

**UNIVERSITY OF NAIROBI**  
**INSTITUTE OF DIPLOMACY AND INTERNATIONAL STUDIES**

**ROLE OF SUBNATIONAL GOVERNMENTS IN INTERNATIONAL RELATIONS:  
A FOCUS ON COUNTY GOVERNMENTS OF KENYA**

**BY**  
**ROSEMARY NYAMBURA NJARAMBA**  
**REG. NO: R50/7043/2017**

**RESEARCH PROJECT SUBMITTED IN PARTIAL FULFILLMENT OF THE  
REQUIREMENTS FOR AWARD OF MASTERS OF ARTS DEGREE IN  
INTERNATIONAL STUDIES**

**2019**

**DECLARATION**

I hereby declare that this research project is my original work and has not been submitted to this or any other institution of higher learning. In addition, appropriate referencing has been made where concerned.

**Signature** ..... **Date** .....

**ROSEMARY NYAMBURA NJARAMBA**

This research project has been submitted for examination with my approval as the supervisor.

**SUPERVISOR: PROF. AMB. MARIA NZOMO**

**Signature** ..... **Date** .....

## **DEDICATION**

This thesis work is dedicated to my special family and friends who were there with me in every step of the entire Masters journey, supporting and encouraging me. I especially dedicate this thesis to my daughter, who remained patient and understanding even when I was away from home in the course of my studies. And to my partner, whose love and support stayed constant. I will always be thankful.

I also dedicate this work to my loving parents, Mr. and Mrs. Njaramba who have continually instilled in me values of hard work and discipline, and who have remained my best cheerleaders throughout my life. I convey heartfelt appreciation to them.

## **ACKNOWLEDGEMENT**

Firstly, I owe the completion of this work to God, whose words of encouragement and strength rang in my ears throughout my graduate life.

I acknowledge my supervisor, Prof. Amb. Maria Nzomo who academically walked with me from the beginning to the end of the research. Her scholarly guidance, directions and contributions to the study were insightful and inspiring.

Credit is due also to my friends and colleagues who took time to give me input into the document and sincere thanks to those who sat with me to provide information on various topics. Special mention to M.A. and R.C.

My immeasurable gratitude goes to my family for their love and prayers.

I also specially thank all my interviewees, who took time out of their busy schedules and created time for the interviews. Your thoughts and experiences were useful in bringing this study together. Deepest thanks to all those who made this thesis a reality.

## LIST OF FIGURES AND TABLES

Table 1: Study sample.....	13
Table 2: Linkages between County Government functions and ecosoc rights.....	38/39
Figure 1: SDGs Institutional Framework.....	30
Figure 2: Overview of planning in Kenya.....	31
Figure 3: County Performance Management Framework.....	32
Figure 4: Domestication process of SDGs in Kenya.....	33
Figure 5: SDGs and County Government functions.....	34
Figure 6: Process of adoption of international instruments.....	36
Figure 7: Distribution of personnel in government delegations.....	49
Figure 8: Contribution to SDGs by County Governments.....	50
Figure 9: County Governments in implementation of human rights.....	50
Figure 10: Relations with foreign governments.....	51

## ACRONYMNS

ADP-	Annual Development Plan
ALGA-	African Local Governments Academy
AULA-	African Union of Local Authorities
AU-	African Union
CEDAW-	Convention on Elimination of All Forms of Discrimination Against Women
CEMR-	Council of European Municipalities and Regions
CCP-	Cities for Climate Protection
CGA-	County Governments Act, 2012
CIDP-	County Integrated Development Plan
CLGF-	Commonwealth Local Governments Forum
CoG-	Council of Governors
CoP-	Conference of Parties
CPMF-	County Performance Management Framework
CSCN-	Commonwealth Sustainable Cities Network
CSW-	Commission on the Status of Women
DFSRD-	District Focus Strategy for Rural Development
EAC-	East Africa Community
EALGA-	East Africa Local Governments Association
EALGF-	East Africa Local Governments Forum
EU-	European Union
FY-	Financial Year
GDP-	Gross Domestic Product
HRBA-	Human Rights Based Approach
ICCPR-	International Covenant on Civil and Political Rights
ICESCR-	International Covenant on Economic, Social and Cultural Rights
ICHRP-	International Council on Human Rights Policy
ICLEI-	International Council for Local Environmental Initiatives
ICT-	Information and Communications Technology
IGRA-	Intergovernmental Relations Act, 2012
ISO-	International Standards Organization
KNCHR-	Kenya National Commission on Human Rights
LAs-	Local Authorities
MDGs-	Millennium Development Goals

M&E-	Monitoring & Evaluation
MoFA-	Ministry of Foreign Affairs and International Trade
MoU-	Memorandum of Understanding
MTEF-	Medium-Term Expenditure Framework
MTP-	Medium Term Plan
NACOSTI-	National Commission on Science, Technology and Innovation
NDCs-	Nationally Determined Contributions
NGO-	Non-Governmental Organization
NPMF-	National Performance Management Framework
Nrg4SD-	Network of Regional Governments for Sustainable Development
PBB-	Program Based Budget
PFMA-	Public Finance Management Act, 2012
RDAs-	Regional Development Authorities
REFELA-	Network of Local Elected Women of Africa
RII-	Rapid Results Initiative
SDGs-	Sustainable Development Goals
SRDP -	Special Rural Development Program
UACA-	Urban Areas and Cities Act, 2011
UCCL AFRICA-	Africa Chapter of the Unao dos Cidades y Capitaes Lusofono Africana
UCLG-	United Cities and Local Governments
UCLGA-	United Cities and Local Governments of Africa
UN-	United Nations
UNDP-	United Nations Development Programme
UNFCCC-	United Nations Framework Convention on Climate Change
UNGA-	United Nations General Assembly
UPR-	Universal Peer Review
USA-	United States of America
UVA-	Union des Villes Africaines

## ABSTRACT

This research set out to investigate the role of subnational governments in international affairs, using Kenya's County Governments as a case study. Subnational governments are governments below the national/central governments. The study was guided by the following objectives: i) to investigate the governance structures and functions of transnational networks of subnational governments; ii) to examine how County Governments in Kenya are contributing towards international agendas; and iii) to assess the challenges subnational governments face in their participation in international affairs. The theory that guided this study was neo-functionalism which recognizes the presence and participation of other actors in international affairs. The research proceeded on the following assumptions, that: i) transnational networks, through their governance structures and functions, are facilitating the contribution of subnational governments in international affairs; ii) County Governments are greatly shaping international agendas; and iii) subnational governments face numerous policy and legal challenges in their participation in international affairs. The testable indicators for the study were SDGs and human rights. On the methodology, both qualitative and quantitative modes of data collection were utilized. A questionnaire was developed and administered, while the interview guide was used in the discussions with key informants.

Findings of the study were: i) County Governments are contributing to the realization of SDGs and human rights; ii) globalization and integration have accelerated the formation of transnational networks; iii) a framework to guide County Governments' activities at the international level should be put in place; iv) deeper collaboration between MoFA and County Governments will ease relations between the two levels of government so that national interests are achieved; and v) County Governments should have a complementary role vis-à-vis the states in international relations. The study recommended, among others that: i) there is need to establish an intergovernmental body that will coordinate subnational diplomacy related issues; ii) a review of Kenya's Foreign Policy is necessary so that the same is cognitive of the devolved system of governance; iii) there is need for deeper and more meaningful cooperation and collaboration between MoFA and County Governments so that national interests are jointly achieved; and iv) capacity building for County staff on matters related to foreign affairs and diplomatic engagement is necessary. The study finally proposed areas that need further research including- paradiplomacy, twining agreements and the cascading of the African Peer Review Mechanism to the Counties.



## TABLE OF CONTENTS

DECLARATION .....	i
DEDICATION .....	ii
ACKNOWLEDGEMENT .....	iii
LIST OF FIGURES AND TABLES.....	iv
ACRONYMNS .....	v
ABSTRACT.....	vii
TABLE OF CONTENTS.....	viii
<b>CHAPTER ONE .....</b>	<b>1</b>
1.1. BACKGROUND OF THE STUDY .....	1
1.1.1. Definition and functions of subnational governments.....	1
1.1.2. Subnational governments in Africa .....	2
1.2. PROBLEM STATEMENT .....	4
1.3. RESEARCH QUESTIONS.....	5
1.4. RESEARCH OBJECTIVES .....	5
1.5. LITERATURE REVIEW.....	5
1.5.1 Theoretical Literature Review .....	5
1.5.2 Empirical Literature Review .....	7
1.5.2.1 Factors that influence subnational governments’ participation in international affairs .....	7
1.5.2.2. Emerging trends of subnational governments’ participation in international relations.....	9
1.5.2.3. Role of the existing transnational networks of subnational governments .....	10
1.5.2.4. Summary of gaps in the literature .....	10
1.6. JUSTIFICATION OF THE STUDY.....	11
1.7. THEORETICAL FRAMEWORK .....	11
1.8. HYPOTHESES .....	12
1.9. RESEARCH METHODOLOGY .....	12
1.9.1. Research Design .....	12
1.9.2. Research site .....	12
1.9.3. Target Population .....	13
1.9.4. Research sample .....	13
1.9.5. Data Analysis.....	13
1.9.6. Data presentation .....	13

1.9.7. Ethical Issues .....	14
1.9.8. Chapter Outline.....	14
<b>CHAPTER TWO .....</b>	<b>15</b>
<b>TRANSNATIONAL NETWORKS OF SUBNATIONAL GOVERNMENTS: GOVERNANCE AND FUNCTIONS .....</b>	<b>15</b>
2.0 Introduction .....	15
2.1. Factors that have influenced establishment of transnational networks .....	16
2.2. Frameworks for subnational participation in transnational networks .....	16
2.3. United Cities and Local Governments (UCLG).....	18
2.3.1. UCLG Governance .....	18
2.3.2. UCLG Work and Achievements.....	19
2.4. Commonwealth Local Governments Forum (CLGF) .....	19
2.4.1. CLGF Governance.....	20
2.4.2. CLGF Work.....	20
2.5. Council of European Municipalities and Regions (CEMR).....	21
2.5.1. CEMR Governance.....	22
2.6. United Cities and Local Governments of Africa (UCLGA) .....	23
2.6.1. UCLGA Governance .....	23
2.6.2. UCLGA Work .....	24
2.7. East Africa Local Governments Association (EALGA) .....	24
2.7.1. EALGA Governance .....	25
2.7.2. EALGA Work and Achievements .....	25
<b>CHAPTER THREE .....</b>	<b>26</b>
<b>ROLE OF COUNTY GOVERNMENTS IN IMPLEMENTATION OF SDGs AND HUMAN RIGHTS .....</b>	<b>26</b>
3.0. Introduction .....	26
3.1.1. Devolution in Kenya: Pre-2010 Constitution .....	26
3.1.2. Era of a new constitutional dispensation .....	27
3.1.3. Progress in the devolution era .....	27
3.2. SDGs: Role of Subnational Governments in their implementation .....	28
3.3. SDGs: County Governments’ perspective .....	29
3.3.1. Linkages between the SDGs, Kenya’s Vision 2030 and County Governments.....	30
3.3.2. Mainstreaming SDGs in the Counties .....	32
3.3.3. Linkages between the SDGs and the County Government functions .....	34

3.4. Subnational Governments and Human Rights .....	34
3.4.1. Obligation to implement international human rights at the subnational level.....	36
3.4.2 Implementation of socio-economic (ecosoc) rights: Kenyan perspective.....	37
<b>CHAPTER FOUR.....</b>	<b>41</b>
<b>CHALLENGES FACING SUBNATIONAL GOVERNMENTS IN THEIR</b>	
<b>PARTICIPATION IN INTERNATIONAL AFFAIRS .....</b>	<b>41</b>
4.0 Introduction .....	41
4.1. Legal status of subnational governments .....	41
4.2. Constitutional, legal and administrative considerations.....	43
4.3. County Governments in international affairs: Kenyan experience .....	45
<b>CHAPTER FIVE .....</b>	<b>48</b>
<b>DATA PRESENTATION, ANALYSIS AND FINDINGS .....</b>	<b>48</b>
5.0. Introduction .....	48
5.1. Data collection.....	48
5.2. Data Analysis .....	48
5.2.1. Participation in international affairs .....	48
5.2.2. SDGs and Human Rights.....	50
5.3.3. Challenges facing County Governments in their participation in international	
affairs .....	51
<b>CHAPTER SIX .....</b>	<b>53</b>
<b>CONCLUSIONS, RECOMMENDATIONS AND FUTURE RESEARCH NEEDS.....</b>	<b>53</b>
6.0. Introduction .....	53
6.1. Conclusions .....	53
6.2. Recommendations .....	53
6.2.1. Policy recommendations.....	53
6.2.2. Academic Recommendations .....	54
6.3. Areas of further research .....	54
<b>REFERENCES .....</b>	<b>56</b>
<b>ANNEXURES .....</b>	<b>60</b>
Annexure 1: Questionnaire.....	60
Annexure 2: Interview Guide.....	62
Annexure 3: Functions and Powers of the County Governments .....	63
Annexure 4: The 17 SDGs .....	64

Annexure 5: Proposed Indicators for National Monitoring, Kenya National Bureau of Statistics .....	65
Annexure 6: NACOSTI Research Licence .....	66

## **CHAPTER ONE**

### **1.1. BACKGROUND OF THE STUDY**

Subnational governments have evolved to become significant actors in international relations. Albeit the fact that nation-states remain the central actors in the discipline of international relations, other subjects like subnational governments continue to receive greater attention from scholars. Additionally, even though subnational governments do not have the leeway to dive into extensive foreign policy arrangements, subnational governments have emerged as visible and vibrant actors in the world stage. Subnational governments stand at a vantage point of being closer to the populace, thereby making them a critical actor in the design and provision of public goods- a traditional role of the state.

Owing to their growing importance, subnational governments continue to influence the way national governments conduct their foreign policy. This is evidenced by the former's expansion of their relationships beyond the nation-state boundaries by signing agreements of cooperation and exchanging expertise with other subnational governments. The intensification of globalization in the twentieth and twenty-first century which is marked by increased movement of people, money and goods across borders has been applied to explain this phenomenon. The net effect of globalization is that the international arena has attracted more actors. On the same breadth, the presence of new opportunities and demands has fuelled competition among subnational governments. As a consequence, national governments are no longer the main actor in dealing with issues that are considered of global interest. Subnational governments indeed have a certain level of autonomy and power, albeit limited in terms of foreign policy, to defend their interests and that of their constituents.

#### **1.1.1. Definition and functions of subnational governments**

Subnational governments are governance units that are created by constitutions or statutes as separate governance bodies existing below the national level. In essence, they are autonomous lower-level units and depending on the jurisdiction can take various forms including- provinces, districts, regions, local governments, states or county governments. Power, responsibilities, functions or resources are usually transferred, partially or wholly through the constitution and other legal instruments, to these units. Depending on the model that has been adopted by a state, these units are designed as governments below the national government, and can be independent or interdependent of the national government. They have recognized

geographical boundaries and have the power to generate revenue for performance of their functions.

The nature of the federal or unitary system under which a nation operates determines the status of the subnational unit. In some federal systems, such as Mexico, Canada, and USA, there are modalities in place for power sharing amid the national government and the states or provinces. Here, the states/ provinces have the power to legislate. On the other hand, where unitary governments exist, all power is derived from the central government, which then delegates some of the administrative and/or financial power to the local governments.

Subnational governments are primarily established to, on behalf of the national governments, manage local affairs by ensuring that the citizens are involved as much as possible. They are closest to the citizens and therefore normally deliver key services and foster public participation in decision-making. Since this allows government to be more responsive and nearer to the people, the populace is able to influence content of policies and laws according to their specific needs. Subnational governments are often responsible for functions such as local transport, education, healthcare, water, recreation facilities and trade regulation.

With respect to funding, national governments are normally the ones that have wider revenue bases, and this means that they have more capacity to collect more money than subnational governments. Consequently, the latter may depend on the national government for funds and consequently may find themselves under the direction of the former on how to spend the monies.

### **1.1.2. Subnational governments in Africa**

Kenya is among several countries in Africa that have embraced decentralization. South Africa, Nigeria, Uganda and Ghana are some of the other countries that have adopted different models of devolving executive and legislative authority to local levels. Generally, such kind of governance mechanisms have a two-tier or three-tier system. In this regard, subnational governments, as they are commonly referred, are spread across Africa, although in different forms. In Kenya, there are Counties, in Nigeria- states, in South Africa- provinces, in Ghana- regions, and Uganda has districts. Essentially, subnational governments are centres for development planning, service delivery and collection of revenue.

Local governance is the public administration of units below the national level- districts, cities, counties, regions and towns. Local governments are established for two key reasons: one is to deliver quality, accessible and affordable services; and two is to involve citizens in identifying their needs and allowing the same citizens to determine how those needs can be met. Local governments run the area utilities related to healthcare, environment, water, roads and education; disaster management services like fire departments; recreational facilities including peoples' parks; localised enforcement agencies and many others. They are closest to the citizens and this one of the main reasons devolved jurisdictions choose to embrace this mode of governance.

From the above, subnational governments have a huge impact on the standard of living of citizens and they influence the overall political, social and economic status of a country. Whatever happens at the subnational level ultimately affects the achievement of national goals. This is in context of the fact that sustainable development is taking root while the traditional definition of security has morphed overtime to take a human approach that recognizes other forms of security like economic, food, personal, education, political, community and environment security. It is well and good to have military power, but in this century, governments are under pressure to guarantee high living standards for their citizens.

As mentioned earlier, local governments, either through a mandate given by a constitution or a statute, are the units that deliver, among others, basic services in health, infrastructure, agriculture, water, disaster management, public participation, trade regulation and education. In essence, the functions of subnational governments occupy a pivotal space in the human development of any nation. Devolved units are key drivers of change and they are playing a big role in elimination of poverty.

Consequently, local governments have a place, be it directly or indirectly, in international affairs. Owing to the functions they perform, subnational governments are influencing foreign policy, diplomacy, governance, regional integration and conflict management. For instance there are existing international organizations whose membership comprises of local governments- EALGF, UCLG (which has an African Chapter called the UCLGA), the CLGF, the CEMR, to name but a few. Since the nation-state is the chief actor in international affairs, it is important to interrogate to what extent local governments are participating in the thematic

areas mentioned; how they are participating; and how this impacts on the conventional practice of international affairs.

Clearly, the decentralization discourse is one that is alive in every continent. But some questions linger- do subnational governments have a voice in the international stage; and how are they being received. They are indeed an integral part of many governance systems world over and they cannot therefore be ignored. Subnational governments are conducting external relations. Whether within or outside regions and continents they are: linking to set agendas related to decentralization; engaging in peer to peer learning; and exchanging information. Later on, the study will look at some of the international local government associations and see how they relate with their respective central or national governments.

## **1.2. PROBLEM STATEMENT**

Globalization has led to increase of non-state actors in international affairs. However, the state has not been very welcoming to these new actors. One of these set of actors is subnational governments. Decentralization, which is a mode of governance that allows for governance to be exercised at the lowest level, has enlarged the space for subnational governments. In some jurisdictions that have adopted this kind of system, the state has on many occasions viewed subnational governments as competitors. A key concern for national/central governments when subnational governments join subnational networks is that they will push for agendas that are not aligned to national interests thereby creating competing interests. Worthy of note is that global agendas which essentially form part of national interests, like SDGs and human rights, will be achieved when strong partnerships are forged between central governments and subnational governments.

Despite this, subnational governments have continued to assert themselves at the international stage. For instance in Kenya, County Governments sometimes deal with foreign governments directly without the involvement of MoFA. This tends to create mistrust and conflict yet there is need for harmonization between the two levels for smooth implementation of Kenya's foreign policy. Subnational governments contribute immensely to service delivery and development, but there are impeding factors to their contribution and participation in international affairs. Also, their role in international relations does not seem to be adequately discussed. This area has not been adequately investigated. Hence the purpose of this study.



### **1.3. RESEARCH QUESTIONS**

- i. What are the governance structures and functions of existing transnational networks of subnational governments?
- ii. How are County Governments in Kenya contributing towards international agendas?
- iii. What challenges do subnational governments face in their participation in international affairs?

### **1.4. RESEARCH OBJECTIVES**

#### ***Broad objective:***

The overall objective of the study is to examine the place and role of subnational governments in international relations and primarily focus on Kenya's County Governments.

#### ***Specific objectives:***

- i. To investigate the governance structures and functions of existing transnational networks of subnational governments.
- ii. To examine how County Governments in Kenya are contributing towards international agendas.
- iii. To assess the challenges subnational governments face in their participation in international affairs.

### **1.5. LITERATURE REVIEW**

The role of subnational governments in international affairs has elicited divergent views across the academic and government divide. It is important to review the existing body of knowledge in order to explore what the various scholars have addressed themselves to with respect to this phenomenon.

#### **1.5.1 Theoretical Literature Review**

There is increased participation of subnational governments in the international stage. To illustrate, in Brussels, there are more than 200 regional embassies that are relating with the European Commission on policy development. This signals the para-diplomatic thesis, and the importance and significance of subnational governments.<sup>1</sup> Because of globalization, greater interconnectivity occasioned by technological advances and need for development cooperation,

---

<sup>1</sup> Bolan, A. *Para-diplomatic theory and Welsh external relations*. September 2011.

foreign relations have ceased to become limited to the traditional nation-state, and have expanded to include other actors.

Realists believe in the state being the dominant actor in international relations. Realism is anchored on several key principles. First, the state participates in global affairs for its own national interests. Whatever decisions the state makes, it does so for the protection and perpetuation of its own interests. Second, the state carries itself as a unitary actor. Here, the state has to take decisions that portray its strength and power to the rest of the world. Also, states live in anarchy by virtue of the fact that no one is in charge internationally. In domestic settings, there are executives, judiciaries and legislatures, but these are glaringly absent in international relations. And if they do exist, they are voluntary.

The state being the principal actor in international relations is a dogma supported by the realism theory. First, foreign relations and the ratification of international agreements is conducted by states. The authority of the state controls and governs the people who participate in diplomacy, the venues for diplomatic activities, the materials, the processes and the content of agreements and treaties. Second, diplomacy is conducted among states. The realism theory therefore highlights the dominance of the state in international relations.

This study also focuses on an emerging approach- federalism. The heterogeneity within a state- either because of language, religion, history, ethnicity and race- is a major factor for the emergence of autonomous units. In any society, there are always the majority groups and the minorities. But even where such dynamics play out in the state, these groups are intertwined through for example geography, infrastructure and marriage, and therefore it would be inconceivable to imagine each group forming a state of its own. On this premise, a state, through legal rules, gives independence to units below the central government. The constitution normally stipulates how powers are divided between the national and subnational levels and provides for some of representation of the subunits in the national government. In such a structure, the constituent units do not enjoy full external sovereignty- which under international law is a key characteristic of an independent state.

The theories surrounding subnational governments cannot be discussed without also espousing the decentralization approach. As mentioned earlier, decentralization is assignment of specific functions by the national government to subnational governments with attendant power,

responsibility and financial resources. Decentralized systems are characterized by political representation and accountability, that is, citizens are able to elect local leaders who can independently articulate issues that are significant to the local level. On the second facet, the subnational governments should be able to have authority on planning and manage public functions efficiently and effectively. On the third facet, the subunits are meant to have control over their own resources for the provision of services- for both expenditures and revenue (whether locally generated or received from the equitable share- and this depends on the legal order of that particular system).

### **1.5.2 Empirical Literature Review**

While recognizing that subnational governments are at the centre of development planning, provision of essential services and citizen engagement; and taking further cognizance that they are the focal points for the localisation of climate change actions, gender, SDGs, and affirmative actions for the marginalized groups, subnational governments are slowly finding voice in international platforms where they are engaging in development cooperation, institutional strengthening, advocacy and mobilization on matters of common interest, capacity building and best practice sharing. These are key units of governance, contributing to the overall global agenda of development, yet receiving little recognition. It is of importance to examine the ways in which subnational governments are shaping the global agenda. And in doing so, also investigate their relationship with the national governments.

#### **1.5.2.1 Factors that influence subnational governments' participation in international affairs**

Domestic competencies are the building blocks for the foreign policy of subnational governments. Most subnational governments deal with issues related to service delivery such as public safety and transport, tourism, education, health and culture. Cities are powerful drivers of politics and the economy. New York's GDP is higher than that of South Korea or Spain. São Paulo in Latin America is wealthier than Bolivia, Paraguay, Uruguay and Argentina combined. Owing to this kind of clout, subnational governments have begun establishing and defining their engagements and networks at the global level to enhance, protect and advance their specific interests. Some regional units (in Canada, the USA and Germany) are applying this method as a foreign policy strategy. In order to take advantage of opportunities in the European Union, Alberta has twelve (12) offices in Europe, Americas and Asia while Gothenburg and Lodz among others, have offices in Brussels.

Factors related opportunity and autonomy determine the extent to which subnational governments participate in foreign policy. The variables that determine autonomy include division of power, constitutional framework and rules that are enshrined in legislation and court decisions. Opportunity variables include religious and ethnic ties, economic interdependence, geography and the political ambitions of the subnational leaders. Political culture can affect both opportunity and autonomy. In essence, the domestic legal order will influence the credibility of the subnational governments to act internationally. The extent of subnational governments' participation in international affairs is limited by what competencies their constitutions grant them.

Certain actions by subnational governments can warrant judicial intervention, for instance where they infringe and threaten functions of the national government with respect to external borrowing, foreign affairs, defence or national security. Belgium allows for regional governments' representation in national delegations attending international meetings. Three (3) possibilities can therefore be deduced: the national government can overtly allow that subnational governments participate in international relations; participation can be prohibited through law; or legislation can be silent on the matter. Irrespective of this constitutional gap, many subnational governments continue to be extremely active internationally.

Owing to the functions that subnational governments perform, they are better positioned to handle certain issues like the environment since they have the advantage of having more knowledge and understanding of the realities and needs of their citizens. They are also able to, unlike national governments, customize national overarching policies and laws to their specific circumstances. In the Kenyan example, the functions delineated to the Counties focus mainly on service provision to the citizens. This aspect has been a driver for the creation of transnational subnational government networks which collaborate on issues of common interest.

As mentioned earlier in this paper, subnational governments do not have international legal personality, and in this regard, are not recognized in international law as actors in international relations. Consequently, the voluntary nature of the agreements that subnational governments sign limits the implementation of the same. It can be concluded therefore that diplomatic activities conducted at the subnational level do not enjoy legal recognition at the international

level. Despite this, instruments of soft law produce an adaptable and loose framework where information, resources and ideas can be exchanged. It is evident that such instruments are non-binding in the legal sense, but in practice, they are highly effective.

### **1.5.2.2. Emerging trends of subnational governments' participation in international relations**

Most cities that have over one (1) million inhabitants participate in international multilateral arrangements. Since 1945, subnational governments in USA, Australia and Canada have pursued international interests. Subnational leaders would cross borders to promote trade and search for foreign investment and they would go even further to open offices aimed at representing their interests globally. By the 1980s, subnational governments in Spain, Germany and Belgium were active in world politics. This phenomenon extended into Latin America in the 1990s. Today, India and Nigeria have, within their federal systems, heightened their international activities. Subnational leaders even receive heads of government and ambassadors in their areas of jurisdiction. France allows its local governments to actively engage in international affairs and they are also permitted to sign development and cooperation agreements with other subnational governments in the world.

Africa has also its own share of subnational government associations. At the continental level, UCLGA is the organization that brings together local governments. UCLGA was established with the merging of three alliances of local governments, namely the AULA, UVA and the Africa Chapter of UCCL AFRICA. Nairobi City County in Kenya, and the CoG<sup>2</sup> are members of UCLGA.

In the East African region, there are two bodies that bring together local governments from the respective countries. These are: the EALGF and EALGA. EAGLF was formed in September 2012 with the aim of supporting decentralization issues in countries in the East African Region. Its key areas of focus are: local economic development, subnational government financing and public participation.

---

<sup>2</sup> This is an intergovernmental institution that brings together the Governors of Kenya's forty-seven (47) Counties.

### **1.5.2.3. Role of the existing transnational networks of subnational governments**

Subnational governments' activities internationally can be categorized into: coalition and collaboration activities. In collaboration activities, subnational governments collaborate with other governments to apply pressure over international and national actors. Collaborative initiatives include the following: where subnational governments enter into MoUs and agreements with their counterparts; where they become members of international associations that enhance sharing of information; and where they establish trade ties with other subnational actors across borders.

A variety of factors can be attributed to the increasing importance of subnational international relations. These include the growth of interdependence resulting from advances in technology and communications; the emergence of "new" issues (e.g., the environment, terrorism, currency fluctuations, and health issues such as AIDS and Ebola), all of which are transnational and cannot be dealt with solely by individual states; the propensity of subnational governments to adopt increased responsibilities and functions because of the declining problem-solving ability of nation states; and the tendency of individual citizens to direct their expectations increasingly to subnational units.

Moreover, transnational problems that affect the whole world can hardly be dealt with by a single nation-state. Subnational actors have also therefore begun engaging in public action over these issues. Globalization and the increasing urbanisation has augmented the voice of subnational governments in international affairs, thereby challenging the Westphalian model of the state. Subnational diplomatic activities have contributed to the emergence of a vibrant transnational social space.

### **1.5.2.4. Summary of gaps in the literature**

Looking at the existing literature on the topic, various gaps are yet to be filled. Scholars have not intensely delved into the real contributions that subnational governments are making at the global stage. It will be important to deeply examine subnational governments' activities (political, economic and social) in international affairs.

It would also be useful to look at the African experience of the subnational government associations and their impact on African local governments. African countries have adopted different styles of decentralization, and studies have not addressed how collaboration happens

in the transnational associations despite states having adopted different modes of decentralization. This dynamic should be addressed. Also, the literature review writings did not reveal how the transnational associations operate in terms of membership and management and how they link with each other to shape international agendas.

## **1.6. JUSTIFICATION OF THE STUDY**

- i. Policy: The study findings and recommendations will assist policy-makers in central/national governments of devolved jurisdictions to determine what kind of legal and institutional frameworks they could establish to harness their subnational governments' participation in international affairs.
- ii. Academic: The study findings will generate literature to be used later by future researchers interested in the same field. The study will create a larger pool of knowledge in this area of subnational governments' participation in international affairs.
- iii. General Public: The study will assist the public to better understand the role of subnational governments in international affairs.

## **1.7. THEORETICAL FRAMEWORK**

The emergence of subnational governments in the international scene can be demonstrated through the neo-functionalism theory. Neo-functionalism was developed in the second half of the 1950s to explain European integration and how supranational bodies were contributing to the furtherance of this integration. Ernst Bernard Haas was one of the early proponents and leading authorities of neo-functionalism through his book 'The Uniting of Europe' in 1958.

Firstly, neo-functionalists believe that once states come together to cooperate in a particular sector, the cooperation incentivizes further collaboration in other sectors. Secondly, neo-functionalism posits that economic integration in most cases fuels more interactions between other players in the region experiencing integration. Consequently, subnational actors begin to cooperate politically across borders on issues that affect them. At the regional and domestic level, interest groups begin to thrive and they continue to advocate for further integration. Thirdly, the supranational body charged with the responsibility of overseeing integration begins to adopt strategies and undertake activities that seek to deepen and expand integration in the integrating sectors and also in other sectors. In summary, the neo-functionalist theory

illuminates three (3) sets of actors: i) states being the main actors in the integration process; ii) other groups with specific interests and subnational actors who are within the state; and iii) supranational institutions which promote networks and associations across national boundaries.

The theory's relevance to the study is as follows. It recognizes the presence of other actors in the international system, other than states. Due to integration spill-over effects, transnational networks begin to form to lobby for interests common to them. Further, as state to state integration takes place, subnational governments also ride on the state connections and begin to relate with their counterparts in the rest of the world. Moreover, as states continue to integrate, they sign onto treaties that deal with issues that are within the jurisdiction of subnational governments, thereby bringing subnational governments in the international space.

## **1.8. HYPOTHESES**

- i. Transnational networks, through their governance structures and functions, are facilitating the contribution of subnational governments in international affairs.
- ii. County Governments are greatly shaping international agendas.
- iii. Subnational governments face numerous policy and legal challenges in their participation in international affairs.

## **1.9. RESEARCH METHODOLOGY**

### **1.9.1. Research Design**

The study applied both the qualitative and quantitative research designs with the unit of analysis being the County Governments of Kenya. It was based on case study and content analysis. This is because the topic was largely dependent on scholarly works and the examination of County Governments' participation in international relations and how they fit in the transnational associations. Furthermore, to enrich the secondary data, academic journals, relevant publications and books, media and technical reports were examined. Primary data was gathered through the set questionnaire.

### **1.9.2. Research site**

The primary data was collected from the relevant institutions, by interviewing key government officials. The following offices were visited: MoFA, Ministry of Devolution and ASAL, KNCHR, some County Government offices and CoG.



### 1.9.3. Target Population

Population is the entire collection of elements about which the researcher wishes to make some inferences.<sup>3</sup> To achieve the broad and specific objectives, the study targeted twenty-five (25) respondents categorised as follows: National Government officials, County Government officials, personnel in intergovernmental institutions and academicians.

### 1.9.4. Research sample

The study employed the non-probability sampling approach due to the fact that there are forty-seven (47) County Governments and a few intergovernmental institutions. In this type of sampling, the researcher selects samples based on subjective judgement. Samples are collected in a process that doesn't accord all the population's individuals an equal chance of being chosen.

**Table 1: Study Sample**

<b>Officials</b>	<b>Size</b>
National Government staff	5
County Governments' staff	5
Council of Governors staff	5
Intergovernmental institutions staff	5
Academicians	5

### 1.9.5. Data Analysis

To reach the objectives of the study, the collected primary data was edited, sorted and analysed for qualitative data presentation. Secondary data was also analysed. All information collected was evaluated and logically presented in order to fulfil the objectives and hypotheses set down at the beginning of the paper.

### 1.9.6. Data presentation

As noted earlier, the research used both the qualitative and quantitative design. The data collected was presented in narrative form.

---

<sup>3</sup> COOPER, DR-EMORY, and R. EMORY. "CW Business Research Methods." (1995).

### **1.9.7. Ethical Issues**

The researcher undertook to ensure that the standards, norms and rules of conducting research were upheld. The researcher sought for a licence of approval to undertake the study. The researcher also sought the approval of the supervisor for the final proposal document and data collection tool. The interviewees were treated humanely and confidentiality was maintained throughout the study. The participants in the study were assured of accessibility to the study results on completion.

### **1.9.8. Chapter Outline**

Chapter 1- **Research Proposal.** The chapter encompasses background of the study, the problem statement, theoretical framework of the study, literature review, justification of the study, hypotheses and research methodology.

#### **Chapter 2- Transnational Networks of Subnational Governments: Governance and Functions**

This Chapter delves into the first specific objective and investigates the emerging trends wherein subnational governments are establishing transnational networks to facilitate their involvement in international affairs.

#### **Chapter 3- Role of County Governments in Implementation of SDGs and Human Rights**

This Chapter focuses on the second specific objective on how County Governments are contributing towards and participating in key international agendas.

#### **Chapter 4- Challenges Facing Subnational Governments in their Participation in International Affairs**

This Chapter focuses on the third specific objective that assesses the challenges subnational governments face as they participate at the international platform.

#### **Chapter 5- Data Presentation, Analysis and Findings.** This Chapter consolidates the data findings and canvasses the analysis of the data.

Chapter 6- **Conclusions and Recommendations.** The Chapter contains the final conclusions and recommendations. The Chapter enumerates precisely the recommendations to academia and policy makers.

## **CHAPTER TWO**

### **TRANSNATIONAL NETWORKS OF SUBNATIONAL GOVERNMENTS: GOVERNANCE AND FUNCTIONS**

#### **2.0 Introduction**

The 20<sup>th</sup> and 21<sup>st</sup> century has seen the emergence of subnational governments joining together to form transnational networks around common interests. These alliances can be described as alliances that are formed between subnational governments of different countries. The general objectives of these networks are two-fold: i) they advocate for the interests of subnational governments at the international level; and ii) they foster cooperation amongst subnational governments of the world and enhance best practice sharing and policy learning.

Transnational networks are multifunctional vehicles. They engage in strategies whose main aim is to make states accountable for international obligations by cultivating practices of shame and sanction, convening platforms at which problems can be communicated and information provided and influencing how particular problems are articulated.

Transnational networks are hubs for mobilization of information, ideas, values and they have the ability to change discourses and knowledge surrounding global problems. In coming together, transnational networks allow member subnational governments to access financial, political and technical resources, but they also act as a platform through which local governments can coalesce to give an international voice to their local agendas. Looking at the CCP program run by ICLEI, CCP focuses on producing and disseminating information on how local governments are contributing to climate change and actions that can be taken at the local level to address climate change problems. The program promotes networking between members and is a platform for sharing climate change related best practices.

The conventional international relations structures are hierarchical in nature. Transnational associations are shifting this narrative and allowing the international community to appreciate the importance of networks as forms of organization. They therefore tend to challenge the conventional notion of politics and power and also the supposition that the state is a sovereign, national and singular unit. This chapter will look at some of the transnational networks of subnational governments, their objectives and the role they play in bringing local governments together to contribute to international agendas.

This chapter will focus on several transnational networks- from global networks, to continental networks and regional networks. It will examine the membership of these networks, their governance structures and the nature and scope of the programmes they implement. The chapter will show how subnational governments link with each other by coming together to form international organizations that are aimed at advocating for their interests at both the domestic and international levels.

### **2.1. Factors that have influenced establishment of transnational networks**

One of the major factors contributing to the formation of transnational networks is the deepening of worldwide integration, regionalization and interdependence of states- phenomena that can be traced to globalization. There are scholars who have also attributed the expansion of networks of subnational governments to the end of the Cold War. After this period, there was an intensification of international cooperation and market competition, ultimately replacing centralization, confrontation and militarization. Economic power began to be a greater threat than military power thereby enabling a shift in focus to foreign trade and its efficiency; and the state's competitive ability and its regions in the world's economy.

Another key factor that has influenced the growth of transnational networks is that in the 20<sup>th</sup> and 21<sup>st</sup> Centuries, more and more jurisdictions have embraced decentralization. The increase of subnational governments around the world has triggered their need to cooperate with one another on matters of common interest. As will be noted in the analysis below, transnational networks have objectives and they employ strategies and tactics that drive their local agendas in the international space. Transnational networks have, within themselves, institutions, decision-making processes and instruments that facilitate their activities.

### **2.2. Frameworks for subnational participation in transnational networks**

There are international regimes that have anchored and recognized subnational governments and their role in development. These provide the legal principles through which transnational networks have emerged across the world.

Over the years, the EU has witnessed vibrant and active subnational diplomacy, including the signing of twinning agreements. This can be attributed to the fact that the right of EU subnational governments to be members of transnational networks is embedded in a convention. The EU

has a *Charter of Local Self-Government* wherein all the Council of Europe member states are parties to this convention. The Charter states as follows:

1. Local authorities shall be entitled, in exercising their powers, to co-operate and, within the framework of the law, to form consortia with other local authorities in order to carry out tasks of common interest.
2. The entitlement of local authorities to belong to an association for the protection and promotion of their common interests and to belong to an international association of local authorities shall be recognised in each State.
3. Local authorities shall be entitled, under such conditions as may be provided for by the law, to co-operate with their counterparts in other States.

At the continental level, there has been policy recognition at the AU that decentralization is important. The *African Charter on Democracy, Elections and Governance*, adopted by the 8<sup>th</sup> Ordinary Session of the Assembly in Addis Ababa, Ethiopia on 30<sup>th</sup> January 2007, took cognisance of the role of local governments in Africa. The Charter at Article 34 stipulates that parties shall, in accordance with their national laws, move power from the centre to local governments that have been elected in a democratic manner.

Further, the *African Charter on the Values and Principles of Decentralization, Local Governance and Local Development* agreed on at the 23<sup>rd</sup> Ordinary Session of the Assembly in Malabo, Equatorial Guinea on 27<sup>th</sup> June 2014, has become the main legal framework for decentralisation in Africa. The Charter recognizes that: decentralization is key in ameliorating the livelihoods of people; local governments are important in realizing democratic governance; and decentralization is at the centre of delivering accessible services for people. At Article 2, one of the objectives of the Charter is to stimulate the cooperation and association of subnational units at the continental, regional, national and local levels. Article 17 of the Charter anchors provisions of solidarity, cooperation and partnership and indicates as follows:

1. National laws shall be adopted to regulate conditions under which local governments or local authorities may form partnerships or cooperate with local governments of other African countries to achieve common continental integration objectives.

2. Local governments or local authorities may enter into appropriate partnerships with non-African local governments to promote cooperation, especially South- South cooperation.
3. Local governments or local government associations at the national level shall be free to join regional, continental and global local government associations.
4. Central governments shall support local governments to fully participate in processes, mechanisms and programmes at the regional and continental levels.

### **2.3. United Cities and Local Governments (UCLG)**

UCLG brings together subnational governments and national associations of subnational governments with the goal of being the global mouthpiece for local governments' interests. UCLG has headquarters in Barcelona. UCLG aspires to be the unifying voice and advocate for subnational governments. UCLG's membership comprises of over 240,000 regions, cities, metropolises and towns; and over 175 regional and local government associations. 140 of the 193 UN member states are represented in this global institution.

UCLG's programmes focus on: accelerating the influence and role of subnational governments and their representative organisations at the international level; supporting the formation of innovative, effective and democratic local governments near to the citizen; and ensuring an effective and democratic international organisation.<sup>4</sup> The organisation works around the following themes, among others: human rights, decentralization and local self-government, gender equality, sustainable development, urban innovation and local finances.

#### **2.3.1. UCLG Governance**

UCLG is governed by a constitution that sets out the framework for the functioning of the organisation and its governing bodies. The constitution spells out the overall mission and structure of the UCLG. The UCLG network is composed of seven (7) regional sections each of which is represented by a vice-president; one (1) section for regional governments and one (1) metropolitan section.

At the helm of UCLG is the Presidency, comprising the President and up to five (5) Co-Presidents who are elected by the World Council from among local government members for

---

<sup>4</sup> <https://www.uclg.org/en/organisation/about> Accessed August 2019.

a renewable term between two (2) ordinary sessions of the General Assembly. One member must come from an individual local government member; one from a national association and one comes from a member of the Metropolitan Section. In case no gender balance is reached, and at the recommendation of the Committee on Statutory Affairs, the chairperson of the Standing Committee on Gender Equality can become an ex-officio member of the Presidency with full rights. The Treasurer participates in the work and deliberations of the Presidency. It is worth noting that the members of the Presidency fulfil their function without remuneration.

According to article 63 of UCLG's Constitution, when a member of the Presidency loses his political mandate, his/her function within the Presidency will terminate at the date of the next meeting of the Executive Bureau. Below the Presidency are the Vice-Presidents who represent UCLG and carry out other responsibilities as appropriate. They do this without being remunerated. Other organs of UCLG are i) the World Council which decides the institution's policies and ensures implementation of the decisions of the General Assembly; and ii) the Executive Bureau which is in charge of the UCLG's administrative and financial management and is composed of 115 members.

UCLG is further governed through policy councils that drive and develop priorities, policy recommendations and work programmes for the institution. Additionally, UCLG has committees that work on a specific policy area in coordination with the policy councils. Currently, there are four (4) committees: Culture; Social Inclusion, Participatory Democracy and Human Rights; Urban Strategic Planning; and Local Economic and Social Development.

### **2.3.2. UCLG Work and Achievements**

UCLG has been spearheading efforts that will lead to adoption of the world *Agenda of Local and Regional Governments*. The agenda contains recommendations that call for local actions that will enable subnational governments be part of the actualization of the New Urban Agenda, the Sendai Framework, the Paris Agreement and the SDGs. UCLG is active in climate change negotiations and has been at the forefront of raising consciousness on the impacts of climate change on subnational governments.

### **2.4. Commonwealth Local Governments Forum (CLGF)**

CLGF is a network of subnational governments within the Commonwealth and it seeks to strengthen and promote democratic local governance across the Commonwealth and to

encourage the exchange of best practices amongst the members. CLGF was founded in 1995 and its establishment was endorsed by Commonwealth Heads of Government at their meeting in New Zealand later that year and further endorsement was received at subsequent Commonwealth Heads of Government meetings.<sup>5</sup> In 2003, CLGF was given official recognition as an associated Commonwealth organisation of elected representatives.<sup>6</sup> It also has official recognition with some UN agencies and other international organisations.<sup>7</sup> CLGF ensures that the local government's voice is heard within the Commonwealth.

CLGF is comprised of about 200 members drawing from most of the 53 Countries of the Commonwealth. It works through regions which are spread as follows: CLGF Pacific, CLGF Asia, CLGF Southern Africa, CLGF West Africa, CLGF East Africa, CLGF Europe and CLGF Americas.

#### **2.4.1. CLGF Governance**

CLGF is governed by the CLGF Board which is elected every two (2) years at the General Meeting of members. The CLGF Board is the main governing body which decides CLGF's policies and priorities. The board comprises of a chairperson, two (2) vice-chairs, members representing all the constituent CLGF regions, co-opted members, associate members and ex-officio members. Interested organisations, national associations or ministries must be based in a Commonwealth country to qualify to be a full member of CLGF. Relevant organisations in non-Commonwealth countries can join as members with observer status while academic and research institutions and other related organisations working with local governments can join as associate members.

#### **2.4.2. CLGF Work**

On women in local governance, CLGF collates and publishes a ranking of the proportion of councillors that are women by latest known year. To further the objective on women empowerment at the subnational level within the Commonwealth, CLGF launched the Commonwealth Women in Local Government Network (ComWLG). ComWLG aims to focus on the following areas: capacity building of existing women leaders so that they can become more effective as leaders, representatives and decision-makers; encouraging women

---

<sup>5</sup> <http://www.clgf.org.uk/about-us/> Accessed August 2019.

<sup>6</sup> Ibid

<sup>7</sup> Ibid



(with a focus on young women) to run for local offices; advocacy for the improvement of gender sensitivity in local governments and local government associations; and best practice sharing within Commonwealth jurisdictions on gender mainstreaming and inclusion at the local level.

On supporting members on sustainable development, CLGF signed a MoU with Microsoft for a term of four (4) years, 2016-20. The partnership aims to facilitate joint activities related to localising SDGs and supporting cities, local governments, local government associations and ministries of local government to better use ICT in order to enhance democratic accountability.

On the urban agenda, within CLGF is the Commonwealth Sustainable Cities Network (CSCN) that was established in June 2015. With rapid urbanization, city/ municipal governments are keen to ensure that cities are well planned, habitable and safe for people to live and work in. In this regard, CSCN was formed to enable CLGF members and particularly its city/municipal members, to come together to look at key issues relating to effective urban management, namely: devolution and governance at the city/municipal level; urban trade, economic development and investment; technology for development; and creating inclusive and resilient cities in line with SDG11 (make cities and human settlements inclusive, safe, resilient and sustainable).<sup>8</sup>

CLGF promotes the exchange of experience and information among members through: conferences and events; workshops and practitioner meetings; the Commonwealth Local Government Handbook, a reference guide to local government in the Commonwealth, which includes country profiles of the local government systems in all the countries of the Commonwealth; publications, the Commonwealth e-journal of local governance and research reports on specific local government issues; case studies; and the CLGF website and knowledge hub.

## **2.5. Council of European Municipalities and Regions (CEMR)**

CEMR is a network of Europe's regional and local governments and their associations. It comprises of 60 member associations and 100,000 local governments drawing from 41

---

<sup>8</sup> <http://www.clgf.org.uk/what-we-do/cities-network/> Accessed August 2019.

countries. CEMR is the oldest and broadest European association of local and regional governments, having been created in 1951.

CEMR work is organised around two main pillars: influencing European policy and legislation in all areas having an impact on municipalities and regions; and providing a forum for debate between local and regional governments via their national representative associations. CEMR also acts as the European section of the world organisation UCLG, through which it represents European local and regional governments on the international stage.

### **2.5.1. CEMR Governance**

CEMR has two governing bodies: the Policy Committee and the Executive Bureau. The Policy Committee approves the budget and the annual work programme and decides on the main policy lines and on the admission of new members. It is composed of around 170 members elected for three (3) years. Each national delegation is assigned a given number of seats based on the country's population. The Executive Bureau includes CEMR's President, two (2) Co-Presidents, the Executive Presidents, the Vice-Presidents and the Secretary General. The Bureau follows up on Policy Committee decisions and, between Committee meetings, is responsible for CEMR's work and policy.

CEMR's political leadership is constituted by the President, Co-Presidents, Executive Presidents and Vice-Presidents who are elected by the Policy Committee for three (3) years. The President chairs the meetings of the official organs and he/she is responsible for representing CEMR. The Co-Presidents, Executive Presidents and Vice-Presidents may be called upon by the president to carry out functions on his/her behalf.

CEMR has a Financial Management Committee that is responsible for the monitoring of CEMR's financial affairs, and in particular formulate recommendations to the Policy Committee on the budget. The members of this committee are elected by the Policy Committee among its delegates. The Secretary General is responsible for the effective management of the Secretariat, which is made up of around 30 staff members. He/she advises the governing bodies and implements their decisions. The Secretary General is elected by the Policy Committee for a six (6) year term.

## **2.6. United Cities and Local Governments of Africa (UCLGA)**

UCLGA is the continental organization for subnational governments in Africa. UCLGA's headquarters are situated in the City of Rabat, the Kingdom of Morocco and it has diplomatic status as a Pan-African International Organization. UCLGA's principal goals are to, among others: bring together local governments in the African continent; push for adoption of local governance; equip local governments with skills and knowledge; and pursue sustainable development in partnership with other institutions of the same mission.

### **2.6.1. UCLGA Governance**

UCLGA is governed by a constitution. It works through five (5) regions: Eastern, Southern, Central, Western and Northern. The structure of UCLGA is as below:

- a. General Assembly (GA): this is UCLGA's highest decision making body where all members sit and is empowered to act in all matters concerning the organization's activities. It elects and directs the leadership of the organization in political strategy. The GA meets every three (3) years.
- b. Presidency (Presidents and Vice-presidents): this is the political authority of UCLGA representing the organization at all levels including functions, meetings and events. It includes six (6) members: five (5) elected members, one (1) for each of the five (5) regions of Africa and the President REFELA who is an ex officio member.
- c. Pan-African Council (PAC): oversees the work of the UCLGA in between the three (3) years. PAC is made up of forty-five (45) members, nine (9) from each of the five (5) regions. PAC elects the five (5) members that form the Financial Management Committee; which committee meets at the eve of every PAC meeting.
- d. Executive Committee: this is the body that makes decisions for UCLGA and its decisions are binding for all members. It exercises all powers that are not specifically reserved for the GA or the PAC, as well as those that are specifically assigned to it by the GA and PAC in accordance with their resolutions. The Executive Committee consists of sixteen (16) members of which fifteen (15) members are elected by the PAC, (three (3) members for each region of Africa), as well as the President of REFELA.
- e. The Secretariat: constitutes the Secretary General and all staff of UCLGA. The Executive Committee appoints the Secretary General on terms and conditions, which it determines at its sole discretion as adopted at the GA.

### **2.6.2. UCLGA Work**

This section will highlight some of UCLGA's programs. To start off, UCLGA convenes continental conferences dubbed *Africities Summits* for subnational governments every three (3) years. Previous editions include Nairobi (2006); Marrakech (2009); Dakar (2012); Johannesburg (2015); and Marrakech (2018). *Africities Summits* have become Africa's platform for dialogue on decentralization, local governance and the contribution of subnational governments to Africa's development and integration. Further, these gatherings have created a continental stage for sharing of best practices among African countries on matters related to local governance. At the Summit, resolutions and declarations are agreed upon by the Council of Ministers, the subnational governments and the development partners. UCLGA also organises the *Africa Mayor Awards*, an awards scheme for leaders of Africa's subnational governments.

UCLGA established an institute known as the African Local Governments Academy (ALGA). The institution aims to support members through training, learning and capacity building. The centre was a result of a resolution at the end of the *Africities Summit V*, held in 2009 in Marrakech, Morocco, to create a centre of excellence for empowerment, capacity building and training.

At COP 23 in 2017, UCLGA launched a Climate Task Force to build synergy among different stakeholders around the climate change agenda. Owing to the importance of subnational governments in the realization of NDCs, the Task Force has been positioned to facilitate the engagement of African subnational governments in the realization of the Paris Agreement. The multi-stakeholder members of the Task Force will be able to support local governments in Africa implement their NDCs and build their capacity to access climate finance, most notably the Green Climate Fund.

### **2.7. East Africa Local Governments Association (EALGA)**

EALGA is the network that brings together local government associations from countries of the EAC namely- Kenya, Rwanda, Burundi, Tanzania and Uganda. The network is governed by a constitution and EALGA's main objective is to advocate for the interests of and represent local governments in east and eastern Africa. EALGA's priority areas of investment include: institutional strengthening and capacity building of local government associations and their

members; supporting members in implementation of human rights, democracy and political participation; and supporting local economic development.

### **2.7.1. EALGA Governance**

EALGA has the following organs of administration:

- a. **Governing Council:** this is the governing body of EALGA and consists of appointed representatives from each of the members.
- b. **Executive Committee:** comprises of the Chair, the Vice-chair and three (3) other members. Every secretary general of a local government association is an ex-officio member of the committee.
- c. **Secretariat:** consists of staff necessary to carry out the administrative duties of EALGA. A Secretary General appointed by the Governing Council heads the secretariat.

### **2.7.2. EALGA Work and Achievements**

This section will highlight some activities and programmes of EALGA. In 2015, EALGA in partnership with EAC organized a policy forum on local governments and regional integration in Arusha, Tanzania. The forum was aimed at equipping participants with a better understanding of the Consultative Dialogue Framework (CDF) in the EAC integration process and how local governments can promote integration through the CDF.

EALGA, in collaboration with EAC has organized cross- border dialogues between local government leaders of different countries on issues of integration and border cooperation.

## **CHAPTER THREE**

### **ROLE OF COUNTY GOVERNMENTS IN IMPLEMENTATION OF SDGs AND HUMAN RIGHTS**

#### **3.0. Introduction**

The chapter first looks at the history of devolved governance in Kenya. Thereafter, the chapter delves into how subnational governments have been contributing to the implementation of SDGs and human rights.

#### **3.1.1. Devolution in Kenya: Pre-2010 Constitution**

The decentralization discourse began way back during the pre and post-independence period. The dominant word that emerged at the time was ‘*majimboism*’. *Majimbo* was a system of governance that was introduced in Kenya after the Lancaster House (London) Conference of 1962, and it envisaged a structure wherein the legislative, executive and financial powers would be shared. However, the bulk of the power would still remain with the central government. The system was scrapped after independence when the Upper and Lower Houses were amalgamated to form the National Assembly.

From then on, Kenya had a highly centralized system of governance. Overtime, this left scars of deeply rooted economic, political and social disparities that were felt in many sections of the Kenyan population. Government needed to get closer to the people in order to adequately address their needs and priorities. Several decentralization structures that have been applied in Kenya over time include SRDP, LAs, RDAs and DFSRD. These initiatives were aimed at improving service delivery; enhancing local participation in planning and budgeting; and accelerating development activities at lower levels below the central government.

However, despite the above efforts, the economic and social status of many Kenyans remained deplorable. Implementation of the DFSRD faced a couple of challenges. For instance, the district development committee, which was the apex decision-making body, was not an entity recognized in law; its decisions were not enforceable; and it lacked independent sources of funds. Further, there was poor coordination of activities at both the national and district levels and integration of the planning processes became a major problem. The debate on ‘federalism’ or ‘devolution’ emerged again vibrantly in the 20<sup>th</sup> century at the height of the clamour for constitutional reforms.

### **3.1.2. Era of a new constitutional dispensation**

The promulgation of the Constitution in 2010 was accompanied by a complete shift in Kenya's governance system. The Constitution states that Kenya's territory is divided into forty-seven (47) Counties. This phenomenon is now commonly known as devolution. The Constitution, by dint of the Fourth Schedule, has assigned to both levels specific functions. Largely, the National Government is the creator of policy, standards and norms, while on the other hand County Governments are the implementers and drivers of service delivery. The Constitution at Chapter eleven (11) establishes the devolved governments. County Governments have been bestowed with both executive and legislative authority to facilitate execution of their mandate.

Devolution is intended to, among others: give powers of self-governance to the people and enhance their participation in the exercise of the powers of the State and in making decisions affecting them; recognise the right of communities to manage their own affairs and to further their development; protect and promote the interests and rights of minorities and marginalised communities; promote social and economic development and the provision of proximate, easily accessible services throughout Kenya; ensure equitable sharing of national and local resources throughout Kenya; and facilitate the decentralisation of State organs, their functions and services, from the capital of Kenya.

Kenya's Constitution under the Fourth Schedule, assigns specific functions as enumerated in Annexure 3. Further, Article 189 encourages cooperation. It is on this premise that the IGRA was enacted. The IGRA has anchored mechanisms for cooperation and coordination at the vertical and horizontal levels.

### **3.1.3. Progress in the devolution era**

Since its inception in 2013, devolution has taken root in Kenya with all the forty-seven (47) County Governments fully established and operational. The requisite legislative framework (the CGA, the IGRA, the PFMA and the UACA), have been instrumental in enabling Counties to set up necessary systems and structures. County Governments have gone further to establish decentralized units all the way to the village.

In six (6) years of its existence, devolution has recorded significant milestones, especially in functions like health, agriculture, water, early childhood education and roads. The shift to devolution meant that resources, responsibilities and power were transferred to the Counties.

Creating governments that are closer to the people has incentivized public involvement in legislation, budgeting and development planning. It is in the first period of devolution that we witnessed citizens challenging certain laws in court for want of adequate participation.

Kenyans have embraced devolution with a lot of enthusiasm. On the overall, Kenyans do believe that devolution is the best solution for sustainable and equitable development. Devolution is indeed also a catalyst for the country's achievement of SDGs. Additionally, County Governments are pivotal in mainstreaming of climate-smart solutions, gender, marginalized groups and minorities, youth, women and persons with disabilities, in planning.

### **3.2. SDGs: Role of Subnational Governments in their implementation**

Subnational governments are key drivers of socio-economic change but their role in international affairs is not overtly recognized. Further, County Governments, in propagating their interests on development and service delivery are collaborating with subnational governments in other countries for partnership, peer to peer learning and exchange of information- a phenomenon that is also receiving little attention and is now referred to as “paradiplomacy”: the external relations of subnational governments.

Former Secretary General of UN stated as follows:

*“It is often said that like all politics, all development is ultimately local. As the world strives for a more sustainable path in the years ahead, particularly beyond 2015, local voices and local action will be crucial elements in our midst .... It is crucial to preserve and nurture political spaces where local authorities can have an impact on decision-making at the global level .... Local authorities have significantly increased their engagement in global processes. The inputs of local leaders and municipal planners have never been more critical to guiding member states towards embracing policies that achieve green, sustainable and inclusive cities.”*

Kenya endorsed the Millennium Declaration of Year 2000 in New York. The Declaration led to the adoption of the eight (8) time-bound MDGs with 21 targets and 60 indicators to be achieved by 2015. On 25<sup>th</sup> September 2015, a transition from MDGs was witnessed, when the UN Member States agreed on the seventeen (17) SDGs (Annexure 4) of the Post-2015 Agenda for Development. SDGs are a build-up of the MDGs (2000 - 2015) and are the centrally agreed global actions on sustainable development until 2030. SDGs are the totality of a universal



agenda that encompasses shared targets for prosperity and peace and for the planet and for all people, and for this and future generations. SDGs reflect the united and urgent call for action by all countries- developed and developing- to partner in the elimination of extreme poverty and other deprivations. It is intended that these global goals will inform countries' planning strategies that improve services, reduce inequalities and accelerate economic growth.

The contribution of subnational governments in the implementation of SDGs cannot be sufficiently underscored. It is argued that they are better placed to develop and implement policies that can achieve meaningful gains in service delivery since they engage locally and know best the needs of the citizens. Moreover, one of the significant benefits of a localised approach is that it inculcates the top to bottom and bottom to top approach in development.

Consequently, by implication, localisation of the SDGs means that subnational governments are at the centre of the implementation of the SDGs since they can adopt SDG targets for which they have direct responsibility.

### **3.3. SDGs: County Governments' perspective**

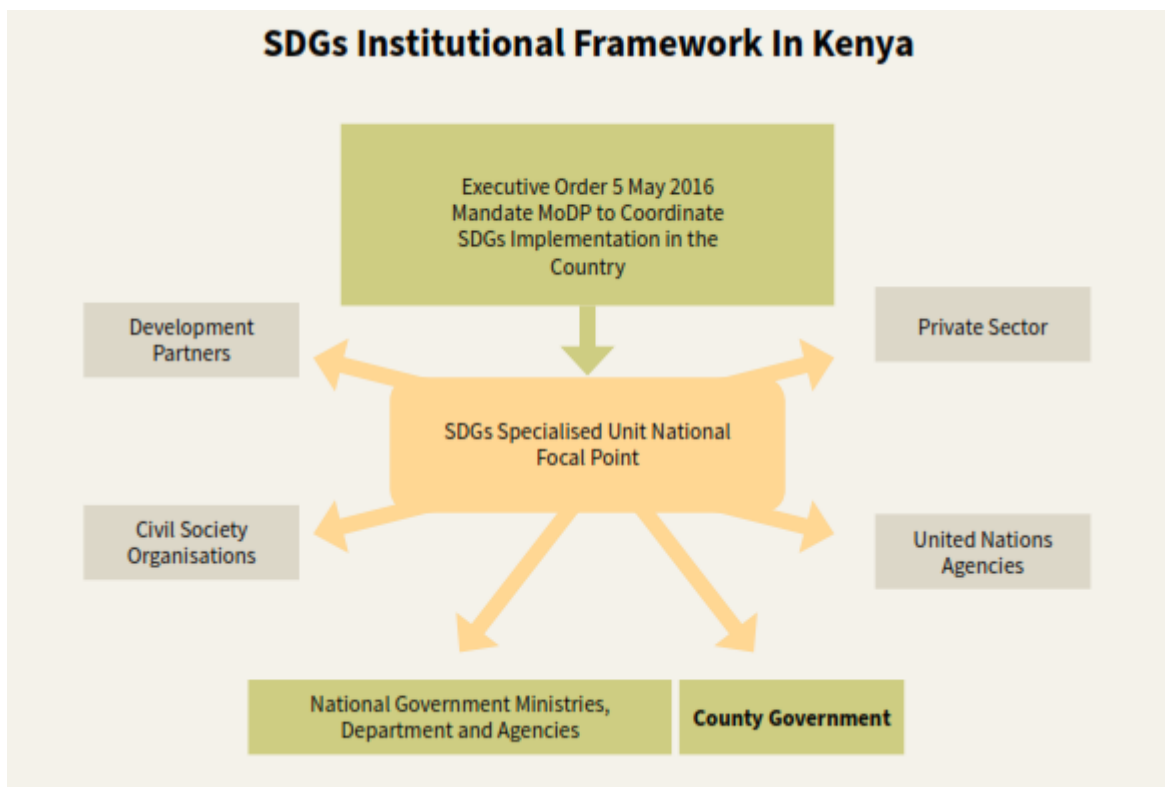
During a County Government SDGs champions workshop held at Sarova Woodlands, Nakuru County between 13<sup>th</sup> and 16<sup>th</sup> August, 2018, Rogers Dhliwayo, the UNDP Senior Economist, in his opening remarks said that *“the battle to achieve SDGs in Kenya, will be achieved or lost at the local level.”* He went on to say, *“It is therefore very important to localize the transformative SDG agenda and UNDP is committed to offer support to the Counties in implementation, monitoring and reporting.”*

The new era of SDGs found Kenya in a different constitutional dispensation, which is more favourable to SDGs implementation. Firstly, Kenya Constitution 2010 provides an actionable guide on how to tackle inequality as well as guarantee adequate rights. This is expected to compel governments at both levels to consider and act on the needs of the poor in a better and more focused way. Secondly, the new devolved system has now made it possible for respective County Governments to prioritize their needs and to tackle them at those lower levels.

As earlier mentioned, the Constitution of Kenya 2010 sets out the fourteen (14) County Government functions. SDGs targets are, whether directly or not, linked to the work of County Governments. Further, since County Governments develop and implement County Sectoral

Plans, and CIDPs,<sup>9</sup> they are placed strategically as the governance units for mainstreaming and implementing SDGs. Specifically, SDGs have been mainstreamed in the CIDP Guidelines. Since 2016, County Governments coordinate SDGs mainstreaming at the Directorates of Planning and Economic Affairs which act as the focal points for steering implementation at the County level. Moreover, the CoG secretariat has a SDGs desk that supports Counties by facilitating capacity building activities.

**Figure 1: SDGs Institutional Framework in Kenya**



*Source: Kenya’s SDGs Transition Strategy (2016-2018)*

### 3.3.1. Linkages between the SDGs, Kenya’s Vision 2030 and County Governments

The connecting factors between the County Governments and the SDGs can be explained by linking the SDGs to Kenya’s Vision 2030<sup>10</sup> and then to the CIDPs. The advent of devolution and the creation of Counties has necessitated the alignment of County plans such as CIDPs and ADPs with the national planning framework such as Kenya Vision 2030 and the MTEF to

<sup>9</sup> A CIDP is a five (5) year plan that sets out the County’s development priorities and the strategies to achieve these priorities. It is enshrined in section 108 of the County Governments Act.

<sup>10</sup> This is a framework for development whose aim is to transform Kenya into a newly industrialising middle-income country providing a high quality life to all its citizens by the year 2030. It is Kenya’s vision for poverty eradication with a focus on economic transformation and wealth creation.

improve service delivery to citizens.<sup>11</sup> Vision 2030's timelines are similar to the timelines of the SDGs. Kenya has the advantage to match the implementation progress of the SDGs to the progress of national development priorities.

To establish the nexus between the SDGs and the Vision 2030, the relevant SDGs to Kenya situation were identified and embedded into the Medium Term Plan. Out of the 230 SDG global indicators, Kenya has prioritised 128 indicators based on relevance, national goals and availability of data, as shown in Annexure 5. Of importance to note, particularly for this study, is that Vision 2030 is being implemented at both levels of government through the five (5) year MTP and CIDPs. The SDGs are therefore mainstreamed at these two levels of government and they are an integral part of the National and County planning and budgeting processes.

**Figure 2: Overview of planning in Kenya**



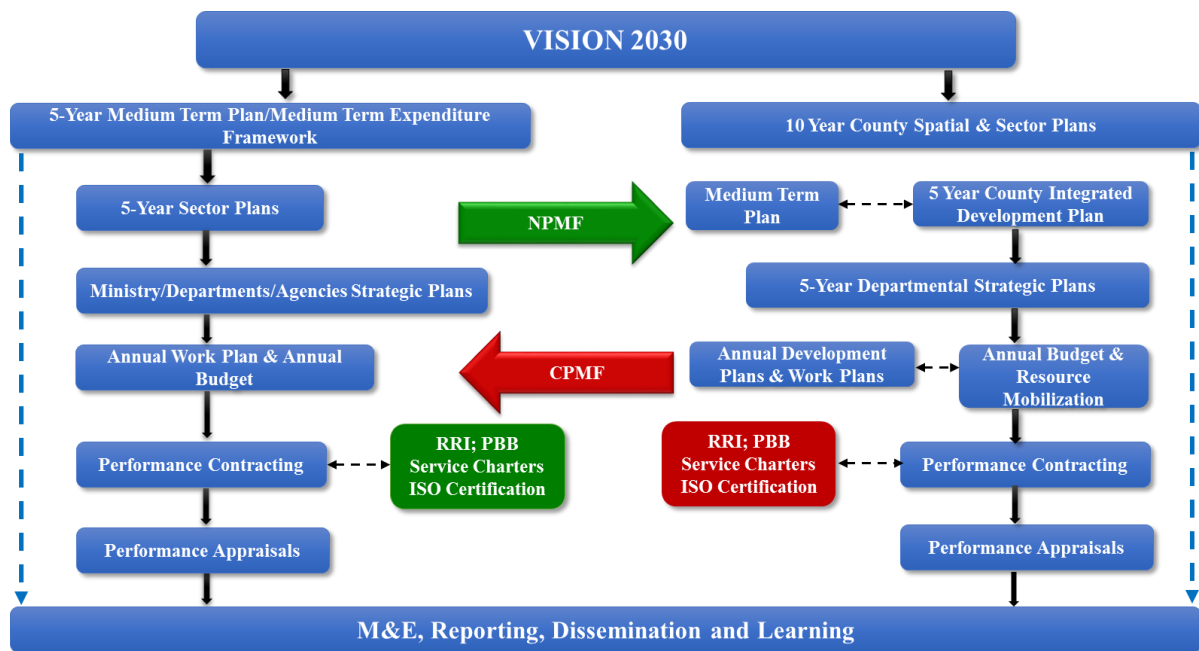
*Source: Author, 2019*

The diagram below further illustrates how County Government plans and policies are linked to the Vision 2030.

---

<sup>11</sup> *County Governments Performance Contracting Guidelines for the FY 2018/19*. Developed by Council of Governors & Performance Management And Coordination Office. Page 1.

**Figure 3: Framework for County Performance Management**



*Source: Performance Management Framework for County Governments, 2017. Council of Governors publication.*

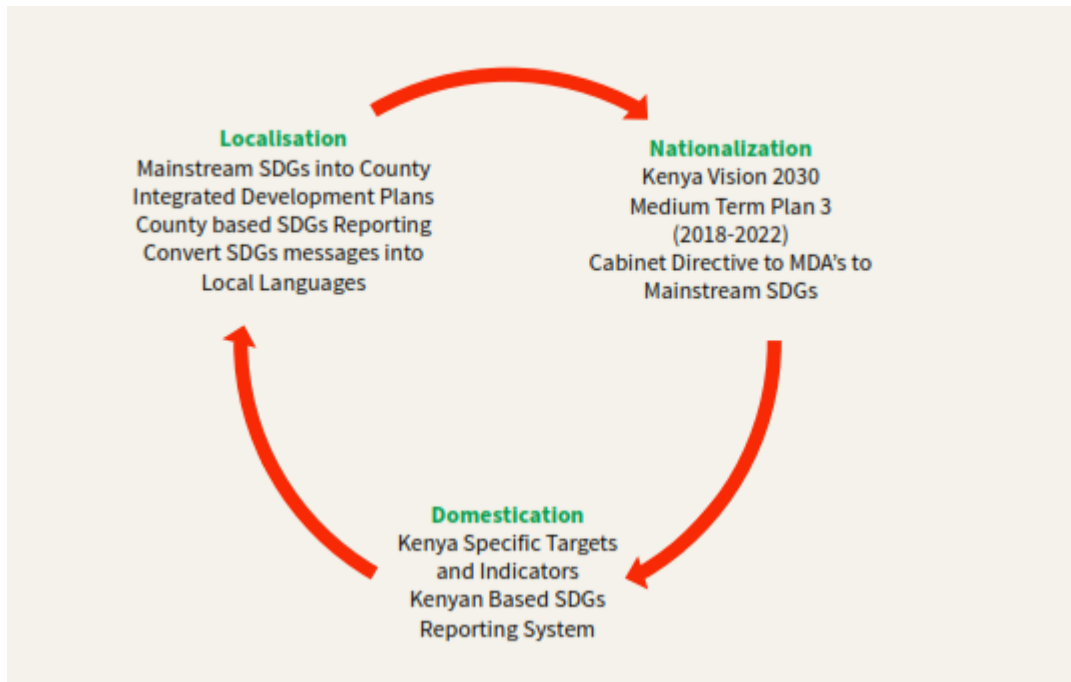
### 3.3.2. Mainstreaming SDGs in the Counties

Mainstreaming of the SDGs into National and County plans is of paramount importance. At the national level, this is done in the Kenya Vision 2030 through the MTPs and the Sector Plans and at the County level, this is done through CIDPs.<sup>12</sup> In line with the County Governments Performance Contracting Guidelines for the FY 2018/19, County Governments are required to integrate the SDGs in their second generation CIDPs (post 2017) since at the formulation of the first generation CIDPs in 2013, the SDGs had not been adopted. Mainstreaming SDGs in MTPs and CIDPs ensures that projects and programmes are geared towards achievement of the SDGs. In essence, it also helps in ensuring allocation of adequate funds to the implementation of SDGs. The diagram below summarizes the alignment of the SDGs into Kenya’s Development context.<sup>13</sup>

<sup>12</sup> Voluntary National Review Report. Ministry of Devolution and Planning. June 2017.

<sup>13</sup> Ibid

**Figure 4: Domestication process of SDGs in Kenya**



*Source: Kenya's SDGs Transition Strategy (2016-2018)*

In the year 2017/18, CoG played an integral role in supporting Counties to localize the SDGs. In the Counties, and as aforementioned, SDGs coordination is domiciled at the Directorates of Planning and Economic Affairs. Through CoG, forty-five (45) County Governments have appointed SDG champions and the other two (2) Counties have the component being handled by an officer in the Directorate of Planning and Economic Affairs. To ease coordination of SDGs related activities at the County level, CoG has developed a data base of all the personnel handling SDGs. CoG, through its SDGs desk, has conducted various sensitization workshops for the SDGs personnel and supported them to mainstream SDGs in the CIDPs. CoG works closely with National Treasury and Ministry for Planning which is the National focal point for SDGs in Kenya. CoG works through committees in the execution of its mandate. These committees have been able to integrate relevant SDGs into their workplans.

On reporting, Kenya has become a pioneer country in Africa in the arena of subnational SDGs reporting. Kenya has developed and piloted the County Voluntary Reporting in five (5) Counties- Marsabit, Kisumu, Taita Taveta, Busia and Kwale. Four (4) of these Counties finalized their reports. Other countries where subnational governments are reporting on SDGs are Columbia and India.

### 3.3.3. Linkages between the SDGs and the County Government functions

The table below illustrates the linkages between the SDGs and County Government functions.

**Figure 5: SDGs and County Government functions**

Function	Goal
Agriculture	Goals 1 and 2
County health services	Goal 3
Control of air pollution, noise pollution, other public nuisances	Goals 3, 6 and 14
Cultural activities, public entertainment and public amenities	Goals 4 and 11
County transport	Goals 9 and 11
Animal control and welfare	Goal 2
Trade development and regulation	Goals 2, 3, 8, 10 and 17
County planning and development	All
Pre-primary education, village polytechnics, homecraft centres and childcare facilities	Goal 4
Implementation of specific national government policies on natural resources and environmental conservation	Goals 1, 6, 8, 9, 11,12, 13 and 17
County public works and services	Goals 9 and 11
Firefighting services and disaster management	Goals 1, 2, 11 and 13
Control of drugs and pornography	Goal 3
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	All

*Source: Table developed by the Treasury and Ministry for Planning, 2017.*

### 3.4. Subnational Governments and Human Rights

Subnational governments have fundamental responsibilities in the human rights discourse. This is so because local governments are involved in decision-making and therefore are key players in the entrenchment of positive measures in policy, legislation and/or administrative actions required in realization of human rights. Human rights obligations extend to all levels of government. With the general trend across the world towards decentralization, which is based on subsidiarity, subnational governments are integral in the actualization of human rights. Indeed, subnational governments are often the ones that translate national and international human rights obligations into practical actions.

The place of subnational governments in the human rights discourse is so important that in 2012 a proposal on human rights and local governments was submitted to the Human Rights Council. The Council sits within the UN system as a body responsible for handling matters related to human rights protection and promotion and for making recommendations on

situations of human rights violations. The Council is made up of 47 UN Member States which are elected by the UN General Assembly.

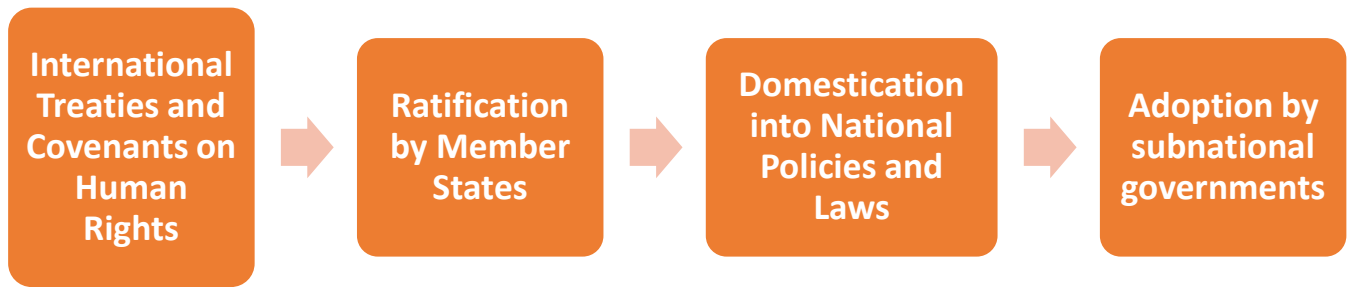
In September 2013, resolution 24/2 was adopted by the Council and it took note of the above-mentioned proposal and subsequently requested for the preparation of a report on the role of subnational governments in the protection and promotion of human rights, including human rights mainstreaming in local governance. The purpose of the report was to compile best practices and highlight challenges. At its 27<sup>th</sup> session, the Council adopted resolution 27/4 and the Committee was requested to continue with its research and to submit a final report at its 30<sup>th</sup> session.

The final report to the Human Rights Council did illuminate various issues. It recognizes that subnational governments are better positioned than national governments to deal with matters that require local knowledge and regulation. This is due to the fact that units at the subnational level have financial, administrative and political powers conferred upon them by the constitution or national legislation, and these powers in turn enable the subnational governments to regulate and manage certain public affairs at the lowest level.

However, the report takes note that the state is the primary duty bearer for human rights. The state is one entity, notwithstanding whether it is unitary or decentralized. Therefore, the obligations endorsed in international human rights treaties bind the state. Particularly, only states can be subjected to regional, continental or universal peer review mechanisms. Furthermore, a state that has violated human rights cannot say that the violations were committed by a local authority. The Vienna Convention on the Law of Treaties stipulates that a state party “may not invoke the provisions of its internal law as justification for its failure to perform a treaty”.

Indeed, national governments are the first points of call in the promotion and protection of human rights, while subnational governments play a complementary role by domesticating and translating the national human rights policies and laws into action. And for optimal results to be achieved in implementation of international human rights, coordination with subnational governments in policy and legislation making is paramount. This process is shown in the diagram below:

**Figure 6: Process of adoption of international instruments**



*Source: Author, 2019*

### **3.4.1. Obligation to implement international human rights at the subnational level**

Stemming from the above, it is clear that subnational governments are part and parcel of the international human rights agenda. Local laws tend to domesticate international human rights concepts and standards. San Francisco in 1998 embraced the rules and standards of the CEDAW as its municipal law. In the USA, legislative, bureaucratic and judicial action has led to the incorporation of international human rights law at the subnational level. Court action has been achieved through judges making decisions that are guided by international human rights standards. Moreover, there are instances when local governments take administrative action in order to promote international human rights. During the 1980s, thirty-seven (37) states, thirty-two (32) counties and 105 cities in the USA enacted either investment or procurement legislation to limit their own investment and procurement from companies doing business with South Africa's apartheid regime.<sup>14</sup>

In the Kenyan context, County Governments' duty to promote, fulfil and respect human rights is a constitutional one. The Constitution states that the general rules of international law shall form part of the law of Kenya. Article 2(6) further shows that any treaty or convention ratified by Kenya shall form part of the law of Kenya. Following this spirit, Article 10 of the Constitution states:

- (1) The national values and principles of governance in this Article bind all State organs, State officers, public officers and all persons whenever any of them—
  - (a) applies or interprets this Constitution;

---

<sup>14</sup> Robinson, Nick. "Citizens not subjects: US Foreign Relations law and the decentralization of foreign policy." 2007.



- (b) enacts, applies or interprets any law; or
- (c) makes or implements public policy decisions.
- (2) The national values and principles of governance include—
  - (a) patriotism, national unity, sharing and devolution of power, the rule of law, democracy and participation of the people;
  - (b) human dignity, equity, social justice, inclusiveness, equality, **human rights**, non-discrimination and protection of the marginalised;

The Constitution emphasizes that the state and all its organs are under a responsibility to observe, respect, protect, promote and fulfil human rights. The Constitution further contemplates that all public offices will address the needs of vulnerable groups within society, including women, older members of society, persons with disabilities, children, youth, members of minority or marginalised communities and members of particular ethnic, religious or cultural communities. In reading these provisions, it is unequivocal that in the performance of their functions and exercise of their powers, both the National and County Governments are mandated by the Constitution to protect human rights.

Flowing from the above, Kenya has ratified key international human rights covenants including the ICESCR, the CEDAW and the ICCPR. Kenya is also a party to the African Charter on Human and People's Rights- the principal human rights framework for the African continent. As will be demonstrated hereinbelow, effective delivery of services at the subnational level is pivotal to the realisation of some of the provisions in these human rights treaties.

One of the most progressive democracies in Africa in recognizing the place of subnational governments in human rights is South Africa, which has entrenched the right to municipal services through jurisprudence. In Kenya, the KNCHR has been mandated by law to offer support all public institutions on implementation of human rights. KNCHR developed HRBA guidelines and a curriculum and training manual for socio-economic rights, all aimed at training national and county personnel in mainstreaming human rights.

### **3.4.2 Implementation of socio-economic (ecosoc) rights: Kenyan perspective**

There are certain rights that fall within the functional competences of subnational governments. For instance, housing, education, water and sanitation, solid waste management, road transport

and libraries are services that are better offered by decentralised units than the central government.

The Kenyan Constitution has enshrined ecosoc rights as below:

- (1) Every person has the right—
  - (a) to the highest attainable standard of health, which includes the right to health care services, including reproductive healthcare;
  - (b) to accessible and adequate housing, and to reasonable standards of sanitation;
  - (c) to be free from hunger, and to have adequate food of acceptable quality;
  - (d) to clean and safe water in adequate quantities;
  - (e) to social security; and
  - (f) to education.
- (2) A person shall not be denied emergency medical treatment.

The table below illustrates how County Government functions are related to the above ecosoc rights, establishing that the effective performance of these functions ultimately contributes to the promotion and fulfilment of the ecosoc rights.

**Table 2: Linkages between County Government functions and ecosoc rights**

<b>Function (Constitution of Kenya, Fourth Schedule)</b>	<b>Corresponding ecosoc right</b>
County health services	1. Access to the highest attainable standard of health, which includes the right to health care services, including reproductive healthcare; and 2. Emergency medical treatment.
1. County planning and development including housing; 2. Refuse removal, refuse dumps and solid waste disposal; and 3. Water and sanitation services.	Accessible and adequate housing, and reasonable standards of sanitation

Agriculture	Freedom from hunger, and access to adequate food of acceptable quality
1. Implementation of specific national government policies on natural resources and environmental conservation including soil and water conservation; and 2. Water and sanitation services.	Access to clean and safe water in adequate quantities.
Pre-primary education, village polytechnics, homecraft centres and childcare facilities	Access to education.

**Source: Author, 2019**

Devolution has contributed to the achievement of the above ecosoc rights in many ways. To improve food and nutrition security, Counties have embarked on strategic interventions such as: empowerment of farmers through mechanization of production systems evidenced by the purchase of tractors, equipping agriculture mechanization stations and offering lease services to rural farmers; and under the subsidies arrangements, Counties have been purchasing and distributing greenhouses to farmers. The performance of the agriculture sector in the year 2018/2019 significantly improved as per the Economic Survey report of 2019. Compared to 2017/2018, maize production increased by 26.0 % from 35.4 million bags in 2017 to 44.6 million bags in 2018.<sup>15</sup>

On the right to healthcare services, County Governments have sustained an average allocation of 20-30% to the sector over the years since their inception. The country experienced growth in the number of functional health facilities growing from 9,858 to 10,820 in 2018 across all Counties. Since the advent of devolution in 2013, County Governments have been able to expand immunization programs and heavily invest in immunization facilities and operationalization of cold chain systems that have led to an increase in pentavalent vaccine uptake and also an increase in immunization coverage for infants. The healthcare innovations that are being adopted by different Counties have continued to improve health services delivery. The use of integrated Mobile Maternal Health-Geographical Positioning System

---

<sup>15</sup> This information has been extracted from the Council of Governors State of Devolution Address delivered on 28<sup>th</sup> June 2019.

(GPS) which enables tracing of expectant mothers has facilitated access to ante-natal care, delivery and postnatal follow-ups in marginalized areas.<sup>16</sup>

On access to safe and clean water, County Governments have been working towards the realization of universal access to water. Through their efforts over the last six (6) years, water coverage in Kenya has increased to 57%, while sanitation coverage is at 16%. Across the country, non-revenue water is at 41%. To facilitate access of water to more households, six (6) Counties have developed water masterplans; fourteen (14) Counties have water policies; and six (6) Counties have operational water laws.<sup>17</sup>

On education, the Early Childhood Education and Development (ECDE) sector has realized modest growth owed to expansion of ECDE centres and increased enrolment thereof. Enrolment in the County ECDE centres increased by 96,732 learners to 3,390,545 in 2018, reflecting a 3% growth. In the Vocational Education and Training (VET) sector, similarly growth has been experienced and this can be attributed to the County Governments' enhanced financial support. Since the establishment of County Governments, the country has witnessed the construction and registration of 316 public Vocational Training Centres.<sup>18</sup>

From the above examples, County Governments are contributing immensely to the realization of ecosoc rights by virtue of the services they deliver.

---

<sup>16</sup> This information has been extracted from the Council of Governors State of Devolution Address delivered on 28<sup>th</sup> June 2019.

<sup>17</sup> Ibid

<sup>18</sup> Ibid

## **CHAPTER FOUR**

### **CHALLENGES FACING SUBNATIONAL GOVERNMENTS IN THEIR PARTICIPATION IN INTERNATIONAL AFFAIRS**

#### **4.0 Introduction**

Evidence of subnational governments in international affairs is owed to their participation in international trade, cultural missions and having diplomatic engagements with foreign governments. They have gone even further to start formal foreign relations. Hong Kong and Macao, for instance, are members of the World Trade Organization, whereas Flanders, Hong Kong, Macao and Madeira are associated members of the United Nations World Tourism Organization. Moreover, subnational governments are also signing international agreements and they are conducting formal relations, to the extent of setting up missions, in sovereign nations. To illustrate, California opened an official office in China in 2013. These kind of activities are geared towards promotion of socio-economic interests of the subnational governments. Yet this nascent component of international relations is being ignored and regarded as inferior and lower to the usual state to state interactions. In some cases, there have emerged conflicts of interest between the subnational governments and the national governments.

This Chapter will look at the challenges that subnational governments face in their participation in international affairs, particularly County Governments of Kenya. It will closely examine the legal status of subnational governments in international law and the binding nature of the agreements signed between subnational governments.

#### **4.1. Legal status of subnational governments**

Legal personality of actors in international law is what legitimizes participation in international relations. Moreover, international legal personality determines the right to influence decisions and the efficiency of the actors in protecting their interests. States, in this case, national governments are the ones that have legal standing and presence. In furtherance of the same, the Vienna Convention on the Law of Treaties, 1969 (applies to treaties between states), and the Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations, 1986 (applies to: (a) treaties between one or more States and one or more international organizations, and (b) treaties between international organizations.), do not recognize subnational governments. In this regard, any international

agreements that subnational governments sign on to are not covered under the perimeters of the two aforementioned Vienna Conventions. Subnational government initiatives are not binding like those of states. Their cross-border initiatives are called soft law (not recognized as legally binding) and comprise of recommendations, guidelines, coordinating measures and other instruments. Not prohibited and yet not properly regulated, their activities turn out to be in the “gray zone” of international law.<sup>19</sup>

Subjects of international law can be divided into two (2) main groups.<sup>20</sup> States belong to the first group of the necessary (original) subjects.<sup>21</sup> Their international legal personality rests on sovereignty.<sup>22</sup> The second group consists of secondary (non-original) subjects whose legal personality is derived from rights granted by their state.<sup>23</sup> They are also referred to as partial or limited subjects of international law, since they are granted only certain rights and obligations.<sup>24</sup> Subnational governments fall in the second category.

Subnational governments hold no legal personality. The primary actors in international law are states. Indeed, national governments are the main duty bearers in international law as they are the ones who negotiate and conclude treaties, thereby taking responsibility to implement the international obligations. Consequently, states are the duty-bearers at the international stage. This trend is not misplaced as any direct approach to subnational bodies will go against fundamental tenets of international law such as state sovereignty and non-interference.<sup>25</sup> The existence of two legal spheres makes the legal position of cities acting in the international political field ambiguous, to say the least<sup>26</sup>. The ICHRP 2005 report notes that ‘when UN experts visit countries to investigate human rights, they usually raise complaints with central governments, even if the abuses are being carried out by lower levels of authority’. This non-recognition of the international legal personality of subnational units excludes them from the scope of international legal regulation and can cause several problems, including: precluding

---

<sup>19</sup> Yakoviyk, I., K. Smyrnova, O. Y. Tragniuk, A. A. Donets, and S. S. Shestopal. *Turkish Online Journal of Design Art and Communication*, 8. 2018. Pg 653-666.

<sup>20</sup> Ibid

<sup>21</sup> Ibid

<sup>22</sup> Ibid

<sup>23</sup> Ibid

<sup>24</sup> Ibid

<sup>25</sup> Bosire, Conrad Mogoya, “Local government and human rights: Building institutional links for the effective protection and realization of human rights in Africa.” *Africa Human Rights Journal* 11, no. 1. 2011. 147-170

<sup>26</sup> Blank, Yishai. "Federalism, Subsidiarity, and the role of local governments in an age of global multilevel governance." *Fordham Urb. LJ* 37. 2010.

sub-national units liability under international law; discrediting the state as a whole because of the unregulated actions of state's units; facilitating undesirable relations or foreign influence between sub-national units and other international players; and heightening the potential for separatist tendencies through the central government's failure to address sub-national units' desire for international cooperation.<sup>27</sup>

Despite the above position, subnational governments are in fact participants of international relations governed by international law but at the same time are not recognized as their subjects. They continue to create their own space at the international level. Subnational activities are diverse. Local governments are: conducting formal missions abroad; engaging in negotiations for agreements and declarations; signing and implementing agreements with other international actors; and are participating in global fora and conferences. County Governments have on various occasions been part of government delegations representing Kenya in international conferences like the CSW, UNGA, COP and World Health Assembly. Subnational governments even host their own conferences, for example, the Africities Summit, which was mentioned earlier. This Summit normally generates a communique that guides the work of UCLGA in the course of the three (3) years before the next Summit.

#### **4.2. Constitutional, legal and administrative considerations**

Subnational governments derive their mandate from the people, and the people belong to a state.<sup>28</sup> Indeed, subnational governments have to undertake their transnational activities in compliance with domestic laws.

The level of activity and commitment of subnational governments in international affairs is hinged upon the domestic constitutional and legal frameworks. A state's laws will determine a subnational government's capacity to pursue international interests. Where the constitution confers upon a devolved unit the powers and authority to undertake direct international activities, that unit becomes more influential in international relations. Domestic statutes can also define the level of legal permission a subnational government has in treaty-making with foreign actors. The greater the constitutional and legal competencies a subnational government

---

<sup>27</sup> Yakoviyk, I., K. Smyrnova, O. Y. Tragniuk, A. A. Donets, and S. S. Shestopal. *Turkish Online Journal of Design Art and Communication*, 8. 2018. Pg 653-666.

<sup>28</sup> Interview with Key Informant. Council of Governors. 16<sup>th</sup> September, 2019

has, the higher the propensity for participation in international affairs. Constitutional and legal limitations are rife.

It is worthy of note many constitutions have assigned the international affairs function to the national governments and many national laws hinder devolved units from engaging in diplomatic activities. For example, in Kenya matters related to international trade, foreign policy and foreign affairs belong exclusively to the National Government. To buttress this, the Treaty Making and Ratification Act states the national executive shall be responsible for initiating the treaty making process, negotiating and ratifying treaties. However, the question that continues to linger is whether the National Government can constitutionally commit the country to obligations that will be performed by the County Governments, without consultation with the latter. For instance, can the President pronounce that all towns will have cleared garbage by the end of the year yet solid waste management is a County function?<sup>29</sup>

The Constitution of Kenya states at Article 1(4) that sovereignty is exercised at the national level and the county level. Following this therefore the Constitution being the supreme law, all actions, domestic or international, should be aligned to the Constitution. Consequently, political commitments on County Government functions that are made without consultation with the Counties themselves are on the face of it unconstitutional.<sup>30</sup> The National and County Governments are closet partners who depend on each other for decision-making. Where the National Government intends to make commitments on devolved functions, County Governments must be consulted since these require additional resources to achieve. Additionally, owing to the fact that the Constitution of Kenya assigns functions to both levels of government, it is important to bring County Governments to the table before reporting since they are the implementers of SDGs and human rights. For the country's commitments to have meaning, Counties must have a voice therein because they are the main constitutional duty bearers for delivery of services.

Another factor that determines the level of engagement of subnational governments in international affairs is the intergovernmental relations subsisting between the national and the local governments. There is greater ability to participate internationally where the devolved

---

<sup>29</sup> Interview with Key Informant. 25<sup>th</sup> September, 2019

<sup>30</sup> Ibid



units and the national government have closer cooperation and coordination and where the mechanisms of consultation exist. In Kenya for instance, the IGRA sets out clear vertical and horizontal mechanisms for consultation, coordination, cooperation and collaboration. When MoFA wants to reach Counties, it does so through the CoG. This has on many occasions, facilitated communication flow and information sharing. In the preparations for UNGA, MoFA invites CoG to participate in the arrangements and to contribute to the country position papers. It is important to create structured modes of engagement as such institutional linkages tend to dispel suspicion and mistrust on subnational governments' activities with other international actors.

### **4.3. County Governments in international affairs: Kenyan experience**

As noted earlier, foreign affairs and foreign policy are National Government functions. However, County Governments play a complementary role to the state since they implement the international agreements signed by the National Government. Despite this, alone, County Governments do not have the audience in international regimes like the UN.<sup>31</sup> They have to ride on the National Government delegations for their issues to be captured. The case of CSW was noted in that the extent of consultations between the coordinating ministry and CoG was dependent on the goodwill of the Cabinet Secretary. On treaty-making, County Governments are rarely consulted on the same even if the subject matter in question falls completely within their jurisdiction. It was noted that County Governments' participation was one of 'tokenism' and that they would be consulted based on a whim, this despite the fact that County Governments are the main implementers for most of the services.

Further, CoG has been involved in human rights review processes (UPR and others). Previously, County Governments had been excluded from the human rights peer review processes. It was not until 2015, two (2) years after the inception of County Governments that CoG lobbied for the participation of devolved governments in the UPR and the African Peer Review exercise since County Governments were implementing most of the functions that Kenya is evaluated on. These efforts paid off as CoG did form part of the delegation representing Kenya in the 57<sup>th</sup> session of the African Commission on Human and Peoples' Rights between 4<sup>th</sup> – 18<sup>th</sup> November 2015 in Banjul. This session was considering Kenya's combined 8<sup>th</sup> – 11<sup>th</sup> periodic report on the African Charter on Human and Peoples' Rights.

---

<sup>31</sup> Interview with Key Informant. Council of Governors. 16<sup>th</sup> September, 2019

With respect to diplomatic engagement, the relationship between MoFA and County Governments was a rocky one at the beginning in 2013 since there were no procedures to guide County Governments in their interactions with foreign governments. There were complaints from foreign governments of unplanned delegations. Some countries also complained over having to receive too many delegations thereby causing fatigue on the hosts.<sup>32</sup> In 2015, the Head of Public Service issued a circular named '*Policy Guidelines on International Travel and Diplomatic Engagements*'. This was aimed at injecting orderly conduct, discipline and decorum in the following areas: international travel, communication/ engagement with diplomatic corps and the international community, representation abroad, signing of MoUs with foreign governments/missions and twinning agreements. Afterwards, the practice has been that where a foreign mission intends for their ambassador, high commissioner or head of mission to visit a County, the embassy or high commission will write a note verbale to MoFA on the details of the trip. Then MoFA writes to the Ministry of Devolution and ASAL, which ministry then writes to CoG or the County. The rationale behind involving MoFA is that an ambassador or high commissioner represents the head of state of their country.<sup>33</sup> MoFA has dedicated the County & Parliamentary Liaison Office to guide and assist County Governments in these protocols. This office did undertake regional sensitizations on the procedures and policies on foreign relations.

At the inception of devolution in 2013, there were County Governments that sought to deal with foreign governments directly with a few attempting to open offices in the diaspora for partnership in investment.<sup>34</sup> However, such initiatives were short lived as the National Government did step in to stop the opening of such offices. County Governments receive monies from the equitable share and they complement this funding with mobilizing resources externally. It is therefore critical that County Governments are facilitated in compliance with the Constitution and other relevant laws to tap into diaspora resources.

Owing to eruption of conflict and cattle rustling, border Counties (those that border other countries) have been involved in cross-border negotiations. The Ministry of Devolution and ASAL has been spearheading a Kenya-Uganda (Turkana/Pokot- Karamoja) cross-border peace initiative by involving the County Governments of West Pokot and Turkana. Border Counties

---

<sup>32</sup> Interview with key informant. County and Parliamentary Liaison Office at MoFA. 18<sup>th</sup> September, 2019.

<sup>33</sup> Interview with Key Informant. Council of Governors. 17<sup>th</sup> September, 2019

<sup>34</sup> Interview with Key Informant. Executive Director, Institute of Development Studies. 26<sup>th</sup> September, 2019

are better placed to resolve conflict with border countries than the National Government because communities along these borders converge in culture and language and also have close historical relations.<sup>35</sup> It becomes paramount therefore for the two levels of government to cooperate in matters security, peace and disease control.

---

<sup>35</sup> Ibid

## **CHAPTER FIVE**

### **DATA PRESENTATION, ANALYSIS AND FINDINGS**

#### **5.0. Introduction**

This chapter presents the findings of the data collected and an analysis of that data based on the formulated research questions.

#### **5.1. Data collection**

Both primary and secondary data was collected for this study. Questionnaires and interviews were administered to gather primary data while existing literature on the topic at hand was used to gather secondary data. Twenty-five (25) questionnaires were administered to the following cadres: County staff (5); National Government staff (5); CoG (5); intergovernmental institutions (5); and academia (5). A total of twenty (20) questionnaires were received back. Eleven (11) in-depth interviews were conducted with key persons who had a grasp of the subject matter. These included officers from the CoG, MoFA, the Ministry of Devolution and ASAL, KNCHR and County Governments. During the interviews, notes were taken and some respondents did agree to be recorded. Secondary data was generated from academic and non-academic literature including the Constitution, statutes, policy documents, reports, websites and journals.

#### **5.2. Data Analysis**

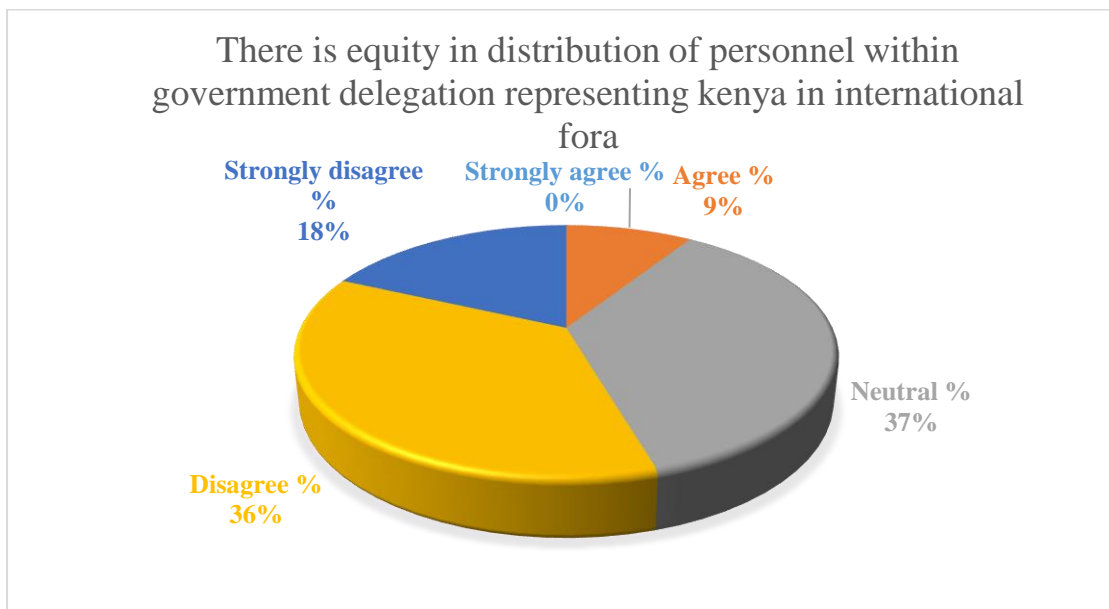
The collected data was analyzed and evaluated. From the analysis, the below findings were derived:

##### **5.2.1. Participation in international affairs**

According to the findings, 54% of the respondents agreed that County Governments should easily be allowed to become members of transnational networks. 73% of those interviewed took the position that the decisions made in transnational networks should be binding on the County Governments. To note however, these decisions should ultimately be in line with national interests since both levels of government should be moving in the same direction in terms of political, economic and social development albeit in different aspects.

91% of those interviewed agreed that there is lack of policy and legal frameworks to guide County Governments' participation in international affairs. For instance, currently, it is not clear which ministry should coordinate membership into transnational networks. Also, where the National Government intends to sign a treaty on a subject matter that falls within the County Government functions, what are the procedures and structures to bring them on board? To synergize interests, it is important to ensure equity in the distribution of personnel within government delegations representing Kenya in international fora where matters that affect County Governments may be discussed. This is prompted by the fact that 54% of the respondents were of the view that currently there is no equity in government delegations.

**Figure 7: Distribution of personnel in government delegations**



*Source: Author, 2019*

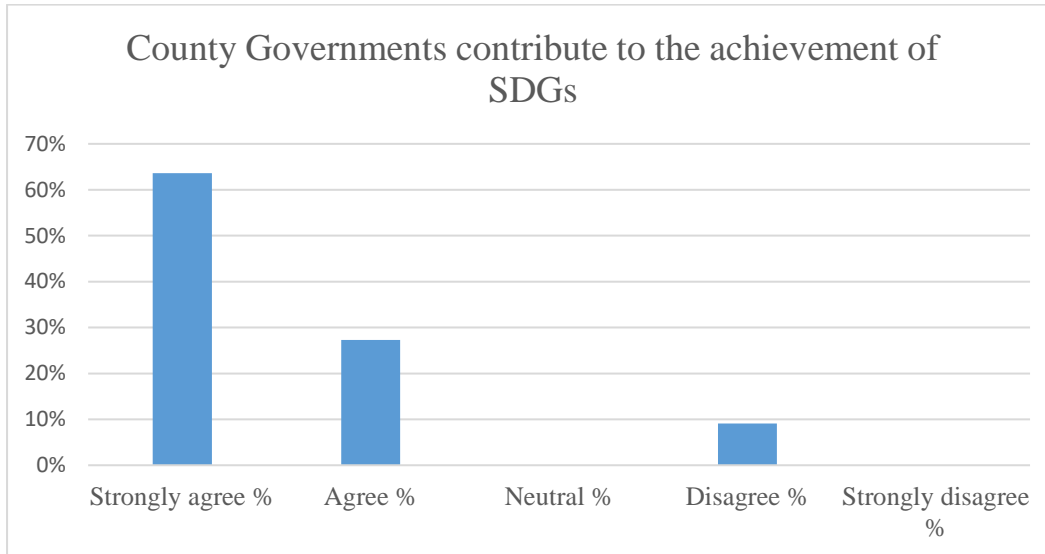
Additionally, 45% of those interviewed opined that there is some form of dialogue in the development of country positions in matters affecting Counties, while 36% disagreed. To reiterate, the framework mentioned hereinbefore would probably address this issue comprehensively since the current mode of consultation is adhoc. Another component that the framework would examine is the setting of the procedures for the signing of sister to sister affiliation agreements (twining agreements) since 45% of the respondents agreed that County Governments should be able to sign these agreements without facing unnecessary bureaucracies at MoFA. 91% of those interviewed concurred that the Constitution and other

statutes should provide for mechanisms for the participation of County Governments in international affairs.

### 5.2.2. SDGs and Human Rights

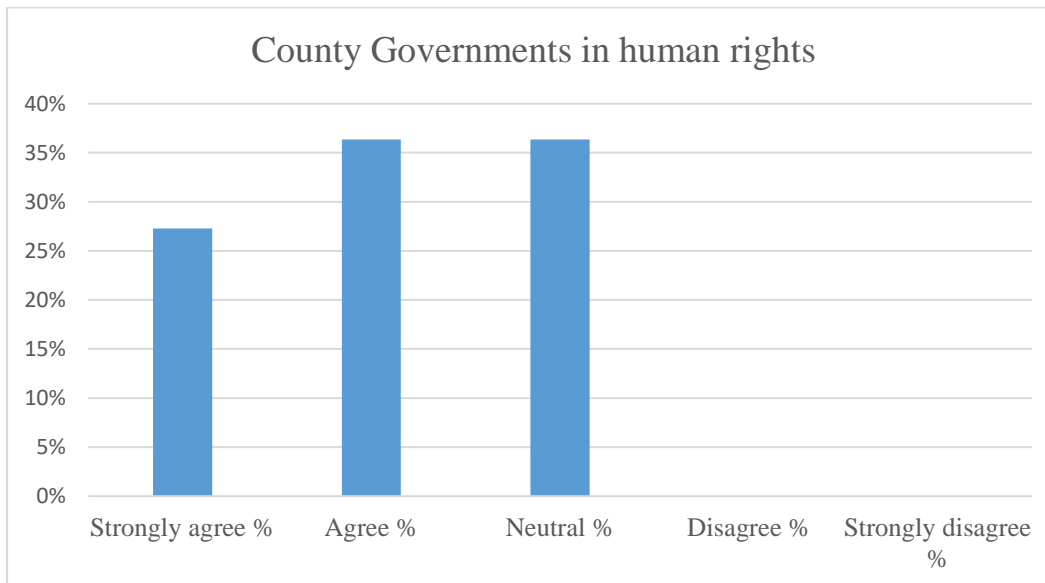
The graphs below indicate the findings of the study with respect to SDGs and human rights.

**Figure 8: Contribution to SDGs by County Governments**



*Source: Author, 2019*

**Figure 9: County Governments in implementation of human rights**

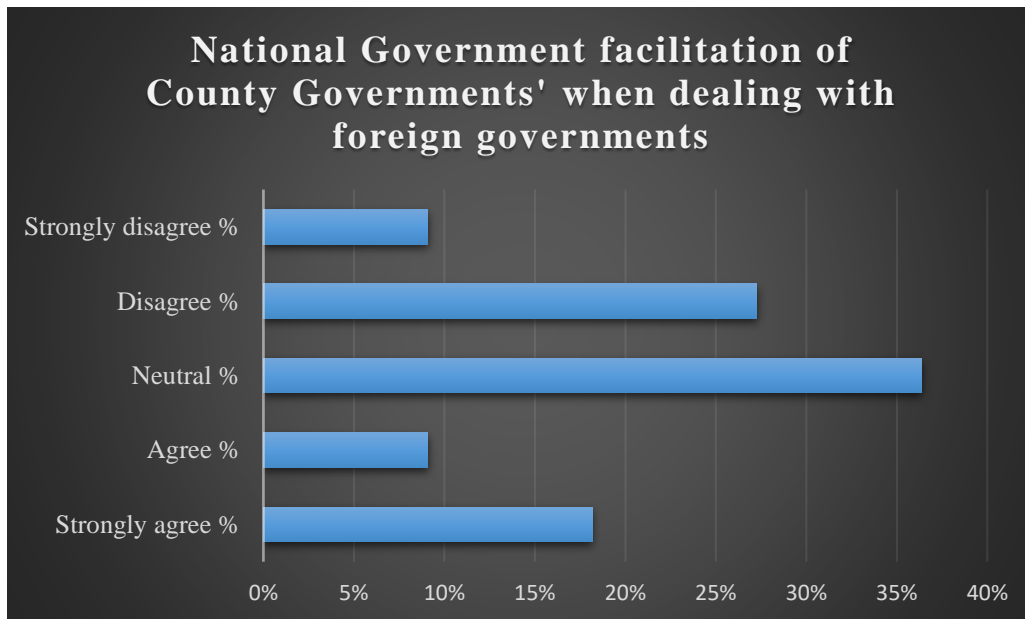


*Source: Author, 2019*

### 5.3.3. Challenges facing County Governments in their participation in international affairs

A slight majority of the respondents were arguably of the view that the National Government does not facilitate County Governments when the latter are dealing with foreign governments.

**Figure 10: Relations with foreign governments**



*Source: Author, 2019*

The need for cooperation between County Governments and MoFA to achieve overall national goals was emphasized throughout the interviews. This explains why a majority of the respondents took the position that there is need for Counties to establish vibrant liaison offices than link with MoFA. With respect to the relationship between the two, 57% of those interviewed opined that MoFA has placed stringent administrative rules for the participation of County Governments in international fora.

As noted earlier in the study, international law does not recognize subnational governments. Despite this, 53% of the interviewees reckoned that subnational governments should be afforded space in international law. 52% of the respondents also agreed that County Governments should, subject to laid down guidelines, be able to sign agreements with foreign governments and partners. It is worth clarifying however that none of the respondents suggested that County Governments conduct international business without the mother states. All of them highlighted the need for subnational governments to respect their states. In this

context, 63% of the respondents reiterated the need for County Governments to coordinate with the National Government while dealing with foreign governments.



## CHAPTER SIX

### CONCLUSIONS, RECOMMENDATIONS AND FUTURE RESEARCH NEEDS

#### 6.0. Introduction

This chapter will look at the conclusions drawn from the study and the recommendations therein. Based on the findings, the chapter also highlights possible areas of future research.

#### 6.1. Conclusions

From the findings, the traditional of statehood remains unchallenged. Despite being actors in international relations, subnational governments are yet to be recognized in international law. The study revealed that there are advanced democracies that have allowed their subnational governments to participate in diplomatic activities through the constitution or statutes. The study also found that with globalization and integration, transnational networks of subnational governments have emerged. These have carved their own niche and have established structures to execute their functions. It emerged that achievement of global agendas like SDGs and human rights will be actualized through local action.

#### 6.2. Recommendations

The following are the recommendations of the study.

##### 6.2.1. Policy recommendations

Noting that subnational governments continue to contribute to global agendas, and further taking cognizance that subnational governments are interacting with their counterparts, it is hereby recommended that:

- i. MoFA, in collaboration with CoG, develops a framework for engagement between MoFA and County Governments that will entrench adequate channels of communication and consultation. The framework can embed guidelines for County Governments wishing to liaise with the diaspora and also have rules for mobilization of diaspora resources. There is need for political goodwill to facilitate Counties to effectively tap into the diaspora for trade ties, exchange programmes and others.
- ii. MoFA undertakes capacity building for County staff on foreign relations and diplomatic engagements and also sensitize County staff on how they can effectively make use of investment desks stationed at MoFA.

- iii. A specific intergovernmental body be established to as a forum where subnational diplomatic initiatives can be discussed and harmonized with national foreign policy if necessary. It will serve as a forum for coordination of foreign action and exchange of information. This initiative requires political goodwill at both levels of government.
- iv. There is need for deeper and more meaningful cooperation between County Governments and the County and Parliamentary Liaison Office.
- v. There is need for deeper consultation and cooperation when the President/ the National Government intends to make commitments at the international level that fall within the jurisdictions of the County Governments.
- vi. Regular and more active collaboration is needed in reporting the implementation of SDGs and human rights. The County Voluntary Reporting mechanism should be upscaled to all Counties. The stronger the local mechanisms for coordinating local development, the higher the chances of achieving these agendas and the higher the opportunities to accelerate impact.
- vii. A review of Kenya’s Foreign Policy be undertaken to recognize the role of County Governments in movement of people and labour, security, conflict management and trade.
- viii. CoG and County Governments to document the gains realized in being members of transnational networks.

### **6.2.2. Academic Recommendations**

Subnational diplomacy is relatively new in Kenya and therefore, it is recommended that:

- i. The subject of the role of subnational governments in international affairs be introduced as an area of study in institutions of higher learning.
- ii. More resources be availed on this subject area.
- iii. More research on this subject should be encouraged in institutions of higher learning so that a larger body of knowledge is created on the same.

### **6.3. Areas of further research**

From the findings, further research on the following topics will be beneficial on this subject area:

- i. Paradiplomacy.
- ii. Twinning agreements/sister-sister agreements.

- iii. The County Peer Review Mechanism, which is a form of the African Peer Review Mechanism being cascaded at the subnational level.

There is little attention being paid to the above phenomena yet there is quite a lot of activity and progress therein. Transnational cooperation of subnational governments is slowly challenging the conventional norms of foreign relations and diplomacy. Indeed, there exists little knowledge on these topics and there is need to build knowledge around these focus areas.

## REFERENCES

Kirori, Gabriel N. "Rural development policies in Kenya: A descriptive analysis over the 1970–2001 period." *European Journal of Business, Economics and Accountancy* 3 (2015): 35-53.

<https://study.com/academy/lesson/what-is-local-government-definition-responsibilities-challenges.html>

B Havenga. *The Role and Purpose of Local Government*. 2003. Chapter 3.

Constitution of Kenya, 2010

Tavares, Rodrigo. "Forget the nation-state: cities will transform the way we conduct foreign affairs." In *World Economic Forum*. 2016.

Aldecoa, Francisco, and Michael Keating. *Paradiplomacy in action: the foreign relations of subnational governments*. Routledge, 2013.

Blank, Yishai. "Federalism, subsidiarity, and the role of local governments in an age of global multilevel governance." *Fordham Urb. LJ* 37 (2010): 509.

Heyvaert, Veerle. "Governing climate change: towards a new paradigm for risk regulation." *The Modern Law Review* 74, no. 6 (2011): 817-844.

Bolan, A. *Para-diplomatic theory and Welsh external relations*. September 2011.

Sandrina Antunes and Isabel Camisão. *Introducing Realism in International Relations Theory*. 2018, Available at <http://www.e-ir.info/2018/02/27/introducing-realism-in-international-relations-theory/>

Jackson, Thomas. "Paradiplomacy and political geography: The geopolitics of substate regional diplomacy." *Geography Compass* 12, no. 2 (2018): e12357.

Dimitrios Karmis and Wayne Norman (eds), *Theories of Federalism*, New York: Palgrave, 2005. P.3-21

Gamper, Anna. "A global theory of federalism: the nature and challenges of a federal state." *German LJ* 6 (2005): 1297.

Morozov, Boris. "Theory and practice of decentralization in developing countries: evidence from Republic of Moldova." (2015).

McMillan, Samuel Lucas. "Subnational foreign policy actors: How and why governors participate in US foreign policy." *Foreign Policy Analysis* 4, no. 3 (2008): 227-253.

Happaerts, Sander, Karoline Van den Brande, and Hans Bruyninckx. "Subnational governments in transnational networks for sustainable development." *International Environmental Agreements: Politics, Law and Economics* 11, no. 4 (2011): 321-339.

Setzer, Joana. "Testing the boundaries of subnational diplomacy: the international climate action of local and regional governments." *Transnational Environmental Law* 4, no. 2 (2015): 319-337.

Raustiala, Kal. "The architecture of international cooperation: Transgovernmental networks and the future of international law." *Va. J. Int'l L.* 43 (2002): 1.

Bulkeley, Harriet. *Cities and climate change*. Routledge, 2013.

Duran, Manuel. "French regions as diplomatic actors: The case of Provence-Alpes-Côte d'Azur." *French Politics* 9, no. 4 (2011): 339-363.

Keohane, Robert O., and Joseph S. Nye. "Transgovernmental relations and international organizations." *World politics* 27, no. 1 (1974): 39-62.

Cohn, Theodore H., and Patrick J. Smith. "Subnational governments as international actors: Constituent diplomacy in British Columbia and the Pacific Northwest." *BC Studies: The British Columbian Quarterly* 110 (1996): 25-59.

Milani, Carlos RS, and Maria Clotilde Meirelles Ribeiro. "International relations and the paradiplomacy of Brazilian cities: crafting the concept of local international management." *BAR-Brazilian Administration Review* 8, no. 1 (2011): 21-36. Available online at <http://www.anpad.org.br/bar>

Realism and Idealism in International Relations by Charles Strohmer. Available at <http://www.charlesstrohmer.com/international-relations/international-relations-101/realism-idealism/all/1/>

Kangu, John Mutakha. *Constitutional law of Kenya on devolution*. Strathmore University Press, 2015

International Council on Human Rights Policy. *Local Government and Human Rights: Doing Good Service: Summary*. ICHRP, 2005.

Bosire, Conrad Mugoya. "Local government and human rights: Building institutional links for the effective protection and realisation of human rights in Africa." *African Human Rights Law Journal* 11, no. 1 (2011): 147-170.

Robinson, Nick. "Citizens not subjects: US foreign relations law and the decentralization of foreign policy." *Akron L. Rev.* 40 (2007): 647.

Davis, Martha F. "Upstairs, Downstairs: Subnational Incorporation of International Human Rights Law at the End of an Era." *Fordham L. Rev.* 77 (2008): 411.

Happaerts, Sander, Karoline Van den Brande, and Hans Bruyninckx. "Subnational governments in transnational networks for sustainable development." *International Environmental Agreements: Politics, Law and Economics* 11, no. 4 (2011): 321-339.

Council of Governors State of Devolution Address, 2019.

Sodupe, Kepa. "The European union and inter-regional co-operation." *Regional & Federal Studies* 9, no. 1 (1999): 58-81.

Betsill, Michele M., and Harriet Bulkeley. "Transnational networks and global environmental governance: The cities for climate protection program." *International studies quarterly* 48, no. 2 (2004): 471-493.

Yakoviyk, I., K. Smyrnova, O. Y. Tragniuk, A. A. Donets, and S. S. Shestopal. "THE ISSUE OF THE INTERNATIONAL LEGAL PERSONALITY OF SUB-NATIONAL UNITS OF THE EU MEMBER STATES (A CASE STUDY OF GERMAN SUB-FEDERAL UNITS)." *TURKISH ONLINE JOURNAL OF DESIGN ART AND COMMUNICATION* 8 (2018): 653-666.

El-Dessouki, Ayman. "Domestic structure and sub-national foreign policy: an explanatory framework." *Review of Economics and Political Science* 3, no. 3/4 (2018): 102-118.

Lecours, André. *Political issues of paradiplomacy: lessons from the developed world*. The Hague: Netherlands Institute of International Relations' Clingendael', 2008.

European Charter on Local Self-Government, 1985.

African Charter on the Values and Principles of Decentralization, Local Governance and Local Development, 2014.

[https://www.uclg.org/sites/default/files/uclg\\_who\\_we\\_are\\_0.pdf](https://www.uclg.org/sites/default/files/uclg_who_we_are_0.pdf)

<https://www.uclg.org/en/organisation/about>

<https://www.uclg.org/en/organisation/structure/uclg-sections>

<https://www.uclg.org/en/issues/climate-change>

<http://www.clgf.org.uk/about-us/become-a-member/>

<http://www.clgf.org.uk/what-we-do/cities-network/>

[https://www.ccre.org/en/article/introducing\\_cemr](https://www.ccre.org/en/article/introducing_cemr)

[https://www.ccre.org/en/article/political\\_structure](https://www.ccre.org/en/article/political_structure)

<https://www.uclga.org/who-we-are/>

## ANNEXURES

### Annexure 1: Questionnaire

#### Section A: General Information

1. Gender: Male [ ] Female [ ]
2. Your age bracket (Tick where appropriate)
 

21 – 30 Years [ ]	31 - 40 Years [ ]
41 - 50 years [ ]	Over 50 years [ ]
3. Kindly indicate the highest level of education that you have attained?
 

Undergraduate Degree [ ]	Masters Degree [ ]
Doctorate [ ]	Others [ ]
4. Please indicate the number of years you have served your respective position.
 

Less than one year [ ]	1-3 years [ ]
4-7 years [ ]	Over 8 years [ ]
More than 10 years [ ]	
5. Please indicate your position in your respective institution.

.....

#### Section B: Role of County Governments in International Relations

This section is about how County Governments contribute to international agendas and how they participate in transnational networks. For each of the statements, please use the scale given below to indicate your level of agreement by ticking the level of agreement on a scale of 1-5: 5-Strongly agree, 4-Agree, 3-Neutral, 2-Disagree and 1-Strongly Disagree.

	1	2	3	4	5
County Governments contribute to the achievement of SDGs.					
County Governments contribute to the protection, respect and promotion of human rights.					
There is equity in distribution of personnel within government delegations representing Kenya in international fora.					
The National Government facilitates County Governments when the latter are dealing with foreign governments.					



There is consultation between the two levels of government in the development of country positions in matters affecting Counties.					
County Governments have vibrant liaison offices that link with the Ministry of Foreign Affairs.					
County Governments can easily become members of transnational networks.					
The decisions made in transnational networks should be binding for the County Governments.					
County Governments can easily sign sister-to-sister city affiliation agreements without the Ministry of Foreign Affairs.					

**Section C: Challenges Facing Subnational Governments in their Participation in International Affairs**

This section is about the challenges Subnational Governments, particularly County Governments, face as they participate in international affairs. For each of the statements, please use the scale given below to indicate your level of agreement by ticking the level of agreement on a scale of 1-5: 5-Strongly agree, 4-Agree, 3-Neutral, 2-Disagree and 1-Strongly Disagree.

	1	2	3	4	5
The Constitution should not allow County Governments to participate in international affairs.					
There is lack of clear policy and legal frameworks to allow for County Governments’ participation in international affairs.					
County Governments should have recognition in international law.					
County Governments should have authority to sign agreements with foreign governments/partners.					
County Governments should have a complementary role vis-à-vis the states in international relations.					

The MoFA has placed stringent administrative rules for the participation of County Governments in international fora.					
County Governments must liaise with the National Government in dealing with foreign governments.					

## **Annexure 2: Interview Guide**

The following question guide was developed to assist in the collection of primary data. Interviews were conducted with key informants.

1. Please share your experience on the membership of County Governments/CoG in transnational networks.
2. In general, how can County Governments exploit their involvement in such transnational networks?
3. How do you think County Governments contribute to international agendas like SDGs and human rights?
4. What has been your experience with the National Government/County Governments in participation of County Governments/National Government in international fora?
5. Do you think County Governments should have a complementary role vis-à-vis the state in international relations?
6. Can you please tell me your position on the role of the MoFA in the participation of County Governments in international fora?
7. What are the competing interests that hinder the full participation of County Governments in international affairs and what do you think needs to be done to improve the enabling environment for their participation?

### **Annexure 3: Functions and Powers of the County Governments**

<p>1. Agriculture, including— (a) crop and animal husbandry; (b) livestock sale yards; (c) county abattoirs; (d) plant and animal disease control; and (e) fisheries.</p>
<p>2. County health services, including, in particular— (a) county health facilities and pharmacies; (b) ambulance services; (c) promotion of primary health care; (d) licensing and control of undertakings that sell food to the public; (e) veterinary services (excluding regulation of the profession); (f) cemeteries, funeral parlours and crematoria; and (g) refuse removal, refuse dumps and solid waste disposal.</p>
<p>3. Control of air pollution, noise pollution, other public nuisances and outdoor advertising.</p>
<p>4. Cultural activities, public entertainment and public amenities, including— (a) betting, casinos and other forms of gambling; (b) racing; (c) liquor licensing; (d) cinemas; (e) video shows and hiring; (f) libraries; (g) museums; (h) sports and cultural activities and facilities; and (i) county parks, beaches and recreation facilities.</p>
<p>5. County transport, including— (a) county roads; (b) street lighting; (c) traffic and parking; (d) public road transport; and (e) ferries and harbours, excluding the regulation of international and national shipping and matters related thereto.</p>
<p>6. Animal control and welfare, including— (a) licensing of dogs; and (b) facilities for the accommodation, care and burial of animals.</p>
<p>7. Trade development and regulation, including— (a) markets; (b) trade licences (excluding regulation of professions); (c) fair trading practices; (d) local tourism; and (e) cooperative societies.</p>
<p>8. County planning and development, including— (a) statistics; (b) land survey and mapping; (c) boundaries and fencing; (d) housing; and (e) electricity and gas reticulation and energy regulation.</p>
<p>9. Pre-primary education, village polytechnics, homecraft centres and childcare facilities.</p>
<p>10. Implementation of specific national government policies on natural resources and environmental conservation, including— (a) soil and water conservation; and (b) forestry.</p>

11. County public works and services, including— (a) storm water management systems in built-up areas; and (b) water and sanitation services.
12. Fire fighting services and disaster management.
13. Control of drugs and pornography.
14. 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.

#### **Annexure 4: The 17 SDGs**

- GOAL 1: No Poverty
- GOAL 2: Zero Hunger
- GOAL 3: Good Health and Well-being
- GOAL 4: Quality Education
- GOAL 5: Gender Equality
- GOAL 6: Clean Water and Sanitation
- GOAL 7: Affordable and Clean Energy
- GOAL 8: Decent Work and Economic Growth
- GOAL 9: Industry, Innovation and Infrastructure
- GOAL 10: Reduced Inequality
- GOAL 11: Sustainable Cities and Communities
- GOAL 12: Responsible Consumption and Production
- GOAL 13: Climate Action
- GOAL 14: Life Below Water
- GOAL 15: Life on Land
- GOAL 16: Peace and Justice Strong Institutions
- GOAL 17: Partnerships to achieve the Goal

## Annexure 5: Proposed Indicators for National Monitoring, Kenya National Bureau of Statistics

Kenya National Bureau of Statistics (KNBS)

### SDGS NATIONAL INDICATOR FRAMEWORK (KENYA)

Table 1. Goal by Selected Indicators<sup>1</sup> for Initial National Monitoring


GOAL	TOTAL INDICATORS	NUMBER/ IDENTIFIED INDICATORS
1 NO POVERTY	12	6 1.2.1, 1.2.2, 1.3.1, 1.5.3, 1.a.1, 1.a.2
2 NO HUNGER	14	6 2.1.1, 2.1.2, 2.2.1, 2.2.2, 2.a.1, 2.c.1
3 GOOD HEALTH	26	16 3.1.1, 3.1.2, 3.2.1, 3.2.2, 3.3.1, 3.3.2, 3.3.3, 3.3.4, 3.6.1, 3.7.1, 3.7.2, 3.8.2, 3.9.2, 3.a.1, 3.b.2, 3.c.1
4 QUALITY EDUCATION	11	10 4.1.1, 4.2.1, 4.2.2, 4.3.1, 4.4.1, 4.5.1, 4.6.1, 4.a.1, 4.b.1, 4.c.1
5 GENDER EQUALITY	14	13 5.1.1, 5.2.1, 5.2.2, 5.3.1, 5.3.2, 5.4.1, 5.5.1, 5.5.2, 5.6.1, 5.6.2, 5.a.2, 5.b.1, 5.c.1
6 CLEAN WATER & SANITATION	11	3 6.1.1, 6.2.1, 6.b.1
7 RENEWABLE ENERGY	6	4 7.1.1, 7.1.2, 7.2.1, 7.3.1
8 GOOD JOBS & ECONOMIC GROWTH	17	12 8.1.1, 8.2.1, 8.3.1, 8.5.1, 8.5.2, 8.6.1, 8.7.1, 8.8.2, 8.9.1, 8.9.2, 8.10.1, 8.10.2
9 INNOVATION & INFRASTRUCTURE	12	7 9.1.1, 9.1.2, 9.2.1, 9.2.2, 9.5.1, 9.5.2, 9.c.1
10 REDUCED INEQUALITIES	11	7 10.1.1, 10.2.1, 10.4.1, 10.6.1, 10.a.1, 10.b.1, 10.c.1
11 SUSTAINABLE CITIES & COMMUNITIES	15	7 11.1.1, 11.4.1, 11.5.1, 11.6.1, 11.a.1, 11.b.1, 11.b.2
12 RESPONSIBLE CONSUMPTION	13	2 12.4.1, 12.4.2
13 CLIMATE ACTION	7	3 13.1.1, 13.1.2, 13.2.1
14 LIFE BELOW WATER	10	3 14.4.1, 14.5.1, 14.a.1
15 LIFE ON LAND	14	8 15.1.1, 15.1.2, 15.3.1, 15.4.1, 15.7.1, 15.a.1, 15.b.1, 15.c.1
16 PEACE & JUSTICE	23	14 16.1.1, 16.1.3, 16.1.4, 16.2.1, 16.2.3, 16.3.1, 16.3.2, 16.4.2, 16.5.1, 16.6.1, 16.8.1, 16.9.1, 16.10.2, 16.a.1
17 PARTNERSHIPS FOR THE GOALS	25	12 17.1.1, 17.1.2, 17.3.1, 17.3.2, 17.4.1, 17.6.2, 17.8.1, 17.11.1, 17.12.1, 17.18.2, 17.18.3, 17.19.2


<sup>1</sup>: It is worth noting that in some instances it is only possible to partially monitor the selected indicator e.g. 4.1.1 (b) and c (i)

General Notes:

- i) Some of the Global Indicators are not applicable to Kenya as a country (they refer to landlocked, least developed, Highly Indebted Poor Countries (HIPC) etc.)


**Annexure 6: NACOSTI Research Licence**

  
**REPUBLIC OF KENYA**

  
**NATIONAL COMMISSION FOR  
SCIENCE, TECHNOLOGY & INNOVATION**

Ref No: **400394** Date of Issue: **23/August/2019**


**RESEARCH LICENSE**




**This is to Certify that Ms.. Rosemary Njaramba of University of Nairobi, has been licensed to conduct research in Nairobi on the topic: Role of Subnational Governments in International Relations: A Focus on County Governments of Kenya for the period ending : 23/August/2020.**

License No: **NACOSTI/P/19/1058**

**400394**  
Applicant Identification Number

  
Director General  
**NATIONAL COMMISSION FOR  
SCIENCE, TECHNOLOGY &  
INNOVATION**

Verification QR Code



**NOTE: This is a computer generated License. To verify the authenticity of this document,  
Scan the QR Code using QR scanner application.**

THE SCIENCE, TECHNOLOGY AND INNOVATION ACT, 2013

The Grant of Research Licenses is Guided by the Science, Technology and Innovation (Research Licensing) Regulations, 2014

CONDITIONS

1. The License is valid for the proposed research, location and specified period
2. The License any any rights thereunder are non-transferable
3. The Licensee shall inform the relevant County Governor before commencement of the research
4. Excavation, filming and collection of specimens are subject to further necessary clearance from relevant Government Agencies
5. The License does not give authority to transfer research materials
6. NACOSTI may monitor and evaluate the licensed research project
7. The Licensee shall submit one hard copy and upload a soft copy of their final report (thesis) within one of completion of the research
8. NACOSTI reserves the right to modify the conditions of the License including cancellation without prior notice

National Commission for Science, Technology and Innovation  
off Waiyaki Way, Upper Kabete,  
P. O. Box 30623, 00100 Nairobi, KENYA  
Land line: 020 4007000, 020 2241349, 020 3310571, 020 8001077  
Mobile: 0713 788 787 / 0735 404 245  
E-mail: dg@nacosti.go.ke / registry@nacosti.go.ke  
Website: www.nacosti.go.ke