



**QUARTERLY SERIES:  
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## **Kenya's Devolution Taking Stock One Year On**

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## Abstract

*This concept defines devolution and traces the history and philosophy behind the development of the term from 18<sup>th</sup> century in the United State of America and the United Kingdom through war of independence and abolition of slave trade. The process of conceptualizing devolution further is shaped during the world war and end of cold war which ushered in the ideology differences between the Western capitalists and the Eastern communists. This was a defining moment as the western capitalists introduced social welfare to counter communism. The brief also looks into post-independence period and what informed countries that devolved their governance system. Finally, it gives a historical background of Kenya's struggle to change its constitution, the challenges therein one year on, recommendations on how to avoid the pitfalls and concluding remarks moving forward into the future with the process of implementation to realize the development aspirations of the people of Kenya.*

## Definition and Historical Context

Devolution is a movement to place governmental power in the hands of elected or appointed managers operating at a level closer to the beneficiaries of government actions<sup>1</sup>. It is the dispersion of decision making governance closer to the people. Muia, D.M (2008 a) asserts that decentralization is one way through which people's right to participate in governance is attainable<sup>2</sup>.

The history of the United States offers some fairly obvious points in time when the local level control changed substantially. The Declaration of Independence in 1776 marked a vigorous move away from a centralized regime to thirteen semi-autonomous local governments, loosely bound by federation<sup>3</sup>. The struggle to define state property, abolition of slavery and the declaration of independence in 1776 and a move away from centralized form of government triggered the civil war that necessitated the constitutional amendment especially those touching on the Bill of Rights. Similar struggles for autonomy were also note in the United Kingdom in the nineteenth century triggered by Ireland and followed by Scotland<sup>4</sup>.

In response to the economic crisis of the 1930s, the United States of America federal government enlarged its scope of action to include anti-poverty programs. The civil rights movement of the 1960s led to stronger federal intervention on such issues as voter rights, desegregation, and equal opportunity<sup>5</sup>.

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

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<sup>1</sup> Scott Loveridge, The Origins of Devolution – Research Paper 9904: A Speculative Note - Regional Research Institute, West Virginia University, Morgantown, April, 1999, pg1, ed Albert Mwendwa, 2010

<sup>2</sup> Institute of Economic Affairs :Devolution in Kenya – Prospects, challenges

<sup>3</sup> Op cit

<sup>4</sup> [http://en.wikipedia.org/wiki/Devolution\\_in\\_the\\_United\\_Kingdom](http://en.wikipedia.org/wiki/Devolution_in_the_United_Kingdom)

<sup>5</sup> Op cit, pg2

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

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

### **The Quest for a Devolved System of Government in Kenya**

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

The resultant outcome of these engagement by forces of change within the then ruling class was the repeal of section 2A in 1992 which restored Kenya's back to a de jure multi-party state. Further reforms were seen in the run up to 1997 elections when the mantra was that of "no reforms no elections". Eventually in the year 2002, the NARC government rode the victory crest on the slogan of constitutional reforms and zero tolerance to corruption. The first term of the third government was marked by wrangles and filibustering in delivery constitutional reforms. The impetus to reforms was occasioned by the wave of violence that engulfed the country immediately after the declaration of presidential results in 2007 elections. Under the stewardship of African Panel of Eminent Persons chaired by the former UN Secretary General Dr. Koffi Anan brokered a peace deal between the two main contenders in the presidential contest and draw up the Agenda Four Reforms which outlined a clear blue print that delivered the current constitution in the year 2010. Kenyans spoke resoundingly by 70% in the 2010 referendum on the constitution and majority supported the document due to the devolved system of governance that was contained therein as the only vehicle that can deliver development by addressing marginalization, exclusion and disbursing power both horizontally and vertically and ensuring that the seat of governance is closer to the people where together they can decide their destiny.

## Devolution and Development Paradox

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

1. At the helm of the fourth government that history has bestowed with the implementation of the constitution, was the leader of the "No" (deputy president) that opposed the new governance dispensation. It is no wonder that the government has been blowing hot and cold when devolution matters are raised.
2. Immediately, the members of parliament and county representative assumed office, their first item on the agenda was to agitate for higher pay despite the Salaries and Remuneration Commission's recommendations. This compromised service delivery for the better part of the first quarter of Jubilee Government's assumption of governmental affairs and pushed the wage bill to unsustainable levels. Kenya is a country with the highest wage differential in the whole world in comparison to the minimum wage of approximately Kshs 8,000 compared to a Member of Parliament salary of Kshs, 850,000. This is approximately 97 times compared to other countries (Norway and Hungary less than 3 times, Namibia, USA, Tunisia and Saudi Arabia less than 10 times and Morocco, Jordan, Bolivia and Lebanon less than 20 times) according to *Gini-coefficient income inequality, 2011*<sup>6</sup>. Members of County Assemblies (MCAs) had their salaries pegged at Kshs 79,000, upon assuming office, they arm twisted the Salaries and Remuneration Commission which saw their pay increased to Kshs 225,000 per month. Further contribution to the ballooning wage bill in the counties was worsened by not electing women MCAs prompting parties to nominate 772<sup>7</sup> more to adhere to the two-thirds gender principle. This will cause taxpayers an extra 103 billion for the next 5 years this is minus monthly allowances of between Kshs 100,000 to 200,000 per month. Further bloat and unsustainable wage bill is caused by individual MCAs hiring 3 to 10 staffs to man the 4450 ward offices countrywide.
3. Insecurity has also been a major challenge in the country since devolution started; there is poor coordination of security matters and intelligence gathering and sharing due to the complexity of relationship between the county governors and county commissioners without clear guidelines on how the two offices should work together. The National Government Co-ordination Act, 2013 section 14<sup>8</sup> establishes coordination units of a county government (Urban areas and cities, Sub-counties, Wards and Villages) that accords section 48 of the County Government Act, 2012<sup>9</sup>. While section 41 of the National Police Service Act, 2011 establishes a County Policing Authority which comprises of the County Governor or his/her appointee, there are no clear guidelines on how security intelligence will be shared. The Section 47(9) (j) on functions of the County Policing

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<sup>6</sup> Politician's Salary as a multiple of GDP per capita -Gini-coefficient 2011.<http://bit.ly/gini-world> na or <http://bit.ly/gini-arab>

<sup>7</sup> Constitution Implementation Commission- Assessment of the implementation of the system of devolved government in Kenya " From Steps to Strides", June 2014. pg. 22

<sup>8</sup> The National Government Co-ordination Act, 2013

<sup>9</sup> County Government Act, 2012

Authority stipulates its mandate as of receiving reports from county policing forums and committees yet these structures have no provisions for funding. This is largely why community policing had failed to deliver in Kenya as the forums at the location and sub-locations areas were not funded yet the district structures had funding.

4. The health sector has also been affected as health practitioners are resisting devolution of health to the counties. This has seen a number of doctors resigning from government health facilities to join the private sector or work in other countries. *“This week I have received seven resignation letters from doctors. Before September 2013, we had a good distribution of doctors in the country,”* said Dr Francis Kimani, Director of Medical Services, just to highlight the crisis facing the sector as quoted in a local daily newspaper. Kenya has 6,500 trained doctors but only 4,000 are active. Those in government service are a paltry 3,100 and of these, 2000 work in or around Nairobi which even highlights the regional disparities in the country. Statistically, Doctor-patient ratio is 1 doctor to 17,000 patients. In November 2011, it was estimated that up to 80 per cent of doctors would leave government by the third year of service to go to the private sector, with Botswana and South Africa being the biggest beneficiaries<sup>10</sup> while other goes to United States of America, France, Australia, Canada and Britain. It is estimated the total cost of educating a doctor from primary school to university is Sh5 million; and for every doctor who emigrates, the country loses about Sh1.5 million worth of returns from investment<sup>11</sup>. The discontent amongst medical practitioners within the devolved system of governance paints a grimmer picture for the health sector and requires urgent action.
5. There has also been a wave of protest against counties that have increased levies. These levies have been imposed without consultations with the people as stipulated in the constitution. This has led to a growing number of Kenyans erroneously concluding that devolution is expensive and should be done away with. Government of Kenya is yet to come up with a national law on participation that would guide counties in tailoring their own legislations on participation.
6. Water has also been a source of concern in devolution as the existing water boards cut across counties and the concern of how to manage boards has been an issue. Some counties also have their water sources from other counties as the case of Mombasa and Nairobi. There has been talk in the counties where the water sources are located of levying taxes. This will make water expensive and unaffordable to the poor who live in urban slums. The draft Water Bill, 2014 seeks to address emerging conflict between counties on water related issues. Section 151(1)<sup>12</sup> transfers all property, functions, assets, liabilities, obligations, agreements and other arrangements from Water Services Boards and National Water Conservation and Pipeline Corporation to County Water Service Providers or to Cross-County Water Service Providers as the case may be.
7. Kenya ‘s public Wage Bill(WB) have been a source of concern over the past years and is estimated at 12.1% of Gross Domestic Product (GDP) in 2013 ( approximately 50%) of the

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Read more at: [http://www.standardmedia.co.ke/?articleID=2000084831&story\\_title=why-doctors-flight-is-a-growing-concern-in-the-ailing-healthcare-system&pageNo=2](http://www.standardmedia.co.ke/?articleID=2000084831&story_title=why-doctors-flight-is-a-growing-concern-in-the-ailing-healthcare-system&pageNo=2)

<sup>11</sup> Op cit

<sup>12</sup> The Draft Water Bill, 2014

country's total revenue. This is higher than the internationally accepted levels of Wage Bill in GDP ratio and the Wage Bill to revenue ratio which is documented as 7% and 30% respectively<sup>13</sup>. Devolution has also been hit with bloat as the new county governments employ new staff and inheriting over 40,000 staffs from the defunct local authorities. It is upon this backdrop that the Salaries and Remuneration Commission (SRC) has issued a communique to all counties to stop new recruitments until staff rationalization is completed and audits conducted to root out ghost workers. According to National Television (NTV) a local television report on 24<sup>th</sup> July 2014, the Government loses approximately Kshs. 1.2 billion annually to payment of non bonafide workers<sup>14</sup>.

8. The process of devolution has also been beset by lack of audit of the resource requirement for all the 47 counties and hence the cash transfers are not based on factual figures. According to the Constitution of Kenya chapter 11 on Public Finance, section 203(2)<sup>15</sup> states that equitable share raised nationally that is allocated to county governments shall be not less than 15 percent of all revenues collected by the national government. The recent budget for financial year 2014/15 stated that 43% of all national government revenues (226.7 billion<sup>16</sup>) yet this is not a percentage derived from the *latest audited accounts* for the financial year 2012/2013 as required by law because those accounts are yet to be audited.
9. Numerous amendments have been proposed by parliament without giving devolution time to take root and learn from before suggesting changing the law. This has seen a committee to audit devolution set in parliament just one year into implementing devolution with a budget of Kshs 80 million that would have been channeled to service delivery. Currently there are Bill that seeks to undermine devolution by amending the County Government Act, 2012 such as the Bill waiting presidential ascent that creates County Development Boards to be chaired by County Senator
10. Devolution has also been plagued by supremacy battles between National Assembly and Senate, County assemblies and governors and the judiciary. This does not portend well to service delivery as energies are channeled to politicking and jostling for power.
11. Finally, devolution has also been a victim of concerns of accountability and transparency as majority of counties operate without regard to fiscal principles as stipulated in the constitution leading to wastage and spending in non-priority areas. According to The Chairman of Governors Council Mr. Isaac Ruto, "governors cannot handle the issues of misuse of funds by the Members of County Assemblies (MCAs). They and their executives fear for their jobs and take a back seat".<sup>17</sup> MCAs have also set a side 3.6million to purchase ipads, in the 2014/15 budget. According to audit report 182billion had not been spent for the financial year 2013-2014 and counties had spent 2.6 billion in foreign travels out of the allocated 8.6 billion and were in a rash to blow the balance. The Commission on Revenue allocation has suggested a drastic cut in the travel budget while the Office of the controller of budgets wants the national government to

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<sup>13</sup> Parliamentary Service Commission –The Public Sector Wage Bill and Its Implication on Economic Performance in Kenya –Policy Working Paper Series No. 1 of 2013, pg.1

<sup>14</sup> National Television (NTV) a local television report on 24th July 2014

<sup>15</sup> The Constitution of Kenya, 2010-Public Finance chapter 11

<sup>16</sup> Budget Highlights –" Mwananchi (Citizen) guideline, 2014/15

<sup>17</sup> The standard Newspaper, July, 2, 2014 pg 1. Or [www.standardmedia.co.ke](http://www.standardmedia.co.ke)

coordinate such travels and set a ceiling<sup>18</sup>. This has been contested by MCAs who have moved to court to challenge the decision to have a national body control and limit their spending.

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

## Recommendations

1. Political will by the Jubilee Government is vital to the process of implementing devolution. This is due to the fact that the national government has control of resources that is important to realizing service delivery of functions that have been devolved to the counties.
2. There is need to complete the audit of all counties resource needs to ensure that the right amounts of resources are transferred unconditionally and conditionally.
3. The national government needs to restructure the provincial administration to accord with devolution. This will ensure proper coordination, intelligence gathering and sharing to inform security decisions in a proactive manner.
4. People's participation in decision making in a devolved system of governance is paramount and is the very essence of devolution. The national government must fastrack the process of coming up with legal and policy frameworks on participation to guide county governments to tailor their laws on participation.
5. The Transitional Authority (TA) and the Public Service Commission (PSC) needs to fastrack the process of county staff rationalization to ensure that only the needed skills and human resource are maintained and other staffs who do not meet the required criteria are either retrained or retired and compensated.
6. The Intergovernmental Authority (IGA) should take full mandate of its authority and give direction on resources that cut across counties such as water to ensure that this service do not become inaccessible to the poor and marginalized even as Water Bill is to under parliamentary approvals
7. In order to assure effective service delivery, health sector stakeholders in Kenya need to collectively explore the challenges and opportunities that devolving the health function portend, and strategize how to develop sustainable health systems at the county levels in tandem with global trends. They need to interrogate the institutional and legal frameworks that will govern policy formulation, planning and priority setting<sup>19</sup>.
8. The bickering between the various arms of government must stop and constructive dialogue should guide the process of implementing devolution. Any differences should be referred to legally mandated institutions for arbitration, mediation and litigation.

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<sup>18</sup> The standard Newspaper, July, 1, 2014 pg 2. Or [www.standardmedia.co.ke](http://www.standardmedia.co.ke)

<sup>19</sup> Development Initiatives -The Africa counts Round Table forum, "Devolution: Challenges and opportunities for Kenya's health sector", July, 2013

## Conclusion

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



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