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**DEVOLUTION AND NATION  
BUILDING IN KENYA.**

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# DEVOLUTION AND NATION BUILDING

## *INTRODUCTION*

One of the key reforms of the constitution is the establishment of devolution through the country's government. It is in the current constitution and will only come into effect after the next general elections, when the county assemblies and governors will be elected. (Ghai, Y& Ghai, J,)

In this paper we have talked about devolution and related it to the dignity of the human person. First we have given a definition for devolution as per the Kenyan context. Secondly, we will look at how the United Kingdom has being impacted since devolution was enforced. Thirdly, we looked at three aspects of devolution; objects and principles of a devolved government, financial aspect of devolution and the gender aspect of devolution. We came to the basis of these aspects by looking at how the common "mwananchi" will be affected by them. Lastly, we have given a summary of the responses we got from conducting an interview. We interviewed our fellow students and lecturer's on their thoughts about devolution being implemented in Kenya. This includes the positive and negative effects of devolution and whether the country can afford this form of government.

## **DEFINITION OF DEVOLUTION**

Devolution is the transfer of powers from the central government to local units) Kenya will be divided into 47 counties. There will be a president, ministers, senator, governor, and members of parliament.

Devolution can take various form;

- a) **Administrative** - For example the establishment of Government Offices for the Regions, or, pre-1999, the practice of transferring responsibilities from central government departments to territorial departments of the same Government.
- b) **Executive** - where the prerogative powers of the UK Government are transferred to ministers of devolved governments, usually under statutory authority.
- c) **Legislative** - where law-making powers are transferred to other legislatures.)

## ***Human Dignity***

*The Principle of Human Dignity*, (2008) defines Human dignity as an invaluable quality that originates from God and is of God because we are made in God's own image and likeness (Gn 1:26-27). Human dignity therefore promotes the sacredness of human life because the human person is the most central and clearest reflection of God among us. It is of great importance to understand that human beings have transcendent worth that comes from God. Human dignity is not based on any human quality, legal mandate, or individual merit or accomplishment. Human dignity is inalienable from the person and is therefore an essential part of every human being and is an intrinsic quality that can never be separated from other essential aspects of the human person.

Human dignity is therefore a quality that respects and seeks to find the best out of and for human life. The government of any country is without doubt the single largest institution that can affect the quality of life of its citizens.

## ***CONTENT OF RESEARCH***

### **Objects and principles of a devolved government.**

One of the objects and principles of a devolved government in accordance to the proposed constitution, Article 174 is to recognize the right of communities to manage their own affairs and further their development. This will give the people a sense of identity and self-empowerment. This is because they will feel recognized in their contribution to the growth of their own county.

Another principle is to protect and promote the interests and rights of minorities and marginalized communities. Hence the minorities will not feel sidelined. This will promote a sense of unity as they will not feel as though their needs have been ignored.

### **Gender aspect**

According to Article 175 of the proposed constitution, no more than two-thirds of the members of the representative bodies in each county government shall be of the same gender. A significant number of women leaders will therefore have a chance to occupy leadership positions since those positions are normally dominated by men.

## **Financial Aspect of Devolution.**

Under the Financial Aspect of Devolution, there are principles that apply and funds received or generated by counties must follow the following ideologies according to the current Kenyan Constitution;

### **a) The Power to Raise Revenue.**

A county can generate revenue through taxation article 209(3). It may impose property rates, entertainment taxes and any other tax that it is authorized to impose by an Act of Parliament.

In order to borrow, a county government may borrow only if the national government guarantees the loan and with the approval of the county government's assembly. This is according to article 212.

### **b) Collecting of Revenue**

In the new constitution, it is unclear how revenue generated will be collected. Administration of revenue involves the collection of taxes once they have been determined. Under the old constitutional system, local authorities were supposed to collect their own taxes. Experience indicates that many of them had no capacity to discharge this function.

With the new constitution, it is still a subject of debate whether the KRA will collect revenue on behalf of the counties or whether it shall assist the counties in building their own capacities to collect their own revenue.

### **c) The power to spend revenue.**

The county governments can raise and spend what they raise. But what the national government raises is to be shared among the two levels of government.

- Article 202 provides for the concept of equitable shares. The article requires that revenue raised national be shared equitably between the national and county governments. The county governments may also be given additional allocations from the national government's share of revenue. These additional revenues may be given conditionally or unconditionally.
- Article 203 provides a detailed criterion to be followed in vertically determining the equitable shares of both the national and county governments on the one hand; and horizontally among the 47 counties. This criterion incorporates the principles of financial equalization which must be followed when determining the shares.
- Article 204 provides for an equalization fund for marginalized areas.

## **Views of Yash Pal Ghai and Jill Cotrell Ghai**

Ghai, Y and Ghai, J think that the costs attributed to devolution are not new costs. “We already have budgeted for districts, including for county councils. Some of the items of the existing central government budget will be transferred to counties as the functions are transferred, and as we already have some funds which are regularly earmarked for districts. Hopefully, the salaries and remuneration commission will establish realistic salaries for public officers and the law might consider providing for allowances, not salaries for members of county assemblies, as their functions will not call for full time commitment.

### **The Current controversy on the Financial Aspect of Devolution.**

However much agreeable this seems, the financial aspect of this debate has been a source of debate between various arms of government and the stakeholders involved. “The International Monetary Fund is finding it increasingly difficult to steer clear of the dispute between the ministries of Finance and the Local Government over the management of the revenue of national and county governments” (Menya, 2011)

Menya (2011), further reports that “the local government is hatching a long-term scheme to suppress county governments and leave the control of finances in the hands of the central government.” This would ideally defeat the whole concept of devolution as was passed by Kenyans in the 2009 referendum that endorsed the current constitution.

Civil society groups in the country argue that counties without the power to control their own finances are reduced to mere political and administrative units. Arguably, this would end up negating the whole idea of devolution of the country into counties with more efficient financial management systems.

### **Devolution in the United Kingdom**

Devolution has been practiced in many countries worldwide with each country having its own story of this form of government. For the purpose of our study, we will look at the United Kingdom countries of Northern Ireland, Wales, England, Westminster and Scotland since the year 1998.

Even though devolution has never been practiced in the contemporary Kenya, we agree with the fact that the dignity of the human person remains the same regardless of his geographical habitation. It would therefore be in order to use examples from the experiences of the people in the United Kingdom to predict the likely effects of devolution on the human dignity of the Kenyan people.

A policy change in governance such as devolution affects the nationals of a country both directly and indirectly. Some of the effects of devolution in the UK, according to the *Joseph Rowntree Foundation*. (2010) include;

- Ten years of devolution coincided mostly with falling levels of poverty and improving employment rates across the UK, particularly in Scotland and the North East of England.
- Social housing improvements were achieved,
- The Welsh approach to social care enables costs for older people on lower incomes to be reduced and contrasts with Scotland's more costly universal approach.
- It is likely to take longer than ten years to see the true impact of devolved policies for disadvantaged groups, especially in Wales where more limited powers are currently available.

Would Kenya experience some of these improvements in living standards that are associated with devolution? Every living being with free will and self-movement seeks to find what is best for him and the community. If every individual would have the common good within them, then without doubt we would reap the positive effects of devolution.

## ***RESEARCH METHODS***

The materials available with information about devolution in the Kenyan context were not in abundance. We however were able to find sources that were relevant to the topic.

On issues regarding communities, we were able to get a number of books that had information concerning various communities. They include: Kenya's Ethnic Communities and A History of the Kikuyu 1500-1900. We were also able to find some information on the internet.

We also looked at a number of website articles and conference proceedings. They provided information on the countries that have practiced devolution and ideas of professionals such as Yash Pal Ghai on the various aspects of devolution.

We watched professionals who were experts on the devolution issue being interviewed on television such as Mutaha Kagwa.

We also interviewed a total of twelve people. This consisted of my fellow students and lecturer's. They gave us their insights about devolution and how they felt about it being implemented in Kenya. The following are questions we asked:

- Do you know what devolution is?
- What do you know about devolution?
- Do you think Kenya can afford this form of government?
- What do you think are the positive and negative effects of devolution?

## **RESEARCH FINDINGS**

From the interviews:

***17% of the people I interviewed do not know what devolution is.***

Those who knew what devolution is were able to give a brief explanation. Some had already concluded that it is a bad thing.

***83% of the interviewees thought that Kenya cannot afford devolution.***

The reasons they gave were:

1. It will be a burden on tax payer's money. This is because there will be too many leaders who will definitely expect a high pay. Hence important needs of the country may not be met or for them to be catered for there might be excessive taxation.
2. The country is currently in debt as a result of misappropriation of funds.
3. The current leaders are not reliable and the chances of them going back to power are high. The issue of corruption has not been dealt with as should. With the dismissal of PLO Lumumba by the members of Parliament themselves the country is still deep in the pit of corruption and is not about to get out.
4. Poor system of governance that is not accountable. Currently the CDF's are not using the allocated funds appropriately.

***17% believe that Kenya can afford devolution because:***

1. Untapped resources will be exploited leading to economic growth of the country.
2. If we choose leaders of integrity, whose aims are to serve their people then they will meet the needs of the people and see to it that the country will grow and develop as targeted.

### **The positive effects of devolution:**

1. Aspect of subsidiarity. Having the powers move from the state authority to the county levels people are assured to be heard if they voice their concerns.
2. There will be equal distribution of resources.
3. It will to the development of individual counties.
4. It will lead to economic growth of the country as a whole.



5. It will lead to increased employment. There will be new posts and the development goals of the county to be met, labour will be required.
6. It will ease the burden of the central government since the work will have been delegated.
7. Decisions will be made faster.

**The negative effects of devolution:**

1. It will lead to disunity. This is because a county will be dominated by people from the same ethnic community.
2. It will promote ethnicity.
3. Corruption might worsen.
4. There might be excessive taxation
5. The criteria for devolution are not clearly specified.
6. It is an expensive form of government.
7. It will lead to conflict within ethnic group- clanism. This may be as a result of nepotism whereby the leader will favour those who are closest to him or her.
8. Some areas have inadequate resources to exploit hence they may continue to lag behind. For example North Eastern.
9. Kenya is too small to be devolved into 47 counties

From the books and website articles we were able to get ideas of the various aspects of devolution from people who are versed about the topic of devolution in the Kenyan context. These include: Yash Pal Ghai, Jill Cotrell Ghai, Mutaha Kagwa and Mwai Kibaki.

From the secondary sources of data we were able to get information concerning the socio-political organization of the tribes, their way of life and their beliefs.

***Devolution in relation to Human Dignity;***

With the central powers moving closer to the people, the people will be more confident in the government. This is because when they voice their concerns they will be heard and consequently decisions made faster. Taking into consideration the hierarchy needs, they will be able to move on to the next level since their current needs have been met. This will also promote peace since there will be lesser cases of strikes and other rebellious acts.

Looking at the goals of development to be met by the county, there will be increased employment opportunities. This will lead to a better standard of living of the people. Currently with inflation at its highest rate ever and increased unemployment since firms are laying off workers, many people have been unable to make ends meet and a significant number of people especially those settling in the slums are hopeless. This is evident as most of them result to drinking cheap alcohol which has caused death and blindness of its consumers.

### **Relationships between the findings.**

Most people are convinced that devolution is not good for Kenya. Those who barely understand what devolution entails are convinced that it is bad because that is what they hear from those who know something about it.

The only reason why people see some light from the whole devolution aspect is because they will be closer to their leaders, there will be equitable distribution of resources and communities will be able to manage their own affairs and to further their development. (Article 174 of proposed constitution)

Implementing devolution will be expensive. Whether we will be able to afford this form of government or not will solely rely on the type of leadership we have. The issue of corruption has not been dealt with as should and people fear that it will move from the national level and onto the county level which will be worse than before. There are also fears that to cater for this new form of government will lead to excessive taxation.

### ***RECOMMENDATIONS.***

People should vote for leaders of integrity, whose aims are to serve, criminalize incitement of ethnic hatreds, promote fair administration and ultimately gear toward inclusion of all (Ghai, Y and Ghai, J). This is because success of devolution lies in the hands of our leaders.

### ***CONCLUSION.***

We have looked at what devolution is, its various aspects and people's views on it being implemented as of 2013.

Many people have fears about devolution being implemented. It being something that cannot be avoided, people should focus on the positives that come with it and try to be more informed on the topic.

We have also reviewed the UK countries that have carried out devolution and there is a lot to learn from them. In addition we took a look at the various aspects of devolution

such as the Resource Distribution and the Allocation of Money and its positive and negative effects.

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