



With the promulgation of the new constitution last year, Kenya ushered in a new era in governance. Gone are the eight provinces, in their place, we now have 47 counties. So what are counties, and what can we expect from this new system?

Devolution

First of all, it is important we understand what devolution is. Devolution is the legal granting of powers from a central government to a government that exists on a sub-national level i.e. a regional or local government. These regional governments are meant to operate with some level of autonomy (independence), in that they have their own budget and unique set of legislation. A well-known example of this is the federal system of governance found in the United States of America, where you have local governments with their governors and unique laws (for example gay marriage is legalized in some states while it is very illegal in others). The proponents of devolution argue that it has the ability to bind the 'external' unity of a nation while preserving its internal diversity. They say it enhances democracy by encouraging people to engage in the political process of their own region. But the biggest argument given for devolution is that it is meant to safeguard a nation's freedom, the distribution of responsibilities should have the right checks and balances that provide an element of power sharing, which makes it harder for corrupt leaders to get a hold of national resources and misuse them in a myopic view of benefiting themselves, and those with them.

The New Constitution, promulgated on the 4th of August 2010, sought to achieve devolution by establishing the County Governments. Devolution to the county governments will only be

autonomous to the extent that they will only be able to implement certain distinct functions that are listed in the Fourth schedule (Part 2) of the Constitution. Chapter 11 of the Constitution defines a two-tier level of governance. The National Government and the County Government, the distinct roles of which are listed in the Fourth Schedule. There are some overlapping roles, but in general, the National Government is in charge of things that affect Kenya as a whole, for example, health, foreign affairs, transport, housing policies and education to mention a few. The county governments will be in charge of things that are closer (of direct importance) to the people. For example, agriculture, basic health services & facilities (pharmacies, ambulances, refuse removal), air & noise pollution, county roads, water services, local tourism & county planning. Counties can pass laws on these and must administer them.

The National and County governments must consult and cooperate with each other according to the New Constitution, but it is obvious the National Government has the role similar to that of a Principal while the County government is a limited autonomy agent. For example, Article 192 gives the President power to suspend a County government under certain conditions. Also, the National Legislation will in some cases override County legislation. Nonetheless, more checks and balances have been introduced as requirements for accountability of both levels of government. The National Government is Constitutionally barred from intruding willfully on the County Government role under the Fourth Schedule. Exceptions to this may require Parliamentary approval (Article 191 and 192). The National Government will have a role to play at the County Level by performing all the other functions that are **not** assigned to the County Government as listed on the Fourth Schedule (Part 1). The importance of the co-operation between the National and County level governments can be seen in these scenarios.

1. Some things the Counties are responsible for, they cannot be left to handle on their own, because there might be national implications. E.g. suppose there is an outbreak of disease amongst animals that migrate across counties. A national policy would be needed. So the national parliament can set laws that will set standards for the whole country in this matter, but it must be done in consultation with the counties. The Senate will represent the counties when these laws are being passed.

2. If a situation occurs where the County is unable to fulfill its duties, e.g. a pandemic outbreak overwhelming a county's health system, the constitution provides that the national government may intervene, but within strict limitations. It may intervene only when necessary and it must help the county build up its systems to deal with it on its own.

3. Counties may not immediately be able to immediately pass all the necessary laws. In which case, the existing national laws will have to do. The County governments will have to be consulted when the national government comes up with laws that will need to be implemented on a county level. If a conflict occurs between two sets of laws from the county government and national government, then the laws for the County government's law will stand – but only in matters pertaining to what the counties are directly responsible for. But if the national law sets up standards for the whole country – the national law will be binding and will overrule the county law.

The 47 counties will have boundaries similar to the districts created in the 1992 District and Provinces act. These boundaries can be changed if a two-thirds majority in both houses of parliament passes a resolution. From the 2012 General Elections, each county will have an elected Governor with a deputy and an elected assembly. While the Governor is in charge of each County, each will be run by an executive committee (similar to the national cabinet), which will consist of

- A Governor: Elected directly by the people
- A Deputy: elected as the running mate of the successful candidate for governorship
- Committee members whose number does not exceed a third of the number of members in the respective county assembly.

The Governor can choose ten people to this committee. No member of the County assembly may also be a member of the County committee; much in the same way members of the National Cabinet cannot be MPs.

Conclusion

Some things relating to devolution have not been completely finalized in this new constitution. The Local Authorities will remain as they are for the time being, because new laws relating to Urban areas and cities must first be adopted. This is to ensure that the functions of the Local Authorities and the New County Governments are properly lined up. For example, the mayoral system has now been scrapped. Also, the national government's system of provincial administration will have to be re arranged to fit in with the new County Governance system. The new constitution allows for functions to be transferred from the national government to the county government and vice versa to make administration more effective. For example, as the counties get more capacity, it makes sense to allow them to run things like free primary education, or nature conservation. If this happens though, there has to be funding to accompany it. Proper co ordination is will be needed between the national government's administration through the whole country and the county governments.