**Task**

1. What is the significance of devolution in the current society?
2. Discuss the pros and cons of devolution.

# **INTRODUCTION**

Devolution involves the transfer of authority for decision-making, finances and management functions to semi-autonomous sub national levels of government.

Promulgation of the Constitution of Kenya 2010, created a decentralized system of two tier governments, as was seen to be key to unlocking the country’s economic potential through distribution of responsibilities. In this system, two of the three arms of government, namely the legislature and executive are devolved to the 47 political and administrative counties as provided for under Article 6.

## **Significance of devolution in the current society**

Devolution increases the people’s understanding and support of socio-economic activities through their participation or influence, making such initiatives more responsive to their preferences. Through the objectives of devolution envisaged in the Constitution of Kenya, 2010 (Art.174) devolution seeks to:

1. To promote democratic and accountable exercise of power;
2. To foster national unity by recognizing diversity;
3. To give powers of self-governance to the people and enhance the participation of the people in the exercise of the powers of the State and in making decisions affecting them;
4. To recognize the right of communities to manage their own affairs and to further their development;
5. To protect and promote the interests and rights of minorities and marginalized communities;
6. To promote social and economic development and the provision of proximate, easily accessible services throughout Kenya;
7. To ensure equitable sharing of national and local resources throughout Kenya;
8. To facilitate the decentralization of State organs, their functions and services, from the capital of Kenya; and
9. To enhance checks and balances and the separation of powers.

For the Kenyan Community, devolution responds to the failures of the centralized system characterized by patronage, clientelism, lack of accountability and running of the state as a private enterprise.

Devolution constitutes building blocks of constitutionalism and substantive democracy as the 47 counties created in Kenya are able to elect their own leadership, make laws, raise their own revenues and use independent authorities to make investment decisions.

It is considered as the strongest form of decentralization as the Counties have clear and legally recognized geographical boundaries over which they exercise authority and within which they perform public functions that provides space for citizen participation.

If well implemented, devolution will result in improvements as it addresses the longstanding challenges regarding equity, ethnic inequalities, inclusion and service delivery, in the end minimizing ethnic-based conflict.

Devolution has transformed development into a right and made resources accessible to citizens in all regions as opposed to the previous system where political patronage transformed state driven development into a privilege to be enjoyed by those close to the center of political powers.

According to Barkan, Hyden and Bratton 1992, central governments have lost the power to orchestrate development planning and budgeting at the local level. This is because the democratically elected county governments are providing citizens or the “wananchi” with opportunities to participate in decisions regarding the planning and implemetantion of local development projects.

The disputed 2007 presidential election led to a political crisis in Kenya’s history in the past government systems. Hence, devolution can be a mechanism or process for de-ethnicising the state and politics thereby reducing ethnic tensions. In addition, with devolution not all political competitions will be pegged on one office (the presidency), instead it will empower communities with powers for self-governance and balance the enormous powers that had previously being vested in the president.

Through established local systems of monitoring and accountability, devolution has potential to enhance equitable distribution of resources, efficiency and effectiveness through the principle of subsidiarity and transparency in management of resources. Incentive for accountability and efficiency stem mainly from political pressures of satisfying local citizens, to enhance re-election prospects of local leaders.

Devolution impacts on the society through increasing inclusion, which reduces the geographical, and bureaucratic distance between governments’ and the citizens in terms of cost for delivery of services. On the other hand, it increases the speed and efficiency with which local governments respond to the needs of the local community (Hope 2014).

# **PROS AND CONS OF DEVOLUTION.**

## **Pros of Devolution**

### **Promotion of Transparency, Accountability and Democracy**

Devolution has enabled people at the grassroots to choose their leaders and directly participate in decision-making processes making room for accountability and democracy. According to World Bank, social accountability is an approach towards building accountability that relies on civic engagement that is where ordinary citizens and or citizen groups participate directly or indirectly in exacting accountability.

In Kenya, there exist various legal frameworks for accountability in the management of public affairs: The Constitution of Kenya, 2010; Leadership and Integrity Act, 2012; Civil Service Code of Regulations, 2006; Anti-Corruption and Economic Crimes Act (Cap.65), 2003; Public Procurement and Disposal Act, 2005; Public Finance management Act, 2012, Public Officer Ethics Act of 2003.

Devolutions seeks to promote democracy and accountability of exercise of power and it also gives powers of self-governance to the people and enhances the participation of the people in the exercise of the powers of the state and in making decisions affecting them.

Hope, 2014 argues that closer proximity of devolved governments to the citizens has increased transparency in the use of local resources and strengthened downward accountability mechanism, resulting in a decrease in corrupt practices. Further, it provides more manageable, transparent, and accountable arena to prevent corruption from erupting or to control it if it does.

A fundamental principle of democracy according to Institute of Economic Affairs (2015) is that citizens have the right to exact accountability and public officials have a duty to be accountable. Similarly, it insists that county public officers have a duty to be accountable to citizens in the management of public affairs, including the use of public funds and the delivery of services. In addition, citizens in the counties, not only have the right to have their socioeconomic rights realized within available resources, they also have the right to exact justifications for how public resources are used in realizing these rights.

### **Distribution of National Resources**

Previously, most of the resources were in the major town and centers like Mombasa and Nairobi. Currently with devolution each county has equal chances of growth as the sharing of resources is done equally based on the formula set by the Commission for Revenue Allocation.

According to Hope (2014), equitable share is governed by a set of criteria that includes the economic disparities within and among counties and the need to remedy them; the desirability of stable and predictable allocations of revenue; and the need for economic optimization of each county and to provide incentives for each county to optimize its capacity to raise revenue.

Currently, resources allocated to counties based on fiscal capacity and efficiency of County Government; development needs of the County Government and their ability to perform the functions assigned to them; stability and predictability of County Revenue Allocations and economic disparities within and among counties and the need to remedy them. The weighted formula is taking into account: population, 18 percent; health index, 17 percent; agriculture index, 10 percent; urban index,5 percent; poverty index, 14 percent; land area index,8 percent; roads index ,8 percent; and basic share index,20 percent (The County Allocation of Revenue,2023).

The Division of Revenue Bill, 2023 provides for the equitable allocation of revenue raised nationally among the county governments.

### **Regional Representation and Inclusion**

The County Government has a better understanding of community needs, therefore, better placed in delivering relevant and responsive services to all its citizens. Article 91 of the 2010 Constitution emphasizes the importance of political participation stating that every political party shall respect the right of all persons to participate in the political process, including minorities and marginalized groups. Political participation entails inclusion of marginalized and minority groups such as women and special interest groups who include youth and persons with disabilities (Cottrel-Ghai 2013).

With devolution, all people including marginalized and minorities can now reap the benefits of self-governance and manage their development and affairs. Through this, citizen participation in decision-making is likely to contribute to political stability, improved governance and improved welfare (Hope, 2014).

Consequently, inclusion has reduced the continued use of minority by politicians as a proxy for ethnicity and calls to action for political competition. Cornell and D’Arcy (2016) confirms that a number of smaller ethnic groups who have never had significant access to national resources now do so via their home counties.

Through participation, the community has a feeling of belonging, is empowered to monitor and evaluate the county government’s compliance with the decisions made and demand speedier government operations as well as push local institutions to enhance their capabilities in undertaking functions not performed well by the national government. Participation in decision-making can also result in more flexible and effective administration since the county governments can tailor their services to the needs of the various groups in the county, adds Hope (2014).

Additionally, she insist that focused local development programs that are locally conceived have a much greater impact on reducing rural poverty and improving human development than broader and more generalized national programs originating from the center. This forms the basis of devolution whose main a gender is geared towards development.

Since adoption of the Constitution in 2010, there is notable progress in terms of equality and inclusion in Kenya as revealed by findings of a report done by KIPPRA and NGEC (2017) indicating that Nairobi County was leading in this status while Turkana and Wajir counties were the least.

World Bank (2018) further notes that with devolution counties are now able to go where the people are and effectively bring out the voices of all citizens including women, youths and marginalized groups.

### **Informed decision making through public participation**

Elected and appointed members at the County are able to engage in meaningful discussions with their constituents in matters regarding the running and managing the affairs, hence decisions made focus more on the local needs.

As provided for in the constitution County Government through citizen participation should provide for opportunities for focused and prioritized community concerns to be addressed.

Through the public expenditure and management processes, at the national and county level, public policy making, analysis and decisions should be based on evidence. The County Integrated Development Plan (CIDP) provides information on development priorities over a 5-year period that informs the annual budget process based on the Public Finance Management Act 2012, which states that no public funds shall be appropriated outside a county’s planning framework.

According to Embassy of Sweden and Diakonia (2016) report on what is public participation, through participation, there is promotion of sustainable decision-making by recognizing and communicating the needs and interests of the community. More so, it facilitates the involvement of those potentially affected by or interested in a decision. Key to note is that, community contributions influences decision making by authorities. Hence, counties that collaborate with non-state actors in decision-making processes are likely to promote shared responsibilities and partnership as well as provide complementary authority.

Improved development results, as the community is informed on the outcomes, the progress of the processes and discussions, and, can engage on negotiations with the duty bearers on the decisions.

However, the report challenges the community to always ask and gauge themselves at what level of participation their leaders are involving them in decision-making, and always aim to participate in county activities.

### **Platform for economic and social development**

Health Sector Performance in Kenya has significantly improved under the devolved system (KIPPRA, 2018). This report further pointed out improved child survival over the last five decades, with reduction of under-five, infant, neonatal and maternal mortality. This is an indication that, it is easier to achieve growth both at the national and county development.

Growth and development strategies by counties has provided new opportunities for employment and investments. Mid Term Evaluation Report by UNDP (2017) on the integration support program to the devolution process revealed that Kenya’s urban centers account for more than 65 percent of gross national income and as the nation is increasingly becoming urban, cities and towns are likely to increasingly play their role of drivers of national economic and social development. More so, the revenue generating mechanisms for devolution have strong effects on economic growth and service delivery as the incomes increase through local economic development initiatives.

### **Experimentation**

Devolution can allow for experimentation with different policies and priorities in different regions, which can help identify effective policies that can be applied nationally.

### **Promotion of National Unity**

One of the objects of devolution is fostering national unity by recognizing diversity (Article 176, COK, 2010). Through distributing and reducing the power of the Central Government, the devolved systems hope to achieve national unity.

Ambose (2017) emphasized on the importance of understanding the meaning of national unity in the context of harmony, accord, and mutual agreement or co-existence among different entities. He further retaliates that if devolution is well watered and natured, it is capable of enhancing unity of Kenyan citizens’ diversity. Of importance is that the peaceful co-existence of Kenyans must embrace the diversity manifested in the culture, race, gender, ethnicity, religion and language. Article 130(2) of the Constitution recognizes the dimension of spatial diversity.

Consequently, the constitution further provides other factors that ought to unite Kenyans. Use of Kiswahili as the national language and English and Kiswahili as the official languages as provided for under article 7(1) and (2), national symbols and national days under the provisions of Article 9 that permits all Kenyans to assemble, come together to remember the progress made as a nation during public holidays.

## **Cons of Devolution**

### **Mismanagement of Funds**

Article 201 of the Constitution provides basic financial management principles as openness; accountability; equity; public participation in financial matters; prudence; and responsible use of public resources. Public Finance Management (PFM) Act 2012 on the other hand was enacted to provide for the effective management of public finances by the national and county governments. In addition, counties established County Finance Act to strengthen management of finance at the county level. Despite there have been laws in place, some counties have been in the spotlight for misappropriating funds while most counties cannot account for the money allocated.

Ndalila (2016) stated that lack of established county infrastructure as well as lack of public participation guidelines permitted greedy officials to take advantage of the gaps and loopholes in the implementation process to mismanage the public funds. In addition, the poor coordination of financial services between the counties and the national governments also contributes to mismanagement of funds.

### **Cost**

It is expensive due to simultaneous process of devolving administrative, political structures and resources. The introduction of more seats (67 senators, 47 governors and 2,526 member of assemblies) to cater for the diverse roles means that the wage budget increased significantly, which is a loss to the taxpayer.

The report on Kenya Devolution, Taking Stock One Year On by Kenya Human Rights Commission (KHRC) revealed that immediately the devolved system was introduced, the members of parliament and county representative assumed office. Regrettably, their first item on the agenda was to agitate for higher pay despite the Salaries and Remuneration Commission’s recommendations.

Members of County Assemblies (MCAs) had their salaries raised from Kshs 79,000, upon assuming office, to Kshs 225,000 per month. Kenya‘s public Wage Bill (WB) was estimated at 12.1% of Gross Domestic Product (GDP) in 2013 (approximately 50%) of the country’s total revenue. This was reported to be 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 (KHRC). Kenya’s Members of National Assembly are the highest paid civil servants with the monthly salary of Kshs. 850,000 termed as the highest wage differential in the whole world (report by the KHRC). It was estimated that taxpayers incurred an extra 103 billion for five years.

Additionally, it became expensive when there was no elected women forcing parties to nominate to adhere to the two-thirds gender principle. How much money counties need will vary depending on how the transfer of functions are sequenced and it is important they receive enough money to fund those functions, World Bank (2011) concluded.

### **Duplication of roles**

In the devolved system, more people are doing the same job, hence higher chances of misusing powers and wasting resources. Kenyans witnessed a lot of back and forth between National assembly and senate at the beginning of 2014 to 2016. This duplication of roles has led to internal policy supremacy wars considering that the County Public Service Boards (CPSBs), the National Government, the transition authority and the former local authorities, hired some officers.

There is redundancy in some cases as some of their roles have not been demarcated clearly (Khaunya, Wawire and Chepng’eno 2015). As a consequence of this, county public administration and service delivery systems has been affected by overlapping jurisdictions as well as functions. For instance the roles of the County Commissioners vis-à-vis the Governor, Sub County Administrator vis-à-vis Assistant County Commissioners, this has bred mistrust and potent of conflict.

Duplication of roles in devolved system in Kenya is a challenge noted by the Council of Governors (COG) one year after the kick of devolution. The COG presented a court case petitioning the court to declare the provisions of Section 91A of the County Government Act, which vests various functions in the County Development Boards unconstitutional for violating Articles 6(2); 95, 96, 174(1), 175, 179(1), 179(4), 183(1), 185(3) and 189(1) of the Constitution. The Court however dismissed the petition indicating that the involvement of the senate, national assembly and national executive in the CDB violates the tenets and principles

Institute of Economic Affairs (2013) noted that there is need to guard duplication of duties among different government offices and this will require personal initiatives and a collaborative approach, conduct civic education and technical support.

### **Uneven Development**

Some counties such as Nairobi, Kisumu, Mombasa and Nakuru also recognized as cities in Kenya already had a head start, development wise. Economic activities are concentrated in specific geographic areas; Nairobi and Mombasa are the leading urban centers accounting for the bulk of Kenya’s production (World Bank, 2011). They have better infrastructure and public utilities as well as opportunities for employment and investment. Hence, it will take extra efforts and some years for other counties to catch up.

World Bank further revealed that half of the counties generate 80 percent of Kenya’s economic activity and that the marginalized regions lack in key infrastructures development hence they receive less than they should according to the Commission for Revenue Allocation. To remedy this, it suggested the need for particular assistance to some counties to help them catch –up.

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