

UNIT 7: DEVOLVED GOVERNMENT.

Devolution This refers to the granting of power from the central government to a lower level such as a region or a local level.

A **'Devolved Government'** is a system of government where there is a transfer or allocation of authority from a central government to a regional government. In a devolved government, power and resources are decentralized with part of the political and economic decision making transferred to the people through the locally established assemblies.

Origin of devolution in Kenya

The Lancaster House Conference of 1962 forms the basis of devolution in Kenya. When the independent constitution was drawn during the conference, a federal system of government as proposed by the KADU delegates was adopted in Kenya. It made provisions for six regions. The legislature was to comprise two chambers (the Senate or upper House and the Lower House

However after independence in 1963, the Kenyatta Government began plans to scuttle the system of government. By December 1964, KANU and KADU merged to form a unitary government of the republic of Kenya.

The enactment of the new constitution on 27th August 2010 reintroduced the concept of devolution in Kenya.

Kenya is divided into 47 Counties each governed by A County Governor with the assistance of the County Executive Assembly. The National Government seats in Nairobi.

To change County Boundaries, the Following must be considered;

- a) Population density and demographic trends.
- b) Physical and Human infrastructure.
- c) Historical and Cultural Ties.
- d) The cost of administration.
- e) The Views of the communities affected.
- f) The objectives of devolution of government.
- g) Geographical features.

Reasons why devolved governments were established in Kenya.

- a) They were established as a means of promoting democratic and accountable exercise of power.
- b) To Foster national unity by recognizing diversity.
- c) To give powers of self-governance to the people and enhance the participation of the people in the exercise of the powers of the State and in making decisions affecting them.
- d) To recognize the right of communities to manage their own affairs and to further their development.
- e) To protect and promote the interests and rights of minorities and marginalized communities.
- f) To promote social and economic development and the provision of services throughout Kenya.
- g) To ensure equitable sharing of national and local resources throughout Kenya.
- h) To facilitate the decentralization of State organs, their functions and services, from the capital of Kenya;
- i) To enhance checks, balances and the separation of powers.

Principles of devolution of government in Kenya.

- a) County governments shall be based on the democratic principles and separation of power.
- b) County governments shall have reliable sources of revenue to enable them to govern and deliver services effectively.
- c) No more than two-thirds of the members of representative bodies in each county government shall be of the same gender.

Structure and Functions of a county government in Kenya

The county government is composed of County assemblies, county executive committees and county public service.

County Assembly in Kenya

- a) A county assembly consists of Members (one member per ward) elected by the registered voters of the wards in a general election.
- b) Members of special seats (no more than two-thirds of the membership of the assembly is of the same gender.)
- c) Members of marginalized groups, including persons with disabilities and the youth.
- d) The Speaker, who is *an ex officio* member.

Nb-The members for special seats and marginalized communities are nominated by political parties in proportion to the seats received in the election in a particular county.

Conditions for seeking election to a County Assembly.

- a) The person must be a registered as a voter in his/her county.

- b) The person must have been a Kenyan citizen for atleast ten years before the elections.
- c) The person must be able to read and write in English and Kiswahili.
- d) He or she must be of sound mind.
- e) The person must be of unquestionable morals and ethics
- f) If a public officer, he/she must relinquish his/her public work.
- g) The person must be nominated by a political party
- h) If he/she is an independent candidate, must be supported by at least five hundred registered voters in the Ward concerned.
- i) The person must not have been declared bankrupt.
- j) The person must not have served a sentence of imprisonment of more than six months.
- k) Must not have been a member of IBEC within five years before the date of election.
- l) The person must not have misused or abused a State or public office.

Functions of a county assembly.

- a) County assemblies make laws for the effective performance of the county government.
- b) It acts as a watch dog over the county executive committee.
- c) It receives and approves plans and policies for managing and exploiting the county's resources,
- d) It approves policies for developing and managing the infrastructure and institutions in the county.
- e) It enhances legislation that may set out the structure and framework for the better administration and management of county governments.
- f) It approves oversight budgets and development projects within the county.
- g) It approves investment decisions and loans.
- h) It supervises other units within the county through political authority, guidance and direction.
- i) Monitors the execution of projects under approved development plans, and assesses and evaluates their impact on development in the county.

The process of law making in a county government.

It is the duty of the County Executive committee, comprising of the governor, the deputy governor and ten other members to draft the details of the proposed legislation with no bias.

The public servants in the county governor's office participate in preparation of the proposed law.

The county executive committee then presents the proposed legislation to the county Assembly.

The members of the county assembly are then free to make their contributions to the bill during the discussion and debate that follows.

Amendments and improvements may be proposed to the bill at this stage.

The recommendations are incorporated

If the members are in favour of the bill, and if it is in conformity with the National Government legislation, then it is approved to become a by-law of the county government

The structure of the County Executive Committee

The executive authority of the county is vested in the county executive committee.

The committee consists of The county Governor and the Deputy County Governor.

Not more than ten other Members appointed by the County Governor, with the approval of the assembly, who are not members of the assembly,.

If the assembly has less than thirty members, the members should be One-third of the number of members of the county assembly.

The county governor and the deputy county governor are the chief executive and deputy chief executive of the county respectively.

Members of a county executive committee are accountable to the county governor for the performance of their functions and exercise of their powers.

The members of the county executive committee cease to hold office once the office of the county governor falls vacant.

Functions of a County Executive Committee.

- a) It implements county legislation.
- b) It implements, within the county, national legislation.
- c) It manages and coordinates the functions of the county administration and its departments.
- d) It prepares proposed legislation for consideration by the county assembly.

- e) It provides the county assembly with full and regular reports on matters relating to the county.

Powers and functions of a governor in a county government

- a) The Governor is the chief executive officer of the county. The Executive Branch of government, headed by the Governor, includes executive departments and advisory boards.
- b) The Governor is the Chairman of county executive committee.
- c) He/ she is in charge of implementing , within the county, national legislation to the extent that the legislation so requires;
- d) He ensures, through the county executive committee, the implementation of county legislation.
- e) He manages and coordinates the functions of the county administration and its departments.
- f) He provides the county assembly with full and regular reports on matters relating to the county.
- g) He appoints with the approval of the assembly members, members to the county executive committee.
- h) He ensures that Members of a county executive committee perform their functions and exercise of their powers fully.
- i) He handles on behalf of the county, all external affairs with other counties in consultation with the central government. (Excluding any which have been delegated to cabinet secretaries.)
- j) The Governor prepares and submits a budget of the county for the following fiscal year.
- k) He sets the terms and conditions of service of persons holding or acting in public offices in the county.
- l) By virtue of his office, the Governor serves on certain boards and special commissions in the county. The Governor chairs the Board of Public Works.

Election of a county governor

The county governor is directly elected by the voters registered in the county at a general election for a term of 5 years.

To be eligible for election as county governor, a person must be eligible for election as a member of the county assembly.

Each candidate for election as county governor nominates a person as his/her running mate to be the deputy governor. If re-elected, can serve for another final term of 5 years.

Each candidate for election as county governor nominates a person as his/her running mate to be the deputy governor.

A County Governor can be removed from office under the following circumstances.

- a) Gross violation of the Constitution or any other law.
- b) When the county governor commits a crime under national or international law.
- c) When the governor abuses office or is accused of gross misconduct.
- d) When he/she suffers from Physical or mental incapacity that hinders performance of the functions of office.

Functions of a deputy governor

- a) As the deputy chief executive of the county, he or she assists the governor in the management and coordination of the functions of the county administration.
- b) He or she acts as the governor of the county when the governor is absent.
- c) The deputy assists the governor in the supervision of work of the county executive committee.
- d) Since he/she is a member of the county executive committee, he participates in legislation by also preparing proposals for county legislation.
- e) He assumes governorship of the county incase the governor is incapacitated or is removed from authority for various reasons.

Functions and powers of a county government.

- a) County governments have the duty to assist in promotion of agriculture by initiating development in specific areas like crop and animal husbandry, livestock sale yards, slaughterhouses control of plant and animal diseases and development of fisheries.
- b) It provides and supervises county health services, both public health and personal health of county members.
- c) It assists in control of environmental pollution by putting in place legislation to regulate and control air pollution, noise pollution and outdoor advertising.
- d) It promotes cultural activities, public entertainment and public amenities ion the county by putting in place structures such as libraries, museums, sporting facilities, casinos, beaches and county parks.
- e) It has a duty to promote and regulate education at the pre-primary, polytechnic, craft and childcare levels.

- f) It has a duty to develop transport facilities in the county through road construction, street lighting, developing ferries and harbours and parking areas.
- g) The county government regulates county planning and development through land survey and mapping, boundaries, housing, electricity, gas and energy regulation.
- h) It implements specific national government policies on natural resources and environmental conservation.
- i) It also puts in place measures to control drug abuse and access to pornography.

Relationship between national and county government.

- a) Governments at either level must exercise their powers and functions in a manner that respects the functional and institutional integrity of government at the other level.
- b) Each of the two governments must assist, support, consult and implement the legislation of the other level of government.
- c) Either of the two governments must liaise with government at the other level for the purpose of exchanging information, coordinating policies and administration and enhancing capacity.
- d) Governments at each level or different level should co-operate in the performance of functions and exercise of powers.
- e) In any dispute between governments, reasonable efforts to settle dispute should be made.
- f) County governments rely on Procedures provided under national legislation in settling intergovernmental disputes between them.
- g) Parliament at national level has the role of ensuring that county governments have adequate support to enable them to perform their functions.
- h) County governments must operate financial management systems that comply with any requirements prescribed by national legislation.
- i) National government is permitted to take any measure on county government provided that Notice must be given to county government.
- j) Where a county government is unable to perform its functions, or does not operate a financial management system that complies with national legislation requirements, the national government may intervene.

Challenges facing county governments in Kenya

- a) County governments have inadequate funds. Some are located in areas of limited resources. This impedes provision of essential services. Some are too small to operate efficiently.
- b) Corruption and misappropriation of funds is common in most counties. This is because those vested with the management powers do not have experience since the appointment of governors is through popular vote.
- c) Rural –urban migration is likely to generate population pressure in urban based counties like Nairobi city and Mombasa. Urban problems like mushrooming of slums, poor garbage disposal and insufficient sanitary facilities arise.
- d) There is likely to be national government interference in the affairs and management of county legislation. This hinders free decision-making.
- e) Inadequate personnel
- f) High population which puts available resources under pressure
- g) Poor transport systems which affects service delivery
- h) Delay of remittance of funds from the national government
- i) Cross-county development of resources shared by more than two counties like a forest ,river
- j) Structural overlap between the two levels of governments e.g provision of education
- k) Leadership wrangles which threatens the operations of some counties in cases of attempts of impeachments of the governor.
- l) Election of ward members to manage ward affairs may hamper operations of the counties especially in legislation.

Possible solutions to the challenges that may face county governments in Kenya

- a) The National governments through the Equalization Fund should be able to provide adequate financial support to County governments located in areas of limited resources. This will assist in provision of essential services.
- b) Those counties that are too small to operate efficiently should be merged with others in terms of social service delivery.

- c) There should be stricter vetting of candidates to vie for positions of county Governors and deputy county Governors in order the possible challenge of financial management and corruption.
- d) Urban-based counties should be given more funding by the National Government to enable them solve urban related problems.
- e) The National government should come up with means on how to curb Rural –urban migration. This may be done through creation of employment generating opportunities in rural counties.
- f) The county governments, especially those that are in economically viable areas should be given financial autonomy and a free-hand in decision making, by the national government.