International Affairs and Global Strategy www.iiste.org
ISSN 2224-574X (Paper) ISSN 2224-8951 (Online)
Vol.26, 2014

Analyzing the Impact of Devolution on Economic Development Potentialities in Kenya

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Abstract
Kenya's 2010 Constitution declares equity to be an underlying principle of governance, which is constituent with its provision for devolution. While institutionalization of equity is acknowledged by the previously marginalized, this is often not the case with beneficiaries of the old order. In order to efficaciously implement the letter and spirit of Kenya's constitution devolution, it is important for Kenyans to understand that while nature vastly differentiated their country, successive governments did little to exploit opportunities for providing the scope for nationwide development. This failure inspired the demand for devolution during the two – decade constitutional review saga. This paper has attempted to analyze Kenya's economic potentialities and challenges that come with a devolved government and has used comparative case analysis study from Brazil with lessons for Kenya as one of the developing nations aiming to foster economic development via devolution. The study relied on secondary data as a method of data collection from existing scholarly literature, including books, journals, research papers, official government and Non – Governmental Organizations' reports and gazette articles and qualitative method to analyze data.
Key words: Constitution, Devolution, Economic Development and Fiscal Decentralization

1. Background of the Study

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

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

Devolution, including other forms of decentralization, however, may not always lead to improved governance and economic development performance. For example, devolution may reduce the ability of the national

[1] Institutions have been defined as structures of rules, procedures and organisations, whether state – provided or otherwise (Kimenyi and Meagher, 2004).
[2] Subsidiarity is defined as the assignment of public functions to the lowest level of government that is competent to oversee their implementation.
[3] Consensus refers to a situation where policy actions of government units reflect the consent of the people that they represent.

government to redistribute resources and therefore the ability to assist the less developed sub – national units. In addition, devolution may lead to the capture of local governments by the political elites, especially if devolution rules and systems are not well designed, and hence allow the local politicians to use the local politicians to use the local resources to consolidate their hold on to political power through patronage.

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

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

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

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

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

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

A review of Kenya's history reveals that the country has for the better part of its independent life been a unitary state with a highly centralized government that has , had an overbearing control over the sub – national governments and the other arms of government, namely the legislature and the judiciary. The country has, therefore, not had any real experience with devolution for two reasons. First, the introduction of regionalism, popularly known as 'Majimboism', in 1963 under the Kenya independent Constitution, did not last long. The first government of the independent Kenya, under the leadership of Jomo Kenyatta, amended the constitution soon after the independence in 1964, effectively scrapping the regional governments and replacing them with the central – controlled Provincial Administration and the local government system. Second, the governments established under the Local Government Act cap 265 of the laws of Kenya were not granted significant political, administrative and fiscal powers. Instead, central government retained control of the local governments through the administration officers (hired by the same central government).

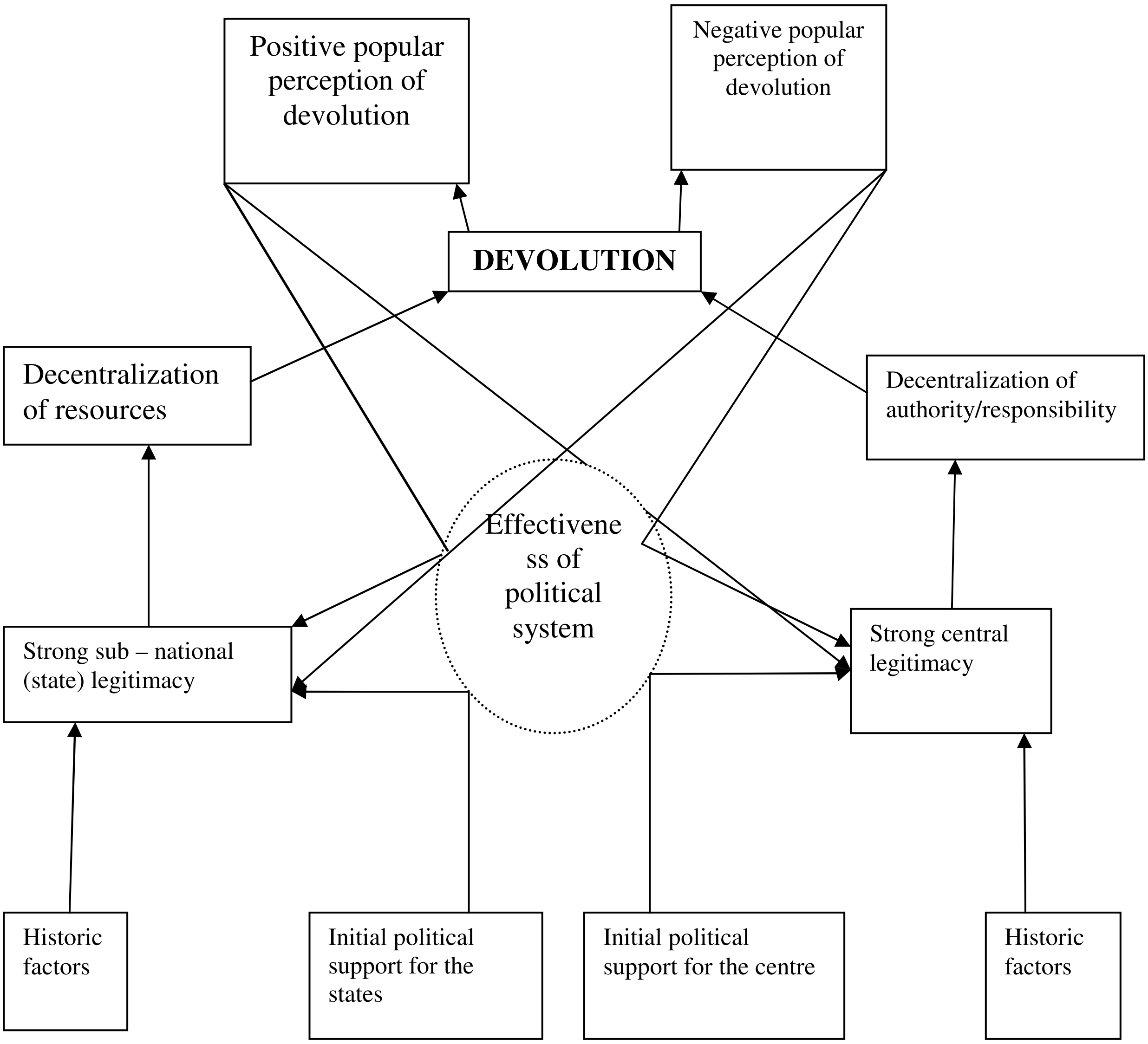
Many as the genesis of the country's governance and economic management problems see this highly centralized Executive control of the country's public affairs. During the constitutional conference in 2003, devolution was advocated by some groups as one way of reducing the overly centralized power of the executive. There was, however, no consensus on the forms of devolution that the country should adapt. For example, there was no agreement on the levels of devolution that were appropriate for effective governance. In addition, there were differences of opinion with regard to how the fiscal powers should be distributed between the central government and the sub – national units.

2. Theoretical Framework

Regional devolution is a complex and heterogeneous process. From the high level of decentralization of certain federal states, such as Germany, and of some Spanish regions, to the more limited influence of regions in France, for example or, until recently, Mexico, decentralization processes across the world have adopted a wide variety of forms. Consequently, conceptualizing devolution is far from simple. Looking for a minimum common denominator, Donahue (1997, p 7 – 15) characterizes the process as being made up of three separate factors: legitimacy, the decentralization of resources and the decentralization of authority. Any form of devolution implies some degree of sub - national legitimacy and some form of decentralization of authority and resources; consequently, any analysis of devolution should consider these three factors.

There is, however, a need for caution in examining evidence, because a simple list based approach may overlook the interaction between the elements. The complexity of the devolution process derives from the interest – conflicts of the various actors involved, and the differences in legitimacy that they share. Most importantly, the interests of sub – national and national governments tend to be at odds across the component factors of devolution. While national governments would, *ceteris paribus*, devolve responsibilities (authority) to their regional or state governments, with as few accompanying resources as possible, the sub – national governments would prefer the opposite case. The balance between these two extremes will depend upon the relative strength, or, in political terms, of the two tiers of government Donahue (1997, p 12). The following figure depicts this approach.

Figure 1: The Complexity of Devolution



Source: Donahue (1997, p 12)

Beginning at the bottom of the diagram, the legitimacy of sub – national and national governments is determined for the most part by the processes of history and respective political support. Of the former, culture, language, and religion have traditionally been the factors behind a strong regional identity and determine the legitimacy of sub – national claims. Economic development has also recently been added to the list (Keating, 1998; Allmendinger and Tewdwr – Jones, 2000). Of the latter, the inclusion of legitimacy into the analysis brings into play a wealth of political factors that shape the power and margin of man oeuvre of governmental tiers. An important caveat here, however, is that a reasonably effective political and democratic system is in place to facilitate the influence of the electorate. This being the case, and all other things equal, poor political support for the regional cause would translate into a relatively weak regional legitimacy and therefore tend 'to promote a devolutionary process in which the central government holds the upper hand, favoring progressive decentralization of responsibilities and often forcing regional and local governments to undertake increasing expenditure responsibilities on a static, and often narrowing, financial base' (Bennett, 1997, p 330). In contrast, a strong regional legitimacy, underpinned by high political support for the regional lobby, would favor a more rapid decentralization of resources from the centre, since there would be strong demand for transfers to sub –

national tiers of government. In general, the combination of historical and political factors in democratic countries shapes the legitimacy of governmental tiers, the relative strength of their respective lobbies, and hence the forms which devolution initiatives are likely to assume. In non – democratic systems, however, the influence of the electorate is compromised, and the factors, which are less transparent, take on more importance in the determination of the legitimacy of government tiers.

In general, an understanding of the interaction between legitimacy and the transfer of resources and authority is imperative to the examination of devolutionary trends (Donahue, 1997). A case that depicts strong decentralization of resources displays no more evidence for devolution than one showing strong decentralization of responsibilities. It merely indicates a different type of devolution, driven by different levels of government and deriving, ultimately, from a different allocation of legitimacy across governmental tiers. Moreover, following from this, we should not necessarily expect cases to depict high levels of both resource and responsibility devolution, since forces are often operative to promote their mutual exclusivity. It is with this conceptualization in mind that impact of devolution on economic development potentialities in Kenya is analyzed.

3. Methodology and Research Design

Research for this paper is library based. It involved analysis of different books, statutes, magazines, journals, newspapers, respective documents and electronic sources as methods of data collection and used qualitative analysis as method of data interpretation on the impact of devolution on economic development potentialities in Kenya with comparative case analysis from Brazil. The Lilian K. Beam Library at United States International University – Africa (USIU) and the online scholarly materials on devolution's economic development impact has been used for research.

4. Kenya's 2010 constitutional devolution

Kenya's short – lived devolution experience, provided for in the in 1963 Constitution had lacked either a substantive founding in the philosophies of its sponsor Kenya African Democratic Union (KADU) or the victorious Kenya African National Union (KANU), which subsequently had the responsibility of implementing it. Conversely, the 2010 Constitution including its chapter 11 on devolution was the product of an extensively consultative, decade – long process. While support for the 2010 draft was arguably partisan in certain respects, the fluidity of Kenyan political camps has meant that membership of the 'camps' was not cast in stone.[1] Among the political class, a major cause of shifts in attitudes during the development of the constitution was perceptions about the impact of its devolution provisions on their political fortunes. For example, political gerrymandering during successive presidencies had seen the number of administrative districts grow from the constitutional 47 to 256 on the eve of the constitution's promulgation.[2] Thus, one threat posed by devolution in the evolving draft constitution was how to decide on the final slate of sub - national entities and their effect on regional power politics. The eventual decision to settle on a mere 47 counties was heavily disputed by politicians from more populous regions of the country. The proposed constitution of Kenya carried the day at the referendum, however, amongst its most significant aspects being the diminution of the powers of the president, and the provisions for substantive devolved government.

Successful devolution requires an efficacious design for the context within which it is to be undertaken, especially in a situation such as Kenya where core elite has mastered the art of self – reinvention with changing times. This ability had enabled the elite to embed themselves strategically to reap the fruits of a unitary government presiding over a weak political system with similarly weakly performing governance institutions that often belie the existence of relatively substantive governance frameworks. It is thus significant for devolution initiatives that Kenya had addressed integrity in governance since the National Rainbow Coalition (NARC) government's 2003 accession to power on a reformist agenda.[3] Nevertheless, even though the NARC government was able to revive the economy,[4] it performed less notably with respect to improved governance, its reluctance to act against the indiscretions of the previous regime soon manifesting itself in strong, persistent

[1] For example, the politicians who had been the primary opponents of the Wako Draft (2005) formed ODM and became the primary supporters of the proposed Constitution of 2010.

[2] While elements in Kibaki's then Democratic Party obtained a 1997 High Court decision that Moi's new districts were unconstitutional, Kibaki would create similarly unconstitutional districts.

[3] Among NARC'S pertinent reforms were the enactment and implementation to varied levels of the Anti – Corruption and Economic Crimes Act (2003), the Public Audit Act (2003), Government Financial Management Act (2004), Public Procurement and Disposal Act (2005). Public Officers Ethics Act (2005) and Fiscal Management Act (2009), alongside various institutional reforms.

[4] Between 2003 and 2007, economic growth averaged above 4 percent, up from negative real growth in 2000/01.

attempts to cover up grand corruption within its ranks.[1]

Article 174's objectives of 'devolution' in the Kenya's 2010 Constitution include:

1. Promoting democratic and accountable exercise of power;
2. Fostering national unity amidst diversity;
3. Enabling self – governance of the people towards their interrogation of the state;
4. Recognizing the right of communities to self –management and development;
5. Protecting and promoting the rights and interests of minorities and marginalized groups;
6. Promoting socio – economic development;
7. Ensuring equitable sharing of national and local resources;
8. Rationalizing further decentralization of State organs; and
9. Enhancing checks and balances.

Consequent to the foregoing and other governance shortcomings, the 2010 Constitution underscores the need for transparency in governance. Article 10 lists the national values and principles of governance that should bind all state organs towards sustainable development. Leadership and integrity in governance are also addressed in Chapter 6, and Chapter 4 includes a Bill of Rights identified as being integral to the Kenyan democratic state. The Bill of Rights secures economic and social rights, including health, housing, food, social security, education, language, culture, and family – amongst other interventions (Article 43). This also underscores attention to special groups, e.g. children, the disabled and the youth. These provisions reflect the government's obligations as a stakeholder, but also implicitly touch on individual's responsibilities and obligations. To these ends, Article 132 requires the president to annually "report…to the nation, on all the measures taken and progress achieved in the realization of the national values…"

Article 174 lists the nine objectives of the governance approach, while Article 175 lists relevant principles, including democracy, separation of powers, reliable revenues and gender sensitivity. Article 176 (read together with the First Schedule) establishes 47 county governments that will each have a county assembly and county executive committee. Article 188 provides for subsequent alteration of county boundaries and the criteria for doing so. County governments are to decentralize functions and service provision while heeding efficiency and practicability.

Part 5 of Chapter 11 addresses the functional relationship between the national and county governments, while the Fourth Schedule elaborates the distribution of service delivery responsibilities. With the exception of omitted functions, which are to remain the preserve of the national government, functions may be duplicated across the levels of government. Article 187 does permit the transfer of functions and requisite resources for their delivery between government levels.

On the composition of the five – year county assembly, Article 177 provides for an *ex officio* Speaker, an elected member for each ward (county constituency), special seat members to ensure that no more two – thirds of members are from the same gender, and representatives of marginalized groups (i.e., the youth and disabled). In the case of these two categories, the members are to be identified to reflect party strength across the county.

The county assembly will legislate as necessary to facilitate delivery of its mandated functions, review the county executive committee's development – planning proposals and supervise the committee's implementation of priorities (Article 185). The county executive committee will include a directly elected governor, a deputy and members appointed by the governor – with the approval of the county assembly – from among persons not of county assembly (Article 179). The governor and the entire governor's office will be removable on the grounds of gross misconduct and/or abuse of office and/or lack of mental or physical capacity (Article 181). The county executive committee shall act as advisor to its legislative assembly, implement county and national legislation, originate legislation, and manage the affairs of the county (Article 183). County governments will establish offices as necessary and fill them, and will be responsible for the good conduct of such officers within the context of a national framework legislated by the National Assembly (Article 235 – 236).

In the performance of its duties, and in concert with the provisions for the National Assembly, the 2010

[1] For the revelations of NARC'S first and only Secretary of Ethics who resigned and fled into self – exile, see Wrong (2009). The NARC government instituted a judicial inquiry into what is arguably Kenya's most notorious swindle, the Goldenberg scandal, but promptly dismissed its findings by exonerating a former vice president and finance minister alleged to be at the centre of the scandal. On the scandal, see 'Report of the Judicial Commission of Inquiry into the Goldenberg Affair', at http//www.tikenya.org/documents/Goldenberg%20Report.pdf. Accessed 12 April 2011.

Constitution empowers a county assembly to summon persons to give evidence, enforce such attendance under oath, compel production of documentary evidence and even interview witnesses abroad (Article 195). On the other hand, the Constitution also compels county assemblies to conduct their business transparently, including facilitating public and media participation in their proceedings and publishing legal materials in the Kenya Gazette.
While encouraging cooperation between the two levels of government (Article 189), the 2010 Constitution nonetheless recognizes the potential for conflict, especially with regard to respective legislation over which the national government is superior (Article 191). The Constitution requires Parliament to ensure that county governments are adequately resourced for their effective service delivery, but it also mandates Parliament to ensure county compliance with national financial management systems, failing which, the national government may intervene as appropriate (Article 190) and suspend the county government (Article 192).

Alongside the division of roles between the national and county governments, the 2010 Constitution also addresses the financing of the activities of the two levels of government towards an equitable society based on openness, accountability and public finance management (Article 201 and 202). The taxation burden (Article 209) and resulting revenues are to be shared fairly across the two government levels for the attainment of inclusive equitable development. All government revenues must first be paid into the Consolidated Fund; before they are withdrawn through an Act of Parliament (Article 206).[1] Article 203 provides the criteria for sharing out the annual government revenue ring – fenced for county governments, currently set at a *minimum* of 15 percent. Article 204 also provides for an initial 20 – year Equalization Fund of 0.5 percent of annual national revenues, to be spent with advice from the Commission on Revenue Allocation (CRA), for redressing primary social and physical infrastructure inequalities in marginalized areas (Articles 215 – 217).

The county level equivalent of the national Consolidated Fund will be the Revenue Fund into which county revenues (Articles 209(3) – (5), 218, 219, and 224) and Treasury subventions (Article 220) will be deposited. Withdrawals will only be possible with the Controller of Budget's approval endorsed by an Act of Parliament (Article 207). County assemblies may approve of borrowing by their counties, but such borrowing will require a guarantee by the national government (Article 212). County funds and accounts will be subject to pertinent national systems, such as statutes governing procurement of goods and services as well as the mandatory annual audit of accounts (Articles 225 – 227).

4.1 Delivering development since independence

Arguably, Kenya's colonial heritage included a more holistic governance framework than was the case with many other sub – Saharan African countries with which it gained independence in the 1960s. The reason for this is likely that Kenya, like Rhodesia (later Zimbabwe), was among the few (British) settler colonies for which the white settlers did not envisage a transition into an African – led independence. Thus, notwithstanding the disagreements between the colonial government and the white settlers over the future of the colony, governance institutions were designed to perpetuate colonialism, or at worst, minority rule as occurred in Zimbabwe. Unlike other European colonials, however, the British ruled indirectly through an 'educated' domestic African class.[2]

Thus, on the eve of independence, indigenous Kenyans slated to take over the reins of government were well versed in the colonial style, having worked alongside British administrators and settler politicians in a system literally transplanted out of London.[3] On acceding to independence, Kenya needed an intellectual rationalization of its colonial heritage that would bring African interests to the fore. Yet, this was a task that founding President Kenyatta simply did not desire to undertake, preferring to perpetuate colonial fundamentals that had been so effective against African resistance.[4] Moi the second president unfortunately followed Kenyatta's example, undertaking reforms to increase his powers, rather than to improve the context for more effective development to reduce poverty, disease and ignorance.

Kenyatta substituted the *Majimbo* Constitution whose devolution could arguably have brought development

[1] Cf. Article 222 of the Constitution
[2] While the British developed a local legislative council in the colony, for the French, parliament was in Paris where African Deputies like L.S. Senghor attended sessions.
[3] For an example, Nyachae (2010) narrates a seamless, literally pre – ordained, progression from clerical officer to the top of the Kenyan public service, before venturing into politics.
[4] See Branch and Cheeseman (2006). Tanzania's Julius Nyerere illustrates a presidency and national leadership that struggled to rationalize the colonial heritage against their country's perceived needs for national development; his choice of Kiswahili as the official and national language arguably generated national cohesion. Nkrumah (1965) succinctly analyses the 'neo – colonialism' evident in the conduct of leaders like Kenya.

prioritization, implementation and benefits nearer the people, with an omniscient, omnipotent centralist system that brooked no dissent. Kenyatta's years witnessed various significant, related political and public financial (mis)management developments, which are pertinent for Kenyans' toasting of the 2010 Constitution and its provision for devolution. The first was the rise of political intolerance, which precipitated often-unprocedural constitutional changes aimed at enabling the president to deal with perceived dissidence. By 1969, the Preservation of Public Security Act of 1950, which allowed detention without trial, would be used to proscribe oppositionist Oginga Odinga's Kenya People's Union (KPU) party and inaccurate the party's entire leadership. If the constitutionality of such measures belied their inherent impunity, the same exemption could not be made of the 1975 arrests of parliamentarians Martin Shikuku and J.M. Seroney in the sanctified precincts of Parliament, and their subsequent detention without trial.[1] With such acts, Kenyatta had set the standard that Moi would follow zealously.

A further significant event, as pointed out above, was the adoption of the 1971 Ndegwa Report, which opened the way for the civil servants to profit from their positions through the direct acquisition of procurement contracts and/or kickbacks.[2] Related to the procurement issues, the third area of significance was the creeping failure of the public audit function. It is understandable that the impunity fostered by the Ndegwa Report would lead public officers to hide their tracks by falsifying returns, or even failing to produce them, for audit purposes. On the financial side, the recurrent failure to act on public audit queries encouraged further indiscretions, undermining service delivery. Into the Moi era, these malpractices had spread to such critical areas as revenue generation, undermining the timely flow of adequate resources to district sector heads and their delivery of services. Contemporaneously, and in the face of a highly muzzled parliament that could not effectively conduct its oversight function over public finances, *Harambee* fund raising emerged as the basis for the generation of investment resources for the social sector infrastructure.[3] Initially popularized by Kenyatta, *Harambee* became an indispensable complement to public expenditure resources and since these un – audited Harambee funds, the aggregate resources in the hands of public officers were subjected to extensive malfeasance. Significant for the later demands for devolution was the fact that the success of *Harambee* fund raising depended on the extensively differentiated local resource potential for development; it was more favorable for areas with better – off populations and political associations with government potentates.[4]

In the early 1980s, widespread impunity over the management of public resources would extensively undermine the government's capacity to both generate revenue and expend it judiciously, thereby increasing reliance on donor budgetary and other support. This opened the door to the World Bank and International Monetary Fund – designed structural adjustment reforms, which included such unpopular measures as social sector cost recovery/sharing characterized by marked differentials in vertical and regional abilities to pay.[5] It is within this context that sectorally ad hoc decentralized funding was developed, such as the Local Authority Transfer Fund (LATF) and Road Maintenance Levy Fund (RMLF). The legislative and institutional provisions for these funds, however, suggested that the government had learnt from the failure of District Focus For Rural Development (DFRD), an earlier attempt at broad decentralization.

Failed budget resource flows induced the need for greater localized fund raising, providing incumbent and aspiring politicians with platforms to market themselves to prospective electors (Nyanjom, 2009). The non – availability or erratic flows of budgetary resources rendered district departmental heads impotent to do their work, aggravating fragile relations with sitting or aspiring politicians who assumed for themselves an oversight function over civil servants. On the other hand, the growing demands for money placed on incumbent and aspiring politicians increasingly transformed them into grassroots 'development officers', and diverted parliamentarians away from their oversight role over public revenue generation and spending, as well as lawmaking. Growing *Harambee* demands have caused unscrupulous parliamentarians to develop a seemingly insatiable appetite for increased, untaxed remuneration, as well as increased constituency – focused decentralized funds. Regrettably, the systems under which these ad hoc decentralized funds have been administered have contained loopholes allowing their manipulation, leading to sub - optional outcomes.

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1 Shikuku's crime was to aver that KANU was dead, while Deputy Speaker Seroney's was to rule in response to a point that it was unnecessary for Shikuku to substantiate the obvious.

2 The Ndegwa Report probably merely formalized a context of long –standing indiscretions. For example, Ndegwa (2006), reports Kenyatta's capricious eve of independence allocation to himself of a settlement Trust Fund plot in the Ol Kalou settlement scheme. For such indiscretions over land, see for example, Hunt (1985).

3 For an early analysis of the significance of Harambee, see Mbithi and Rasmusson (1977).

4 For an education sector case study, see Miguel (2000).

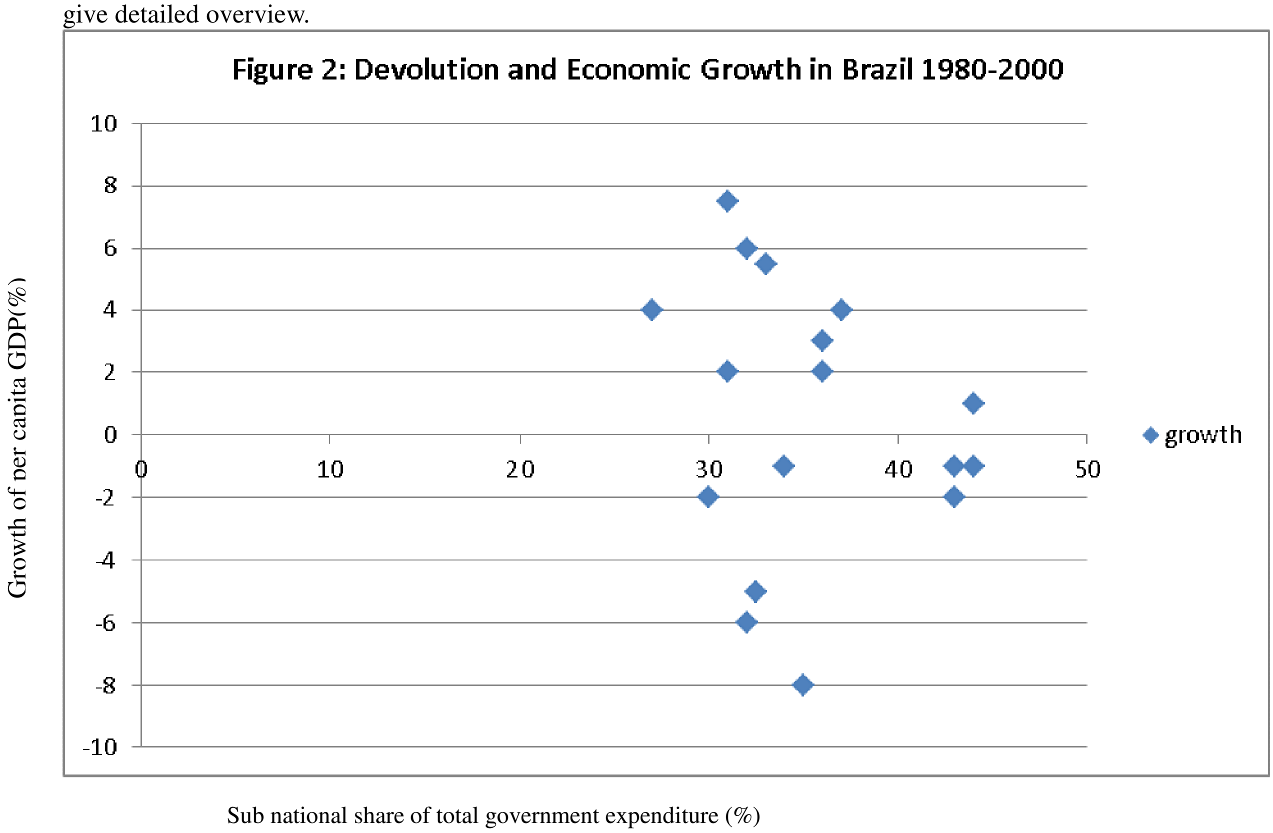
5 The 1989 introduction of health cost sharing was associated with an abrupt 40 percent reduction in public facility use rates, causing the immediate suspension of the reform. See Mbugua (1993).

5. Case Overview of Brazil on Devolution's Impact on Economic Development

Brazil has a long history of federalism going back to the nineteenth century, when a federal republic was established in 1889. Since then, devolutionary trends in Brazil have largely followed political cycles, with authoritarian spells favoring a greater centralization of power and democratization being closely associated with devolution (Rodriguez – Pose and Arbix, 2001). Thus, the return to democracy with the Constitution of 1988 following a military regime marked a great increase in the political influence and fiscal autonomy of state and municipal governments (Rodriguez – Pose and Gill, 2004). The trend was accompanied by a high growth in the share of federal tax transfers to sub – national governments, which climbed from 18 percent to 44 percent from 1980 to 1990 (Serra and Afonso 1999, p.5).

Brazil is one of the most decentralized democracies in the developing world, with sub – national governments accounting for about half of public expenditure (Dillinger and Webb 1999; p.1). The country consists of 26 states and the Federal District of Brasilia, which are represented in the Chamber of Deputies based on population and in the Senate on an equal basis of three senators per state. Brazilian states are responsible for a wide and expanding range of taxation, expenditure and investment functions, and are the only known sub – national units along the Canadian provinces to administer their own value – added tax, called the ICMS (Rodden, 2003).

The following plot rudimentarily indicates a slightly negative relationship between Brazil's devolutionary trend and economic growth (Figure 2). However, due to the large number of factors affecting both of these variables, no conclusion can be drawn from this simple representation but in - depth case – study analysis of different ways in which devolution has affected Brazil's economic development entails the following as part of this paper to give detailed overview.



Sources: Growth of GDP per capital (%) from The Penn World Table Version 6.2; sub – national share of total government expenditure (%) from IMF Government Finance (own representation).

5.1 Devolution and local economic development policies in Brazil

One of the most prominent contributions of devolution to economic growth, as argued by its advocates, is through policy innovation. Namely, a certain degree of autonomy for investment and expenditure decisions allows sub – national units to pursue policies for economic development tailored to their own local needs and endowments (Gill et al., 2004). Hiving this freedom, and being responsible for their own welfare, the regions are more likely to embark on creative attempts to raise their own revenues (Rodriguez – Pose and Gill, 2005) and supply public goods and services (Thiessen, 2003).

Devolution is thus expected to make public expenditure more efficient (Marinez – Vasquez and McNab, 2005), create opportunities for local regimes to mobilize around sustainable development (Benneworth and Roberts, 2002) and contribute to a better coordination between various local actors (e.g. local government, businesses and civil society). Most, importantly, devolution is expected to provide each territory the autonomy to pursue a development strategy tailored to its own economic potential and competitive advantage (Martinez – Vasquez and McNab, 2003a), thus contributing to greater national economic development.

In Brazil, the pursuit of economic development strategies at the local level coincided with the country's recent devolutionary trend. Sub – national governments' participation in the promotion of local economic development has surged dramatically over the last decade. A survey reveals that by 2001, 35 percent of the country's municipalities had implemented some type of fiscal incentive program and 52 percent had implemented some type of employment or income generation program (Biderman and Barberia, 2005, p.6). Most importantly, studies have shown that this new trend of the growing presence of decentralized development initiatives can largely be attributed to Brazil being one of the countries to give the most autonomy to municipal governments (Biderman and Barberia, 2005).

Rodriguez – Pose et al. (2001) illustrates this trend of Brazilian municipalities' increasing involvement in local economic development with the case of ABC region in the Sao Paolo metropolitan area, where economic crisis and restructuring have led to inter – municipal cooperation and the creation of a local economic development council involving civil society, the public sector, local businesses and trade unions. The authors acknowledge that this initiative has in part been driven by greater municipal autonomy, giving local governments the capacity to take a more pro – active stance in implementing innovative initiatives for endogenous development.

Thus, in the context of empowering local development strategies, development has, arguably, made a positive contribution to economic development in Brazil. Yet, working against this positive contribution are potential perverse effects of the devolutionary trend, whose manifestations have been differently mitigated or exacerbated through the country's policy environment.

5.2 Devolution, Inter – territorial competition and efficiency concerns in Brazil

On the negative side, through the contraction of the central government's role in attracting and allocating industry (Rodriguez – Pose and Gill, 2004) and the delegation to regions of the responsibility for their own revenue generation and economic development, devolution can push sub – national territories to competition for the attraction of foreign direct investment (FDI). In a belief that FDI will spur innovative capacity and have a stimulating effect on the local economy (Vazquez – Barquero, 1999), sub – national could increasingly engage in competition for the attraction of firms. However, as FDI has become more footloose and less constrained by traditional location factors in recent decades (Chesire and Gordon, 1998), this competition is likely to take the form a "race – to – the – bottom" in general incentives (tax breaks, grants, donations of land, etc.) offered by each region.

Such strategies can have a clearly detrimental effect on economic development. Firstly, the incentives offered to firms will put a strain on fiscal budgets and may cause regional governments to under - provide for public services and basic infrastructure (Serra and Afonso, 1999). Secondly, when regions sell themselves out based on generic incentives, instead of building upon what already exists in the local economy, the possibility of a synergy between the attracted firms and local economic activity is greatly diminished (Biderman and Barberia, 2005). Thirdly, engaging in race – to – the bottom causes most of the value of such incentives to accrue to the investors themselves, who are able to exploit their monopolistic power at the regions' expense (Cheshire and Gordon, 1998). Most importantly, the incentives offered represent a deadweight loss and source of inefficiency to the nation as a whole, as they are aimed at affecting the location decisions for firms that had the intention to locate within the country in the first place (Rodriguez – Pose and Gill, 2005).

In Brazil, the manifestation of this detrimental effect of devolution has been borne out in the form of a "Guerra fiscal" between different states for the attraction of FDI, notably in the automobile industry. Between 1995 and 1999, car manufacturers invested over US $12 billion in Brazil (Rodriguez – Pose and Arbix, 2001, p. 134). Far from being growth – enhancing, however, this investment spurred a fierce and wasteful rivalry between Brazilian states, in trying to influence companies' location decisions. In exchange for locating within a region, firms were increasingly offered tax breaks, favorable loan agreements, donations of land, grants, etc. The car companies encouraged such competition and played Brazilian states off against each other in order to achieve the best possible deal. The final outcome of these bidding wars was pure waste, since any possible increase in local welfare was neutralized by the costs of attracting FDI, which would have been located in Brazil in any case, leading, in the long – run "towards greater dependency, greater instability, greater disparities and probably greater poverty" (Rodriguez – Pose and Arbix, 2001, p. 152).

Arguably, the detrimental effects of devolution on inter – territorial competition has been induced, or at least exacerbated, by inadequate policy decisions and institutional framework. Firstly, incentives and subsidies as a means of attracting companies were encouraged under the New Automotive Regime – a federal government initiative for fostering FDI in the automobile sector (Rodriguez – Pose and Arbix, 2001). Further, this practice was made possible by state governments' right to levy their own value – added taxes (Biderman and Barberia, 2005). Most importantly, when the bidding wars got out of hand, the federal government failed to set up an adequate institution for the regulation of financial incentives offered by the competing regions. Ideally, such an institution would discriminate against FDI attracting policies which are diversionary (i.e. attract investment away from other regions) and promote those that are capacity – enhancing (Cheshire and Gordon, 1998). The National Fiscal Policy Council, which on paper should fulfill such a role, was ineffective as it operated on a unanimity rule, where any state has the right to veto a decision (Rodriguez – Pose and Arbix, 2001).

In sum, the negative effects of devolution on inter – territorial competition in Brazil have been borne out partly as a result of an inadequate policy and institutional framework, to the detriment of economic development, and in opposition to devolution's positive impact.

5.3 Devolution and spatial disparity concerns in Brazil

Through a mechanism similar to that of promoting inter – territorial competition, devolution can often lead to increased inequality between the regions of a country. In a devolved system, spatial equality usually comes second to the main objective of promoting an economic dividend within each region (Agnew, 2000). By putting each in charge of its economic development and exposing it to competitive forces from its neighbors, devolution carries with it implicit fiscal, political and administrative costs which fall more heavily upon those regions with limited adjustment capacities, resulting in differential rates at which regions can capitalize upon the opportunities it offers and leading to greater development of initially rich and powerful regions to the detriment of poorer areas (Rodriguez – Pose and Gill, 2004).

In addition, insofar as redistribution to minimize spatial disparities is a rate of the central government, the reduction of the latter's power and resources through the devolutionary process can reduce its capacity to correct such disparities and thus increase inter – regional inequality (Prud'homme, 1995). Further, from a dynamic point of view, devolution can bring about a regressiveness in the allocation of government expenditure, as the empowerment of the states in deciding how transfers are allocated gives disproportionate negotiating strength to the richer ones, whose degree of influence over the central government is higher, allowing them to secure a disproportionate share (Rodriguez – Pose and Gill, 2003). Thus, devolution can reinforce regional inequalities, which may prove detrimental to economic development due to their negative welfare consequences (Cheshire and Gordon 1996, cited in Agnew, 2000) and the under – utilization of resources, such as infrastructure and labour, in lagging regions (Armstrong and Taylor, 2000), for instance.

In line with the theoretical predictions above, empirical evidence from various developed and developing countries indicates a clear coincidence of increasing spatial disparities with devolution initiatives. Most surprisingly, however, Brazil is a notable exception to this trend, experiencing a 16 percent decline in spatial inequalities between the 1980s and 2000, when devolutionary efforts were on the rise (Rodriguez – Pose and Gill, 2004, p. 2098). As in the previous case of inter – territorial competition, Brazil's policy and institutional framework has played a role in affecting the link between devolution and regional disparities. In contrast to the previous case however, the role has been positive, comprising of an effective mitigation of the negative consequences of devolution on spatial disparities.

Firstly, the fact that devolutionary trends have not been accompanied by an increase in regional disparities can be attributed to the existence in Brazil of a fairly developed and redistributive fiscal transfer system, which, according to Prud'homme (1995) is an important tool for controlling the negative effects of devolution on spatial disparities. The federal government assumes exclusive responsibility for the taxes on personal and corporate income, payroll, wealth, foreign trade, banking, finance and insurance, thus having control over a large revenue pool from which transfers to the state governments can be made (Rodden, 2003). These transfers are fixed by formula, which determines a participation co – efficient for each state that is based mainly on re – distributive criteria, with about 85 percent of total funds being set aside for the poorer regions – the North, North – East, and Centre – West (Rodden, 2003, p. 8). Further, because the majority of federal taxes are generated in the south and south - east, the extent of regional re – distribution is even greater than this figure would suggest (Dillinger and Webb, 1999).

Finally, the Brazilian federative system is also designed to generate a significant process of redistribution in terms of political power and congressional representation of the states (Serra and Afonso, 1999). In the Federal Senate, where three senators represent each state, rich and poor regions enjoy equal representation. This equality in representation is of great importance, as the Brazilian Senate is responsible for analyzing and voting all bills and constitutional amendments that come out of the Chamber of Deputies.
In sum, in contrast to the case of inter – territorial competition, the institutional and policy framework of Brazil has contributed to mitigating the perverse effects of devolution on spatial disparities and therefore on economic development.

5.4 Lessons for Kenya

As a logical conclusion to the arguments presented on devolution in pursuit of economic development in Brazil, it can be asserted that, for the case of Brazil, devolution has affected economic development through various complex channels, and the extent to which the two factors have been positively related has in part been dependent on institutional – specific policies.
The experience of Brazil under devolution provides for Kenya's learning experience concerning accommodating the potential consequences of transferring resources and power tiers of government. As the case of Brazil clarifies the negative consequences of devolution on equity and efficiency could be overcome through policy, yet, if left unmitigated, they can have clearly detrimental consequences for economic development.

6. Conclusion

This paper has undertaken an extensive review of Kenya's transition into independence with a view to analyzing dominant issues that are likely to shape devolution on economic development potentialities in Kenya with comparative analysis with devolution in Brazil. It noted the manner in which various colonial institutions found their way into independent Kenya, in total disregard for the fact that colonial institutions were designed to repress – not develop – the natives. Notable among these was the Provincial Administration, the status of which both Kenyatta and Moi greatly elevated to enable them to over – concentrate governance in the presidency while emasculating other institutions that should have overseen equitable development. At the same time, the weakening of parliamentary scrutiny of public finances bred extensive corruption and the arbitrary disbursement of development resources, resulting in a widely unequal society whose social sector services were highly dependent on similarly unequal potential for *Harambee* resources. Occurring alongside the global economic realities that by the 1980s led to need for structural adjustment programmes, service delivery declined in ways that induced demands among Kenyans for greater autonomy over their fates through greater decentralized governance.

After two decades of debating content, Kenyans finally, and emphatically, voted in a new constitution in August 2010. Besides providing for devolution (Chapter 11), the 2010 Constitution acknowledges the risks posed by poor governance (impunity fuelled by low levels of integrity) to equitable and sustainable development. The constitution consequently devotes substantial attention to the ideals of good governance (such as Articles 10, 73 and 75 – 77) as the foundation of reforms such as devolution, and without which such reforms would fail.

On devolution (Chapter 11, parts of Chapter 12 and the Fourth Schedule), the constitution is true to the theory and empirical evidence of good devolution frameworks. First, it is founded on the supreme law of the land. Second, the constitution is clear on relative roles of the different levels of government, and on the assignment of expenditure and revenue. The emphasis on equity is critical for Kenyans to appreciate the structural changes that must occur in budgets, for example, if the very ambitious but nonetheless timely Bill of Rights is to be fully achieved. Critically, the Constitution does away with the hitherto notorious Provincial Administration and with Local Authorities (LAs), whose perpetuation would amount to an untenable duplication of county government functions. Additionally, out of political expediency the Committee of Experts on the Constitution avoided the rationalization of county numbers, sizes and populations, opting for the country's 47 existing legal districts. The Constitution does, however, provide scope for the future rationalization of the counties.

That Kenyans want the full and expeditious implementation of the 2010 Constitution is reflected in the broad approval of the April – June 2011 process of nominating the Chief Justice, Deputy Chief Justice and Director of Public Prosecutions. Progress on the more contentious issues calls for the expeditious implementation of the

Fifth Schedule, however, which provides for enabling legislation. Two factors stand in the way of this agenda: the impeding and highly divisive ICC (International Criminal Court) trials over the post 2007-election violence; and the aftermath of 2013 general election. The partisanship arising over these issues has already imposed bottlenecks to the efficacious attention to the Fifth Schedule.

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