

UNIVERSITY OF NAIROBI

SCHOOL OF LAW



**ENHANCING GOOD GOVERNANCE UNDER KENYA'S DEVOLVED SYSTEM OF
GOVERNMENT: A CASE OF MACHAKOS COUNTY**

**A RESEARCH THESIS SUBMITTED IN PARTIAL FULFILLMENT OF THE AWARD
OF MASTERS OF LAWS (LL.M) DEGREE 2015/2016**

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DECLARATION

This project is my original work and it has not been submitted and it is not currently being submitted for a degree in any University or institution.

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DEDICATION

I dedicate this work to my children Phillip, Barrack and Elijah.

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LIST OF ABBREVIATIONS

CDF	Constituency Development Fund
CGA	County Government Act 2012
COB	Controller of Budget
CoK	Constitution of Kenya 2010
DFRDS	District Focus for Rural Development Strategy
ICT	Information and Communication Technology
MDGs	Millennium Development Goals
MP	Member of Parliament
PFMA	Public Financial Management Act
UNESCAP	United Nations Economic and Social Commission for Asia and the Pacific
WBDR	World Bank Development Reports
WBR	World Bank Report

LIST OF CITED CASES

1. *Commission for the Implementation of the Constitution vs Parliament of Kenya and Another, Petition No. 454 of 2012.*
2. *Council of Governors & 3 Others vs Senate & 53 Others, Petition No 381 of 2014, eKLR [2014].*
3. *International Legal Consultancy Group vs The Senate and Clerk of the Senate, Constitutional Petition No.8 of 2014.*
4. *Kenya Small Scale Farmers Forum & 6 Others vs Republic of Kenya & 2 Others [2013] eKLR, Petition No. 1174 of 2007.*
5. *Kiambu County Government & 3 Others vs Robert N. Gakuru & Others, Civil Application No. 97 of 2014 (UR NO. 80/2014), [2014] eKLR.*
6. *Nairobi Metropolitan Psv Saccos Union Limited & 25 Others vs County Of Nairobi Government & 3 Others [2013] eKLR Petition No.486 OF 2013.*
7. *Republic vs Attorney General & 3 Others Ex-Parte Tom Odoyo Oloo, Judicial Review Application No. 196 of 2015.*
8. *Republic Vs Transition Authority & Another Exparte Kenya Medical Practitioners, Pharmacists and Dentists Union (KPMDU) & 2 Others, Judicial Review No 317 of 2013, 201 eKLR.*
9. *Richard Kariuki Kibuchwa & Another vs Governor, Kirinyaga County & 2 Others, Constitutional Petition No. 6 of 2015, [2015] eKLR.*
10. *Robert N. Gakuru & Others vs Governor Kiambu County & 3 Others [2014] eKLR.*
11. *Trusted Society of Human Rights vs Attorney General and Others, Petition No 381 of 2014, eKLR [2014].*

LIST OF LEGISLATIONS

1. Government of Kenya, *Constitution of Kenya 2010* (Government Printers 2010).
2. Government of Kenya, *Coordination of National Government Act of 2013* (Government Printers 2012).
3. Government of Kenya, *Urban Areas and Cities Act of 2011* (Government Printers 2011).
4. Government of Kenya, *County Government Act No. 17 of 2012* (Government Printers 2102).
5. Government of Kenya, *Leadership and Integrity Act No of 2012* (Government Printers 2012).
6. Government of Kenya, *Public Finance Management Act of 2012* (Government Printers 2012).
7. Government of Kenya, *Public Officers and Ethics Act of 2003* (Government Printers 2003).
8. Government of Kenya, *Transition County Allocation Act of 2013*(Government Printer 2013).
9. Government of Kenya, *Intergovernmental Relations Act of 2012* (Government Printers 2012).
10. Government of Kenya, *Transition to Devolved Government Act of 2013* (Government Printers 2013).
11. Machakos County Government, *Machakos County Government (Bursary Fund) Regulations 2014* (Machakos County Government 2014).
12. Machakos County Government, *Machakos County Public Participation Act* (Government Printer, 2014).

13. Meru County Government, **Meru County Public Participation Act 2014** (Government Printer, 2014).

ABSTRACT

The term ‘good governance’ has become a common vernacular in development and scholarly discourse. Countries are required to employ good governance practices in key decision making and implementation. The United Nations Development Program (UNDP) identifies participation, accountability, transparency, rule of law, equity, consensus oriented, efficiency, effectiveness and responsiveness to the needs of the people as elements of good governance. These elements have become universally accepted. In order to enhance governance, countries are adopting various mechanisms. One of the mechanisms is through decentralization of power. It is argued that decentralization of power provides an environment in which good governance thrives by fostering local participation, accountability, transparency, efficiency and responsiveness to the needs of the people. This study also proceeds from the understanding that the “goodness” of good governance is in promotion of common good in the way public goods for example development programs and public appointments as well as government services are provided to citizens of a country.

In 2010, Kenyan changed its governance system to a devolved system of governance. This was informed by the inadequacies of the centralized system which was characterized by challenges including bureaucratic inefficiencies, lack of accountability and transparency, marginalization, unequal distribution of national resources, lack of public participation, patronage, rent seeking, ethnicity amongst others.

Good governance and its principles are recognized under Article 10 of the Constitutional of Kenya 2010 (CoK) as part of the national values and principles of Kenya’s governance. The objectives, principles and functions of devolution are tailored towards achievement of good

governance. The legal framework such as the County Government Act, Public Finance Management Act, Leadership and Integrity Act and the Public Officers Ethics Act all aim at fostering good governance. The legal framework establishes an elaborate institutional framework such as county decentralized units in addition to the County Assembly to offer oversight over the County Executive and County treasuries. In 2013, the devolved government was established and one of its mandates was to foster good governance for development. However, since its inception devolution has faced a myriad of challenges threatening good governance such as corruption, misuse of public resources, political patronage, and impunity amongst others. The need to inquire into the structures County Governments have put in place to enhance good governance and development is inevitable. This study uses Machakos County as a case study to determine what institutional and legal framework are in place to ensure good governance, identifies the challenges facing the achievement of good governance at the counties and recommends the way forward in resolving these challenges.

CHAPTER ONE

1.0 INTRODUCTION

1.1 Background to the Study

This study seeks to critically interrogate good governance practices in the Kenyan devolved system of government using Machakos County as the case study for purposes of enhancing the developmental objectives of devolution under Article 174 of the Constitution of Kenya, 2010 (CoK). The CoK 2010, recognizes good governance as a national value and principle of governance both at the national and county level..

The concept of good governance as we know it today has its origins in the 1970s, as formulated by development agencies to measure governance.¹ However, it was not until 1980's that the concept became seductive in the global developmental agenda. It emanates from the concept of governance. The word 'governance' has its origins from Latin word '*gubernaer*' and greek word '*kubernaein*' which mean to steer.² Governance is the way in which governance actors manage the affairs of a country through a well-established legal and institutional framework for the benefit of the people.³

The World Bank defines governance as the 'way power is exercised through a country's economic, political and social institutions'. The United Nations Economic and Social

¹ Nicole Madlonado, 'The World Bank's Evolving Concept of Good Governance and its Impact on Human Rights (Doctoral workshop on development and international organizations Stockholm, Sweden, May 29-30, 2010).

² 'What is Governance' <<https://tamayaosbc.wordpress.com/2014/08/21/what-is-governance/>> accessed 5 October 2016.

³ Francis Fukuyama, 'What is Governance' (Centre for Global Development, Working Paper Series No. 314 2013).

Commission for Asia and the Pacific (ESCAP) define governance as, ‘the process of decision making and the process by which decisions are implemented or not implemented’.⁴ The United Nations Development Program (UNDP) defines governance as ‘the exercise of economic, political, and administrative authority to manage a country’s affairs at all levels, comprising the mechanisms, processes, and institutions through which that authority is directed’.⁵ Whereas the definition of governance varies, it rests on three dimensions: authority, decision making and accountability.⁶ This study shall adopt the UNDP definition of governance because it is broad and encompasses all governance structures. For the purposes of understanding the concept of good governance, governance is the process of exercising economic, political and administrative, power granted to governance actors through legal, institutional and policy framework to manage country’s resources.

The question of whether governance is good or bad arose during the 1970s amongst development agencies as a yardstick to measure governance. International development agencies argue that poor governance leads to underdevelopment.⁷ UNDP and World Bank have been at the forefront in promoting the idea of development through good governance.⁸ World Bank defines good governance as the ‘the manner in which power is exercised in the management of a country’s economic and social resources for development’.⁹ In this definition, good governance is seen as being critical to the development process and management of the country’s resources. UNDP on the other hand, defines good governance as the processes of decision making, planning for

⁴<<http://www.unescap.org/sites/default/files/good-governance.pdf>>accessed 25 September 2016.

⁵ UNDP, *Governance and Sustainable Human Development* (1997).

⁶ Institute on Governance, ‘Defining Governance’ <http://iog.ca/defining-governance/> accessed 4 October 2016.

⁷Claudio Ciborra and Diego D Navarra, ‘Good Governance, Development Theory and Aid Policies: Risks and Challenges of e-Government in Jordan’ (2005) 11, *Journal for Information Technology for Development* 141.

⁸ Through the Bank’s Studies and reports, mainly through the World Development Reports series, issued by the Bank; see especially reports of 1997, 199/2000, 2004, 2006 and 2007. See also Yusuf et al (2009) for a discussion on the impact of the WDRs.

⁹World Bank, *Governance and Development* (Report, World Bank 1992).

development and delivery of services to the people. Such a process must be participatory, consensus oriented, accountable, transparent, responsive to the needs of the people, effective and efficient, equitable and inclusive and should follow constitutionalism and the rule of law.¹⁰ UNDP not only identifies what good governance is, but goes ahead to provide aspects of good governance.

The principle of participation simply means that all actors in governance-public, civil, individual and private-have to be involved in the decision making of the issues affecting them. The participation can be direct or indirect.¹¹ Rule of law requires that the laws and regulations are imposed fairly without any discrimination.¹² The rule of law includes, ‘protection of human rights, physical security, security against violence and coercion, easy, timely and equal access to justice’.¹³ Transparency and accountability as a principle of good governance ensures that decisions are made in openness and every decision is subject to public oversight.¹⁴ The principle of responsiveness ensures that all institutions and process serve all stakeholders within reasonable time. Effectiveness and efficiency involves the use of the available public resources to produce results.¹⁵

Equity allows all people irrespective of gender, status, tribe or race to be involved in governance. Consensus orientation requires mediation of the different interests of society so that to reach a consensus on the best interests of the entire community on policies and procedures. In the end it is expected that by internalising the above principles in the management of public affairs,

¹⁰W Andy Knight, *Democracy and Good Governance* (Oxford University Press 2008).

¹¹ Robert N. Gakuru & Others v Governor Kiambu County & 3 others [2014] eKLR.

¹² Tom Bingham, *Rule of Law* (Penguin 2011).

¹³ UNDP, *Supporting the Achievement of the Millennium Development Goals in Asia and Pacific (Phase II)*, RAS/04/061 December 2008.

¹⁴ Tero Erkkila, ‘Transparency and Institutions of Public Accountability’ in Tero Erkkila (ed), *Government Transparency* (Palgrave Macmillan 2012) 105-125.

¹⁵ Ibid.

corruption is minimized, the views of minorities are taken into account and the voices of the most vulnerable in society are included in decision-making. It also safeguards the present and future needs of society.¹⁶This study adopts the UNDP definition of governance because it is broad and defines what to look for in determining whether there is good or bad governance. Significantly also, most of the aspects identified are adopted under Article 10 of the Constitution of Kenya (2010) as national values and principles of good governance hence form part of our national fabric.

Presently it is argued that decentralization of power promotes good governance and in turn enhances development and service delivery at the local level. It brings governance closer to the people promoting local participation in issues affecting them such as legislation, resource allocation, resource management, politics, development projects, health care, education, water provision amongst others.¹⁷ Based on this argument, various countries have adopted decentralization in order to promote development at the local level through decentralization of political and economic power from the central government to a number of subnational levels.¹⁸

This argument formed the epicenter for the clamor for devolution of power and resources as provided for under the CoK. The centralized system of government, which had existed since independence, had faced various challenges including bureaucratic inefficiencies, lack of accountability and transparency, marginalization, unequal distribution of national resources, lack of public participation, patronage, rent seeking, ethnicity amongst others.¹⁹ Kenya's historical over-concentration of power in one center, among others, resulted in underdevelopment and

¹⁶United Nations Economic and Social Commission for Asia and the Pacific, 'What is Good Governance?' <<http://www.unescap.org/sites/default/files/good-governance.pdf>>accessed 22 November 2015.

¹⁷ See part two of the fourth Schedule, CoK 2010 which provides for the functions of the County Government.

¹⁸Junaid Ahmed, Shantayanan Deverajan, Stuti Khemani and Shekhar Shah, 'Decentralization and Service Delivery' (World Bank Policy Research Working Paper 3603, 2005).

¹⁹ John Mutakha Kangu, *Constitutional Law of Kenya on Devolution*(Strathmore University Press 2015).

marginalization characterized by unequal access to state resources and services by all the regions and communities in Kenya.²⁰ Through the years, development and access to public services were hindered by poor governance policies manifesting themselves in patronage, lack of democratic and participatory governance, lack of transparency and accountability in public expenditure among others.²¹

To check on these manifestations of bad governance, Kenyans, through the Constitutional review process changed the system, design and structure of governance from a centralized one to a devolved one, where power and resources are shared between one National Government and 47 County Governments. Supporters of devolution argue that, it enhances service delivery and development at the County level by bringing resources close to the people and enhancing the right to self-governance.²² Good governance therefore is recognized as an essential element of devolution.²³ Kenyans were excited that decentralization of governance from the national level to the County level would lead to good governance through regular public participation in decision-making, equitable distribution of development projects and opportunities, increased oversight on expenditure hence reduced corruption among other factors.²⁴

To avoid the mistakes of the past and insulate devolution from bad governance, the Constitution of Kenya 2010 made very elaborate good governance provisions to ensure openness in the running of public affairs relating to public finance, integrity, accountable exercise of power, oversight and separation of powers among others.²⁵ To operationalize them, Parliament enacted

²⁰Lumumba and Franceschi (n 3)

²¹PLO Lumumba, MK Mbondenyi and SO Odero, *The Constitution of Kenya: Contemporary Readings* (LawAfrica 2011).

²²Dhurba P Rizal, *Decentralization and Good Governance* (Adroit Publishers 2001).

²³JG Potter, *Devolution and Globalization: Implications for Local Decision-makers* (OECD 2001).

²⁴Kangu (n 26),

²⁵ See Generally Articles 10; 96 (3); 174; 185 (3) and 201 of the Constitution of Kenya, 2010

several pieces of legislation to give full effect to the Constitutional provisions. The County Government Act 2012,²⁶ Public Finance Act 2012,²⁷ Leadership and Integrity Act 2012²⁸ and the Public Officer Ethics Act 2003²⁹ provide a strong legal framework on good governance in Kenya at the County level. They have specific provisions to ensure *inter alia* transparency and accountability, public participation and consultation, high levels of integrity for public officials, and structures and institutions to support implementation of decisions.

In spite of the elaborate Constitutional and statutory provisions made to ensure devolution reverses past inequalities through good governance and equitable development, four years into the devolution system, there are a number of reported success stories but also a myriad of governance and institutional challenges that must be tackled for devolution to succeed. This new system appears to be riddled with a lack of good governance, as well as proper structures and institutions for promotion of the principles of good governance for efficient delivery of public services. Published Controller of Budget, Auditor General³⁰ and Ethics and Anti-Corruption Commission reports³¹ all point to an urgent need to strengthen accountability and inculcate a culture of good governance in the management of County Governments. According to the World Bank, corruption, wastage of resources, poor prioritization as well as poor institutional design has emerged as a threat to the dream of development under devolution.³²

²⁶ Government of Kenya, *County Government Act No. 17 of 2012* (Government Printers).

²⁷ Government of Kenya, *Public Finance Management Act Chapter 412 C of the Laws of Kenya* (Government Printers).

²⁸ Government of Kenya, *Leadership and Integrity Act No of 2012* (Government Printers 2012).

²⁹ Government of Kenya, *Public Officers and Ethics Act of 2003* (Government Printers 2003).

³⁰ Government of Kenya, *Annual General Report Of The Controller And Auditor General , On The Audit Of Public Authorities And Other Bodies For The Financial Year 2013/2014* (GoK 2014).

³¹ Government of Kenya , *The National Survey Report On Corruption And Ethics* (2015).

³² World Bank Report: Kenya Economic Update, June 2015, 12th Edition

Pundits have opined that the bad governance of the past, which had undermined development since independence, appears to have been ‘devolved’ to the County against the core aspirations of Kenyans. The reported pre-occupation by most County assemblies, for example, with trivial issues like allowance seeking foreign trips that have little or no value to their electorate at the expense of their cardinal functions has given impetus to claims of ineffective and compromised oversight.³³ It is also contended that the executive arm of the County has hitherto not developed enough legal, policy and institutional capacity including the anticipated further decentralization of structures to village levels. For good governance to prevail under the devolved system there is need to critically analyze the institutional capacity and soundness of the County Governments.

It is these constitutional and legal provisions and their conceptual and historical justifications that will form this study’s analysis of the extent to which principles of good governance have been inculcated in Machakos, the case study county, for the purpose of ensuring equitable socio-economic development and delivery of proximate services to the county residents. It is hoped that the findings of the study will be relevant to not only the other County Governments but also to the national government and other actors involved in this subject. This study focuses on participation, transparency and accountability.

1.2 Problem Statement

The CoK entrenches the principles of good governance in order to enhance development at the county level. While the principles and institution capacity is well established under the CoK and County statutory laws, one can argue that the real implementation occurred when the devolved system was established after the general elections. It begs the question whether the principles of

³³Agnes Odhiambo, ‘County Budget Implementation Review Report’ 1996.

good governance were barely aspirational. Devolution under the CoK was meant to enhance development and service delivery at the County level. However, development projects at the County Government have been hampered by various factors such as corruption, supremacy battles, and wastage of resources, nepotism, tribalism, and politics among others. This has led Kenyans to lose trust in devolution.

Weak governance, lack of accountability and poor institutional framework undermines development in county governments. For example, miss-appropriation and miss-application of funds, poor prioritization of projects, lack of proper public participation frameworks, wastage and lavish expenditures, weak oversight by County assemblies, wrangles between Governors, their deputies and also senators among other factors manifest poor governance challenges that are undermining development in Counties. There is need to unravel these challenges and make recommendations for clear, stable and predictable systems to be put in place in line with internationally accepted principles of good governance in order to enhance and accelerate the developmental benefits of devolution.

1.3 Study Justification

This study is justified on the basis that it evaluates the objectives and functions of devolution in order to provide information to the relevant stakeholders. As we prepare for next general elections there is need to determine what did not work in the first five years of devolution. In doing so, we will be able to identify the challenges that hindered the realization of devolution. This study adds information to the scarce literature on the topic of study. Most of the literature available has only tackled a descriptive aspect of the challenges facing devolution without pinpointing on the elements of good governance. This study seeks to fill this gap. Another

justification is that this study links the elements of good governance to the developmental role of County Governments' and making them to be the driving force in the implementation of devolution.

1.4 Research Objectives

1.4.1 Main Objectives

The main objective of this study is to assess the level of compliance with existing constitutional and legal provisions meant to ensure good governance for development and recommend ways and means of ensuring that devolution meets its constitutional objectives of fostering development by incorporating and refocusing on principles of good governance in the making and implementation of decisions.

1.4.2 Specific Objectives

This study is based on the following specific objectives:

- a) To identify the levels to which the principles of good governance such as participation, accountability, transparency, rule of law, efficiency and effectiveness have been applied and practiced by Machakos County Government.
- b) To establish and analyze the challenges hindering the realization of good governance practices and County development;
- c) To determine the institutional capacity and structures that the County Government of Machakos has put in place to ensure good governance and to foster County development;
and

- d) To recommend ways and mechanisms of ensuring that devolution meets its constitutional objectives of fostering development by incorporating and refocusing on principles of good governance in the making and implementation of decisions

1.5 Research Hypothesis

This study is based on the following hypotheses;

- a) As demonstrated in the historical background, bad governance in Kenya led to under-and-unequal development. It is therefore our hypothesis that good governance practices can accelerate human development and bridge the existing inequalities under devolution.
- b) The overriding objective of Devolution is to give decision making powers to the residents of a county as opposed to decisions affecting a county being made exclusively from a centralized national level. The Constitution,³⁴ the County Government Act and the Public Finance Management Act envisage the creation of several structures both horizontally (at the county headquarters level) and vertically (decentralized units) to undertake decision making and implementation. It is on this basis that it is hypothesized that quality structures and institutions provide an enabling environment for good governance practices and enhances development at both the national and County Government levels.
- c) The passage of the new Constitution in 2010 brought a lot of hope to the people of Kenya. The people hoped, and rightly so, that poor governance that had led to underdevelopment and unequal distribution of public goods in the past had come to an

³⁴ Article 176 (2), Constitution of Kenya 2010.

end. Four years since the start of Devolution, independent reports³⁵ continue to show a pattern of wastage and corruption. The rate of implementation of the development functions assigned to counties under the Constitution is also wanting³⁶. The people are also concerned about prioritization in counties. It's therefore hypothesized that citizens are not satisfied with the implementation of development four years into devolution and this calls for the need to adopt good governance.

1.6 Research Questions

The research is based on three key questions:

- a) Is good governance a fundamental element in fostering development in the Kenyan devolved system of government?
- b) How adequate, effective and efficient are the structures, institutions and systems that have been put in place at the County level in promoting good governance practices towards developmental results?
- c) Going forward what mechanisms should be put in place to ensure a culture of good governance at the County level in order to permanently foster County development?

1.7 Conceptual Framework

This study is based on the conceptual understanding that good governance is not an end in itself but it is based to facilitate the attainment of development. Development is a concept that is

³⁵ Office of the Controller of Budget and Auditor General, *Annual General Report of the Controller and Auditor General on the Audit of Public Authorities and other Bodies for the Financial Year 2013/2014* (Government of Kenya 2014).

³⁶ Fourth Schedule, CoK 2010.

contested both politically and theoretically. If not qualified, development is intended as something desirable. According to Bellu, development when referring to society or a socio-economic system, it means ‘improvement either in the general situation of the system or in some of its constituent elements’.³⁷ Development is qualified and specified in different ways: economic, human, sustainable and territorial.³⁸ For development to occur Dudley Seers outlines several conditions that lead to realization of the potential of human personality: ‘the capacity to obtain the basic physical necessities such as food; job; equality; participation on government; belonging to a nation that is truly independent both economically and politically; and adequate education levels.’³⁹ Participation in government by the people who established is a key element of development.

Economic development is traditionally seen as the traditional form of development and is strictly associated with the perimeter of economic growth defined as an increase in the per capita income of a nation. It is the improvement of the way ‘endowments, goods and services are used within (or by) the system to generate new goods and services in order to provided additional consumption and/or investment possibilities to the members of the system’.⁴⁰ Human development on the other hand deviates from economic development as it is people-centered development which focuses on improvement of various dimensions affecting the well-being on individuals and their relationships with the society such as education, empowerment, health etc.

³⁷ Lorenzo G Bellu, ‘Development and Development Paradigms: A Reasoned Review of Prevailing Visions’ (FAO, 2011)

³⁸ Ibid.

³⁹ Shelly Shah, ‘Development’ Meaning and the Concept of Development’

<http://www.sociologydiscussion.com/society/development-meaning-and-concept-of-development/688> accessed 27 November 2016.

⁴⁰ Bellu.

Sustainable development considers the long term perspectives of the socio-economic system to ensure improvements occurring in the short term not to be detrimental to future generations.

The World Bank model of development uses econometric indicators such as GDP, GNP to measure the rate of development. It adopts the economic development. This study adopts the human development approach as envisaged by UNDP. This study adopts the definition of good governance by UNDP, which enlists the principles of good governance such as participation, transparency, accountability, rule of law, which encompasses the discussion under study.

For purposes of identifying whether Kenyan devolution has led to development, this study shall focus on functions of County government under Fourth Schedule in the CoK. Amartya Sen's Development as Freedom has come to be recognized in jurisprudential and access to justice discourse as a theory of economic justice. His capability approach (CA) which has become decisively influential over the last two decades as a normative framework for assessing social arrangements, social justice, equality, and quality of life, as well as for designing policies.⁴¹ The core characteristic of the capability approach is its focus on what people are effectively able to do and to be, that is, on their capabilities.⁴²

In Sen's view, the life of a person consists of “a sequence of things the person does, or states of being he or she achieves, and these constitute a collection of 'functionings' – doings and beings the person achieves”⁴³. In other words, ‘functionings’ refer to “the various things a person may

⁴¹Robeyns, I. (2011). "The Capability Approach", *The Stanford Encyclopedia of Philosophy (Summer 2011 Edition)*, Edward N. Zalta (ed.), Retrieved from <http://plato.stanford.edu/archives/sum2011/entries/capability-approach>. (Assessed 22nd November 2015)

⁴² Dr. Ingrid Robeyns, (2003) “The Capability Approach: An Interdisciplinary Introduction,” Amsterdam School of Social Sciences Research Oudezijds Achterburgwal 237, at 5

⁴³Sen, A. K., &Drèze, J. (1999).*The Amartya Sen & Jean Drèze Omnibus: Poverty and Famines; Hunger and Public Action; India: Economic Development and Social Opportunity*. New York: Oxford University Press, at 10

value doing or being”⁴⁴, or the valuable activities and states constitutive of a person's well-being. Examples of functioning’s include both basic and complex achievements such as living long, being adequately nourished, enjoying good health, being happy, having self-respect, and participating in social and political activities in the community. Functioning is closely related to another core concept- capability. “‘Capability’ refers to the alternative [reachable] combinations of functioning’s’ from which a person can choose. Thus, the notion of capability is essentially one of freedom – the range of options a person has in deciding what kind of a life to lead”.⁴⁵ In other words, capabilities refer to genuine freedoms a person “enjoys to lead the kind of life he or she has reason to value”⁴⁶.

As highlighted earlier, the idea of good governance and development through decentralization is majorly promoted by multi-lateral and international development agencies. These advocates of development through decentralization key among them being the World Bank and the UNDP, argue that decentralization improves the efficiency and responsiveness of the public sector in many ways including by promoting allocative efficiency, by fostering productive efficiency and accountability, and by facilitating cost recovery.⁴⁷ The World Bank has in particular emphasized on ‘pro-poor, service-led, redistributive and participatory development’.⁴⁸

It has also been argued that the major justification for decentralization is that it enhances good governance through enhancing local democracy, local participation, accountability, transparency and representation.⁴⁹ It provides an environment through which good governance principles can

⁴⁴Sen, A. K. (1999). *Development as Freedom*. Oxford: Oxford University Press, at 75

⁴⁵ Supra note 3

⁴⁶ Supra note 4 at 87

⁴⁷ Research Plan IRIS Center, *Decentralization, Governance, and Delivery of Public Services: The Impact of Institutional Arrangements* (University of Maryland September 29 1999) 2.

⁴⁸ See Generally World Bank Development Reports for 2004, 2006 and 2007.

⁴⁹ Kiwanuka

thrive. In this regard, devolution of power and resources from one center to several centers is viewed as a principle of good governance in itself mainly because distributing and sharing power and resources results to equity.⁵⁰ On the other hand however, devolution is seen as a form of organizing power. The resultant effect is that there are governments at sub-national levels with a significant measure of power and resources. It is therefore argued that such governments', just like national governments', must internalize the principles of good governance in their practices so as to realize their overriding objective of fostering development and service delivery.

For decentralization to enhance good governance, a country must establish strong institutional frameworks hinged on human rights, democracy, rule of law, sharing of information and local participation.⁵¹ Comparatively, many countries such as Indonesia, Brazil, Uganda, Nigeria, Mozambique, India amongst others have adopted a form of decentralization as a means to enhance their governance structure.⁵² In Indonesia, Green argues that decentralization has led regional autonomy allowing regions to implement legal and economic policies that are more efficient and applicable to their circumstances.⁵³ In Singapore good governance structures enhancing transparency, accountability, rule of law, equity have been attributed to its economic development success.⁵⁴ Closer home, Rwanda is argued to have made progress in its economic growth, public sector management and regulatory reform since the 1994 genocide by adopting good governance structures such as decentralization, local participation in governance and strengthening accountability mechanisms. India's Keralla province has one of the most successful public participation models in the world. Kenya's devolution can borrow valuable

⁵⁰ Ibid.

⁵¹ Kiwanuka (n 90),

⁵² Keith Green, 'Decentralization and Good Governance@ A Case of Indonesia' (2005).

⁵³ Ibid.

⁵⁴ Thomas Koh, 'The Principles of Good Governance' (Ministry of Foreign Affairs Thailand Workshop on Good Governance, 7 December 2009).

lessons from Kerala's model of participatory governance.⁵⁵ For this reason, this study will devote discuss present Kerala's model in greater detail for better understanding. The structure of participation is bottom-up with decentralised planning donating sizable decision-making powers to the local government. The model is spearheaded by the Campaign 'The People's Campaign for Decentralised Planning'.

This study develops a conceptual framework that adoption of good governance practices in a devolved system of government enhances development. Decentralization of power provides an environment through which good governance practices can thrive. It provides multiple centers of participation in decision-making that in turn assures better management and development. In a conceptual framework good governance is the independent variable while development is the dependent variable. Key developmental actors such as World Bank, OECD and World Bank argue that decentralization of power, in effect promotes good governance, which spurs development. For purposes of this study, devolution, a form of decentralization is the intervening variable. Through this conceptual framework the study seeks to show that it is indeed through the adoption of good governance principles such as participation, inclusiveness, accountability amongst others that devolution shall achieve its developmental objectives. It is also clear that systems and structures to support the internalisation of good governance practises must be designed and anchored in local legislation and policy for there to be consistency and a perpetual culture hinged on the principles.

⁵⁵ TM Thomas Isaac and Patrick Heller, 'Democracy and Development: Decentralised Planning in Kerala' <<http://www.archonfung.net/docs/isaac.pdf>> accessed 6 November 2016.

1.8 Theoretical Framework

Kenya's democracy is largely premised along western conceptions of law and government, as developed over time, which include justice, equality, rationality, freedom, impartiality and , individual rights among others as well the legitimacy of government to protect those rights. These conceptions have their basis in the social contract theory whose roots are traceable in ancient philosophies of Socrates and Plato as historically developed by Thomas Hobbes, John Locke and Jean-Jacques Rousseau. John Rawls theory of justice as fairness is credited for resurrecting the social contract debate in the 20th century as is David Gauthier 1986 work on politics and morality.⁵⁶ The theory of governance emanates from the social contract theory

The overarching claim by social contract theorists in the different phases is that a person's moral and or political obligations are dependent upon a contract or an agreement among them to form the society in which they live in, called a civil society.. According to Thomas Hobbes, John Locke and Jean-Jacques Rousseau, individual citizens have natural rights that they surrender to the absolute authority of the government, referred to as the sovereign.⁵⁷ In return the government protects the civil liberties and rights of the citizens. Hobbes argued that in order to avoid state of nature, the opposite of a civil society and which is 'solitary, nasty, brutish and short' power should be granted to a centralized authority with power to rule. .⁵⁸ Hobbes was a supporter of absolutism and argued that, 'law is dependent upon the sanction of the sovereign and the government without sword are but words and of no strength to secure a man at all'.⁵⁹

⁵⁶ OJ Paul, *Key Issues in Jurisprudence: An In-depth Discourse on Jurisprudence Problems* (1st edn Law Africa 2006).

⁵⁷ Ibid.

⁵⁸ George P Fletcher, *Basic Concepts of Legal Thought* (Oxford University Press 1996) 92.

⁵⁹ Ibid.

John Locke on the other hand differed from Hobbes in the sense that he saw the state of nature as a golden age, which was a state of peace, goodwill and mutual existence.⁶⁰ To Locke, nature was a State of liberty where people enjoyed their rights and pursued their own interests. However, in the state of nature, property was not secure, and people surrendered their rights in regard to protection of property by the government. Having created a government, the people benefited as there were laws, judges to adjudicate laws and the executive power to enforce those laws.⁶¹ He also rejected absolutism and argued for the right of citizens to revolt against the government if it infringed on their rights under the social contract.

On his part Jean- Jacques Rousseau argued that civilization and increase in population had caused greed, competition and inequalities giving rise to tensions between those who had and those who didn't have property.⁶² He advocated for reciprocated duties where the sovereign is committed to the good of the people and each individual is committed to the good of all. John Rawls justice as fairness attempted to answer the question of a socially just means of distributing public goods. Through his difference principle, he brought into the social contract debate the need to look beyond mere formalities and address underlying factors that cause socio-economic inequalities in society. This led to the idea of social justice where social and economic inequalities are to be viewed in a manner that gives benefit to the most disadvantaged members of the society.

Under article 4 (2) of the CoK, Kenya is a multi-party democracy founded on the national values and principles of governance provided for in Article 10, which has been referred to earlier in this study. The entrenchment of the principles of good governance in the Constitution signals the

⁶⁰ Paul (n 97).

⁶¹ Ibid.

⁶² Benjamin Nwabueze, *Constitutionalism in the Emerging States* (C Hurst & Company 1973).

desire of the people of Kenya as decreed by the Preamble, for governments, at both levels, based on human rights, equality, freedom, social justice and the rule of law.⁶³ This perception is reinforced by the prescription of popular sovereignty in the Constitution. Sovereignty is to be exercised either directly or through elected representatives. The people are thought to exercise their sovereign power better and create a stronger democracy when they participate directly in common decision making, their rights are respected, laws are obeyed by all and there is inclusivity in governance rather than just merely choosing those who make decisions on their behalf and sitting back which only results in a thin democracy.⁶⁴ Taken to its logical end, the democratic argument is that the majority of citizens participating in elections should hold fundamental power over the policy decisions of representative government. However, democracy should not only include all the people, but also provide a basis for the people to think about the issues they decide.⁶⁵ The power and appeal of democracy and the idea of representative institutions lies in the idea of autonomy - we are free when only laws we choose bind us.⁶⁶

The above arguments clearly show that Kenya's constitutional ideology with regard to good governance as read together with the objects of devolution under article 174 is premised on the idea of representative democracy and social justice which are core to social contract theory. Good governance is expected through County Governments to confer developmental benefits to the greatest majority of citizens who had historically been neglected due to the predatory nature of the former central government. It's for this this reasoning that this study will relies on the

⁶³ Ibid.

⁶⁴ Benjamin Barber *Strong Democracy: Participatory Politics for a New Age* (University of California Press, 2003).

⁶⁵ James S. Fishkin, *When the People Speak Deliberative Democracy and Public Consultation* (Oxford University Press, 2009).

⁶⁶ Adam Przeworski *Democracy and the Limits of Self-Government* (Cambridge 1999) 12.

social contract theory especially as postulated by John Rawls albeit with the necessary and flowing modern day modifications.

1.9 Literature Review

The literature reviewed focuses on good governance practices for development under a devolved system of government. Kiwanuka,⁶⁷ discusses the institutional challenges facing good governance in Uganda's local government. He argues that African countries have placed great emphasis on decentralization of power and developing capacity for increased local governance. The justification for this has been to enhance good governance through enhancing local democracy, promoting transparency, participation, accountability, integrity and fiscal management. However, this remains aspirational unless principles of good governance are adhered to. Good governance can be reached if the all stakeholders can reach a clear common vision. The weak institutional framework slows down good governance. He recommends that the central government should strengthen institutional policy reform process and support the involvement of the people in governance. This research focuses on devolution which ensures that the devolved units are autonomous from the central government unlike the local governance discussed by Kiwanuka. Kiwanuka places more emphasis on institutional challenges facing good governance at the local government. This research goes beyond the institutional challenges.

Lumumba, Mbodenyi and Odero,⁶⁸ in their book provide an in-depth assessment of the interface between constitutionalism and Kenya's new Constitution of 2010. They argue that the principles of good governance require institutions to be efficient, effective and consistent. Whereas devolution aids in development, good governance requires 'institutional capacity and

⁶⁷ Kiwanuka (n 90).

⁶⁸Lumumba, Mbodenyi and Odero (n 28).

mechanisms to ensure accountability through the capacity to monitor and enforce rules and to regulate societal activities in the public interest'.⁶⁹ This book only anticipates what is required. In this study the researcher uses empirical research to determine the exact institutions that the County Government has put in place to promote the principles of good governance.

Omollo⁷⁰ examines Kenya's experience with devolved system of government, the challenges faced and prospects of devolution under a new Constitution. Her study notes that Kenya attained independence under a Constitution that provided for regionalism but the system was dismantled soon thereafter. During independence, municipal and county councils were established with a significant measure of autonomy under the jurisdiction of the regional assemblies. However, when the regional assemblies were dismantled, powers previously exercised by the assemblies were transferred to the minister for local government leading to dominance and control of local authorities by the central government. The study proposes a well-designed devolution system to cure the weaknesses noted in the local authority system. One essential of this design is the entrenchment of devolution in the Constitution so as to surmount lack of political good will to implement it as happened at independence. The other essential is to enshrine mechanisms for citizen participation in the Constitution. Devolution and public participation are essential features of Kenya's new Constitution. What remains to be ascertained is how these novel provisions have been utilized specifically to empower *Wananchi* and bring about development. However, this article was written before the first devolved government came into office in 2013. In deed in 2013, the first devolved government was established. This research therefore analyses the

⁶⁹Ibid.

⁷⁰ Annette Omolo, 'Devolution in Kenya: A critical Review of Past and Present Frameworks', in IEA, *Devolution in Kenya: Prospects, Challenges and the Future* (, Institute of Economic Affairs, IEA Research Paper Series No. 24 2010)

structures the current devolved government has put in place since its establishment in office in order to achieve its development agenda and entrenching good governance.

On his part Juma ⁷¹observes that what was practiced in Kenya after the collapse of regionalism shortly after independence was delegation through the local authorities and de-concentration through the provincial administration and field based ministries. In his opinion, all attempts at decentralization beginning with regionalism at independence, the Local Authorities and the District Focus for Rural Development (herein after referred to as DFRD) failed because no attention was paid to the normative value of these concepts and the ideology and political philosophy that underlie them. He then discusses the perceived strengths of devolution, which include prospects of democratic self-governance, public participation, nation and nationhood building, equalization and efficient and effective delivery of services. He further looks at pitfalls that could befall devolution if it is not well thought out and managed. Among other issues, he argues that devolution can be captured and controlled by local elites to the exclusion of ordinary citizens thereby rendering democratic governance and public participation elusive. He argues that whether or not devolution of power will succeed will depend on the overall political and Constitutional culture nurtured deliberately by the public alongside a committed leadership.

Juma's study like Omollo's, was carried out before the passing of the 2010 Constitution. Its main relevance to this project, in our view, is the provision of the historical and contemporary theoretical underpinnings against which successes or failures of devolution within the context of constitutionalism and democratic practice can be assessed. This project thus moves further to

⁷¹D Juma, 'Devolution of Power as Constitutionalism: The Constitutional Debate and Beyond' <<http://ssrn.com/abstract=1382821>> accessed 23 November 2015.

evaluate the practical effects of devolution guided by the reasoned strengths of devolution and possible pitfalls as highlighted above.

According to Joel Barkan and Michael Chege⁷² the District Focus Rural Development (DFRD) policy of the early 80's enhanced the potential for public input in development by establishing subordinate development committees below the District Development Committee at the division, location and sub-location levels. Their study however does not make any findings on whether indeed it had improved governance. The evidence available, which we site with approval, suggests that the policy was implemented in a manner that enhanced control of decision making by local representatives of the central government hence undermining its very objective.⁷³

Wekesa⁷⁴ examines the Constitution and the County Government Act to establish their potential to protect and promote the political and socio-economic rights of ethnic minorities in counties. He concludes that both the Constitution and the County Government Act are deficient in protecting and promoting the ethnic minority's right to political participation in the sense that the election to County assemblies is based on the first-past-the-post electoral system which favors the ethnically dominant and therefore makes the chances of minorities being elected slim. Given the important role of County Assemblies in debating and passing legislation necessary for implementation of development as well as over sighting the Executive, and the identified deficiency in the electoral system, it is opined there is need for deliberate mechanisms to mainstream and safeguard the interests of ethnic, religious and other minorities within Counties.

This is necessary in ensuring an inclusive and equitable society.

⁷²JD Barkan and M Chege, 'Decentralizing the State: District Focus and the Politics of Reallocation in Kenya' (1989) 27 (3), *The Journal of Modern African Studies* 431-453.

⁷³ See Southal & Wood (1996) 508, where they note that "this worked out in practice as a tightening of central power"

⁷⁴SM Wekesa, 'County Governments and Rights of Marginalized Ethnic Minorities in Kenya: Evaluating the Potential Benefits and Challenges of Devolution (LLM Dissertation, University of Pretoria 2012).

In evaluating how good governance impacts on development, Adegboye argues that the true test of good governance is the degree to which it delivers on the promise of human rights; civil, political, economic, cultural and social rights.⁷⁵ The key question in this assessment, which we intend to employ in the current study, is; are the institutions of governance effectively guaranteeing the right to health, water for all, adequate housing, food, quality education and fair justice? Subramanian commenting on the success story of the Mauritanian textile industry in early 1990's argues that it was underpinned by social and political arrangements that encouraged participation, representation and coalition (consensus) building.⁷⁶ This is an example that tenets of good governance coupled with sound home grown economic policies are critical in bringing about development. Kofi Annan (1997) shares this position on the linkage between democracy, good governance and development.⁷⁷

Ochieng,⁷⁸ looks at the comparative Legal, Constitutional and Policy framework for public participation in the devolved system of government among Kenya, South Africa, Uganda and Tanzania and concludes that there are few formal and statutory spaces designed for public engagement in the governance process in the Kenyan regime for County governance. He gives an example of the fact that there are no inbuilt mechanisms within the system to ensure that public input is taken into account in decision-making and implementation. This is a real danger because there is possibility that wananchi can be consulted for the mere purpose of it without necessary taking into consideration their views while designing and implementing programs and projects.

⁷⁵ Adegboye 'Consolidating Participatory Democracy in Africa: The Challenges and the Way Forward' (2013) 9 (2), European Scientific Edition 1857.

⁷⁶ Arvid Subramanian, 'Mauritius Trade and Development Strategy' (2001).

⁷⁷ K. Annan, 'A New Era Beckons Africa' (1999) 11(1) Africa Recovery 1.

⁷⁸ Ochieng, W.K., 'Devolution of Government in Kenya as a means of Engendering Public Participation in Governance' (LLM Dissertation University of Pretoria 2012).

A recent World Bank Report on Kenya's economy indicated the strides Kenya had taken towards achieving good governance. The report on this matter lays down the impact devolution has had towards achievement of good governance in the country especially with respect to public participation and notes that the County Governments, with support from national authorities have made considerable progress towards implementing constitutional and legal provisions for transparency, accountability and participation. In the early stages, they prioritized the setting up of structures and systems to facilitate public participation. County have built communication frameworks, and established participatory forums as per legislative requirements. Beyond meeting the legislative Requirements County have adopted innovative initiatives to engage citizens.⁷⁹

Indeed a government that engages its citizenry on decision-making is viewed more as transparent and accountably and the people are always kept abased of the workings in the government. This also goes a long way in helping curb corruption within government as the glaring public eye on elected and public officials serves as deterrence. Of particular importance, the report mentions Machakos County as one of the leading County that has made significant strides in ensuring good governance is upheld in the workings of the County Government with only Nakuru County doing better. Machakos County is listed among the countries that have provided adequate budget information as well as county that have established various structures to facilitate citizen participation, in line with Section 91 of the County Government Act .⁸⁰ While it is appreciated that some form of structures has been put in place as highlighted above, there is no mention of evidence of the structures being grounded in County legislation. Under the circumstances therefore their quality, legitimacy, validity and permanency is put to doubt.

⁷⁹ World Bank, *World Bank Report: Kenya Economic Update*, (World Bank June 2015, 12th Edition).

⁸⁰ Ibid at 39.

As stated earlier, most of the available literature and which is reviewed here was mostly written before the enactment of the new Constitution and therefore could not have addressed the problems being encountered in the County Governments in respect of democratic governance to achieve development. Where the studies were done after the promulgation of the new Constitution, like in the case of Wekesa and Ochieng, they were done before the 2013 General Elections which brought into being the County Governments across the forty seven (47) counties. The studies therefore do not address the current problems and realities. They are largely aspirational and theoretical.

This study will therefore be quite different, as it will draw from the practical situation after the coming into being of County Governments. Its main distinguishing feature from other studies reviewed above is that it will feature good governance practices under evolution not as they ought to be but as is being implemented. Another point of departure from earlier studies is the fact that this study will test public perceptions on the various aspects of good governance and how their lack or presence has influenced development from a population that has already experienced devolution at work unlike in the other, largely a true reflection of the wishes of the people on deepening people-centered democratic practices and good governance in County Governments in Kenya aimed at harnessing the developmental benefits of devolution.

1.10 Research Methodology

This study is based on qualitative research method. It analyzes the relevant data available, it goes beyond it, and examines through primary data the reality of good governance practices at the County level. Earlier studies that have been reviewed in our literature section were either undertaken before the actual operationalization of County Governments or were not

methodologically designed to determine good governance practices under devolution in Kenya. The main hypothesis of this research is that without effective institutional capacity, then good governance practices shall not be easily implemented.

This study uses both primary and secondary data.

a) Primary data

The advantage of primary data is that it provides first-hand information. After reviewing the literature on the concept of good governance for development and the provisions on Kenyan legal, institutional and policy framework for furthering good governance in the devolved system of government, the research collected primary data from key respondents in Machakos County. The essence of collecting primary data is to establish empirical evidence on the adoption of governance practices at the county level and challenges facing them. The researcher inquired into whether the Machakos government had put in place mechanisms to enhance accountability, transparency, rule of law, effective use of public resources, participation, and further decentralization at the county level.

Machakos County is the research site. Machakos County was chosen by the researcher due to its accessibility to the researcher. This is because the researcher lives and works in Machakos County hence it shall be easily accessible. Machakos County has been chosen, on one side, owing to favorable ranking by a recent World Bank Report as one of the County with highest allocation of her budget on development.⁸¹ Additionally, published Opinion polls by pollsters such as Infotrak Research Ltd have also shown that Kenyans perceive Machakos County as the

⁸¹World Bank, *World Bank Report: Kenya Economic Update* (World Bank 2015).

leading County in implementing devolution.⁸² The import of these polls to this study is in the fact that delivery of development and services is positively impacted upon by competition among County Governments. On the other hand, among other issues, critics have argued that Machakos County leadership has employed public relations tactics to hoodwink the public and exaggerate their developmental successes. There has also been open disagreements between the County Governor and his Deputy that epitomized in an attempt to impeach the Deputy Governor that was only defeated on the floor of the Senate.⁸³ It is for these parallel paradigms that Machakos was picked as the research site.

The target population is the staff and residents of Machakos County. The staff include the County Executive, County Assembly Members at Machakos County who provided information on the institutional capacity on good governance in the County. In order to get first hand experiences, the study primarily sought to interview key holders of offices in the County Government set-up whose mandate bears a high degree in influencing good governance and development. In this category the researcher had targeted to interview the Governor, County Executive Committee members in charge of Finance, Economic Planning and County Administration as well as the officers in charge of project monitoring and evaluation, internal audit, legal services and political affairs within the executive arm. In the legislative arm, the study sought to interview the speaker, Leader of Majority, Chairperson of the Committees in Budget, Public Accounts and Implementation. The above target population was deemed adequate to address the research objectives. However the researcher was unable to interview the target population and instead administered questionnaire. Due to the busy schedule of the governor, it

⁸²Infotrak Research and Consulting, '*County Track Index- Level of Public Participation and Management of Public Funds by Ten Countyi n KENYA*' (2015).

⁸³ Machakos County Government, *Report of the Senate Committee on the Impeachment of Hon Bernard Kiala, the Deputy Governor of Machakos County* (Machakos County Government August 2014).

was not possible to administer the questionnaire. The public was also administered with questionnaires.

In collecting primary data, this study adopts both a descriptive and case study design. A descriptive research design explains the beliefs, attitudes and challenges facing good governance in the Kenyan devolved system of government. A descriptive research design enables the researcher understand the gaps in the legal, policy and institution frame work hindering good governance at the County level. Due to limited time and resources, a case study design the study also adopts a case study. It analyzes Machakos County in detail to determine the challenges facing devolution in regard to good governance and its institutional capacity.

The sampling technique used is purposive sampling. Purposive sampling is a form of non-probability sampling where the researcher aims study a theoretically representative of the study of the population by maximizing the scope or range of variation of the study. The power of purposive sampling lies in selecting information rich cases for in-depth analysis related to the central issues under study. The target population was purposively chosen in order to provide the researcher with relevant information to meet the objectives of the study.

In collecting data the researcher administered questionnaires to the respondents. As the researcher works at Machakos County, he also employed observation as a method of data collection by observing the structures in place enhancing good governance and development. Structured questionnaires were used to elicit information from the target populations. The questions were divided into two categories. The first part sought to determine how Machakos County had enhance devolution and service delivery. It requested the respondents to list some of the County development projects, rate the County's performance, and identify the policies and

challenges hindering devolved development. The second part of the questionnaire sought to determine the structures the County had put in place to ensure participation, accountability, transparency, equity, rule of law, responsiveness and consensus oriented.

Each individual respondent was approached and appointments sought to administer the questionnaires. We preferred to administer the questionnaires than sending them to the respondent to fill because by self-administration there is a likelihood of learning beyond the statistical results that are the outcomes of the questionnaire process. Self-administration has been proved overtime to increase the response rate. Capturing the non-statistical factors and a high response rate are necessary quality control tools that increase the reliability and validity of the research. Unstructured interview schedules shall be used to elicit more information from the respondents.

b) Secondary Data

The study sought to review existing literature, reports and other publications to identify the typical devolution design features that have been (can be) implemented with success in achieving good governance and sustainable development. It reviewed literature on devolution in Kenya from a purposive approach to establish the irreducible minimum deliverables that Kenyans should expect from their County Governments. The study heavily rely on the devolution provisions in the constitution of Kenya 2010, World Bank Development Reports (WDR), reports of the Controller of Budget, Commission on Revenue Allocation and the Auditor General. The study will also relied on literature generated by institutions that have a focus on decentralization and development. Recent scholarly works around the topic of devolution and development in

Kenya will also be considered. South Africa experiences will be reviewed for comparative purposes.

1.11 Scope and Limitation of the Study

This study is limited in scope to Machakos County. Machakos County was used as case study. Every County is peculiar in terms of resources and structures available in promoting devolution, development and good governance. The study was further limited in the sense that it only based on data collected from Machakos County. The choice of the County was based on its proximity to the capital city where the researcher is based. The choice of the County was also informed by available information on its performance as one of the best out of all the County in implementing devolution as was indicated in the World Bank Report in 2015. Limited resources and time constraint made it impossible to cover all the 47 counties. This fact notwithstanding, it is hoped that the diversity of the populations in Machakos in terms of their socio-economic status will make it possible to generalize the conclusions drawn from the data to the entire country.

Another limitation is that there is no accepted definition of the concept of good governance. This discussion limited its discussion to the recognized elements/principles of good governance such as accountability, participation, transparency etc. This study reviewed how these elements of good governance have been incorporated in enhancing the development objectives of devolution. This study specifically looked at the mechanisms put in place to ensure citizen participation, accountability frameworks and the structures and institutions established to support the above.

1.12 Description of Chapters

This study has five chapters. The first chapter is basically an introduction. It sets out the background to the study, the statement of the problem, research hypothesis, theoretical and conceptual frameworks, literature review, scope and limitation of the study, objectives, justification of the study and research questions. It is a road map for the study.

The second chapter provides a detailed discussion on what good governance entails. It provides philosophical foundation of the concept of good governance, identifying its origins, definitions, elements and interpretation.

Chapter three contextualizes good governance under the Kenyan devolved system of government. The first part describes how devolution fosters good governance practices by enhancing local participation, responsiveness, efficiency, rule of law, accountability and equity. The second part the historical development of the Kenyan devolved system from centralized system in order to address good governance inadequacies. The third part discusses the entrenchment of good governance into the CoK to enhance devolution.

Chapter four recognizes that the principle of good governance is well entrenched in to the CoK and calls for its adherence in the devolved system. Based on the legal and institutional framework, this chapter, using Machakos County as the case study discusses the good governance practices Machakos County has put in place. In this chapter, the study basically conducts an assessment of the extent to which Machakos County has complied with the legal, policy and institutional on good governance. It analyzes the data collected from the County to establish its institutional capacity and challenges facing it.

Chapter five enumerates the results of the research, draws general conclusions and proposes mechanisms to improve good governance with the main objective of delivery of development necessary for economic growth, poverty reduction hence minimizing inequalities.

CHAPTER TWO

2.0 CONCEPTUALIZATION OF GOOD GOVERNANCE: ORIGINS, DEFINITION, ELEMENTS AND INTERPRETATION OF GOOD GOVERNANCE

2.1 Introduction

This chapter focuses on the concept of good governance. It discusses its definition, elements and interpretation. While it is argued that good governance is a pre-requisite for development it is important to understand what entails good governance. The objective of this chapter, therefore, is to provide an in-depth understanding of the concept of good governance.

2.2 Defining Concept of Governance

The terms ‘governance’ and ‘good governance’ have become common terminologies in development and governance discourse around the world.⁸⁴ In order to understand the concept of good governance, one must first understand the concept of governance from which good governance emanates. The term ‘governance’ is not a new word. It can be traced to the 17th and 18th Centuries.⁸⁵ It has its origins from Latin word ‘*gubernaer*’ and greek word ‘*kubernaein*’ which means to steer.⁸⁶ It was traditionally used synonymously with government because government was a central institution which yielded power over the people and made key decisions.⁸⁷ People surrendered their rights to the government creating a relationship between the ruler and the ruled. In the ancient times government was perceived as a process of making

⁸⁴Firket Toksoz (ed), *Global Governance: Improving Quality of Life* (Tesev Publications 2008).

⁸⁵ibid.

⁸⁶‘What is Governance’ <<https://tamayaosbc.wordpress.com/2014/08/21/what-is-governance/>> accessed 5 October 2016.

⁸⁷ Joachim Blatter, ‘Forms of Political Governance: Theoretical Foundations and Ideal Types’ (University of Luzern, Democracy and Governance Working Paper Series No. 7 2012).

decisions.⁸⁸ For example in Athens, citizens would converge in a place and address issues affecting society. Government by then was a process of making key decisions affecting the society such as tax and dispute resolution.

With the advent of civilization and democracy granting power to the people to be involved in key decision-making, the role of government to exclusively make key decisions changed and led to the emergence of other stakeholders broadening the scope of governance. Due to the emergence of other actors in governance, governance stopped being synonymous to government.⁸⁹ Governance does not only refer to government institutions but also to other private sectors and requires collaboration and cooperation among the various actors of governance.⁹⁰ However, government is usually the main actor in governance and is referred to as the public sector.⁹¹ The main role of the public sector is to provide an enabling environment for the other sectors to be involved in governance and participate in the attainment of the public goods. Other actors are the private sector and the civil society.⁹²

Plumptre and Graham agree that when governance is interchangeably used with government in addressing public policy issues, the impact is that it can be interpreted that government can only address the problem and other institutions have no role to play.⁹³ Governance is not a mandate exclusively preserved for a government and it cannot be used interchangeably to mean government. While government is a central institution wielding power over the people,

⁸⁸Leftwich (n 3).

⁸⁹ Joan Corkery, 'Introductory Report' in Joan Corkery(ed), *Governance: Concepts and Applications* (International Institute for Administrative Studies 1999) 12.

⁹⁰Anne Mette Kjaer, *Governance* (1st edn, John Willey Publishers 2004).

⁹¹ Susannah Fisher and Swenja Surminski, 'The Roles of Public and Private Actors in the Governance of Adaptation: The Case of Agricultural Insurance in India' (Centre for Climate Change Economics and Policy Working Paper No. 102).

⁹²G Thomas, D Weiss, Seyle Conor and Coolidge Kelsey, 'The Rise of Non-State Actors in Global Governance: Opportunities and Limitations (One Earth Foundation 2013).

⁹³Tim Plumptre & John Graham, 'Governance and Good Governance: International and Aboriginal Perspectives' (Canadian Institute of Good Governance 1999).

governance is associated with decentralization of power and inter-sector collaboration in addressing and achieving public interests. In defining governance, the need not to limit its definition to government must be understood to mean that it is not only government which is concerned with public interest issues.⁹⁴ Non-state actors, international organizations, civil societies and other bodies not related to government also have an interest in public issues. Definition of governance must, therefore, inevitably go beyond government.

Due the emergence of non-state actors such as the civil society, the private sector and international organizations in governance, governance as a concept in itself has undergone various transformation. Toksoz connotes that; “governance” signifies a transformation from a type of relationship where one side governs the other to a set of relationships where mutual interaction takes place in order to make desirable choices for citizens’.⁹⁵ In 1980s, political scientists broadened the scope of governance to include the public sector, private sector and Non-Governmental Organizations (NGOs).⁹⁶ Kaufmann and others define governance as;

“...the traditions and institutions by which authority in a country is exercised. This includes the process by which governments are selected, monitored and replaced; the capacity of the government to effectively formulate and implement sound policies; and the respect of citizens and the state for the institutions that govern economic and social interactions among them”.⁹⁷

According to the Oxford Dictionary, governance is a way of governing a state, organization etc.

Word Bank refers to governance as the ‘process by which authority is conferred to rulers, by

⁹⁴ibid.

⁹⁵Toksoz (n 125).

⁹⁶ Blatter (n 128).

⁹⁷Daniel Kaufmann, Aart Kraay and Pablo Zoido-Lobaton, ‘Aggregating Governance Indicators’ (World Bank 1999). (Emphasis added).

which they make the rules, and by which those rules are enforced and modified'.⁹⁸ The UNDP defines governance as 'the exercise of economic, political, and administrative authority to manage a country's affairs at all levels, comprising the mechanisms, processes, and institutions through which that authority is directed'.⁹⁹ This is the definition that informs the discussion in this study as it recognises that the institutions exercise the economic, political and administrative authority to manage affairs of a country. The County Government has the mandate to ensure that it exercises this power for the benefit of the people. This study interviews key officers in the County Government of Machakos to determine how they exercise their political, economic and administrative power to manage the county's resources and provide effective governance.

Although the definition of governance varies, it rests on three dimensions: authority, decision-making and accountability.¹⁰⁰ It involves two processes - decision-making and implementation of the decisions. Governance therefore entails the making of decision affecting people and its implementation by the government and others actors. In summary, governance is the process of making decision and implementing them by the various actors in governance such as the public, private and civil society sectors. It refers to the institutions in place and their relation with the political power.¹⁰¹ It is the exercise of power to manage the affairs of a state. The underlying factor is that power must exist for governance to suffice. The concept of good governance emanates from the concept of governance.

⁹⁸World Bank, 'What is Governance'

<<http://web.worldbank.org/WBSITE/EXTERNAL/COUNTRIES/MENAEXT/EXTMNAREGTOPGOVERNANCE/0,,contentMDK:20513159~menuPK:1163245~pagePK:34004173~piPK:34003707~theSitePK:497024,00.html>> accessed 5 October 2016.

⁹⁹UNDP, Governance and Sustainable Human Development (1997).

¹⁰⁰Institute on Governance, 'Defining Governance' <http://iog.ca/defining-governance/> accessed 4 October 2016.

¹⁰¹Issa G. Shivji, 'Good Governance, Bad Governance and the Quest for Democracy in Africa: An Alternative Perspective' (A Plenary Lecture presented to Nordic Africa Days, held in Uppsala, Sweden from October 3 to 5, 2003).

2.3 Origins, Definition, Elements and Diverse Interpretation of the Concept of Good Governance

a) Origins and Definition of the Concept of Good Governance

The concept of good governance has its origins in the role of the state as a key player in social, political and economic development.¹⁰² It emerged in late 1970s.¹⁰³ However, it wasn't until the 1980s that the term 'good governance' became catchy and seductive in the development discourse.¹⁰⁴ It emerged in development agenda in 1980s at a time of unprecedented political changes such as the collapse of the Berlin wall in 1989 which led to the disintegration of the Soviet Eastern bloc.¹⁰⁵ These political changes led to discussions on how a state should be structured to achieve its economic and social development through governance. It was during this era that the concept of governance and ultimately good governance evolved. Uddin and Joya argue that it is not surprising that the concept of good governance emerged during this period when 'market oriented structural adjustment programs pushed by the international developmental institutions in the developing world were increasingly under public criticism'.¹⁰⁶ Since then the concept of good governance has been on the agenda of development agencies for decades now.

¹⁰²Merilee Gwindle, 'Good Governance: The Inflation of Idea' (Faculty Research Working Paper Series no. 23, Harvard Kennedy School 2010).

¹⁰³ Nicole Madlonado, 'The World Bank's Evolving Concept of Good Governance and its Impact in Human Rights' (Doctoral workshop on development and international organizations Stockholm, Sweden, May 29-30, 2010).

¹⁰⁴ibid.

¹⁰⁵ Nicole Madlonado, 'The World Bank Evolving Notion of Good Governance and Its Impact on Human Rights' (Presentation at Doctoral workshop on development and international organizations Stockholm, Sweden, May 29-30, 2010).

¹⁰⁶Mohammad Jasim Uddin and Laila Ashrafun Joya, 'Development through Good Governance: Lessons for Developing Countries' (2007) 29, Asian Affairs 1.

The World Bank was the first institution to formulate the concept of good governance in its programs aiding development projects in developing countries. In its 1989 Report, the World Bank introduced for the first time the concept of good governance in its development discourse to measure the quality of governance.¹⁰⁷ In that report, the term ‘governance’ was used to describe the need for institutional reforms and efficient public sector reforms. In 1992 the World Bank further redefined the concept of good governance and defined governance as the manner in which power is exercised in the management of a countries’ economic and social development.¹⁰⁸ In its initial reports the World Bank avoided the use of the connotation ‘good’ when referring to governance. The reason may have been that the use adjective ‘good’ referred to a subjective view of the performance of a state on governance and the interpretation of what constitutes good governance would vary.¹⁰⁹ Since then the term ‘good governance’ has become a common vocabulary in measuring governance and takes a central place in the development discourse.

Hoyden and Court argue that there exist two definitions of good governance.¹¹⁰ First, multilateral organizations such as World Bank and United Nations institutions define governance as the manner in which power is exercised in the management of a country’s social and economic development.¹¹¹ World Bank defines good governance as the ‘the manner in which power is exercised in the management of a country’s economic and social resources for development’.¹¹² UNDP defines good governance as the processes of decision-making, planning for development

¹⁰⁷World Bank, *Sub-Saharan Africa: From Crisis to Sustainable Development* (World Bank Report 1989).

¹⁰⁸World Bank, *Governance and Development* (World Bank Report 1992).

¹⁰⁹Maldonado (n 1).

¹¹⁰ Goran Hyden and Julius Court, ‘Approaches to Analyzing Governance, Institutional Reforms and Capacity Building’ in Dele Oluwu and Soumana Sako (eds), *Better Governance and Public Policy: Capacity Building for Democratic Governance* (

¹¹¹ Ibid.

¹¹²World Bank, *Governance and Development* (Report, World Bank 1992).

and delivery of services to the people. Such a process must be participatory, consensus oriented, accountable, transparent, responsive to the needs of the people, effective and efficient, equitable and inclusive and should follow constitutionalism and the rule of law.¹¹³

A second approach of defining good governance focuses on sharing of public management between state and non-state organizations.¹¹⁴ OECD adopts the second approach and argues that good governance ‘encompasses the role of public authorities in establishing the environment in which economic operators function and in determining the distribution of benefits as well as the relationship between the ruler and the ruled.’ Johnston defines good governance as ‘legitimate, accountable, and effective ways of obtaining and using public power and resources in the pursuit of widely-accepted social goals’.¹¹⁵ He defines good governance as the process of managing resources in an effective way. Uddin and Joya provide that; ‘in general terms, ‘good governance’ means developing institutions and processes that are more responsive to the ordinary citizens, including the poor. It implies the promotion of participation, accountability and effectiveness at all levels’.¹¹⁶

In all definitions that have been advanced, one main similarity can be discerned; the indicators of good governance are employed such as the need for public participation, accountability, responsiveness, transparency, and equity amongst others. This study, therefore, determines how Machakos County enhances participation, inclusiveness, transparency and accountability in its governance. All these definitions bring out aspects of what constitutes good governance. The UNDP definition is more elaborate as it recognises that good governance must be participatory,

¹¹³Knight (n 12).

¹¹⁴ Ibid.

¹¹⁵Michael Johnstone, ‘Good Governance, Rule of Law , Transparency and Accountability’ <<http://unpan1.un.org/intradoc/groups/public/documents/un/unpan010193.pdf>> accessed 3 October 2016.

¹¹⁶Mohammad Jasim Uddin and Laila Ashrafun Joya, ‘Development through Good Governance: Lessons for Developing Countries’ (2007) 29, Asian Affairs 1.

inclusive, responsive, accountable, transparent, respect the rule of law, equitable, efficient, effective and consensus oriented. This definition informs the discussion of this study which discusses the mechanisms that County Governments, using Machakos County as a case study, use to promote participation, accountability, transparency, effective management of county resources, rule of law, equity and inclusiveness. The national values and principles under Article 10 encompass the aspects of good governance recognised in the definition espoused by UNDP.

Despite the various definition of good governance determined by the cultural, social and economic values of a certain society, there are universally accepted elements of good governance that cut across cultural boundaries.¹¹⁷ In order to cure this gap, various institutions and governments have adopted various elements/principles of the concept of good governance. The most enlisted principles are: transparency in decision-making, accountability, participation, and rule of law, responsiveness, coherence, efficiency and effectiveness. The UNDP in its 1997 Report on Governance and Sustainable Human Development identifies eight characteristics of good governance: participation; rule of law; transparency; responsiveness; consensus oriented; equity; effectiveness; efficiency; accountability; and strategic vision.

Participation in governance simply means that all actors of governance-public, civil society, individual and private-sector have to be involved in the decision making of the issues affecting them and implementation of the same. Good governance requires that the people, including the minorities, women and the marginalized have the opportunity to fully participate in the formulation of policies, decision-making, as well as their implementation. Participation ensures that the people's voice is heard and influences every aspect of decision making as well as implementation of governance decisions. Inclusiveness on the other hand emphasizes that

¹¹⁷Plumptre and Graham (n 134).

everyone has a role to play in governance including people with disabilities, women, youth, and children among others. Participation can be direct or representative.

The CoK places the sovereign power to the Kenyan people, which can be exercised directly or indirectly through their democratically elected representatives at both the national level and county level.¹¹⁸ Participation as a national value and principle of governance in Kenya is very elaborate and has attracted litigation in various aspects. People have the right to participate at both levels of government as provided for under articles 118 and 196 of the CoK. Adoption of devolved governance is aimed at bringing governance closer to the people and ensuring that they participated in matters affecting them such as development. The two third gender rule encapsulated under the CoK is a means through which Kenya aspired equitable participation of both genders to enhance inclusiveness. One of the principles of the CoK aimed at ensuring equitable participation in matters of governance is to ensure no more than two-thirds of the members of the representative bodies at both levels of governance shall be of the same gender.¹¹⁹ The County Government Act 2012 (CGA) also requires that citizen participation be enhanced at the local level and provides the modalities of participation such as the use of notice boards, public barazas, advertisement amongst others. It is thus clear that participation as a principle of good governance is well established under the Kenyan governance system.

Rule of law requires a fair legal framework administered impartially. No one should be above the law and everyone abides by the law. Professor Thomas Koh in his lectures on principles of good governance in Singapore that have enabled Singapore succeed economically posited that of all

¹¹⁸ Article 1, CoK 2010.

¹¹⁹ Article 175, CoK 2010.

the elements of good governance, the principle of the rule of law is the most important.¹²⁰ Government based on rule of law increases public confidence in the governance systems in place and government legitimacy. It does not discriminate between the various, social, political and cultural groups. Rule of law includes, ‘protection of human rights, physical security, security against violence and coercion, easy, timely and equal access to justice’.¹²¹ The protection of human rights requires an enabling environment that has an appropriate legal framework and elaborate institutions to enforce human rights.

The rule of law is provided for under the CoK preamble and Article 10 as one of the values and principles of governance. The CoK also provides for an expansive Bill of Human rights as an integral part of the Kenya’s democratic state and framework for social, economic and cultural policies.¹²² The rule of law ensures that all actions and decisions of governance abide by the laws and regulation in place as it was stated in the case of *Aids Law Project v Attorney General & 3 others*:

“Article 10 of the Constitution binds State organs, State officers, public officers and all persons to national values and principles of governance whenever they apply or interpret the Constitution; enact, apply or interpret any law; or make or implement public policy decisions. One of the said values and principles is the rule of law.”

Accountability ensures that governance actions and decisions are subject to public oversight. All actors in governance are accountable to the public on decision-making. This ensures that policies and projects are in tandem with set objectives. Accountability ensures that rulers are accountable

¹²⁰Koh (n 95).

¹²¹UNDP, *Supporting the Achievement of the Millennium Development Goals in Asia and Pacific (Phase II)*, RAS/04/061 December 2008.

¹²² Chapter Four, CoK 2010.

to the ruled. It takes two dimensions: the first relates to internal accountability, which requires financial accountability and creation of internal controls by governance actors. This is referred to as horizontal accountability; the second is external accountability also known as vertical accountability, which ensures governance actors are accountable to the people.¹²³ It is also called political accountability and includes those in power delivering on their mandate by implementing whatever they promised during elections in order to get themselves elected into office.

In order to ensure accountability at the county level, the county assembly has to exercise an oversight role over the county executive. The senate also has an oversight mandate over the county national revenues allocated to the County Governments. Independent offices such as the office of the Ethics and Anti-Corruption Commission,¹²⁴ Auditor General¹²⁵ and Controller of Budget¹²⁶ have been established to oversee proper utilization of public funds and to help curb misuse. However, published reports by Controller of Budget, Auditor General¹²⁷, Ethics and Anti-Corruption Commission¹²⁸, all point to an urgent need to strengthen accountability and inculcate a culture of good governance in the management of County Governments. Accountability at the county level has been undermined by corruption, patronage, impunity, tribalism and nepotism. Weak oversight mechanisms by the County Assemblies and the Senate have undermined effective accountability.

Transparency means that decisions are made in accordance with the prescribed laws, rules and regulations. So far a number of legislations have been enacted at the county level by various

¹²³Madlonado (n 1).

¹²⁴ Article 79, CoK 2010.

¹²⁵ Article 229, CoK 2010.

¹²⁶ Article 228, CoK 2010.

¹²⁷ Government of Kenya, *Annual General Report Of The Controller And Auditor General , On The Audit Of Public Authorities And Other Bodies For The Financial Year 2013/2014* (GoK 2014).

¹²⁸Government of Kenya, *The National Survey Report On Corruption And Ethics* (2015).

County Governments to implement key county decisions such as the County Government Act¹²⁹ and the Public Finance Management Act¹³⁰ which have specific provisions to ensure *inter alia* transparency and accountability, public participation and consultation, high levels of integrity for public officials, and structures and institutions to support implementation of County Government decisions. Transparency ensures that information is freely available and accessible to those affected by decisions and there exists in place a feedback and evaluation mechanism.¹³¹ Counties have already established websites where information is easily available. The counties also use media such as radios, television, workshops, televisions and social media to publicize their policies and development projects. A government, which is transparent, and information is easily available and accessible to its citizens, is assured of progress as it has established strong public support.¹³²

Effectiveness and efficiency involves making use of the available resources to produce results without unnecessary wastage.¹³³ Subsidiarity and decentralization can be used as a means of achieving effectiveness. When delivery of public services is provided in an efficient and effective manner then it enhances governance by realizing sustainable development and people no longer have to compete for scarce and inefficient resources.¹³⁴ This promotes the use of the available resources without jeopardizing the needs of future generations. Corruption and misuse of public resources for personal gain hinders the promotion of the principle of efficiency and effectiveness.

¹²⁹ Act No. 17 of 2012.

¹³⁰ Chapter 412 C of the Laws of Kenya.

¹³¹ Kefela (n 18).

¹³² Ibid.

¹³³ Chilufya Kawelwa, Good Governance and What Constitutes Bad Governance'

https://www.academia.edu/6413378/GOOD_GOVERNANCE_AND_WHAT_CONSTITUTES_BAD_GOVERNANCE

NCE accessed 11 November 2016.

¹³⁴ Ibid.

Responsiveness and equity are also principles of good governance. Responsiveness requires that all the institutions and processes serve all stakeholders within a reasonable time frame. It also requires that the governance actors respond to the peculiar needs of the people within reasonable time. In establishing hospitals, health facilities, education, water projects, these projects must respond to the needs of that particular community.

Equity requires that all people irrespective of gender and status have equal opportunities in governance and access to available resources. The CoK provides for the adoption of the two-third-gender rule to ensure that women as a marginalized group participate in governance. The County Government is required as a principle to adhere to this rule. Consensus orientation requires mediation of the different interests of society so that to reach a consensus on the best interests of the entire community on policies and procedures. This can be done through understanding the social, political, cultural, religious and economic aspects of a given society. Governance involves fostering unity by recognizing diversity.

b) Diverse Interpretation of Good Governance

Despite the fact that good governance has become a common vernacular by both development agencies and other international actors, consensus is still building as to its meaning. While international agencies, civil societies and other stakeholders call for the entrenchment of good governance; the concept of good governance in itself is argued to be based on a normative theory.¹³⁵ It remains an elusive subject meaning different things to different organizations and

¹³⁵ Bo Rothstein, 'Good Governance' in David Levi-Faur (ed), *Oxford Handbook on Good Governance* (Oxford University Press 2012).

actors.¹³⁶ Corkery argues that when different donors or developmental agencies speak of good governance they don't necessarily mean the same thing.¹³⁷ Developmental agencies such as the World Bank, OECD, African Development Bank address economic institutions and public sector management on good governance and avoid the political aspect because it does not fall under their mandate. They focus on transparency, accountability, participation, effectiveness and public sector reforms. On the other hand, international organizations such as the UN, civil societies and NGOs, refer to good governance to highlight democratic governance, human rights and political aspect of governance avoided by multilateral banks.¹³⁸

Gerring attributes this to the lack of parsimony, differentiation, coherence and theoretical utility in defining good governance.¹³⁹ He argues that the concept of good governance includes generally a variety of good things, which do not fit in any meaningful way.¹⁴⁰ Gerring is not right. The elements of good governance such as accountability, transparency and participation ensures that an institution of governance carries out their duties knowing that they are answerable to the people who granted them the power. They restrain themselves from the misuse of public resources, which enhances governance. Good governance does not only require the actors to be 'good' people, but all the actors must understand that they need good governance and work towards reforming the governance structure.¹⁴¹ Good governance goes beyond having the power to make decisions and implementing certain decisions. It involves management of the available resources to achieve social good.

¹³⁶Rachel Gisselquist, 'What Does "Good Governance" Mean' <<https://unu.edu/publications/articles/what-does-good-governance-mean.html>> accessed 6 October 2016.

¹³⁷Corkery (n 13).

¹³⁸Corkery (n 130).

¹³⁹John Gerring, 'What Makes a Concept Good? A Criteria Framework for Understanding Concept Formation in the Social Science' (1999) 21, Palgrave Macmillan Journals 357.

¹⁴⁰ibid.

¹⁴¹ ibid.

When interpreted literally, the term ‘good governance’ encompasses good things. What is good for one society however may not be good to the other. The application of the attributes of good governance may become controversial from one region to another. Determining the attributes of good governance will then be guided by values, cultural norms or desired social and economic norms of a given institution.¹⁴² Good governance will depend on the values that a country holds dear. In its preamble, the CoK recognizes the aspirations of all Kenyans for a government based on the essential values of human rights, equality, freedom, democracy, social justice and the rule of law.¹⁴³ Recognizing good governance and constitutionalizing it as a national value is a clear indication of the aspirations of the Kenyan people and the importance that Kenya attaches to the values to the extent of containing them in the constitution. The Constitution is the supreme law of any nation and usually embeds the values that a society attaches great importance to.¹⁴⁴

Good governance also covers different ideals in society: economic, social and political dimensions.¹⁴⁵ Each society has its own priorities and measurement of good governance shall be determined by the values they hold. The technical/economic governance refers to the economic dimension of governance such as the transparency of government accounts, effectiveness of public resource management, and the stability of the regulatory environment of the private sector. It is the process by which public resources are effectively utilized and policies implemented. The social dimension refers to the building, strengthening and promoting of democratic institutions as well and tolerance within society.¹⁴⁶ The political dimension includes the legitimacy of government, accountability of the political elements of government, respect of

¹⁴²Plumptre and Graham (n 134).

¹⁴³ Article 10, CoK 2010

¹⁴⁴ Article 1, CoK 2010.

¹⁴⁵ Suchitra Punyaratabandhu, ‘Commitment to Good Governance, Development and Poverty Reduction: Methodological Issues In the Evaluation of Progress at the National and Local Levels’ (CDP Background Paper No. 4 ST/ESA/2004/CDP/4 2004)

¹⁴⁶ibid.

human rights and respect of law'.¹⁴⁷ A case example is Singapore. In Singapore economic success has been attributed to good governance structures such as transparency, accountability and rule of law.¹⁴⁸ However, when it comes to democracy, which is a principle of good governance, Singapore has been accused of being undemocratic and oppressive. When asked about democracy as an element of good governance in Singapore during his public lecture, Koh had the following to say;

*“Democracy is a better form of governance than all other alternatives. However, democracy does not guarantee good governance and does not solve all problems. A democratic government can be a corrupt government. Some democracies are incompetent...so while I believe in democracy, I am also very aware of its shortcomings. It is not a panacea.”*¹⁴⁹

Rwanda has also made a lot of progress in its economic growth, public sector management and regulatory reform since the 1994 genocide. However its democracy and respect for human rights are problematic. Countries such as Korea, Taiwan, Malaysia and Thailand have also achieved great economic development and growth despite poor transparency, accountability, rule of law and democracy.¹⁵⁰

Some scholars have argued that the yardstick used to measure good governance is premised on Western preferences, which are developed hence not applicable to developing countries such as Africa.¹⁵¹ This maybe the reason why good governance continues to be a challenge in the

¹⁴⁷ibid.

¹⁴⁸ Koh (n 95).

¹⁴⁹ibid.

¹⁵⁰Uddin and Joya (n 157).

¹⁵¹Christine Cubitt, ‘An Introduction to Governance in Africa’ (2014)

<<http://www.govafricajournal.org/articles/10.5334/gia.ae/>>accessed 3 October 2016.

developing countries. They advocate the adoption of country specific approach to good governance. In fact Rothstein argues that, ‘good governance can only be attained when society is in possession of political, legal and administrative institutions that enable it to enact and implement policies that can be broadly understood as being for the public good’.¹⁵² Shivji, on the other hand, is very pessimistic of the entire discourse on good governance arguing that while governance as a concept is based on power and how that power is used in managing society resources, the concept of good governance is not pegged on power and decision making.¹⁵³ He states that:¹⁵⁴

“The “good governance” discourse, however, does not consider the relationships of power. Rather, it presents itself as a moral paradigm, distinguishing between the good, the bad and the evil. What is ‘good’ and ‘bad’ governance thus turns out to be a moral judgment, on the one hand, and relativist and subjectivist, on the other. The result, I want to suggest, is that ‘good governance’ has no conceptual or theoretical value in understanding a phenomenon with a view to change it. Rather, it is, at best, a propagandist tool, easily manipulatable by whoever happens to wield power. And this is exactly how it has been deployed in the dominant, neo-liberal discourse.”

Despite the different interpretations of good governance, it denotes the qualitative aspect of governance.¹⁵⁵ It determines the process of governance. Measuring whether governance is good or bad will be determined by the values of the given society of what is good or bad for the purposes of attaining the common public interests.¹⁵⁶ Despite the fact that there is no universally

¹⁵² *ibid.*

¹⁵³ Shivji (n 142).

¹⁵⁴ *ibid.*

¹⁵⁵ *Ibid.*

¹⁵⁶ *ibid.*

accepted definition and scope of good governance, that commands universal acceptance, there is a consensus that the concept encompasses political and institutional processes and outcomes that endeavour to attain common public goods. This was observed by the UN System Task Team on the Post 2015 UN Development Agenda,¹⁵⁷ that from the broad definitions of good governance two broad issues of governance can be discerned. The first one pertains to the institutions of governance in place including public administration and public service. Good governance will be determined with how institutions of governance in place will carry out their functions. This includes sound management of resources allocated, equitable access of public services, public participation in governance and institutional responsiveness to the needs of the people.¹⁵⁸ In order to be responsive public institutions must put in place strategies to monitor accountability, transparency, rule of law, citizen participation, and curbing corruption.¹⁵⁹ The second broad issue of governance is underpinned on democracy and the rule of law.¹⁶⁰

2.4 Conclusion

The concept of good governance cannot be divorced from governance. Governance is the process in which governance actors exercise their power by managing the available resources for the benefit of the public good. Good governance connotes the way in which governance is exercised. Although there exists no universally accepted definition of good governance as it varies from one governance actors to another, there exists universally accepted indicators or elements of good governance. Every country has its own governance challenges and it can choose from any of the indicators appropriate to its situation.

¹⁵⁷UN System Task Team on the Post 2015 UN Development Agenda, *Governance and Development* (2012).

¹⁵⁸Ibid.

¹⁵⁹UNGA, *Public Administration and Development (A/RES/50/225 1996)*.

¹⁶⁰UN System Task Team on the Post 2015 UN Development Agenda (n 51).

CHAPTER THREE

3.0 GOOD GOVERNANCE UNDER THE KENYAN DEVOLVED SYSTEM OF GOVERNMENT

3.1 Introduction

Ardent supporters of devolution argue that devolution of power enhances good governance by enhancing accountability, transparency, rule of law, equity, participation, efficiency, responsiveness and effective management of resources. This chapter discusses how devolution enhances good governance which in turn promotes social, economic and political development. The first part describes the link between devolution and good governance. The second part analyses the historical justifications that informed the establishment of Kenyan devolved system of governance from the centralized and local governance under the independence constitution. The last part discusses the Constitutionalization of devolution for good governance under the 2010 Constitution of Kenya.

3.2 Devolution for Good Governance

The link between decentralization and good governance features more prominently in debates on development.¹⁶¹ It is argued that decentralization of power promotes good governance by bringing governance close to the people, enhancing equal redistribution of national resources, participation, and accountability.¹⁶² It promotes democracy by bringing government closer to the people; provides mechanisms for protecting democracy through checks and balances and; by distributing authority and responsibility for fiscal management and public service delivery,

¹⁶¹ Doeveren (n 23).

¹⁶² Ibid.

minorities are given a stake in the system.¹⁶³ Devolution as a form of decentralization is the delegation of authority to formally constituted local government bodies to discharge specified or residual functions.¹⁶⁴ It is a form of political decentralization. It encompasses more than the transfer of administrative functions and local units exhibit autonomy and independence from the central government. It has been advocated as a political response to the ills plaguing fragile and plural societies such as conflicts, inequalities, corruption, poverty, economic stagnation and ineffective use of public resources.¹⁶⁵ Devolution then enhances development and service delivery at the local level.¹⁶⁶

Devolution enhances good governance by improving participation of the people in governance. Participation is a key element of good governance. People participate in key decision making and its implementation. Advocates of devolution argue that decisions made with greater participation will be better informed and more relevant to diverse interests in society than those made only by national political authorities.¹⁶⁷ Public participation as a principle is well anchored under the 2010 Constitution of Kenya. In the case of *Kenya Small Scale Farmers Forum & 6 Others vs Republic of Kenya & 2 Others*¹⁶⁸ the Court held that:

One of the golden threads running through the current constitutional regime is public participation in governance and the conduct of public affairs. The preamble to the Constitution recognizes, “the aspirations of all Kenyans for a government based on the

¹⁶³ Omollo (n 111).

¹⁶⁴ Preston Chitere and Onesmus Ileri, ‘District Focus for Rural Developments as a Decentralized Planning Strategy: An Assessment of its Implementation in Kenya’ in Thomas N Kibua and German Mwabu (eds), *Decentralization and Devolution in Kenya: New Approaches* (University of Nairobi Press 2008).

¹⁶⁵ Albert Mwenda, ‘Introduction’ in Albert K Mwendwa (ed), *Devolution in Kenya: Prospects, Challenges and the Future* (Institute of Economic Affairs 2010).

¹⁶⁶ Rizal (n 29).

¹⁶⁷ World Bank, ‘What is Decentralization’ www.ciesin.org/decentralization/English/General/Different-forms.html accessed 2 July 2015.

¹⁶⁸ [2013] eKLR.

essential values of human rights, equality, freedom, democracy, social justice and the rule of law.” It also acknowledges the people’s ‘sovereign and inalienable right to determine the form of governance of our country.’” Article 1 bestows all the sovereign power on the people to be exercised only in accordance with the Constitution. One of the national values and principles of governance is that of ‘inclusiveness’ and ‘participation of the people.’¹⁶⁹

Good governance therefore is recognized as an essential element of devolution.¹⁷⁰ However, in a devolved system of governance, good governance requires efficiency, effectiveness and consistent.¹⁷¹ Kenyans were enthusiastic that by establishing a devolved system of government it would facilitate decentralization of power and bring governance closer to the people.¹⁷² One of the mechanisms through which citizens can participate in service delivery include: through regular elections; surveys to solicit citizens feedback on service delivery; public hearings and call in lines; legal recourse through which citizens can petition government; and ombudsman through which citizens can lodge complains relating to service delivery.¹⁷³ The CGA 2012, requires the County Government to further establish decentralized units such as sub-counties, wards, village administrator, village council and any further structures of decentralization to ensure and coordinate participation of the people in governance.¹⁷⁴ The proximity of devolved units can therefore be said to increase the quality of representation and enabling people to participate more in their governance.

¹⁶⁹ Ibid.

¹⁷⁰ Potter (n 30).

¹⁷¹ Odero (n 32).

¹⁷² Kangu (n 26).

¹⁷³ Mwenda (n 205).

¹⁷⁴ Part VI, CGA 2012.

Devolution enables County Government to respond to the needs of the people within reason time because County Governments, execute their functions closer to the people and are better placed than the central government in matching the preferences and priorities of citizens and increasing their individual welfare in their areas of jurisdiction.¹⁷⁵ There are two main reasons that are advanced to justify this position. First, because of the proximity of County Governments to the people, they are considered to have better information than the central government about the preferences of local populations.¹⁷⁶ Hence, in this view, they are better informed to respond to variations in local demand for development and services. Secondly, by relieving the center of the burden of planning and implementation of development, devolution reduces the central bureaucracy which often leads to inefficiency. Billow, an economist analyst from Kenyan North Eastern regions argues that it is through devolution

that the needs of the people of Wajir who were marginalized under the previous have been addressed.¹⁷⁷ It is only through devolution that proportional sharing on national resources and regional balance can be achieved. In Wajir County Billow states that:

Although there are some corruption and fraud claims reported people have seen some development projects being started. For instance, in my home town Wajir, I always give credit to the governor for the visible projects like the 25kms tarmacked roads besides the numerous jobs created, local investments and growth and advancement in the structural as well as the physical development by the locals.¹⁷⁸

¹⁷⁵ Ibid.

¹⁷⁶ RA Musgrave, *The Theory of Public Finance* (McGraw-Hill 1959); Friedrich Hayek, 'The Use of Knowledge in Society' (1945) 35, *American Economic Review* 510.

¹⁷⁷ Billow Abdi Hassan, 'The Magic Power of Devolution and Its Related Benefits' <http://nepjournal.com/the-magic-power-of-devolution-and-its-related-benefits/> accessed 3 November 2016.

¹⁷⁸ Ibid.

Further, devolution increases the likelihood that County Governments respond to the demands of local populations effectively and efficiently by promoting competition among County Governments themselves and between public and non-governmental service providers.¹⁷⁹ Competition allows for a variety of bundles of local public goods to be produced hence enhancing the overall efficiency and contributing to accelerated development. It also pressurizes devolved units to pay attention to the preferences of their constituents and tailor their service delivery accordingly.¹⁸⁰ If well designed also, devolution can address inequalities and ensure equitable development.¹⁸¹

Devolution is also argued to improve efficiency by fostering accountability, reducing corruption, and increasing cost-effectiveness in the government.¹⁸² In this view, since County Governments are closer to the people, citizens tend to be more aware of County Governments' actions than they are of actions of the central government. Also, the mobility of labor can impose discipline on County Governments: they must provide goods and services efficiently, or risk losing their tax base as citizens (both labor and capital) "vote with their feet." Further, it has been argued that more effective incentive schemes can be designed if local officials are responsible for local outcomes. Devolution leads to improved governance.¹⁸³

¹⁷⁹ C Tiebout, 'A Pure Theory of Local Expenditures' (1956) 64, *Journal of Political Economy* 416.

¹⁸⁰ Albert Breton, *Competitive Governments: An Economic Theory of Politics and Public Finance* (Cambridge University Press 1996); Wallace Oates, *Fiscal Federalism* (Harcourt Brace Jovanovich 1968; Wallace Oates, 'The Theory of Public Finance in a Federal System' (1968) 1 (1) *Canadian Journal of Economics* 1); Pierre Salmon, 'Decentralization as an Incentive Scheme' (1987) 3(2), *Oxford Review of Economic Policy* 24.

¹⁸¹ World Bank (n 10) 110-111.

¹⁸² Ostrom, Elinor, Larry Schroeder, and Susan Wynne, *Institutional Incentives and Sustainable Development: Infrastructure Policies in Perspective* (Westview Press 1993).

¹⁸³ Raymond Fisman, and Roberta Gatti, 'Decentralization and Corruption: Cross-Country and Cross- State Evidence' (1999).

Devolving functions closer to the population is also argued to be able to increase consensus and legitimacy concerning the choice of public services.¹⁸⁴ This, in turn, can be expected to foster cooperation and vigilance, as well as acceptance and adherence to rules of public sector integrity. This would be especially true where the financing of public services is devolved via the assignment of revenue collection instruments like in the case of Kenya. In this case, incentives for effective, accountable, transparent and responsive governance arise because budget constraints and revenue expectations to leverage such constraints drive local government to maximize cost-efficiency and service delivery.¹⁸⁵ This way, it can be argued that for devolved units to gain legitimacy to raise local revenues to fund their functions, they have a corresponding responsibility to demonstrate how such revenues are utilized by showing tangible development programs and by providing efficient services to the local taxpayer.

Making services more demand-responsive through decentralization is thought to have the added benefit of increasing households' willingness to pay for services.¹⁸⁶ Households in this view are more willing to pay for services (in funds or in kind) that match their demand. County Governments may also exert greater fiscal effort and raise more revenues if they can determine how the revenues are used. Also, the tighter the circuit of public service finance and delivery, and the more transparent the system is, the more obvious the bite of systemic corruption becomes to sub-national governments and communities. This strengthens the incentives of County Governments and their constituents to monitor revenue collection, planning, expenditure, and

¹⁸⁴ Patrick Meagher, 'Cooperating against Corruption: Governance, Collective Action, and Jurisdictional Design in Plural Societies' (Presented at IRIS Conference on Collective Action and Corruption in Emerging Economies 1999).

¹⁸⁵ Yingyi Qian and Barry Weingast, 'Federalism as a Commitment to Preserving Market Incentives.' (1999) 11 (4), *Journal of Economic Perspectives* 83.

¹⁸⁶ John Briscoe and Harvey Garn, 'Financing Water Supply and Sanitation Under Agenda 21' (1995) 19(1). *Natural Resources Forum* 59.

service delivery. This in turn helps increase willingness to pay both taxes and fees.¹⁸⁷ By increasing revenues through willingness to pay by a larger population, as well by the population volunteering to participate more in their development, devolved units have in their exposure more resources to provide more development than would have been possible under a centralized system that is not democratically in touch with the local populations.

3.3 Historical development of Kenyan Devolved System and Good Governance

The role of devolution in promoting good governance is what inspired Kenyan to clamor for a devolved system of government. Kenyan governance challenges as we see them today were shaped by the historical structures that were put in place during the colonial period.¹⁸⁸ They are traceable to colonial policies most of which continued to be practiced even after independence.¹⁸⁹ The colonial administration was centralist, oppressive and designed for control as opposed to participatory and democratic governance.¹⁹⁰ The economic policies pursued were exclusionist-based on race, the result of which was segregated development in favor of areas set aside for European settlers.¹⁹¹ At independence, Kenya adopted economic, administrative and government structures meant for centralized control. While the struggle for independence was waged on a reform platform, ironically, these exclusionist colonial governance structures were left intact,

¹⁸⁷ Bosire (n 36).

¹⁸⁸ UNHABITAT, *Local Democracy and Decentralization in East and Southern Africa: Experiences from Uganda, Kenya, Botswana, Tanzania and Ethiopia* (UNHABITAT 2002).

¹⁸⁹ Abraham Rugo Muriu, 'Decentralization, Citizen Participation and Local Public Service Delivery: A Study on the Nature and Influence of Citizen Participation on Decentralized Service Delivery in Kenya' (Master Thesis, Potsdam University 2012).

¹⁹⁰ YP Ghai and JPWB McAuslan, *Public Law and Political Change in Kenya: A Study of the Legal Framework of Government from Colonial Times to the Present* (Oxford University Press 1970).

¹⁹¹ Ibid.

with devastating consequences on how state power was exercised as well as on allocation of public resources for development.¹⁹²

Ghai and McAuslan trace colonial policies to the 1902 Order in Council that empowered the representative of the Crown in a protectorate to divide the colony into provinces and districts for purposes of administration.¹⁹³ The commissioner was also given executive, judicial and legislative powers.¹⁹⁴ In addition, regulations were passed which gave Provincial Commissioners power to appoint village headmen, later referred to as chiefs.¹⁹⁵ The effect and purpose of these initial structures was to establish administrative structures to ensure the colonial rule had control of the protectorate. This hindered participation and inclusiveness of the people in governance. This was followed by a number of other policies meant to entrench colonial rule and its interests.¹⁹⁶ Key among them was the policy to set aside fertile areas of land for exclusive European settlement.¹⁹⁷ This in turn displaced Africans and exclusive ethnic reserves created for them around the European-settled areas. The colonial Government then imposed taxes on Africans, forcing them to come out to work for the white settlers in order to meet their tax obligations.¹⁹⁸

¹⁹² Daniel M Muia, 'Devolution of Governance to Districts in Kenya: A Case Study' in Thomas N Kibua and Germano Mwabu (eds), *Decentralization and Devolution in Kenya: New Approaches* (University of Nairobi Press 2008) 77.

¹⁹³ Ghai and McAuslan (n 230).

¹⁹⁴ Ibid.

¹⁹⁵ Regulations No. 22 of 1902 (Village Headmen) cited in Ghai & McAuslan (1970) 40.

¹⁹⁶ M Fredrick Khaunya, B Peter Wawire and Viola Chepng'eno, 'Devolved Governance in Kenya: Is it a False Start in Democratic Decentralization for Development?' 2015, *International Journal of Economics, Finance and Management*.

¹⁹⁷ Karuti Kanyinga, 'The Legacy of the White Highlands: Land Rights, Ethnicity and the Post - 2007 Elections in Kenya' 3.

¹⁹⁸ Collins Leys, 'Politics in Kenya: The Development of Society' [1971] *British Journal of Political Science* 307.

The above policies provide evidence of a colonial policy of control and economic deprivation to secure submission by Kenyans to British illegitimate and undemocratic rule.¹⁹⁹ It is these policies that set a foundation for centralized government with imperial powers that characterized post-independence Kenya before the promulgation of the Constitution of Kenya 2010. The colonial policies and practices excluding Africans from political, economic and development matters led to wide resentment of the colonial system by Africans.²⁰⁰ This led Africans to demand for independence from British foreign rule. As part of the Independence negotiations, there emerged two main schools of thought, each arguing for its preferred model of governance. This debate on structure of government pitting the two main political parties then- KANU and KADU- with KANU favoring a centralized system and KADU supporting decentralization of power.²⁰¹

KADU wanted a federal state with autonomous regions.²⁰² The main justification by KADU for establishment of a second chamber was to protect minority tribes in Kenya.²⁰³ Second justification was to protect the autonomy of the regions and interests of people in those regions.²⁰⁴ This would enhance good governance by enhancing accountability, transparency, responsiveness to the needs of the people, bringing resources closer to the people and ensuring and rule of law. KANU on the other hand supported a centralized system of government. KANU saw bicameralism as an institution that would promote tribalism and cause divisiveness among

¹⁹⁹ BA Ogut, and WR Ochieng, *Decolonization and Independence in Kenya: 1943-1991* (James Curry 1995); Bruce Berman, *Control and Crisis in Colonial Kenya: Then Dialectic of Domination* (James Curry, 1990).

²⁰⁰Ibid.

²⁰¹ Robert M Maxon, *Kenya's Independence Constitution: Constitution Making and End of Empire* (Fairleigh Dickinson University Press 1995).

²⁰² JB Ojwang, *The Constitutional Development in Kenya: Institutional Adaptation and Social Change* (Act Press, 1990).

²⁰³ BA Ogut, and WR Ochieng, *Decolonization and Independence in Kenya: 1943-1991* (James Curry 1995); Bruce Berman, *Control and Crisis in Colonial Kenya: Then Dialectic of Domination* (James Curry, 1990).

²⁰⁴Julius Kipngetich, 'Devolution of Power' in *Report of the Constitutional of Kenya Review Commission* (2003).

Kenyans.²⁰⁵ KANU supported a unitary form of government with all decision making powers centralized.

After protracted negotiations, Kenya attained independence in 1963 with a Constitution that provided for a regional system of government popularly known as *Majimbo*.²⁰⁶ The regional government envisaged autonomy of the regions in order to enhance public involvement in the running of their governments. The 1963 Constitution divided Kenya into seven regions, which had both legislative and executive powers. Regional assemblies exercised the legislative powers while the Finance and Establishments Committee exercised the executive powers of the regions.²⁰⁷ The Constitution also provided for local government systems. Each region was divided into local government areas headed by elected local authority councils. There was a national minister in charge of local government areas, to primarily coordinate the national nature of the new republic to avoid disintegration.²⁰⁸

With KANU that had not supported *Majimboism* assenting to power, regional governments were systematically dismantled through carefully orchestrated Constitutional amendments in the period between 1964 and 1969, in the pretext of unifying the country.²⁰⁹ These amendments included, *inter alia*, the 1964 amendment, which removed all, except the specifically entrenched powers from the regional, assemblies. Another significant Constitutional amendment was the one deleting provisions relating to the financial arrangements between the central and regional governments effectively rendering regional governments at the financial mercy of the central government. The amendment also removed the rigid requirements for approval by regional

²⁰⁵Ghai and McAuslan (n 230).

²⁰⁶ Ibid.

²⁰⁷ Independence Constitution of Kenya 1963.

²⁰⁸ UNHABITAT (n 228)

²⁰⁹ Gibson Kamau Kuria, *Majimboism, Ethnic Cleansing and Constitutionalism in Kenya* (Kenya Human Rights Commission 1994).

assemblies and a resolution of both chambers of Parliament before effecting changes to regional boundaries thus making it easy for the Executive to alter boundaries at will.

In 1965, there was another Constitutional amendment whose effect was to abolish the entrenchment of executive powers of the regional assemblies and renaming them as provincial councils, which were also to be abolished with time. Later, in 1968 the Senate as the upper house whose mandate was to protect the interests of the regions was also abolished and merged with the House of Representatives effectively killing the bicameral system thereby making Kenya Constitutionally unicameral. The overall effect of these amendments was the removal of power sharing and self- governance Constitutional provisions leading to the concentration of power under the Presidency. This watered to germination the seed for an all-powerful centralized system of governance where distribution of state resources was through a system of political patronage and only those regions and communities deemed to be “politically correct” by the political establishment of the day would benefit.

The Local Government Act, Cap 265 (*now repealed*) established a system of local councils headed by a powerful Minister of the central government.²¹⁰ While the councils were constituted by elected and nominated councilors, the executive functions and day today running of the councils was overseen by officers of the central government. This arrangement of seconding officers created many conflicts since the officers did not owe allegiance to the local communities and their elected representatives. It is also important to note that the functions of the local authorities were mainly service oriented and not developmental in nature.²¹¹ They included social welfare activities, regulating and cleaning markets, licensing of certain business especially

²¹⁰ K Kibwana, ‘Constitutional and Political Issues Surrounding Regionalism in Kenya’ in Wanjala S, Akivaga SK and Kibwana K (eds), *Yearning for Democracy: Kenya at the Dawn of a New Century* (Calipress 2002).

²¹¹ Ojwang (n 248).

retail and wholesale trading as well as land use planning among others. The authorities were largely funded by the national government although they also had very limited own revenue raising powers like charging fees for business permits.

The Omamo commission appointed to inquire into the affairs of local authorities, identified among other issues that local development was based on central planning and due the fact that local government powers were not Constitutionally guaranteed while at the same time the Act gave sweeping powers to the Minister, there was wide spread manipulation leading to high levels of corruption.²¹² The financial grants by the central government to these councils were also found to be increasingly inadequate. Local authorities were therefore largely an extension of the central government. Democratic governance including self-determination by local communities by having powers to set their own development needs and priorities were missing. The councils also lacked both legal and financial powers to cause meaningful development.²¹³

After many years of bad governance in post – independence Kenya, in 1990, Kenyans started what came to be known as the struggle for the second liberation that culminated in the passage and promulgation of the new Constitution of Kenya in 2010. According to Bannon, by 1994, Constitution making had become the vehicle through which democratization, promotion and protection of human rights and social justice were robustly agitated for.²¹⁴ The struggle, led by a new breed of politicians and academics mainly organized under Civil Society Organizations (CSO's) knew that the surest way to end bad governance and ensure equitable distribution of state resources was by having a supreme law which laid down such a framework. This period

²¹²Omamo Commission, *Report of the Commission of Inquiry on Local Authorities in Kenya: A Strategy for Local Government Reform in Kenya* (Commission of Inquiry on Local Authorities in Kenya 1995).

²¹³ Government of Kenya, *District Focus for Rural Development: Review Report* (Government Printers 1984).

²¹⁴AL Bannon, 'Designing a Constitution- Drafting Process: Lessons from Kenya' (2007) 116 Yale Law Journal.

was also the era of the global movement around adopting good governance as an integral part of ensuring economic development and fighting poverty.

The CKRC Final Report documents that there was widespread feeling among Kenyans that power and resources were heavily centralized leading to marginalization.²¹⁵ People felt alienated from the central government, deprived of their resources and victimized by being denied development for their political affiliations.²¹⁶ For these reasons, the report says devolution was very popular among Kenyans as a mechanism of restructuring the state and addressing the problems of centralization.²¹⁷ This led the commission to recommend that the devolution principles in the new Constitution should include among other issues efficient and equitable mobilization, allocation and management of resources, enhanced participation of the citizenry in governance as well as arrangements for funding of the devolved units that ensures their autonomy and accountability.²¹⁸

Throughout the reform process, devolution remained one of the most contentious issues. The Bomas draft provided for four levels of government: - national, regional, district and locational.²¹⁹ This was highly contentious and led to a section of the political divide comprising especially of those in Government at the time to come up with what was to be called the *Wako draft* that was published and presented before the 2005 referendum. Although the referendum was highly ethicized, the weakening of the devolution provisions was explored by those against the *Wako* draft to lead Kenyans into rejecting it. The Constitutional referendum on the proposed *Wako* Constitutional Draft held on the 21st November pitted those supporting the adoption of the

²¹⁵ CKRC, *Final Report of the Constitution of Kenya Review Commission* (CKRC 2005).

²¹⁶ *ibid.*

²¹⁷ *ibid.*

²¹⁸ *ibid* 237 – 238.

²¹⁹ Draft Constitution of Kenya (Bomas Draft) 2004.

proposed Constitution on the “Yes” side against those opposed on the “No” side of the referendum campaigns. Devolution of power was one of the most contentious issues during the 2005 referendum that almost halted the referendum²²⁰.

Kenyans had at the onset expressed their need for a change of governance from the centralized system of government to a decentralized system of government.²²¹ Many Kenyans felt that the need for a devolved system of government was necessary as the post-independence Kenya had been characterized by centralization of political and economic power in the hands of a few resulting in a spatially uneven and unfair distribution of resources corresponding inequalities in access to social services.²²²

It is worth noting that the events of the 2005 referendum heavily divided the country along ethnic lines almost similar to the *majimbo* debate at Independence. This led to very charged presidential campaigns in 2007 General Elections whose results were rejected by the opposition leading to post-election violence that attracted international attention in the years 2007-2008. The Waki Commission that was formed to probe the causes of the violence identified the feeling of exclusion from state resources by people who came from communities other than that of the President and over- centralization of both political and economic power as key underlying factors that had caused the post -election violence.²²³

²²⁰Bard Anders Andreassen and Arne Tostensen, ‘Of Oranges and Bananas: The 2005 Kenya Referendum on the Constitution’ (CMI 2013).

²²¹Ojwang (n 248).

²²² World Bank, *Devolution Without Disruption: Pathways to a Successful New Kenya* (World Bank Report, 2012).

²²³Waki Commission, *Commission of Inquiry to Investigate the Post-Election Violence* (Waki Commission 2008).

There was consensus in the recommendations of the Waki, Kreigler²²⁴ and Kenya National Dialogue and Reconciliation Committee²²⁵ that brokered the National Accord facilitating power sharing between the opposition and Government that the permanent solution to these manifestations of bad governance lay in reviving and completing the Constitutional review process that had stalled after the 2005 referendum. This led to the enactment of the Constitution of Kenya Review Act 2008 that provided for the Committee of Experts as a key organ of finalizing the constitutional review by building consensus around the contentious issues.²²⁶

As noted earlier, most of the underlying factors identified by the Commissions appointed to investigate different aspects of the Post- election violence touched on the need to adopt devolution. The Committee of Experts would also later identify devolution as among the contentious issues. Despite its controversial history, devolution was the single most important factor that led to the overwhelming approval of the Harmonized Constitutional Draft during the August 4th 2010 referendum that ushered in the new and progressive CoK, 2010. The fact that devolution both as a principle of enhancing good governance- associated with the objectives of self-reliance, democratic decision-making, popular participation, and accountability of public officials²²⁷ - and also as a system of governance meant to produce developmental benefits permeates all aspects of the CoK 2010, is clear evidence of the hope that the people of Kenya place on devolution. The people hoped for devolution to improve their welfare through good governance and equitable development at the local levels.

²²⁴Report of the Independent Review Commission on the General Elections Held in Kenya on 27th December 2007.’

²²⁵Agenda Four of the Kenya National Dialogue and Reconciliation Committee Report.’

²²⁶Section 5 of the Constitution of Kenya Review (Amendment) Act 2004.

²²⁷ Melissa Mungai, ‘Fragmentation in a bid to Defragment: Decentralization as a solution to the Challenge of Inclusion in the Kenyan Context’ (2016) 1(1), Strathmore Law Review 123.

The historical missteps highlighted above clearly demonstrate that centralization of power and resources undermined development and resulted to huge inequalities. Over- concentration of power in the Presidency, compounded with systematic weakening of watchdog institutions also contributed to corruption and a general lack of transparency and accountability in the conduct of public affairs. Taxpayers were not involved in deciding and implementing their development priorities as well. This explains why devolution continues to be billed as the panacea for solving economic, social and political challenges in Kenya hence the overwhelming desire by Kenyans for devolution to succeed.

3.4 Good Governance and Devolution in Kenya under the Constitution of Kenya, 2010

In 2010, Kenyans adopted a new Constitutional dispensation that overhauled the governance regime by constitutionalizing devolution of power and resources. It also constitutionalized the aspect of good governance under Article 10 of the CoK as a key national values and principles of governance. Others aspects of good governance that are constitutionalized include rule of law, equity, participation, accountability, transparency, responsiveness and devolution. In response to the people's expectations of greater democracy, human rights and accountability of the government to its citizens, the Constitution ushered in a new republic with expanded, transparent political and economic structures, including devolution to forty-seven counties.²²⁸

A constitution reflects the values of a society. Constitutionalizing devolution and restricting its amendment to referendum is a clear indication that Kenyans were not only enthusiastic in forming a devolved system of government, but had also learnt lessons from their governance history and were no longer willing to repeat the mistakes of the past. The Constitution also provided for in-built mechanisms for amendment making sure that the people are involved if

²²⁸ USAID, *Special Focus: Kenya's Momentous Devolution* (USAID, 2008).

devolution provisions are to be amended.²²⁹This provision was necessary to safeguard against interference with devolution by the ruling elite as happened to *majimbo* provisions under the independence constitution. Hence the objects, principles and structure of the devolved governance can only be amended through a referendum.

It was expected that devolution would come with three major changes after the 2007-2008 post-election violence, which led to loss of lives, property and polarized the country.²³⁰The changes and transformations that devolution was intended to bring forth were based on the developmental disparities that had been experienced during the previous regimes. First, it was expected that through devolution a significant share of government spending would reach the local level.²³¹ Second, the distribution of resources between regions and localities would be more equitable.²³² Finally, the government would be more accountable, open and participatory, leading to increased responsiveness to citizen needs.²³³Flowing from these expectations, the promulgation of the CoK, 2010 was laden with many promises, including devolution of power to enhance economic, social and political development.²³⁴ The change of governance from a centralized system to decentralization through devolution was and remains one of the reasons that the CoK was celebrated. Kenyans from areas that had been marginalized under the previous regimes were hopeful that their regions would gain self-governance and stir development through sharing of the national funds and resources. As Media Publication Association in collaboration with Konrad Adenauer Stiftung in its publication put it:

²²⁹Article 255, CoK 2010.

²³⁰Muia (n 232).

²³¹Ibid.

²³²Ibid.

²³³Ibid.

²³⁴Mungai (n 267).

*“With devolution, then resources shall be channelled to the local communities in the counties. The centralization of power in Nairobi will be a thing of the past. Citizens shall now focus on the local leadership rather than the national. This is a very important step since in the past, acquisition of the presidency by any community was seen as the gateway to a purse of national fund.”*²³⁵

According to Schneider, devolution implies ‘the creation or strengthening, financially or legally, of sub-national units of government, whose activities are substantially outside the direct control of the central government’.²³⁶ Both the implementation and the authority to decide what is done is shifted to local bodies, who are accountable to the central government in so far as it is able to ‘impose its will by threatening to withhold resources or responsibility that the local unit needs’.²³⁷ De Visser, goes further to define devolution as the ‘location of decision-making powers with autonomous sub-national governments’. He explains that in devolution, the subnational government power is permanent unlike in delegation where the same can be withdrawn by the national government.²³⁸

The people of Kenya adopted devolution as the central and most transformative aspect of the Constitution not as an end in itself, but as a tool to achieving specific objectives.²³⁹ Kangu argues that by constitutionalizing and entrenching devolution, the people aimed to achieve real non-centralism and not mere decentralization or delegation by the national government.²⁴⁰ Devolution was intended to address various problems of centralization rooted in the previously highly

²³⁵Ibid.

²³⁶Ibid.

²³⁷Bosire (n 36).

²³⁸J De Visser, ‘Developmental Local Government: A Case Study of South Africa’ (2005).

²³⁹Kangu (n 26)

²⁴⁰ibid

centralized system of governance in Kenya.²⁴¹ Kenyans anticipated that the transfer of powers and functions to the County Government would accelerate development and enhance more opportunities.²⁴² Sharing and devolution of power is one among the national values and principles of governance recognized under Article 10 of the CoK.²⁴³ It was in this spirit that in the case of *Republic Vs Transition Authority & Another; Ex parte Kenya Medical Practitioners, Pharmacists and Dentists Union (KPM DU) & 2 Others*,²⁴⁴ it was held that the Constitution devotes itself to the ideals of good governance under Articles 10, 73 and 232 to ensure smooth transition of devolved power.

After the general elections in March 2013, devolution finally kicked off with the election of the first Governors and Members of County Assemblies (MCA's) thereby putting in place the initial structures to constitute the County Governments. A close reading of the objectives of devolution under Article 174 of the CoK clearly indicates that devolution was intended to enhance economic, social and political development and improve service delivery.²⁴⁵ The Constitution further recognizes the people as the central focus of devolution to managing their own affairs and further their development. People irrespective of gender or marginalization would have an

²⁴¹Ibid.

²⁴²Yash Pal Ghai and Jill Cottrell Ghai, *Kenya's Constitution: An Instrument for Change* (Katiba Institute 2011).

²⁴³Other principles and national values include patriotism, national unity, rule of law, democracy, public participation, human dignity, equity, social justice, inclusiveness, equality, human rights, non-discrimination, good governance, integrity, sustainable development, transparency and integrity.

²⁴⁴Judicial Review No 317 of 2013, 201 eKLR.

²⁴⁵Article 174 of the CoK provides for the following objects of devolution:

- (a) to promote democratic and accountable exercise of power;
- (b) to foster national unity by recognising diversity;
- (c) 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;
- (d) to recognize the right of communities to manage their own affairs and to further their development;
- (e) to protect and promote the interests and rights of minorities and marginalised communities;
- (f) to promote social and economic development and the provision of proximate, easily accessible services throughout Kenya;
- (g) to ensure equitable sharing of national and local resources throughout Kenya;
- (h) to facilitate the decentralization of State organs, their functions and services, from the capital of Kenya; and
- (i) to enhance checks and balances and the separation of powers. (Emphasis added).

opportunity to manage and control their own resources. Adoption of devolution in Kenya was as a result of the failures of the centralized system of governance inherited from the British colony. At the time of independence, Kenya had inherited a history of highly centralized system of government coupled with regional inequalities and disparities.²⁴⁶

One of the principles of the devolved government is that it shall have reliable resources of revenue to enable them to govern and deliver services effectively.²⁴⁷ This is meant to ensure a stable financial base for County Governments that is not subject to the control and or manipulation of the national government so as to ensure counties have financial resources to implement their development purpose. It is on this basis that the Constitution under Article 202 provides for equitable sharing of national revenue between the national government and all the forty seven County Governments.

Counties are the focal point of local economic, social and political development initiatives.²⁴⁸ While the Fourth Schedule to the CoK 2010 pursuant to Articles 185(2), 186 (1) and 187(2) generally distributes developmental functions between the national and County Governments, a County Government's priority areas in development must reflect the need of the local community and inevitably vary from one county to another. Counties such as Nairobi, Mombasa, Kisumu and Nakuru which had considerable levels of development may not be compared to counties such as Wajir, Mandera, Garissa, and Turkana which had been marginalized for long. The Constitution further provided for the Equalization Fund for poor

²⁴⁶GM Munene, 'Constitutional Development in Kenya: A historical Perspective' in Yash Vyas and Others (ed), *Law and Development in the Third World* (1994)56.

²⁴⁷Article 174

²⁴⁸National Association of Counties, 'Strong Economies, Resilient Counties: The Role of Counties in Economic Development' (NACO, Texas 2014).

counties to stir development.²⁴⁹ The Equalization Fund is to be used only to provide ‘basic services including water, roads, health facilities and electricity to the marginalized areas to the extent necessary to bring the quality of those services in those areas to the level generally enjoyed by the rest of the nation, so far as possible’.²⁵⁰ On 11th March 2016, President Uhuru launched a 6 Billion Equalization Fund for poor counties and expressed the confidence that it would spur public investment in the poor counties and hasten development to ensure equity in national development.²⁵¹

By virtue of the Constitution, Devolution must ensure equitable development and distribution of resources, opportunities and services in order to reduce the regional and ethnic disparities of the past.²⁵² It must give the Kenyan people and communities the benefits of democratic and accountable exercise of power enabling them to participate and manage their own affairs of governance, economic and social development.²⁵³ Devolution aims to provide proximate services and ensure affirmative action for protection and promotion of the interests and rights of minorities and marginalized communities and groups.²⁵⁴

The above arguments summarizing the Constitutional purpose and objectives of devolution, clearly demonstrates an intention to make sure devolution translates into greater democracy and development through integrating good governance. In proposing devolution to settle the problems of centralization, the people of Kenya were also careful not to transfer powers and resources and hand them over to a local autocracy. Counties will engage in various development

²⁴⁹Article 204, CoK 2010.

²⁵⁰Article 204 (2) , CoK 2010.

²⁵¹Nairobi Star Newspaper, ‘Uhuru Launches Sh6 Billion Equalization Fund for Poor Counties’ <http://www.the-star.co.ke/news/2016/03/11/uhuru-launches-sh6-billion-equalization-fund-for-poor-counties_c1311697> accessed 17 October 2016.

²⁵²Article 174 ‘Constitution of Kenya’.

²⁵³Article 174 *ibid*.

²⁵⁴ Article 174 *ibid*.

activities depending on the needs of the local communities as provided for the Schedule IV of the CoK, 2010 and relevant gazette notices transferring functions to counties.

The experience on whether devolution enhances good governance is mixed. Both the small number of rigorous empirical studies in this area, as well as the public record of decentralization efforts, show limited success within a generally disappointing array of experiences.²⁵⁵ However devolution in itself has faced various challenges. For example D’Arcy and Cornell carried out a study in Kenya to determine how decentralization affects patronage and rent seeking.²⁵⁶ In their findings, they argue that devolution has devolved patronage and rent seeking to the local level, where ethnic groups and political elites have the mentality that is their time to eat.²⁵⁷ Devolution does not necessarily promote allocative efficiency, reduce corruption and waste, or facilitate cost recovery.²⁵⁸

There are two schools of thought which vary but also complement each other. On one hand, it is argued that because devolution as an ideological principle inherently associated with the objectives of self-reliance, democratic decision-making and popular participation in government, even if it doesn’t yield the benefits of development and growth it is in itself a desirable political objective.²⁵⁹ On the hand, there are theoretical predictions on decentralization suggesting that only certain forms of decentralization, or better, devolution under certain institutional arrangements, will work. Whether decentralization in fact improves or harms public sector

²⁵⁵ See generally Azfar, Omar and Satu Kähkönen, Anthony Lanyi, Patrick Meagher and Diana Rutherford, “Decentralization, Governance and Public Services: The Impact of Institutional Arrangements, A Review of the Literature,” Mimeo, IRIS Center, University of Maryland University Research Corporation International (1999).

²⁵⁶ Michelle D’Arcy and Agnes Cornell, ‘Devolution and Corruption in Kenya: Everyone’s Time to Eat?’ [2016] African Affairs 1.

²⁵⁷ Ibid.

²⁵⁸ Ibid.

²⁵⁹ Rodinelli, Nellis and Cheema, ‘Decentralisation in Developing Countries: A Review of Recent Experience’ (1984).

performance appears to depend on formal institutional arrangements and design, as well as their interaction with social practices, influencing the implementation of decentralized governance.

In the course of reviewing these arguments and concepts-that have helped in designing this study- it became apparent that whether either the supposed advantages or supposed disadvantages of devolution materialize depends on the presence of certain legal, institutional and structural tools deliberately placed to foster good governance and development oriented.²⁶⁰ The historical governance experiences that led a country to adopt devolution as the preferred model for distributing state power and resources are also instructive. It is with this in mind that provisions on devolution and good governance and their attendant benefits of development are integral in the Constitution Kenya, 2010.

The Constitution, for example, delegates exercise of sovereign power to counties and their structures²⁶¹, declares devolution and access to services as one of the core defining features of the Kenyan Republic ²⁶² and provides for sharing and devolution of power as among the national values that direct the conduct of public affairs.²⁶³ The Constitution also dedicates a whole Chapter to devolution and clearly defines the objectives and principles of devolved government.²⁶⁴ This chapter lays ground for the sharing of functions between the national and County Governments as well as on the institutional and design features of the structures of the devolved governments.²⁶⁵ The Constitution also provides for the financial²⁶⁶and staffing²⁶⁷ autonomy of counties and the attendant good governance principles for each. For all these and

²⁶⁰ Ibid.

²⁶¹ Articles 1; 3 (b), and 4 (b) of the Constitution of Kenya,2010

²⁶² Article 6 of the Constitution of Kenya,2010

²⁶³ Article 10, Constitution of Kenya,2010

²⁶⁴ Ibid, Chapter 11

²⁶⁵ See Generally Part 2 and 3, Chapter 11, Constitution of Kenya,2010.

²⁶⁶ Ibid Chapter 12

²⁶⁷ Ibid Article 235

other relevant provisions the Constitution tasked parliament to come up with legislation to give full effect to the guiding principles in the Constitution. These Constitutional, legal and policy frameworks will be discussed in detail in Chapter Four of this study.

3.5 Conclusion

It is these historical experiences which greatly informed the overwhelming desire by Kenyans to anchor devolution in the Constitution and to make devolution provisions among the most difficult to amend.²⁶⁸ It is therefore necessary that the implementation of devolution after the 2013 General Elections always pays hindsight to these historical lessons in order to remain focused to the true intentions of devolution and to deliver on its objectives. The success of any County Government therefore must be gauged on the basis to which it lives up to these historical aspirations by Kenyans to devolve power and resources so as to realize good governance and development at the local levels hence nationally. It has also been argued that the existence and design of institutions, structures and systems in County Governments can either hinder or promote the objectives of devolution. The next chapter look at the design features of Kenya's devolved system using Machakos County and how implementation of these features has promoted or otherwise undermined good governance and the development purpose of devolution.

²⁶⁸ See Article 255 (1) i of the Constitution of Kenya, 2010

CHAPTER FOUR

4.0 IMPLEMENTING GOOD GOVERNANCE PRACTICES UNDER KENYAN DEVOLVED GOVERNANCE: A CASE STUDY OF MACHAKOS COUNTY

4.1 Introduction

Using Machakos County as a case study, this chapter analyses how good governance practices have been incorporated in devolution basing on the legal, policy and institutional framework in place. It basically conducts an assessment of the extent to which Machakos County has internalized and institutionalized good governance practices. It analyses data collected from respondents holding positions at Machakos County and members of the general public who have a high bearing on the practice of good governance. The questionnaire was designed to test the respondents understanding of good governance as well as to find out how Machakos County Government enhances the principles of public participation, rule of law, transparency, equity, responsiveness, accountability, efficiency and consensus building. This chapter also analyses the various challenges the County Government encounters in enhancing good governance.

4.2 Devolution and Development in Machakos County

Unlike the regime under the repealed Constitution, which through systematic anti-people amendments had concentrated power under the Presidency, the CoK, 2010 created and granted County Governments the mandate to run their own affairs and ensure equal access to county resources, promotion of development, service delivery among others. Under the Constitution, County Governments are responsible for: county legislation;²⁶⁹ executive functions as outlined

²⁶⁹ Article 185, CoK 2010.

under article 183 of the CoK;²⁷⁰ and performance of the functions outlined under the Fourth Schedule. Part two of the Fourth Schedule of the CoK provides for the County Government functions which include: agriculture; county health services; control of air pollution, noise pollution, public nuisances; cultural activities, public entertainment; county transport; animal control and welfare; trade development and regulation; county planning and development; firefighting services and disaster management; controlling of drugs and pornography etc. The County Government is also mandated to ‘ensuring and coordinating the participation of communities and locations in governance at the local level and assisting communities and locations to develop the administrative capacity for the effective exercise of the functions and powers and participation in governance at the local level’.²⁷¹

After the 2013 general elections Kenyans were filled with optimism, hope and high expectations. Regions that had been marginalized such as North Eastern, Coast and Eastern saw in devolution a chance to have a fair share in national resources, equal employment at the local level, eradication of poverty through economic empowerment, decentralization of services, access to health, quality education and infrastructure, which had been centralized and not fairly distributed.²⁷² Devolution received much support from Kenyans, the government, donor-aid agencies like World Bank and other stakeholders. In 2014, Ipsos Synovate indicated in its opinion poll that 69% of Kenyans supported devolution.²⁷³ Ipsos Synovate pointed out that in 2014 more than half of Kenyans (55%) could identify a development project in their counties

²⁷⁰ The county executive committees implements county legislation; manages and coordinates the functions of the county administration and its departments; and implement, within the county, national legislation to the extent that the legislation requires.

²⁷¹ Section 14, Part 2 of the 4th Schedule, CoK 2010.

²⁷² Joseph Kazungu Katana, ‘Why Corruption is Devolution Biggest Enemy’ <http://www.the-star.co.ke/news/2015/12/12/why-corruption-is-devolutions-biggest-enemy_c1257766> accessed 3 November 2016.

²⁷³ Ipsos Synovate, Ipsos’ *Third Quarter SPEC (Social, Political, Economic and Cultural)* (Survey Report, 19th September 2014.)

owing to devolution.²⁷⁴ In 2015 in its second media release, Ipsos synovate found out that 78% of Kenyans supported devolution.²⁷⁵ In a press release by Twaweza- a Non-Governmental Organization- released on March 2016, it indicates that 8 out of 10 Kenyans support devolution and are willing to pay taxes to the County Governments.²⁷⁶ This is a clear sign that Kenyans still believe in devolution.

With the transfer of shared functions from the national government to the County Government now substantially done, it is the mandate of every County Government to decentralize its functions and provision of services to the extent that it is efficient and practicable to do so.²⁷⁷ The National Ministry of Planning and Devolution records its major achievements in the past three years to date, as establishing a strong devolved system of government.²⁷⁸ It records six achievements it has spearheaded under the devolved system of government. First, it has facilitated the transition process and operations at the County Government through provision of startup funds, human resources and physical infrastructure.²⁷⁹ Second, the transfer of functions to the devolved government has been fully completed as provided for under the CoK thereby improving public access to facilities.²⁸⁰ The transfer of functions from the national government to the County Government was a challenge facing the devolved system of government.²⁸¹ Third, it has ‘facilitated the setting-up and operationalization of Inter-Governmental mechanisms including the National and County Government Coordination Summit; the Inter-Governmental

²⁷⁴ Ibid.

²⁷⁵ Ipsos Synovate, *Ipsos’ 1st Quarter SPEC (Social, Political, Economic and Cultural)*, (Survey Report, 22nd April 2015).

²⁷⁶ Twaweza, ‘Taking government closer to the people?: What citizens think about Devolution’ (Twaweza Research Brief 2016).

²⁷⁷ Article 176 (2), CoK 2010.

²⁷⁸ Ministry of Devolution and Planning, ‘Major Achievements over the Past Three Years: 2013-Date’ <http://www.devolutionplanning.go.ke/?post_type=news&p=1519> accessed 3 November 2016.

²⁷⁹ Ibid.

²⁸⁰ Article 187, CoK Kenya.

²⁸¹ Council of County Governors v Attorney General & 4 others, Petition No.472 OF 2014, [2015] eKLR

Sectorial Forums and Inter-Governmental Relations Technical Committee'.²⁸² Fourth, it has enhanced capacity building at the county level through training, induction, technical assistance, institutional support and civic education.²⁸³ Fifth, it has improved the legislative process at the county level through development of model laws and training of relevant officers. Finally, the ministry has developed a funding framework for the County Governments.

The territory of Kenya is divided into 47 counties specified under the First Schedule of the CoK. They are Mombasa, Kwale, Kilifi, Tana River, Lam, Taita/Taveta, Garissa, Wajir, Mandera, Marsabit, Isiolo, Meru, Tharaka-Nithi, Embu, Kitui, Machakos, Makueni, Nyandarua, Nyeri, Kirinyaga, Murang'a, Kiambu, Turkana, West Pokot, Samburu, Trans Nzoia, Uasin Gishu, Elgeyo/Marakwet, Nandi, Baringo, Laikipia, Nakuru, Narok, Kajiado, Kericho, Bomet, Kakamega, Vihiga, Bungoma, Busis, Siaya, Kisumu, Homabay, Migori, Kisii, Nyamira and Nairobi County. The number of the counties was based on the delineation of administrative districts under the Provinces and Districts Act of 1992. The main reasons of devolving governance to the aforementioned counties are well stipulated under Article 174 of the CoK amongst them to bring governance close to the people through participation; to grant the people the right to participate and further their development; to promote democratic and accountable exercise of power; and to promote social and economic development and the provision of proximate, easily accessible services throughout Kenya. .

Machakos County was established under the First Schedule of CoK as County number 16.²⁸⁴ Its capital is Machakos town, Kenya's first administrative headquarter. According to its website, 'it

²⁸² Ministry of Devolution and Planning (n 316).

²⁸³ Ibid.

²⁸⁴ Article 6 (1) of the CoK 2010 provides that the territory of Kenya is divided into the specified counties in the First Schedule.

has a total population of 1, 098, 584 people, 264, 500 households and covers an area of 6,208 square kilometer'. It borders Nairobi and Kiambu counties to the West, Embu to the North, Kitui to the East, Makueni to the South, Kajiado to the South West, and Murang's and Kirinyaga to the North West.²⁸⁵ The Akamba people are the dominant habitants of Machakos County. It has eight constituencies: Machakos Town, Mavoko, Masinga, Yatta, Kangundo, Kathiani, Matungulu and Mwala. The county has urban, peri-urban and rural populations. The semi-industrialized Mavoko sub-county is the main urban area in Machakos followed by Machakos Town in Machakos central sub-county. There are a number of peri-urban towns spread across the county, which mainly host the sub-county headquarters. A majority of the geographical area remains rural.

It is no doubt that the Kenyan devolved system of government was intended to unlock the country's social, economic and political development. The centralized system of government had faced various challenges including bureaucratic inefficiencies, lack of accountability and transparency, marginalization, unequal distribution of national resources, lack of public participation, patronage, rent seeking, ethnicity among others. Devolved system of government was established to cure the challenges of a centralized system of governance under the past regimes. In 2015, Info-track Research Company ranked Machakos County as the best performing county in Kenya in the implementation of devolution.²⁸⁶ According to the recent World Bank Report on Kenyan devolution, Machakos County was ranked as one of the counties with highest allocation of her budget on development.²⁸⁷ In Machakos County, all the respondents posited that food insecurity, water scarcity, poor road infrastructure, poor health care, inadequate distribution

²⁸⁵ Ibid.

²⁸⁶ Infotrak Research and Consulting, 'County Track Index- Level of Public Partivoation and Mngement of Public Funds by Ten Counties in KENYA' (2015).

²⁸⁷ 'World Bank Report: Kenya Economic Update' (2015).

of development projects, lack of market access of agricultural produce and inequalities in the distribution of resources are some of the issues that made people of Machakos County yearn for a devolved government. One respondent argued that electricity from Masinga dam never benefited the people of Machakos.²⁸⁸ He argued that there is need to inform the public within reasonable time of public forums and also ensure that they get to the interior.

The current Machakos Governor Dr. Alfred Mutua, pledged to develop Machakos in a faster and efficient manner. Immediately after the 2013 general election, he was the first governor to constitute his cabinet on April 12th 2014. The American National Democratic Institute in its Report published that over 80% of the people of Machakos County are happy with the leadership and development agenda of the County Government. So far since its establishment the County Government of Machakos has put in place various development projects. It has tarmacked the historical 33 km Makutano Ma Mwala-Kithimani road, tarmacked roads within Athi River Township, which is its major industrial area and one of its major urban areas, as well as improving other feeder roads.²⁸⁹ Machakos County is semi-arid and it has in most cases been hit with water shortage crisis. In order to address water scarcity in the County of Machakos, the County Government has ensured access of water to schools by distributing 10,000-litre water tanks to primary schools for water harvesting and storage; it has contacted comprehensive water mapping and geo-surveying to identify water sources for development; and has bought eight own bore-hole drilling equipment with the use of which it has constructed several bore holes.²⁹⁰ In the health sector, the County Government modernized Machakos level 5 hospital, bought van and motorcycle ambulances for emergency response for all 70 geographical locations in the county;

²⁸⁸ Respondent 9, Machakos County, 6th November 2016.

²⁸⁹ Respondent 3, County Executive Committee for Roads and Public Works, Machakos County, 8th November 2016.

²⁹⁰ Machakos County, *Ukweli Usemwe: Maendelwo Chap Chap* (Machakos Government 2016).

and upgraded health facilities in the 40 wards to become community hospitals with maternity wing, mini-theatre, laboratory and casualty to ensure residents get health services within a manageable distance from their localities.

4.3 Implementation of Good Governance Practices in Machakos County Government

Good governance requires that governance be participatory, inclusive, efficient, effective, respecting the rule of law and promoting equity. A well-structured decentralized system is one which ensures that the functions of the sub-governments are supported by a well-structured support system and necessary resources.²⁹¹ It must establish financial, human and institutional capacity. In order to carry out its functions, County Government need revenue which can be raised at the local level, through equitable sharing, conditional grants²⁹² and loan and donor funding. Article 209(3) empowers counties to impose property rates, entertainment taxes and any other tax that it is authorized to impose by an Act of Parliament. Article 202 of the CoK provides for the sharing of national revenue equitably between the national government and County Governments. The equitable share of the revenue raised nationally allocated to County Government should not be less than fifteen percent of the revenue collected by the national government.²⁹³ This revenue is unconditional. Grants are additional allocations from the national government's share of the revenue and is either conditional or unconditional. Equalization fund is used by the national government to provide basic services such as water, roads, health facilities to marginalized areas in order to bring the quality of those services to the level generally enjoyed by the rest of the nation.²⁹⁴ The question that triggers many is whether

²⁹¹ Albert K Mwenda, *Economic and Administrative Implications of the Devolution Framework Established by the Constitution of Kenya* (Institute of Economic Affairs 2010) 8.

²⁹² Article 202(2), CoK 2010.

²⁹³ Article 203, CoK 2010.

²⁹⁴ Article 204, CoK 2010.

devolution has achieved its goals as stipulated in the CoK in promoting good governance. Some argue that despite the various challenges that has faced devolution, it has presented some opportunities such as development, participation of people in local governance, enhanced accountability etc.²⁹⁵ This study sought to determine how Machakos County implements good governance practices in its administration based on the legal and institutional framework.

When posed with the question on what is good governance, one respondent defined good governance as the process where, ‘the public is given priority in development agenda through decision making and implementation’. This definition implies that the needs of the public are given priority and any decision made on the development agenda reflects the needs of the people.²⁹⁶ Good governance requires that governance actors respond to the needs of the people. It was perceived that County Government is in a better position to provide service delivery to the people because it has close knowledge of the needs of the people. Good governance encompasses ‘leadership that is people centered, development oriented, result oriented and evidence based’.²⁹⁷ In under-developed and arid counties, the County Government focuses on development projects such as food provision, health care, quality education, water, county transport amongst others, which form the main needs of the people. Machakos county is semi-arid and often characterized with food insecurity and water scarcity. In order to be responsive to the needs of the people Machakos County, the County Government has initiated and completed water drilling projects and water reticulation to avert the water crisis,²⁹⁸ it has continued to

²⁹⁵ Ibid.

²⁹⁶ Respondent No. 11, Machakos County, 8th November 2016.

²⁹⁷ Respondent No. 7, Machakos County, 8th November 2016.

²⁹⁸ Respondent No. 7, Executive Committee Member in Charge of Trade, Economic, Planning, Investment, Industrialization, Energy and Natural Resources, 7th November 2016.

provide subsidies in farming such as free seeds and affordable fertilizers to help and motivate the resident to engage in productive agricultural activities to avert food shortage.

Whereas the County boasts of putting in place public responsive development projects, such as drilling of water boreholes and establishment of community health facilities, the residents agree that the County still has a lot to do. Machakos County still faces food shortages. Most of Machakos County is semi-arid and there is need for the county government to invest into agriculture. Respondents 15, 17, 18 and 19 argued that food crisis and water accessibility were the most pressing needs of the people of Machakos County.

a) Participation

Participation as a principle of good governance ensures that the people play a role on decision making and its implementation. In order to enhance public participation in devolution the CGA under Part VIII provides for citizen participation. The CGA requires County Governments to facilitate public participation through access to information;²⁹⁹ establishment of decentralized units;³⁰⁰ capacity building and civic education;³⁰¹ private-public partnerships; and public consultation.³⁰² The County Government is required to create structures, mechanisms and guidelines for public participation in various aspects of the County Government business including enactment of new laws; budget priorities; county planning;³⁰³ reviewing public sector performance and expenditure; and submission of grievances.

²⁹⁹ Access to Information ensures that the public has the right information at the right time to enable them to engage appropriately.

³⁰⁰ Decentralized units allows public to participate at the local level promoting governance.

³⁰¹ Capacity Building and Civic Education enables the public to be effective in their engagement by providing them the requisite skills, knowledge and attitude.

³⁰² private-public partnerships

³⁰³ Section 102, CGA 2012.

In order to give effect to public participation under the devolved system various counties have enacted legislations that ensure the people participate in governance at the county level. Machakos County has enacted the Machakos County Public Participation Act, 2014 which came into force on 29th December 2014.³⁰⁴ The Act defines public participation as, ‘an open, democratic and accountable process of engaging a representative sector of the public in formulating policies and developing laws that affect them’.³⁰⁵ This definition encompasses transparency, accountability and democracy. Other legislations include the Meru County Public Participation Act which defines public participation as including the processes and methods designed to consult, involve and inform the public or stakeholders in order to allow those who would potentially be affected by a decision, any policy, legislation, program, project to have input into the process’.³⁰⁶

County Governments are required to put in place modalities and platforms for public participation under Article 92 of the CGA. These modalities include information communication technology based platforms, town hall meetings, budget preparation and validation fora, notice boards and development project sites. Machakos County has in place a website and a Facebook page where it provides information and engages the public in key discussions. Machakos county involves the public in decision making through regular public ‘barazas’,³⁰⁷ setting budget economic fora,³⁰⁸ notice board and county website³⁰⁹. A respondent states that they constantly engage the public by way of forums and also actual visitation at the location level to identify the

³⁰⁴ Machakos County, *Machakos County Public Participation Act* (Government Printer, 2014).

³⁰⁵ Section 2, Machakos County Public Participation Act, 2014.

³⁰⁶ Section 2, Meru County Public Participation Act.

³⁰⁷ Respondent No. 7, Machakos County, 8th November 2016.

³⁰⁸ Respondent No. 8, Member of County Assembly, Machakos County, 8th November 2016.

³⁰⁹ Respondent No. 5, Human Rights Activist Machakos County, 8th November 2016.

needs of the people at that level.³¹⁰ The Machakos County Government also seeks periodic inspection of projects through the Machakos Integrated Development Plan.³¹¹ This is done through appointment of ward project managers and involving members of the County Assembly in decision-making and formulation of policies.³¹²

Most of the residents in Machakos County agreed that public participation is key in implementing County functions under the Fourth Schedule of the CoK. Whereas the respondents working at Machakos County indicated that they County had put in place mechanism to foster participation the public had different views. Most of the residents contacted argued that majority of those who attended public forums were supporters of Machakos County and Governor Mutua.³¹³ The Governor also has a fixed agenda emanating from his manifesto and does not incorporate the views of the opponents. Public participation should not just be a procedure to meet the law but should ensure that all the views of the public are taken into consideration. Respondent 29 was very pessimistic of the extent of public participation at the County level. Indeed most of the respondents from the public had never attended any public forum, and those who had the opportunity to attend rarely attended. However, there is still opportunity as some of the respondents agreed that they could access the MCA's offices and air their views if they had time.

The CGA also requires the Counties to establish decentralized units in order to enhance participation and bring governance closer to the people. The decentralized units include cities,

³¹⁰ Respondent No. 2, Machakos County, 8th November 2016.

³¹¹ Respondent No. 1, Machakos County, 8th November 2016; Respondent No. 3, Machakos County, 8th November 2016.

³¹² Respondents 11, Machakos County, 8th November 2016.

³¹³ Respondent 15, 18, 20, 23, 25, 26, 29 and 30, Residents, Machakos County, 26th November 2016.

sub-counties,³¹⁴ county wards, village units and any other further units as may be determined by the county assembly.³¹⁵ Machakos County has in place the Department of Decentralized Units, County Administration and Energy to foster decentralization of further units. All respondents for the purposes of determining if Machakos county had established decentralized units answered in the affirmative. Machakos county has established eight sub-counties; Yatta, Kangundo, Masinga, Mwala, mavoko, Kathiani, Matungulu and Machakos Town. Each sub-county has a sub-county administrator responsible for the coordination and management of the sub-county administrative functions including ‘facilitation and coordination of citizen participation in the development of policies and plans and delivery of services’.³¹⁶ It has 40 wards, each ward administered by County Ward administrator.³¹⁷ The ward administrator coordinates and facilitates citizen participation in the development of policies and plans of the County Government at the ward level, and delivery of services. It has also established leaders in villages to bring governance closer to the people. The Machakos County Administrative Act of 2015 is the legislation that provides for the establishment of administrative units at the County level.

b) Transparency and Accountability

Good governance requires accountability and transparency in the way power is exercised to promote social and economic development. It ensures that governance stakeholders are answerable to the public in the use of public resources. The Public Finance Management Act 2012, requires County Government to adhere to principle of public finance under Article 201 of the CoK, fiscal responsibilities under Section 107 of the PFMA and national values under Article 10 of the CoK. Article 201 of the CoK requires; openness and accountability including public

³¹⁴ This should be equivalent to constituencies as established under Article 89 of the CoK.

³¹⁵ Section 48, CGA 2012.

³¹⁶ Section 50, CGA 2012.

³¹⁷ Section 51, CGA 2012

participation in financial matters; use of public money in a prudent and responsible way; a responsible financial management and a clear fiscal reporting.

The County Government is required to establish County treasuries³¹⁸ which shall each comprise of the County Executive Committee member for finance, Chief Officer and the department or department of the County Treasury responsible for financial and fiscal matters.³¹⁹ The role of the County Treasury is to ensure proper management and control of public finances; accounting for the finances of the County Government and its entities in order to promote efficient and effective use of the county's budgetary resources.³²⁰ Machakos County has established the County Treasury whose mission is to 'To create an enabling environment for accelerated and sustained economic growth through pursuit of prudent economic and fiscal policies and coordination of County Government financial Operations'.³²¹

The respondents in Machakos County were asked on which financial systems the County had put in place to ensure transparency and accountability in the way public resources are spent. The respondents posited that the County had adopted sound financial management systems such as Integrated Financial Management System (IFMS), internet banking, departmental procurement committees, e-procurement and public budgeting process. ³²²Respondent 4 submitted that the County has put in place various committees such as the County Audit Committee, Public Accounts Committee, Budget Committee, Implementation Committee, Evaluation Committee and Verification Committee.³²³ The role of these committees is to ensure that public resources

³¹⁸ Section 103, PFMA 2012.

³¹⁹ Ibid.

³²⁰ Section 104, PFMA 2012.

³²¹ Machakos County Government, *The County Treasury: Program Based Budget FY 2014/2015* (Machakos County Government 2015).

³²² Respondent 11, Machakos County, 8th November 2016.

³²³ Respondent 4, Speaker Machakos County, 8th November 2016.

are well utilized for the benefit of the people. The Machakos County Government also ensures that there is County cabinet approvals of all procurements, having set up an audit verification team that audits all payment vouchers and has set up county anti-corruption offices.³²⁴ The public has a different view. Most of the respondents argued that corruption is rampant at the County offices and there is weak accountability. Whereas the Senior County officers involved in corruption are under investigation and prosecution of corruption cases are in court, the public lack the confidence in the accountability mechanism According to respondent 14, the MCA's are not carrying out their oversight authority over the executive because they benefit from the corruption.

To enhance and demonstrate accountability and transparency amongst the public the government has implemented the e-government that is easily accessible and updates the public through media platforms such as its website, twitter handle and facebook page on all activities taking place in the county.³²⁵ The County website has also all the publications that can be easily accessed by the public and also available at the County department.³²⁶ The County Government works together with the Members of County Assembly to scrutinize the process and encourage open tendering process. It also ensures public participation in development projects and carries out baseline surveys on project priority.³²⁷

The county assembly plays an oversight role over the county executive by way of checks and balances. The Machakos County assembly plays its oversight role by reviewing the performance of county executive every month to keep them accountable and summoning the county executive

³²⁴ Respondent No. 7, Machakos County, 8th November 2016.

³²⁵ Respondent 2, Machakos County , 8th November 2016.

³²⁶ Respondent 6, Member of County Assembly Machakos county, 8th November 2016.

³²⁷ Ibid.

to respond to queries pertaining to their dockets.³²⁸ Respondent 17 and 19 indicated that the county assembly oversight role over the executive has been hindered as a result of gains and selfishness of the Members of County Assembly (MCAs). It was also identified that academic limitations and political groupings by the MCAs undermined their oversight role presenting a weak oversight mechanism.³²⁹ There is need to raise minimum educational qualifications and organize capacity building through training. As respondent 7 put it:

“Sometimes the assembly will ask genuine clarifications, however, due to their lack of appreciation of certain development dynamics some of the members of county assembly then politicize the clarifications thus not placing their oversight role objectively”.

c) Equity

The principle of equity requires that all people have equal access to services and governance irrespective of gender, status or tribe. One of the objectives of devolution is to protect and promote the interests and rights of minorities and marginalised communities furthering equity. Equity at the county level involves adhering to the two-third gender rule in County employment; and enhancing participation of the youth, women and people with disabilities in governance and have fair access to the available resources and opportunities. Machakos County has established the Ministry for Education, Youth and Social Welfare to ensure that all people including children, the elderly, women and youth are involved in governance and have equal access to the available resources. It also endeavours in creating job opportunities for youth in areas where

³²⁸ Ibid.

³²⁹ Respondent 12, Machakos County, 8th November 2016.

County projects are located.³³⁰ The County hosted the first major Youth Convention in May 2016, engaging youth in issues of empowerment, leadership and governance.³³¹

The Machakos County Government has increased tender reservation for the youth, women and persons with disabilities from the national recognised 30% to 50%.³³² The County has established a Committee on Youth and Gender to ensure that the needs of women and youth are catered for.³³³ The county has also ensured that it observes the two-third gender rule in appointments and committees and holds appropriate workshops on capacity building.³³⁴ The County Government also ensures that women, youth and people with disabilities are represented in budget forum.³³⁵ The County also partners with Maendeleo ya Wanawake to assist and empower women.³³⁶

The principle of equity also requires that there be equal distribution of resources and services to the people. In order to ensure equal distribution of available resources and opportunities, the County Government of Machakos through public participation allows the public to present their priorities.³³⁷ Most of the respondents stated that Machakos County Government ensures that all projects are need based and has enacted a policy on equitable distribution.³³⁸ These projects are based on the feedback from the public.³³⁹ It involves the public through public participation in

³³⁰ Respondent 1, Machakos County, 8th November 2016.

³³¹ ‘Governor Mutua Hosts Major Youth Convention’ <http://www.capitalfm.co.ke/news/2016/05/governor-mutua-hosts-major-youth-convention-friday/> accessed 14 November 2016.

³³² Respondent 10, Machakos County, 8th November 2016; Respondent 11, Machakos County, 8th November 2016.

³³³ Respondent 4, Speaker Machakos County, 8th November 2016.

³³⁴ Ibid.

³³⁵ Respondent 8, Member of County Assembly, Machakos County, 8th November 2016.

³³⁶ Respondent 2, Machakos County, 8th November 2016.

³³⁷ Respondent 3, County Executive Committee for Roads and Public Works, Machakos County, 8th November 2016.

³³⁸ Respondent 4, Speaker Machakos County, 8th November 2016.

³³⁹ Respondent 8, Member of County Assembly, Machakos County, 8th November 2016.

barazas and public forums to identify development priorities in their area.³⁴⁰ Respondent 9 indicated that the County had established a Ward Fund for purposes of development, wealth creation and poverty eradication under the under the Machakos County Ward Development Fund Act of 2014. The fund ensures that County wards lagging behind in development benefit from the fund. The County Government has school bursary scheme which has assisted various need students to access education.³⁴¹

d) Rule of Law

The principle on rule of law requires that everyone is accountable under the law and established legal principles. The law applies to everyone irrespective of sex or status. It is a recognised principle of governance under Article 10 of the CoK. It is also recognised under section 7 of the Kenyan Leadership and Integrity Act, which requires a state officer to abide and carry out their duties in accordance with the Constitution and Law. The Public Officer Ethics Act also requires state officers to respect the rule of law and uphold the human rights and fundamental freedoms in the CoK unless limited under Article 24 of the CoK.³⁴² The County Government must ensure that it carries its functions in accordance with the CoK, County laws and national laws. In order to implement devolution, various laws were enacted. These included: Public Finance Management Act, 2012; County Government Act, 2012; Transition County Allocation Act, 2013; Intergovernmental Relations Act, 2012; Coordination of National Government Act, 2013; Urban Areas and Cities Act, 2011; and leadership and integrity Act of 2012.

³⁴⁰ Respondent 1, Machakos County, 8th November 2016; Respondent 7, Machakos County, 8th November 2016.

³⁴¹ Machakos County Government, *Machakos County Government (Bursary Fund) Regulations 2014* (Machakos County Government 2014).

³⁴² Section 10, Public Officer Ethics Act.

The respondents in this study were required to state the extent to which Machakos County enhanced the rule of law. Out of the 12 respondents, 8³⁴³ were of the view that Machakos County had strictly adhered to the Constitution and while the remaining four agreed that it had averagely done so.³⁴⁴ The respondents who indicated that the County had averagely adhered to the rule of law based their argument on the fact that the County Government is still in transition state and it's in the process of learning all the laws in place to ensure good governance under devolution.³⁴⁵ Respondent 1 stated the 'ministries especially those concerned with finance have always come forth strongly to advocate for strict adherence to financial management procedures'. Respondent 7 in affirming the County Government adherence to the rule of law provided that:

“The County Government has in place quite a number of consultants who see to it that adherence to the Law is maintained. The County through the executive ensures that circulars are constantly sent to the entire staff on matters of the anti-corruption initiatives, adherence to procurement laws and adherence to prudential management rules.”³⁴⁶

e) Efficiency and effectiveness

Good governance requires efficiency and effectiveness in delivery of services. Effectiveness and efficiency involves making use of the available resources to produce good results.³⁴⁷ The use of the available resources takes in consideration the needs of the present and future generations. A

³⁴³ Respondent 1, 4, 7, 8, 9,10, 11 and 12 Machakos County, 8th November 2016.

³⁴⁴ Respondent 2, 3, 5 and 6, Machakos County, 8th November 2016.

³⁴⁵ Respondent 3, Machakos County, 8th November 2016.

³⁴⁶ Respondent 7, Machakos County, 8th November 2016.

³⁴⁷ Chilufya Kawelwa, Good Governance and What Constitutes Bad Governance'

https://www.academia.edu/6413378/GOOD_GOVERNANCE_AND_WHAT_CONSTITUTES_BAD_GOVERNANCE accessed 11 November 2016.

public officer should not use his position to enrich themselves at the expense of the public.³⁴⁸ In order to ensure timely, effective and efficient service delivery the County of Machakos has employed various mechanisms such as making available the suggestion box; providing customer care services; devolving county functions to sub-counties;³⁴⁹ timely preparation of budgets; maendeleo chap chap ideology;³⁵⁰ obtaining feedback from public;³⁵¹ enhancing road infrastructure; use of effective communication channels like use of the website, vernacular radio stations, advertisements.³⁵²

f) Consensus Oriented

Devolution fosters unity through recognising diversity.³⁵³ Devolving functions closer to the people increases consensus and legitimacy concerning the choice of public services.³⁵⁴ County Government is required to put in place institutional framework that can avert conflict and foster unity amongst diverse interests and groups. This institutional framework includes but is not limited to public participation forums, judiciary, alternative dispute resolution mechanisms and traditional dispute mechanisms. Whereas the Counties are distinct and autonomous, they must work in coordination and cooperation with the national government.³⁵⁵ The Intergovernmental

³⁴⁸ Section 11, Public Officer Ethics Act 2003.

³⁴⁹ Respondent 2, Machakos County, 8th November 2016.

³⁵⁰ Respondent 5, Human Rights Activist Machakos County, 8th November 2016.

³⁵¹ Respondent 7, Machakos County, 8th November 2016.

³⁵² Respondent 9, Machakos County, 8th November 2016.

³⁵³ Article 174 (b), CoK 2010.

³⁵⁴ Meagher, Patrick. 1999. "Cooperating against Corruption: Governance, Collective Action, and Jurisdictional Design in Plural Societies," presented at IRIS Conference on Collective Action and Corruption in Emerging Economies.

³⁵⁵ Article 6 (2), CoK 2010.

Relations Act provides a framework for consultation and cooperation between the national and County Governments and amongst County Governments.³⁵⁶

Machakos County has put in place various mechanism to facilitate consultations and consensus building in decision-making. The major avenue for consultation and consensus building is public participation avenues in various wards.³⁵⁷ According to respondent 4, the County Government has taken measures to ensure consultation and consensus building. These include: holding joint meetings; creating a Standing Committee on devolution; invitation to committee sittings; and the creation of the office of the whip. The executive, county assembly, sub-county administrators, and ward project managers work closely together and consult each other on issues touching on the county governance.³⁵⁸ The County also uses media such as its website, radio, TV, facebook page as a means of carrying out consultations.³⁵⁹ Forums for external consultation with key external stakeholders such as investors and civil society is used as a medium of consultation.

4.4 Challenges Facing the Implementation of Good Governance Practices at Machakos County Government

Despite a fairly well growing institutional and legal framework for good governance, challenges are bound to happen. The study sought to determine some of the challenges facing Machakos County in implementing good governance practices. Whereas the staff respondents applauded Machakos County for entrenching good governance practices such as participation, accountability, transparency, responsiveness to the needs of the people and rule of law, the biggest challenge that the County faces is political interference and wrangling such as opposition

³⁵⁶ Government of Kenya, *Intergovernmental Relations Act* (Government Printers 2012).

³⁵⁷ Respondent 5, Human Rights Activist Machakos County, 8th November 2016.

³⁵⁸ Respondent 8, 11 and 12, Machakos County, 8th November 2016.

³⁵⁹ Respondent 9, Machakos County, 8th November 2016.

politics devoid of an agenda and full of malice, external political interference, narrow and sectorial political interests devoid of a pro-people vision by some of its elected leaders.³⁶⁰ Internal and external political wrangling and patronage affects the manner in which MCAs carry out their oversight role over the executive and their mandate in representing the needs of the people. Respondent 23 argued that whereas the MCAs summon members of the executive to account, they are in many cases influenced by witch hunting and party politics.³⁶¹

The second challenge identified by most of the respondents was corruption. Corruption involves the misuse of public resources for personal enrichment instead of the intended development projects.³⁶² In 2014 eight Machakos County officials were arrested by the EACC over corruption allegations. Corruption is so rampant in Machakos County that in 2015, Machakos Governor formed the Machakos Anti-Corruption Unit to fight graft. Respondent 18 argued that the corruption at Machakos County undermines the objectives of devolution and called for the need to address the same. Even though Machakos County has the best-celebrated manifesto, without fighting corruption at the local level, it will not be able to meet its objectives.

The third challenge was inadequate funding. Delayed disbursements from the national government lead to delayed implementation of key projects to ensure responsiveness in a reasonable time as well as disruption of service delivery.

Inadequate human capacity, lack of skills and lack of a well-structured human resource system is the fourth challenge. This is attributed to staff who may not have the necessary experience to perform their duties. It is also due to lack of knowledge and a shared vision among the political

³⁶⁰ Respondent 1, Machakos County, 8th November 2016.

³⁶¹ Respondent 13, 14, 18, 22, 23, 24 and 29, Machakos County, 26th November 2016.

³⁶² Respondent 3, County Executive Committee for Roads and Public Works, Machakos County, 8th November 2016.

leadership and staff on what good governance entails and how to implement key governance issues.³⁶³ Low literacy level among a sizeable number of the populace, some staff and MCAs coupled with high poverty levels contribute to political manipulation and lack of adequate visionary, professional and intellectual capacity at all levels. This calls for continuous civic education and awareness on good governance, specifically designed training programs.³⁶⁴

The fifth challenge is resistance to change. Devolution is a new concept being implemented by the national government lacking the willingness to let go some of its former functions like construction of urban and rural roads coupled by weak national transitional institutions. There are also challenges with MCAs, who disguise their oversight role to blackmail the executive in efforts to seek for personal gain. MCA's also complained that members of the executive sometimes take their oversight role for granted. Through follow a up telephone interview, the majority leader sighted instances where the Speaker had to intervene with the Governor to secure attendance to committee sessions by some executive officers.

There was a general feeling that the expectations of the members of the public were very high to the extent that, even where there is intention by the county government to perform a certain task, delays occasioned by external factors and or legal procedural requirements like in the case of procurement, wananchi become impatient and accuse the leadership of not solving their problems. Poor attendance at the public participation forums especially where there is no provision for transport reimbursement and unwillingness among the public to participate was also recorded as a challenge.³⁶⁵

³⁶³ Respondent 2, Machakos County, 8th November 2016.

³⁶⁴ Respondent 7, Machakos County, 8th November 2016; Respondent 9, Machakos County, 8th November 2016.

³⁶⁵ Respondent 11, Machakos County, 8th November 2016.

Another challenge affecting good governance in Machakos county is the practice of nepotism in employing county staff. There have been general concerns by the public that senior county executives employ their relatives and close friends. This undermines good governance because such employee mostly lacks the requisite skills and knowledge required to steer the county activities thus affecting full implementation of development projects.³⁶⁶

³⁶⁶ ³⁶⁶ Respondent 22, 23, 24 and 29 , Machakos County, 26th November 2016.

CHAPTER FIVE

5.0 CONCLUSIONS AND RECOMMENDATIONS

5.1 Introduction

This chapter provides, findings, general conclusions derived from the study based on problem statement, objectives, research questions and hypothesis. It further provides recommendations.

5.2 Chapter Summary

The main objective of this study was to assess the level of compliance with existing constitutional and legal provisions meant to ensure good governance for development and recommend ways and means of ensuring that devolution meets its constitutional objectives of fostering development by incorporating and refocusing on principles of good governance in the making and implementation of decisions. The assumption was that devolution in itself provides an enabling environment in which good governance practices can thrive. If well adopted good governance can lead to development.

Chapter one introduced the topic under study. It set out the background to the study, the statement of the problem, research hypothesis, theoretical and conceptual frameworks, literature review, scope and limitation of the study, objectives, justification of the study and research questions. It is a road map for the study. The study recognized that good governance indeed enhances governance and every state must thrive to promote the same. In the background statement, the study identified that decentralization of power promotes good governance as it brings governance close to the people, increases accountability and transparency. The government is also responsive to the needs of the people as it is closer to them. However in the research problem, the study recognized that, devolution does not automatically lead to good

governance. Challenges such as weak institutional framework, corruption, political patronage, misuse of public resources, and tribalism among others undermine good governance. The concept of development based on the human approach adopted by the UNDP underpinned this study. While the concept of good governance has varied definition, this study adopted the UNDP definition, which encompasses elements such as participation, equity, and rule of law, responsiveness, accountability, transparency and consensus oriented. The reason for adopting the UNDP definition was because the elements of good governance are recognized as national values and principles of good governance under Article 10 of the COK. The study adopted qualitative research method. Both primary and secondary data was used. Primary data was collected from the public and staff at Machakos County. The sampling technique used was purposive sampling. Chapter one also outlined chapter breakdown.

Chapter two discussed in detail the concept of good governance providing its definition, historical background, rationale and interpretations. This chapter indicated that good governance emanates from governance, which not only refers to the role of the government but other governance actors such as the civil society and international organizations. This chapter also showed that the concept of good governance was coined by developmental agencies to qualify governance. However what constitutes good governance varies from one jurisdiction to another because what is good depends on the morals values of each society. For example, Kenya constitutionalized its national values and principle of governance under the CoK.

Chapter three contextualized good governance under the Kenyan devolved system of government. It discussed the linkage between good governance and decentralization to determine how adoption of Kenyan devolution was shaped by the quest for good governance. It described how devolution fosters good governance practices by enhancing local participation,

responsiveness, and efficiency, rule of law, accountability and equity. It also analyzed devolution for good governance and development under the CoK. This chapter recognized that good governance forms the epicenter of the Kenyan devolved system of government. Good governance is well entrenched into the CoK of Kenya.

Identifying that the principle of good governance is well entrenched under the CoK, chapter four focused in its implementation at the County level. It recognized that there is a strong legal and institutional framework to implement the constitutional provisions of good governance at the county level. The legal framework includes the County Government Act, Leadership and Integrity Act, Public Finance and Management Act, Public Officers Ethics Act and the Intergovernmental Relations Act. The institutional framework includes County Assembly, County executive, senators, Auditors General and county decentralized units among others. These institutional frameworks were meant to ensure that good governance was spearheaded at the County level. This study sought to find out if the County had entrenched good governance practices as stipulated in the Constitutional and legal framework. Based on the legal and institutional framework, this chapter, using Machakos County as the case study discussed the good governance practices Machakos County has put in place. In this chapter, the study basically conducted an assessment of the extent to which Machakos County has complied with the legal, policy and institutional on good governance. It also identified the key challenges facing Machakos County in enhancing good governance.

Chapter five provides for the chapter summary, findings and recommendations. It enumerates the results of the research, draws general conclusions and proposes mechanisms to improve good governance with the main objective of delivery of development necessary for economic growth, poverty reduction hence minimizing inequalities.

5.3 Findings and Recommendations

The main objective of this study was to assess the level of compliance under the Kenyan devolved system of government with existing constitutional and legal provisions meant to ensure good governance for development and recommend ways and means of ensuring that devolution meets its constitutional objectives of fostering development by incorporating and refocusing on principles of good governance in the making and implementation of decisions. Using Machakos County as the case study, the study sought to determine the policies, structures, systems and institutional capacity it had put in place to enhance good governance practices such as participation, responsiveness, efficiency, rule of law, equity, accountability, transparency, effectiveness and consensus oriented. Based on the analysis of data collected from the respondents and reviewed literature, this study derives various conclusions and makes further recommendations.

Good governance emanates from the concept of governance, which goes beyond the role of the state as a single actor in governance. It encompasses other non-state actors such as civil society, international organizations, development agencies, and religious institutions amongst others. However, government remains the main actor in governance, which provides an enabling environment for the other sectors to be involved in governance and participate in the attainment of the public goods.

Good governance practices such as participation, rule of law, responsiveness, equity, efficiency, consensus oriented, accountability, transparency and effectiveness determine the quality of governance. A government that enshrines these principles in its decision-making and puts institutional framework in place to implement attracts public confidence in its governance. Although the definition of what is good governance varies from one region to another and is

determined by the core values a society considers most important, it cannot be doubted that good governance is an important element of governance that every governance actor must strive to attain.

The findings of this study and recommendations include:

- a) Good governance is well entrenched and recognized under the Constitution of Kenya and the legal framework and this calls for the need to strengthen the legal and institutional framework.**

The first conclusion is that the principle of good governance is well entrenched and recognized in the Kenyan legal and institutional framework. The Constitution of Kenya (CoK), 2010, recognizes the good governance as a national value and principle of good governance which every state organ, officials and public officers must abide with in every decision-making and interpretation of the law. The Constitutionalization of the principle of good governance is a clear indication that Kenyans aspired for good governance. The CoK further constitutionalizes the elements associated with good governance under Article 10 such as participation, transparency, and accountability, rule of law including human rights, equity, responsiveness, efficiency, integrity, non-discrimination and protection of the marginalized groups. The CoK in itself, which is the supreme law of the land by constitutionalizing good governance as a national value and principle of good governance, provides a very strong foundation. The County Government Act, Intergovernmental Relations Act, Public Finance Management Act, Public Officer Ethics Act and Leadership and Integrity Act, provide a strong legal framework on good governance in the County government. Institutional framework such as the office of Controller of Budget; Auditor

General; County Assembly; Ethics and Anti-Corruption Commission also provide an institutional framework to ensure good governance.

Despite the legal and institutional framework on good governance, the devolved system still faces many challenges that undermine its realization. Machakos County is a good example. It has enacted laws and regulations such as the Machakos County Participation Act of 2014, to ensure that the public participate in governance. However political interference, corruption, low literacy level, resistance to change, low public participation, inadequate funds, weak County assembly oversight over the executive, rivalry battles amongst others hinder the full realization of good and smooth governance.

This study recommends need to strengthen institutions such as the Ministry of Devolution and Planning, Council of Governors, County Assembly, Intergovernmental Relations Council, Ethics and Anti-Corruption Commission, Senate, Office of the Controller of Budget, Auditor General among others. Strengthening these institutions entails building their capacity to perform functions, adequate funding, increasing human resource and ensuring they are autonomous from political interference. The legal framework also requires creation of further decentralized units such as Sub-Counties, wards, cities, village councils to bring governance closer to the people and responsive to the needs of the people. Further decentralization also increases service delivery, accountability, transparency and provides an effective feedback mechanism. However, the national government in collaboration with the county government must aim at strengthening the capacity of these structures through resource mobilization. For ease of compliance, it is also recommended that an easy to understand lay peoples' manual of the key provisions on good governance be prepared to act as a checklist for Governors, CEC's, MCA's, other stakeholders

and the general public. This way persons who have no expertise in law will not find it a big challenge in at least having knowledge of the various constitutional and legal provisions.

b) Devolution provides an enabling environment in which good governance can thrive and hence the need to implement devolution

The second finding is that there is a link between devolution and good governance. In order to achieve devolved development, County government must entrench good governance practices. In order to enhance good governance and entrench good governance practices, Kenyans adopted a devolved system of government. Devolution promotes good governance as it provides an environment in which good governance practices can thrive. Devolution brings governance closer to the people and fosters public participation in local governance. As a result of its proximity to the people and enhanced participation in decision making, devolution ensures that government is responsive to the needs of the people. It ensures efficiency, effectiveness and responsiveness. Due to greater participation, devolution enhances accountability and transparency. People are more aware of what the government is doing and can directly inquire for information. Devolution also enhances legitimacy and increases consensus as it recognizes diversity. However, despite the ability of devolution to enhance good governance, it needs a strong legal and institutional framework that is adhered to. It is only by creating efficient administrative framework, creating quality institutions and building their capacity, adopting participatory, transparent and accountable governance that devolution can deliver.

Counties cannot achieve the objects of devolution and good governance without cooperation with the national government and other non-state actors. It is recommended that the national government in collaboration with the County government must adhere to the implementation of

devolution. The County government must ensure that it discharges its functions at the county level as stipulated under the Fourth Schedule of the CoK. The developmental projects must correspond to the peculiar needs of the people. The Counties must cooperate with the judiciary to ensure that those who engage in corruption and misuse of resources are prosecuted. The Counties must cooperate with the office of the Auditor General, Controller of Budget and other internal auditors and provide them with information when needed. We have witnessed a number of cases where governors refuse to appear before the Senate to account for misappropriation of funds hindering good governance. The role of the Senate is to provide oversight of national revenue allocated to the County government, and in that case the counties must cooperate with the senate without politicizing the issue. There is also need for the County assembly to work together with the County executive and senate in a holistic manner. This will avert the unnecessary supremacy battles that we have witnessed since the establishment of the County government. The essence of such cooperation is to ensure that the needs of the people are protected and devolution benefits the people.

c) Machakos County has to some extent put in place legal and institutional framework at the County level, however there is need to strengthen the same

Machakos County has to a large extent made steps towards complying with the constitutional and legal provisions meant to enhance good governance. It has further decentralized its administrative units up to the ward level in accordance with Part VI of the CGA. It has in place sub-counties and wards to enhance participation. In accordance with Part VIII of the CGA on citizen participation Machakos County has put in place modalities and platforms to enhance citizen participation. For example it has a website which has ample information easily accessible by the public, it has a facebook page and twitter handle and its Governor, Dr. Mutua frequently

appears on various media stations to engage with the people. Machakos County also uses vernacular radio stations such as Musyi and Mbaitu FM to engage and receive feedback from the public on various development agenda. Through advertisement of opportunities, Machakos County has been able to invite people to public forums to engage them in budget process, legislation and decision-making. This study recommends that Machakos County to strengthen its institutional framework by building its capacity.

d) Political interference, supremacy wars, corruption, misuse of public resources, illiteracy, lack of adequate funds and favorism among others are the main challenges facing devolution, development and good governance at the County level.

Political interference, rivalry wars and perceptions of corruption are the major challenges facing good governance at the county level. Other challenges inadequate funds, low literacy level, resistance to change, lack of capacity and weak institutional framework. Political interference has led to unnecessary rivalry between the Governor on one side and his deputy and the Senator on the other. This has in turn divided the county assembly members along the same lines sometimes interfering with objectivity at the altar of political expediency.

There is need to carry out civic education awareness and training on good governance. The County government should partner with organizations and civil societies that spearhead good governance practices. From the study, the findings indicated that most of the staff at Machakos County lacked knowledge on good governance practices and how to implement them. Institutions such as the Ministry for Devolution and Planning, Council of Governors, Intergovernmental Relations Technical Committees and research institutions should spearhead education on good governance.

There is need to strengthen the capacity of the county government to implement good governance practices. This can be done through training, benchmarking, exchange programs, regional tours and visiting other counties to learn from them. Capacity can also be enhanced through the use of modern internet, communication, technologies (ICT) such as e-procurement, IFMS to promote financial accountability, openness and transparency.

Human resource challenges manifested in lack of a shared world view, low intellectual and academic capacities among MCA's and some staff, and lack of adequate experience among some staff were identified as among the key challenges. It is recommended that the country begins structured dialogue ahead of the next elections to build enough consensus on the minimum academic qualifications for its elected leadership. A number of the respondents recommended a diploma as the minimum qualification for a person aspiring to be MCA.

In terms of a shared vision for Governance and development, it was noted that the gap exists because the Governor has wide international exposure acquired over years as he schooled in America and Australia and taught in the Middle East before returning home to be the first Government Spokesperson of the Republic of Kenya. He is also widely travelled around the globe. His worldview for speedy, quality and efficient provision of services and development while 'squeezing the shilling' to provide value for money by doing more for less while insisting on results didn't appear to have been well captured and internalized by the rest of the stakeholders beyond the *Maendeleo chap chap sloganeering*. It is therefore recommended that a leadership training program with a clear curriculum be mounted for all staff and a majority of the residents to be brought to a near same level in terms of vision.

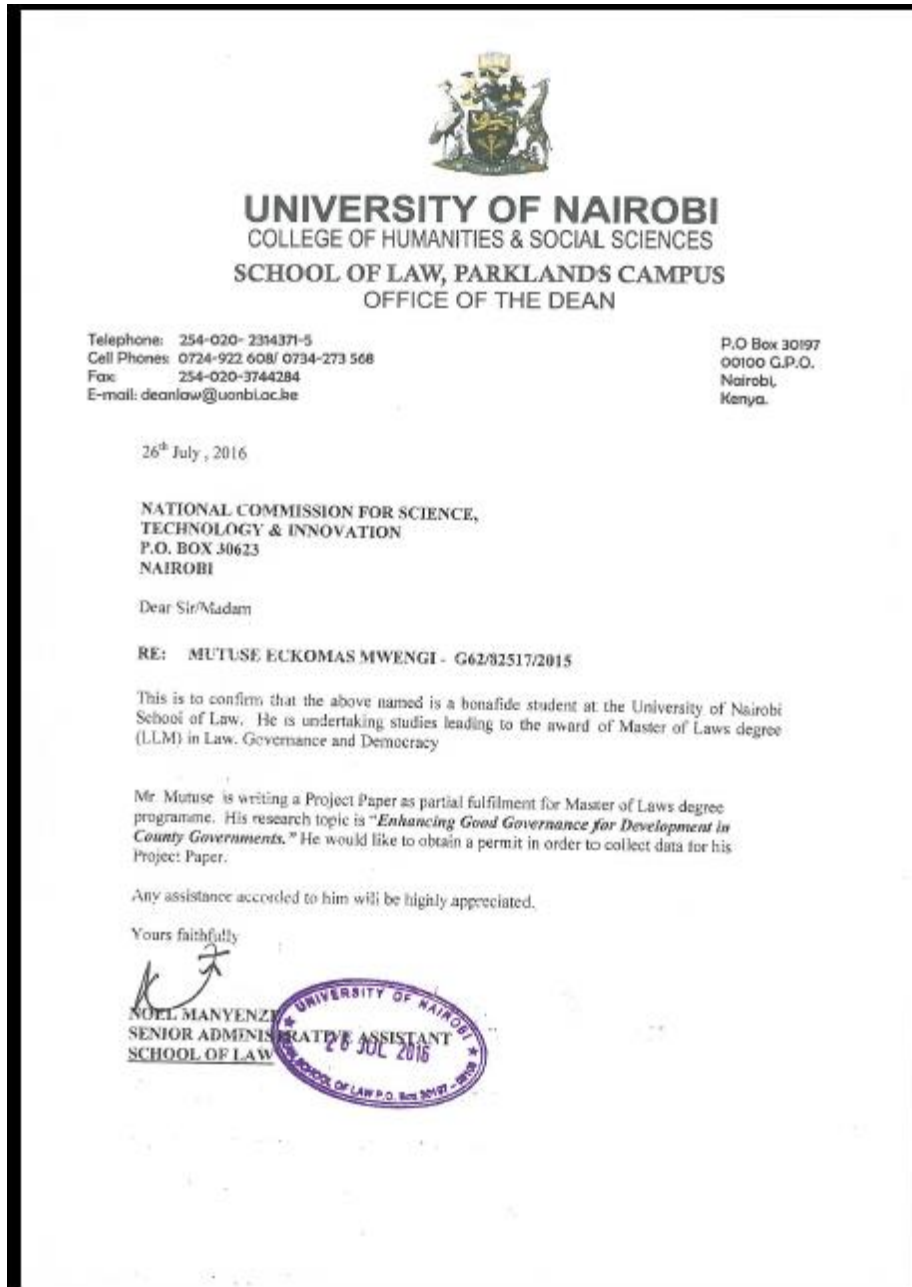
The problem for not attracting experienced staff was cited as being lack of commensurate remuneration. There was also unqualified staff majorly said to have been inherited from the

defunct local authorities. For certain critical cadres like CECs, Chief Officers and technical heads of departments, because remuneration is a national issue, it is recommended that counties, through the Council of Governors, petition the Salaries and Remuneration Commission to review packages accruing to those positions so as to attract qualified and experienced persons and promote meritocracy. As for under qualified staff, it was noted that there was a deliberate move to deploy them into manual sectors like garbage collection which policy has made the county one the cleanest in Kenya. The county may also consider taking advantage of the Section 84 of the County Governments' Act on voluntary early retirement to lay off such unqualified staff and employ better qualified and skilled ones in replacement.

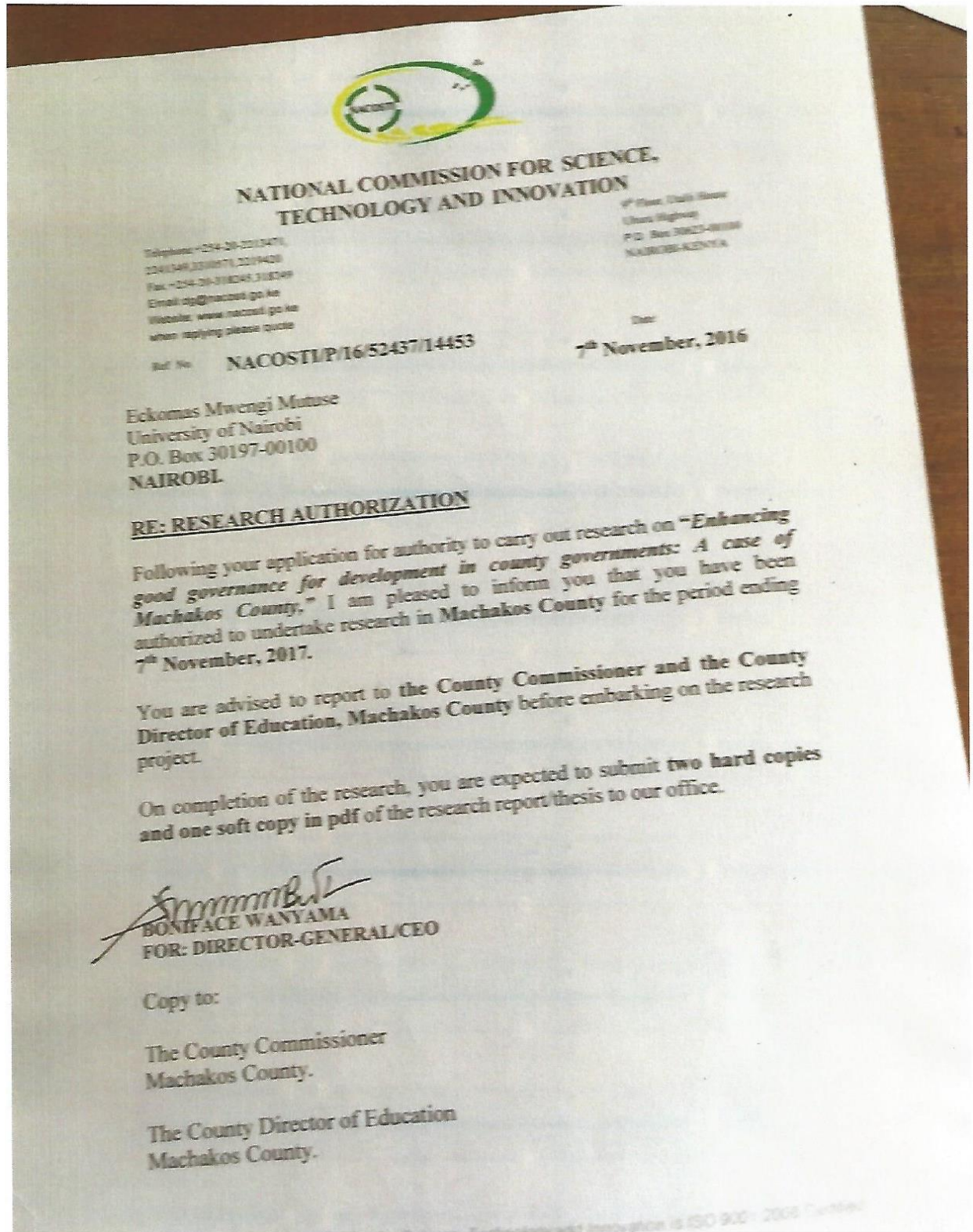
There is need to allocate more money to the County governments by the national government or the County government should explore other avenues of raising revenue. However such increase in allocation of revenue to the county governments should be underpinned on the accountability and transparency in public finance management. Financial support for citizen participation should therefore be a collaborative effort among all the key stakeholders, with public resource playing a key role. County governments should partner with the private sector, donors and citizens in funding public participation.

APPENDICES

APPENDIX 1: UNIVERSITY OF NAIROBI LETTER AS BONAFIDE STUDENT



APPENDIX 2: NACOSTI RESEARCH AUTHORIZATION



NATIONAL COMMISSION FOR SCIENCE,
TECHNOLOGY AND INNOVATION

Telephone: +254-20-2212471,
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NAIROBI-KENYA

Ref No: NACOSTI/P/16/52437/14453

Date:
7th November, 2016

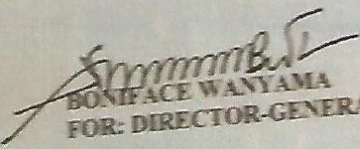
Eckomas Mwangi Mutuse
University of Nairobi
P.O. Box 30197-00100
NAIROBI.

RE: RESEARCH AUTHORIZATION

Following your application for authority to carry out research on "*Enhancing good governance for development in county governments: A case of Machakos County*," I am pleased to inform you that you have been authorized to undertake research in Machakos County for the period ending 7th November, 2017.

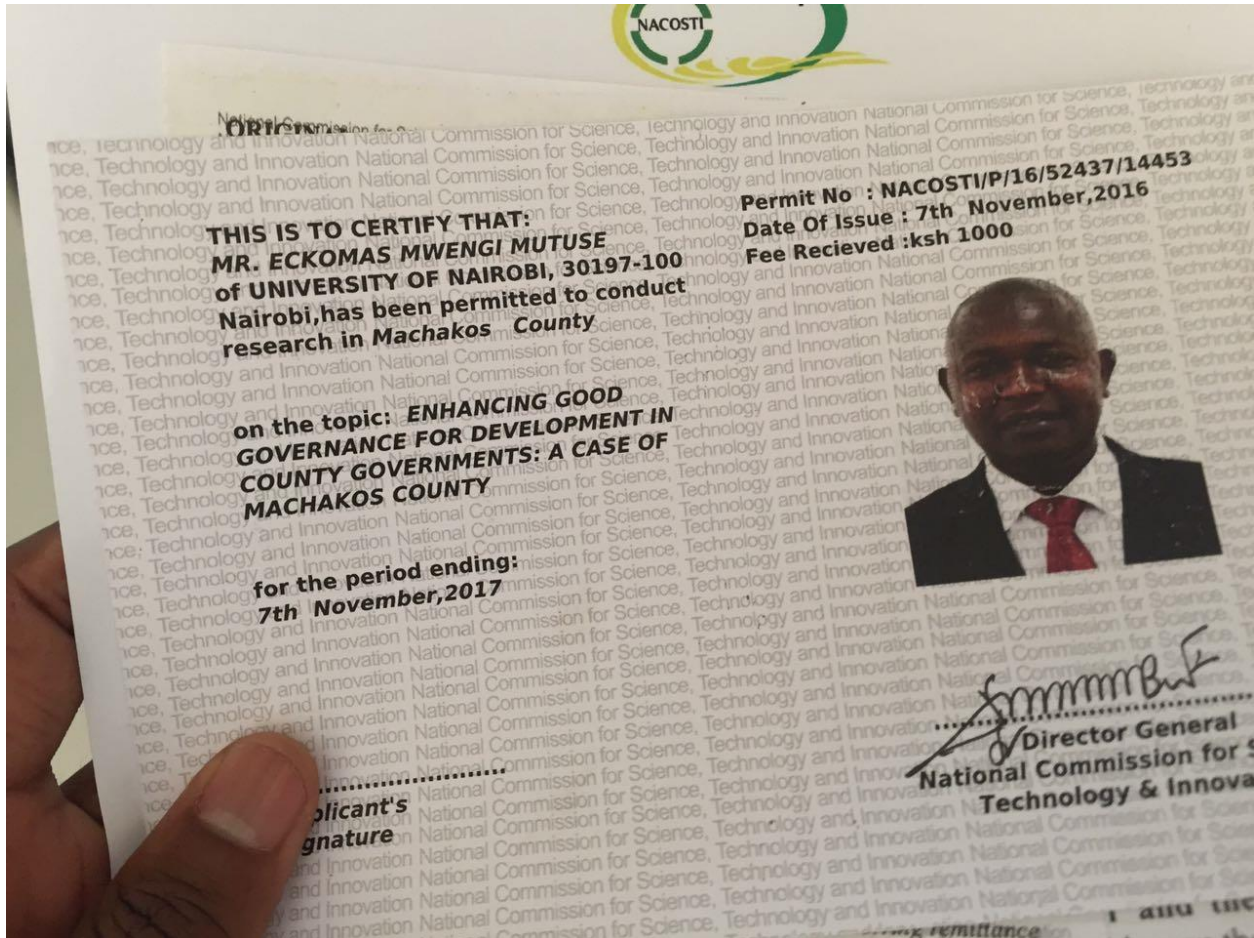
You are advised to report to the County Commissioner and the County Director of Education, Machakos County before embarking on the research project.

On completion of the research, you are expected to submit two hard copies and one soft copy in pdf of the research report/thesis to our office.


BONIFACE WANYAMA
FOR: DIRECTOR-GENERAL/CEO

- Copy to:
- The County Commissioner
Machakos County.
 - The County Director of Education
Machakos County.

APPENDIX 3: NACOSTI RESEARCH PERMIT



APPENDIX 4: CONSENT FORM

UNIVERSITY OF NAIROBI

SCHOOL OF LAW

NAME: Mutuse Ekomas Mwengi

REGISTRATION NO.: G62/82517/2015

RESIGNATION: Masters of Laws Student, Parklands School of Law

CONTACT ADDRESS: 1996-90100, Machakos

MOBILE NO.: 0715346466

PROJECT TITLE: Enhancing Good Governance under Kenya's Devolved System of Government: A Case of Machakos County

Please Tick

1. I confirm that I have read and understand the information sheet for the above study and have had the opportunity to ask questions.

2. I understand that my participation is voluntary and that I am free to withdraw at any time, without giving reason.

3. I agree to take part in the above study.

6. I agree to the use of anonymised quotes in publications

Name of Participant

Date

Signature

Name of Researcher

Date

Signature

APPENDIX 5: QUESTIONNAIRE

PART A: Introduction

My names are MWENGI MUTUSE, a Masters of Laws (LLM) student at the University of Nairobi. As part of my LLM degree, I am carrying out a study on *‘Enhancing Good Governance under Kenya’s Devolved System of Government: A Case of Machakos County’* .

The main objective of this study is to critically analyze the impact of good governance on county development under the Kenyan devolved system of government.

I would like to ask you questions that would enable me understand the extent to which good governance practices or lack thereof have impacted on development in Machakos County. The data collected will also help in comprehending the legal, institutional and policy framework that the county government has/will put in place to enhance good governance and foster development. I intend to use the information gathered to come up with key recommendations to the national, county governments, development partners and other stakeholders involved. These recommendations shall be aimed at being integrated in to the legal, institutional and policy framework in order to enhance good governance and foster development under devolution in Kenya. Please note that all the information you give is confidential and will be used for research purposes only. Read each question carefully and give your honest response. Your responses will guide us in determining governance issues hindering as well as those promoting development under devolution in your county.

PART B: Demographic Information

1. Name (Optional):

2. Designation/Occupation

PART C: DEVOLUTION FOR DEVELOPMENT AND SERVICE DELIVERY

1. Are there any identifiable historical development problems that the people of Machakos wanted devolution through their county government to correct? Please list them

- (i)
- (ii)
- (iii).....
- (iv).....
- (v)

2. Since its inception in March 2013, what are some of the development projects that Machakos County Government has put in place to promote socio- economic development? List them.

- (i)
- (ii)
- (iii).....
- (iv).....
- (v)

3. How would you rate your county’s performance in delivery of its development mandate?

Very good Good Average Poor

4. What are some of the programs and policies that your county has put in place to ensure people-centered, poverty reducing, socio-economic development and service delivery?

(i)

(ii)

(iii).....

(iv).....

(v)

5. To what extent has Machakos County decentralized its structures to ensure service to Wananchi at the lowest levels? Tick appropriately

County Headquarters

Sub-county Level

Ward Level

Village Level

6. In your view what are some of the challenges facing your county in delivering socio-economic development and provision of services to Wananchi?

(i)

(ii)

(iii).....

(iv).....

(v)

7. Based on the challenges above, in your view what mechanisms should the county put in place to enhance socio-economic development and service delivery?

- (i)
- (ii)
- (iii).....
- (iv).....
- (v)

PART D: GOOD GOVERNANCE AND INSTITUTIONAL FRAMEWORK

1. What do you understand by the term good governance?

.....

.....

.....

2. In your view do you think there is a relationship between good governance and development?

Yes

No

Please explain your answer.

.....

.....

.....

3. What mechanisms has your county government put in place to involve the public in setting the development agenda including determining priority projects and programs?

- (i)

- (ii)
- (iii).....
- (iv).....
- (v)

4. What mechanisms has your county put in place to ensure the budgeting process is as inclusive as possible?

- (i)
- (ii)
- (iii).....
- (iv).....
- (v)

5. To what extent can you rate your county in adhering to the Constitution and other Laws (eg County Governments Act, Public Finance Management Act and the Public Procurement and Disposal Act) meant to ensure good governance under devolution ?

Strict Average Low

6. What financial and other systems has your county put in place to ensure transparency and accountability in the way public resources are spent?

- (i)
- (ii)
- (iii).....
- (iv).....
- (v)

7. In decision-making and developmental agenda, what mechanisms has your county put in place to ensure equity in that all parts of the county benefit without any form of discrimination?

- (i)
- (ii)
- (iii).....
- (iv).....
- (v)

8. What mechanisms has your county put in place to ensure that women, youth, minorities and other vulnerable groups have fair access to the available resources, opportunities and take part in governance?

- (i)
- (ii)
- (iii).....
- (iv).....
- (v)

9. What mechanisms has your county put in place to ensure wananchi get timely, effective and efficient service delivery in your different service points?

- (i)
- (ii)
- (iii).....
- (iv).....
- (v)

10 In your view has the county assembly played its role in providing oversight by way of checks and balances to the Executive?

Yes

Somehow

No

Please explain your answer

.....

.....

.....

11 In your view, do Members of the County Assembly have enough capacity including educational capacity to carry out their mandate?

Yes

No

Please explain your answer

.....

.....

.....

12 Has the County Executive played its role in proposing county specific legislation and policies to guide governance and development in Machakos?

Yes

No

If Yes Please state some of these Policies/ Laws

.....

.....
.....

If No Please explain the situation

.....
.....
.....

13 What mechanisms has the county leadership put in place to ensure consultations and consensus building in decision- making?

- (i)
- (ii)
- (iii).....
- (iv).....
- (v)

14. What are the challenges that may be hindering the realization of the above elements of good governance in your county?

- (i)
- (ii)
- (iii).....
- (iv).....
- (v)

15. In your view, could the challenges your county is facing in enhancing service delivery and socio-economic development be as a result of poor governance mechanisms, weak institutions and structures?

Yes

No

Please explain your answer

.....
.....
.....

16. How can the county government address such challenges?

- (i)
- (ii)
- (iii).....
- (iv).....
- (v)

THANK YOU

APPENDIX 6: LIST OF TARGETED RESPONDENTS

EXECUTIVE SIDE

1. Dr. Alfred N. Mutua - Governor
2. Hon. Elizabeth Mutheu Nzyoka - Minister, Finance and Revenue Management
3. Hon. Kioko Luka - Minister, Decentralized Units, County Administration, Water and Irrigation
4. Hon. Joshua Musili - Minister, infrastructure
5. Hon. Naomi Mutie - Minister, Health and Emergency Services
6. Hon. Dr. Sunil Kumar Dhall - Minister, Trade, Investment, Economic Planning and Industrialization
7. Ms. Jacinta Masila - Chief Officer, Finance
8. Mr. James Kathili - Chief Legal Officer
9. Dennis Makau - Directorate of Political Affairs

COUNTY ASSEMBLY

10. Hon. Bernard Mungaata - Speaker
11. Hon. Joshua Mwonga - Majority Leader
12. Hon. Thomas Kasoa - Minority Leader
13. Hon. Willy Kasimu - Chair, Budget Committee
14. Hon. Joseph Kalunde - Chair PIC/PAC Committee
15. Hon. Jacqueline Nziva - MCA & Chair County Assembly Women Caucus
16. Hon. Raphael Mutuku - Nominated MCA (Youth and disability interests)

PUBLIC STAKEHOLDERS

- 17. Ms. Francisca Mutinda - Chair, Maendeleo ya Wanawake, Machakos County
- 18. Mr. Malcom Kateta - Organising Secretary, Chamber of Commerce
- 19. Mr. Cosmas Kikolya - Catholic Church, Machakos County Development
Coordinator and Member County Budget &
Economic Forum representing area Bishop
- 20. Mr. Manthi Musyoka - Civil Society/Human Rights Activist

APPENDIX 7: LIST OF RESPONDENTS

1. Respondent No. 1, Machakos County, 8th November 2016.
2. Respondent No. 2, Machakos County, 8th November 2016.
3. Respondent 3, County Executive Committee for Roads and Public Works, Machakos County, 8th November 2016.
4. Respondent 4, Speaker Machakos County, 8th November 2016.
5. Respondent 5, Human Rights Activist Machakos County, 8th November 2016.
6. Respondent 6, Member of County Assembly Machakos County, 8th November 2016.
7. Respondent No. 7, Machakos County, 8th November 2016.
8. Respondent No. 8, Member of County Assembly, Machakos County, 8th November 2016.
9. Respondent 9, Machakos County, 8th November 2016.
10. Respondent 10, Machakos County, 8th November 2016.
11. Respondent No. 11, Machakos County, 8th November 2016.
12. Respondent 12, Machakos County, 8th November 2016.
13. Respondent 13, Machakos County, 26th November 2016
14. Respondent 14, Machakos County, 26th November 2016
15. Respondent 15, Machakos County, 26th November 2016
16. Respondent 16, Machakos County, 26th November 2016
17. Respondent 17, Machakos County, 26th November 2016
18. Respondent 18, Machakos County, 26th November 2016
19. Respondent 19, Machakos County, 26th November 2016
20. Respondent 20, Machakos County, 26th November 2016
21. Respondent 21, Machakos County, 26th November 2016

22. Respondent 22, Machakos County, 27th November 2016
23. Respondent 23, Machakos County, 27th November 2016
24. Respondent 24, Machakos County, 27th November 2016
25. Respondent 25, Machakos County, 27th November 2016
26. Respondent 26, Machakos County, 27th November 2016
27. Respondent 27, Machakos County, 27th November 2016
28. Respondent 28, Machakos County, 27th November 2016
29. Respondent 29, Machakos County, 27th November 2016
30. Respondent 30, Machakos County, 27th November 2016

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