund - IMF (2009) notes that, 'unless a hard budget constraint can be effectively enforced in sub-national governments, ex-ante matching of spending responsibilities with resources does not ensure ex-post adequate maintenance of fiscal discipline.'

9. See Legal Notice No. 22 of 22nd April 2004.

6 Risk to Successful Decentralisation

There is overwhelming evidence that shows that, success of decentralization is dependent on the design and implementation of the decentralization framework (Sharma, 2005; Ter-Minassian, 1997). In implementing decentralization, several obstacles may get in the way. The case of Argentina and Brazil shows that, overzealous and imbalanced approach to fiscal decentralization can produce market distorting effect, where the sub-national governments dominate the union, and destabilize the public sector and economy as a whole. The degree of devolution of spending and revenue-raising responsibilities has significant implications for the central government ability to conduct macroeconomic policies through the budget. For example, expenditure by the sub-national governments can boost aggregate demand and affect the balance of payment unfavourably. Even if the overall level of expenditure is constrained by limits on their taxing and borrowing powers, changes in the composition of their expenditures – for instance in favour of items with relatively large multiplier effect, such as public works or transfers to finance consumption – can boost aggregate demand at a time when the central government is trying to contain it.

The Kenya Constitution 2010 provides some broad guidelines on devolution, with regard to sharing of resources and service responsibility between the national and county government. Article 203 (2) requires that not less than 15 per cent of annual national revenue be assigned to the counties and a further 0.5 per cent be set aside for the Equalization Fund. In addition, Article 202 also provides for transfer of additional revenue to the county governments. Many functions, however, cannot be neatly categorized as local or national, but will require a combination of centralization and decentralization. The exact split of responsibility between the national and county government will only become clear once the implementation of the constitution gets underway. It is, therefore, possible that a mismatch between the resources and responsibility may arise. Even with the explicit proposals on sharing of resources enshrined in the Constitution, political pressures or expectation of efficiency gains may motivate decentralization of spending responsibilities without transferring to the sub-national governments adequate resources to meet these responsibilities. This risk is real in Kenya because of a number of reasons. First, the fourth schedule of the Constitution of Kenya 2010 that attempts to delineate the local and national responsibilities is open to varying interpretations. As a result, sub-national units of government could exceed their authority in the exercise of their political, administrative and fiscal powers. For example, local governments may engage in policy making in areas that have inter-jurisdictional spill-over, such as, environmental protection policy or preventive public health intervention. Such responsibility lies in a higher level of government and not the county governments. Second, Articles 202 and 203 of the Constitution leaves room for the Commission on Revenue Allocation and Parliament to exercise discretion in determining the split of national revenue between the county and the national governments. In such circumstances, large vertical imbalances may result either in favour of national government or in favour of the sub-national governments.

Large vertical imbalances, in favour of the national government, may have some negative effects. First, they may create expectation of gap-filling transfers by the national government to the sub-national governments. Second, they may lead to deficit financing and excessive debt accumulation by the sub-national governments, especially in respect to mandatory statutory payments.

Substantial vertical imbalances in favour of the sub-national governments, on the other hand, may promote excessive spending on functions initially assigned to them through, for example, generous wage increases for their employees. Once the sub-national governments commit to these expenditures, it becomes difficult for them to accommodate within their budgets the additional spending responsibilities that may subsequently be transferred to them.

The quality, volume, frequency and source of local level information determines decentralization outcome. Meaningful participation of households in public service delivery requires informed citizens. Unless the public knows what goods and services are provided by the Government, how well they are provided, who the beneficiaries are, and how much they cost, it cannot demand effective public service delivery. Access to information about actions and performance of the Government is thus critical for the promotion of government accountability. The source of such information is also important. For example, reliance on community leader and local officials for information could undermine the quality and objectivity of information. As a result, communities are unable to effectively play the watchdog role. This, ultimately, weakens the political discipline of local governments. Evidence has also shown that, the media can motivate the Government responsiveness by disseminating information about government action which in turn informs citizens' choices of political leaders (Besley and Burgess, 2002). On the other hand, the media tends to be more objective in its reporting. The media, both print and broadcast, therefore, play an important role as the source of information about government actions and performance in most countries. Besley and Burgess (2002) have actually shown that, local media reporting has a positive correlation with the Government responsiveness to citizens' demands. Obviously, how effectively the media does this job depends on the degree to which they are free, independent and contested. Chapter four of the Constitution, however, offers protection to the media and entrenches freedom of the press. In order to give force to this chapter and guarantee free flow of information, 'the Freedom of the Media' law, must be enacted.[10]

Absence of reliable public accountability mechanisms could jeopardize the successful implementation of decentralization. To ensure both the accountability of elected representatives to citizens and the accountability of bureaucrats to elected representatives, public accountability mechanisms are a prerequisite. A transparent and competitive political process, as well as relevant and credible information, is critical to accountability. This will help to check waste of public funds that characterize the current local government system.
In Kenya, sub-national government jurisdiction is closely aligned to ethnic groupings. Whereas this enhances cooperation and collective action within the sub-national units,

10. The Freedom of the Media law is listed under the fifth schedule of the constitution as one of the laws to be enacted by Parliament.

it certainly limits inter-jurisdictional competition. Where tribal affiliation influences appointments of bureaucrats who serve in the county governments, the end result will be incompetent and probably corrupt administration. Schou and Haug (2005) notes that, the major concerns over decentralization in ethnically diverse societies are that it encourages ethnic identification, accentuates inter-group differences and fosters discrimination against local minorities – all increasing the likelihood of ethnic conflict. Regional parties may also emerge and precipitate ethnic conflict and the drive to secession by mobilizing constituencies on ethnic or geographic grounds. Regional parties may also produce legislation that threatens or isolate other groups in a country (Brancati, 2005).

Schou and Haug (2005) conclude that, decentralization can fulfil conflict-mitigating role only if it meets certain conditions. First, it must broaden popular participation, including minority groups. Second, it must incorporate an efficient bargaining process between all the sub-national groups and the Government. Third, decentralization framework must establish mechanisms for State outreach and control in remote areas. Fourth, the framework must build trust between groups that participate in local governance institutions. Fifth, the intergovernmental fiscal relations framework must facilitate redistribution of resources between regions.

Besides, the degree of devolution, sequencing of decentralization can have important implications for macroeconomic stability and adjustment. It is expected that some county governments will have better capacity to take on the functions assigned to the sub-national units than others. In the transition phase, therefore, the Government must, through legislation, provide for mechanisms for evaluating county governments' capacity to take up assigned responsibilities and signing-off the functions and related finances to the county government.

7 Conclusion

It is very clear that the devolution framework entrenched in the Constitution of Kenya 2010 offers opportunities for the country to address key national challenges, such as high poverty levels, inequalities, corruption and poor service delivery in the public sector. The success of decentralization will be measured on the basis of the country's success in overcoming these challenges. For the country to ensure successful decentralization, several measures should be put in place.

Unnecessary costs must be avoided. For example, governance structures, such as the provincial administration, that have no place under the new constitutional dispensation must be re-engineered or scrapped altogether. An assessment of the revenue and expenditure assignment between the national and county government indicates that, it would not be advisable to retain the provincial administration after the county governments are established. The national government must, therefore, explore ways of redeploying the staff of the provincial administration in the county administration. In order to operationalize the county governments, decisions on the location of county headquarters must be made. There has not been consensus on the location of county headquarters for some counties. This indecision may delay the operationalization of county governments. The national government must, therefore, provide the guidelines for choosing the location of county headquarters.

From the above analysis, it is clear that democratic decentralization has the potential to reduce inequalities. For this to happen, however, effective public participation is critical. In addition, national and county governments must desist from spreading public resources thinly across vast regions and many sectors.

In order to incentivize good performance and investment in national priorities among county governments, the national government should incorporate conditions on grant transfers to counties.

During the formative stages of the implementation of devolution, the national government must set aside sufficient funds for capacity-building of county governments in terms of development of the necessary infrastructure and human resource.

It is clear that there is need to provide an appropriate framework for coordinating and overseeing sub-national borrowing in order to ensure macroeconomic stability. Sub-national governments need to be subjected to hard budget constraints – i.e., comprehensive, transparent and effectively monitored limits of their indebtedness. These limits should be preferably set through standing rules enshrined in law and based on sustainability criteria, relating to the capacity to service the debt with own resources and non-discretionary transfers from the national government. Counties that demonstrate the capacity and discipline in the management of debt, however, should be allowed flexibility to borrow in order to finance development programmes. Mechanism for coordinating sub-national borrowing is essential

in order to ensure macroeconomic stability. The mechanism for coordinating sub-national borrowing could be overseen by the National Treasury or an intergovernmental committee comprising of representative from the national and county governments. The national government should seek an active dialogue with the sub-national governments and their involvement in macroeconomic management. The model of cooperative federalism should be considered.

In implementing the devolution framework set out in chapter eleven of the Constitution, the institutions overseeing its implementation must guard against the risks that could hinder successful decentralization. First, there is need to ensure that there is no mismatch between the resources and service delivery on responsibilities assigned to the county and national governments. Second, to facilitate effective public participation in the oversight of public service delivery, there is need to guaranteed access to quality and relevant information.

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