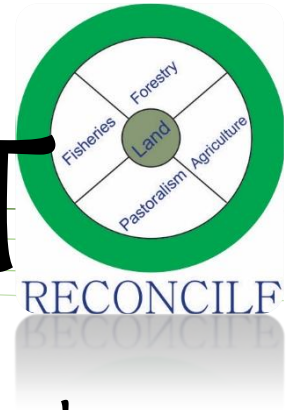
DEVOLUTION CONCEPT



- All sovereign power belongs to the People of Kenya and is to be exercised only in accordance with the Constitution- article 1 of the Constitution.
- Devolution is a form of decentralization. It is simply defined as the process of transferring decision-making and implementation powers, functions, responsibilities and resources to legally constituted, and popularly elected local governments.
- Devolution in Kenya is based on the supremacy of the Constitution, sovereignty of the people and the principle of public participation. Therefore devolution being an aspect of the Constitution binds all persons and all State organs at both levels of government.

Cont'd

- Devolution is one of the concepts in the Constitution that has brought about a complete overhaul in Kenya's system of governance.
- The need for Devolution is informed by the need to have power sharing, checks and balances in governance and the decentralization of resources.
- The main **characteristics** of devolution includes;

❖The presence of local units that have autonomy and independence from the centre, with clear and legally recognized geographical boundaries over which to exercise authority and perform public functions.

❖The units are also accorded corporate status and the power to raise sufficient resources to carry out their functions.

Cont'd

- **Objectives** of devolution are under article 174 of the Constitution;

❖To promote democratic and accountable exercise of power.

❖To foster national unity by recognizing diversity.

❖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.

❖To recognize the right of communities to manage their own affairs and to further their development.

❖To protect and promote the interests and rights of minorities and marginalized communities.

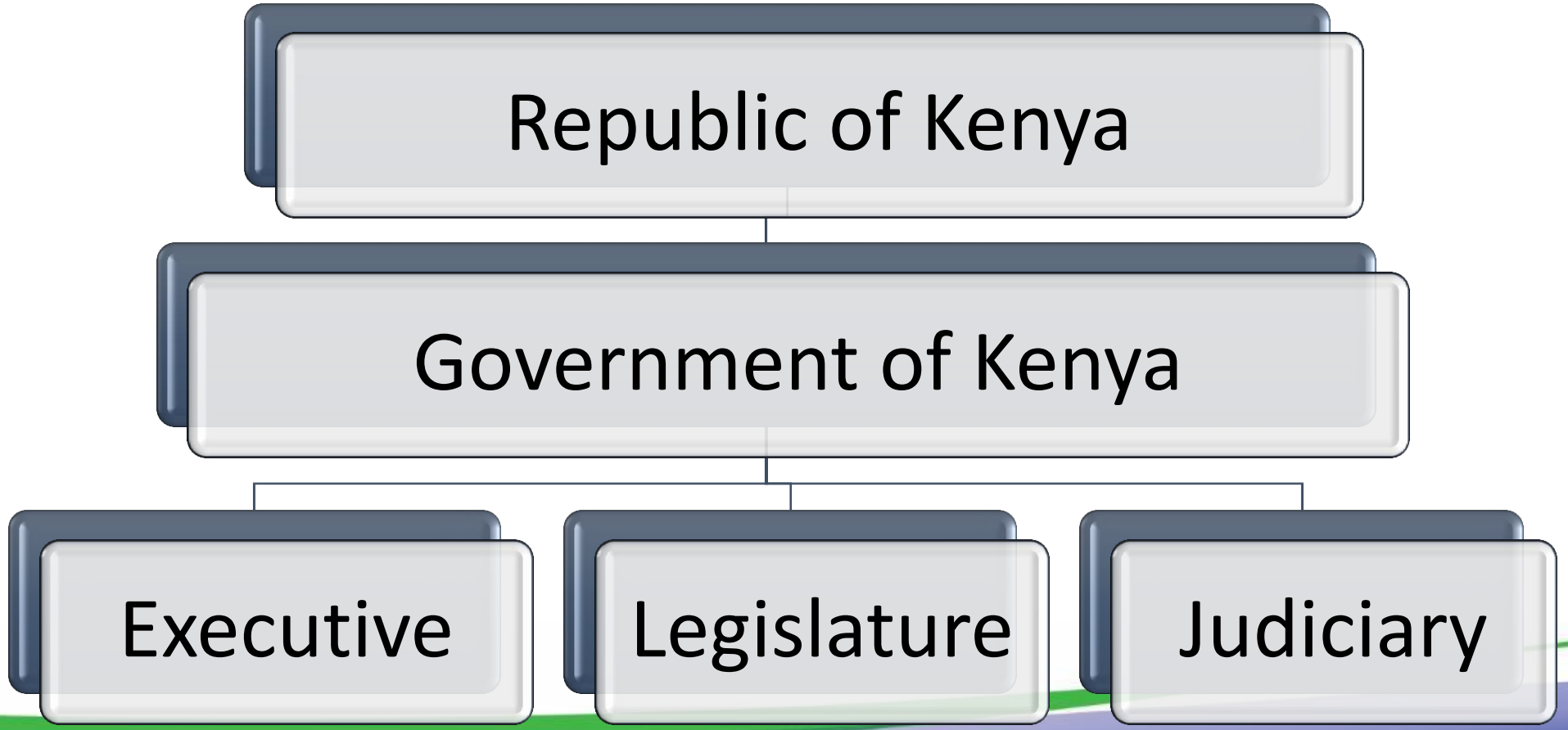
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- To promote social and economic development and the provision of proximate, easily accessible services throughout Kenya.
- To ensure equitable sharing of national and local resources throughout Kenya.
- To facilitate the decentralization of State organs, their functions and services, from the capital of Kenya.
- To enhance checks and balances and the separation of powers.
- The **principles** of devolution when implementing devolution are embedded in article 175 of the Constitution;
- County governments shall be based on democratic principles and the separation of powers

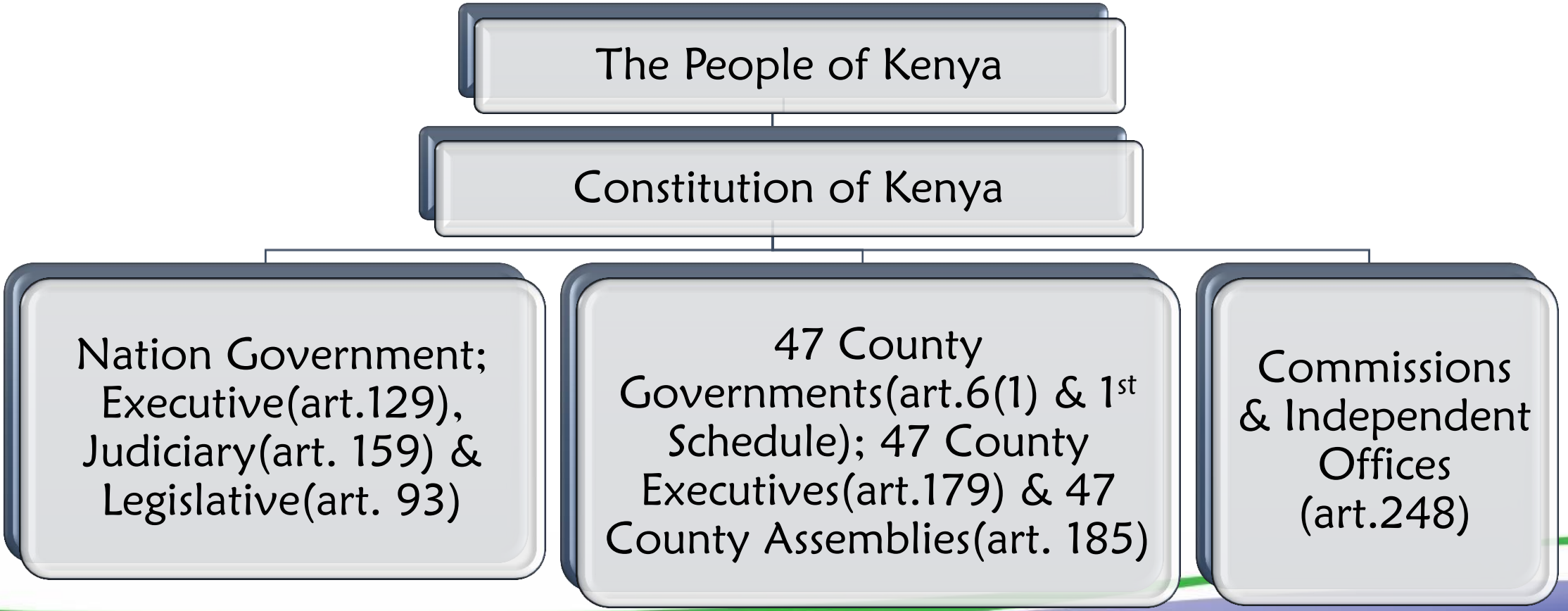
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- ❖County governments have reliable sources of revenue to enable them to govern and deliver services effectively.
- ❖No more than two-thirds of the members of representative bodies in each county government shall be of the same gender.
- It is important to note that the national and county governments are required to adhere to the national values and principles of governance as set out in Art. 10 of the Constitution. They bind all State organs, State officers, public officers and all persons whenever any of them applies or interprets the Constitution; enacts, applies or interprets any law; or makes or implements public policy decisions.
- The national values and principles of governance include: patriotism, national unity, sharing and devolution of power, the rule of law, democracy and participation of the people; human dignity, equity, social justice, inclusiveness, equality, human rights, non-discrimination and protection of the marginalised; good governance, integrity, transparency and accountability; and sustainable development.

Old Structure



New Structure



LEGISLATION ON DEVOLUTION

- The primary source of law governing devolution is the Constitution. It provides legality and life to devolution while also requiring Parliament to enact legislation to give effect to its provisions on devolution.
- Below are some of the outlined legislation passed by Parliament;

a) <u>The County Government Act</u> whose objectives are;

- Give effect to Chapter Eleven of the Constitution; Art. 174 and 175 of the Constitution; Art. 176 (2) of the Constitution on further decentralization.
- Provide for the removal from office of the speaker of the county assembly in accordance with Art. 178 of the Constitution.

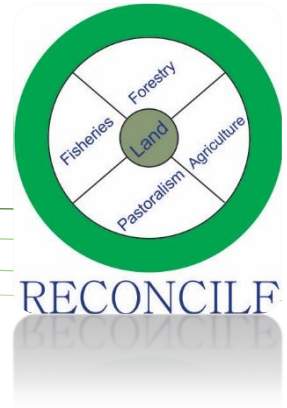
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- Provide for the powers, privileges and immunities of county assemblies, their committees and members under Art. 196 of the Constitution.
- Provide for public participation in the conduct of the activities of the county assembly as required under Art. 196 of the Constitution.
- Seek to ensure that the community and cultural diversity of a county is reflected in its county assembly and county executive committee as contemplated in Art. 197 of the Constitution.
- Prescribe mechanisms to protect minorities within counties pursuant to Art. 197 of the Constitution.
- Prescribe additional requirements in respect of the publication of county legislation as contemplated in Art. 199 of the Constitution.

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- Provide, pursuant to Art. 200 of the Constitution, for the manner of nomination or appointment of persons to, and their removal from, offices in county governments, including the qualifications of voters and candidates; the procedure of assemblies and executive committees including the chairing and frequency of meetings, quorums and voting; and the suspension of assemblies and executive committees.
- Prescribe, pursuant to Art. 235 of the Constitution, uniform norms and standards for establishing and abolishing offices in the county public service; appointing persons to hold or act in those offices, and confirming appointments; exercising disciplinary control over and removing persons holding or acting in those offices and provide for the promotion, evaluation and reporting on the compliance by county public officers with the values and principles in Art. 10 and 232 of the Constitution.

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b) Intergovernmental Relations Act whose objectives are;

- Provide a framework for consultation and co-operation between the national and county governments.
- Provide a framework for consultation and co-operation amongst county governments.
- Establish institutional structures and mechanisms for intergovernmental relations.
- Provide mechanisms for the resolution of intergovernmental disputes where they arise.
- Provide a framework for the inclusive consideration of any matter that affects relations between the two levels of government and amongst county governments.

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- Give effect to Art.s 187 and 200 of the Constitution, in respect of the transfer of 4 functions and powers by one level of government to another, including the transfer of legislative powers from the national government to the county governments.

c)Transition to Devolved Government Act whose objectives are;

- Provide a legal and institutional framework for a coordinated transition to the devolved system of government while ensuring continued delivery of services to citizens.
- Provide, pursuant to section 15 of the Sixth Schedule to the Constitution, for the transfer of powers and functions to the national and county government.
- Provide mechanisms to ensure that the Commission for the Implementation of the Constitution performs its role in monitoring and overseeing the effective implementation of the devolved system of government effectively.

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- Provide for policy and operational mechanisms during the transition period for audit, verification and transfer to the national and county governments of assets and liabilities; human resources; pensions and other staff benefits of employees of the government and local authorities and so on.
- Provide for closure and transfer of public records.
- Provide for the mechanism for capacity building requirements of the national government and the county governments and make proposals for the gaps to be addressed.

d) National Government Co-ordination Act whose objectives are:

- Facilitate the exercise of executive authority pursuant to Art. 131(1)(b) and 132 (3) (b) and (c) of the Constitution;

Cont'd

- Provide for the effective co-ordination and administration of the national government functions prescribed in the Constitution, this Act or any other written law.
- Provide for the establishment of an administrative and institutional framework at the national, county and decentralised units to ensure access to national government services in all parts of the Republic.

e) Public Finance Management Act whose objectives are:

- Ensure Public finances are managed at both the national and the county levels of government in accordance with the principles set out in the Constitution; and,

Cont'd

- Public officers who are given responsibility for managing the finances are accountable to the public for the management of those finances through Parliament and County Assemblies.

f) Urban Areas & Cities Act whose objectives are;

- Classification of areas as urban areas or cities.
- Governance and management of urban areas and cities.
- Participation by the residents in the governance of urban areas and cities.
- Other matters for the attainment of the objects provided for in paragraphs (a) to (c).

g) Constituencies Development Fund Act – There has been a lot of controversy over this Act as it is supposedly contrary to the Constitutional philosophy on devolution. Be that as it may, its objectives are;

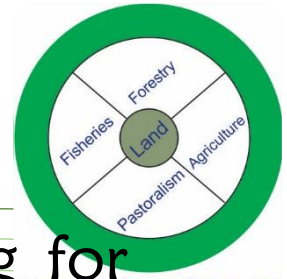
- A specific portion of the national annual budget is devoted to the constituencies for purposes of infrastructural development, wealth creation and in the fight against poverty at the constituency level.

PUBLIC FINANCE



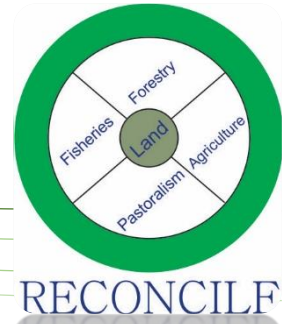
- Public finance is usually administered through a budget and that is why all government institutions ought to provide estimates of budget for each financial year. Each financial year, the National and County government make their plans through following a budget hence there is need to have one to ensure the plans for the year E.G schools are built e.t.c.
- Chapter twelve of the Constitution provides for Public Finance and it provides for the principles of public finance such as; ensuring openness and accountability and the framework for effective management of public finance by the National and County government. The law outlines the oversight responsibility of parliament and other related government organs. The same legislation also extends opportunity to the public to be involved in some ways in interrogating the budgets and expenditure.
- Process of making budgets at the county level; ministries in the county make budget estimates and here is where there is public participation then finance committee come up with a proposed budget- then county assembly decides on whether to pass it thereafter it becomes a working budget. When the budget is a working budget it is audited and it runs for one year starting from June of each year.

PLANNING



- The National government has the responsibility for the overall planning for the Republic of Kenya and is in-charge of integrated development planning processes that include both medium and long term planning. This function also includes determining financial and economic policies and priorities at national and county levels.
- Planning is therefore a mechanism for economic coordination where it is necessary to apply the coordinating function of the government to involve direct allocation of scarce resources. The idea is to determine the pace of the economy and provide policy guidelines as well as realistic budgets. This requires that the government draws economic development plans and spectral blue prints or plans.
- For example the County Integrated Development Plan (CIDP) is a plan that is essential in all counties. There is need to have directions on the plans of a county and its objectives, how they are to achieve their plans and the challenges and how to solve them and all this is included in the CIDP. In the formulation of the CIDP, the county is to intergrate its objective from vision 2030 that was created at the National Level.

PUBLIC PARTICIPATION



- Art. 54 of the Constitution requires the state to take measures including affirmative action programmes to ensure that the youth have opportunities to associate, be represented and participate in political, social, economic and other spheres of life.
- Art. 56 of the Constitution requires the State to put in place affirmative action programmes designed to ensure that minorities and marginalised groups participate in governance and other spheres of life.
- Art. 118 and 196 requires Parliament and county assemblies respectively to conduct their business in an open manner, and hold their sittings and those of their committees, in public; and facilitate public participation and involvement in the legislative and other business of the assembly and its committees.

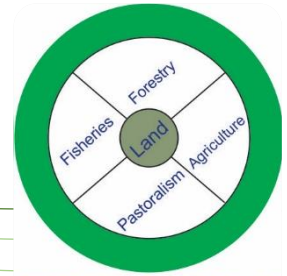
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- The County Government Act provides further guidelines for the realisation of the Constitutional goal of ensuring people's in governance. According to s. 87 of the Act, citizen participation in county governments shall be based upon the following principles:

a) Timely access to information, data, documents, and other information relevant or related to policy formulation and implementation;

b) Reasonable access to the process of formulating and implementing policies, laws, and regulations, including the approval of development proposals, projects and budgets, the granting of permits and the establishment of specific performance standards;

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c) Protection and promotion of the interest and rights of minorities, marginalized groups and communities and their access to relevant information;

d) Legal standing to interested or affected persons, organizations, and where pertinent, communities, to appeal from or, review decisions, or redress grievances, with particular emphasis on persons and traditionally marginalized communities, including women, the youth, and disadvantaged communities;

e) Reasonable balance in the roles and obligations of county governments and non-state actors in decision-making processes to promote shared responsibility and partnership, and to provide complementary authority and oversight;

f) Promotion of public-private partnerships, such as joint committees, technical teams, and citizen commissions, to encourage direct dialogue and concerted action on sustainable development; and,

g) Recognition and promotion of the reciprocal roles of non-state actors' participation and governmental facilitation and oversight.

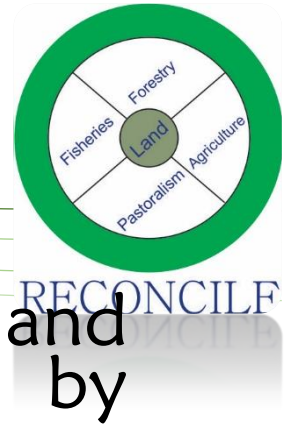
DEVOLUTION & NRM

- Article 62 [3]) states that all natural resources are the control of the National Government
- These natural resources include government forests, minerals and water among others
- The Constitution therefore vests the role of protection of the environment and natural resources with the National Government (4th Schedule Part 1 (22).
- This role is geared at delivering a durable and sustainable system of development.
- The same Constitution (4th Schedule Part 2 Art. 10) however gives the responsibility of implementation of specific national government policies on natural resources and environmental conservation on the County Governments

Cont'd

- The functions devolved to the county are: Agriculture; County health services, including, in particular; Control of air pollution, noise pollution, other public nuisances and outdoor advertising; Cultural activities, public entertainment and public amenities; County transport; Animal control and welfare; Trade development and regulations; County planning and development; Pre-primary education, village polytechnics, home craft centres and childcare facilities; Implementation of specific national government policies on natural resources and environmental conservation Soil and water conservation and Forestry; County public works and services; Fire station services and disaster management; Control of drugs and pornography; Ensuring and coordinating the participation of communities and locations in governance at the local level.
- It is assumed that devolution of NRM will lead to greater participation in decision-making which is itself a positive good that enhances good governance in NRM.

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- The other assumption is that NRM will be looked at better and more efficiciently if it is managed at the local level by communities or local government.
- Last, there is an assumption is that devolution may not be efficient as devolved units usually lack technical and financial resources to effectively manage forests.
- It is clear therefore that if devolution of NRM should work, then it not only needs appropriate enabling policy but national government support over time.
- There is need to have support from the national government support (e.g., technical expertise and funding to consistently pay salaries) and lessons on management can be quickly disintegrate if devolution is introduced in the absence of enabling policy and policy frameworks.

Policy Conclusion



- Devolved NRM is characterized by some continuation of substantive central government control and management over natural resources rather than a genuine shift in authority to local people.
- States, communities and other stakeholders have different visions of devolution and its mode of implementation. A shared framework, more accountable to local livelihood needs and people's rights to self-determination, is required. Careful re-assessment of the state's claim to be protecting the wider 'public interest' forms part of this process.
- More powerful actors in communities tend to manipulate devolution outcomes to suit themselves. Checks and balances need to be in place to ensure that benefits and decision-making do not become controlled by élites.
- Strong local organizational capacity and political capital enhance outcomes for local people by enabling them to mobilise resources and negotiate better benefits. NGOs, donors, federations and other external actors have a key role in moving devolution policy and practice towards local interests.

Challenges

- Inadequate resources and funding.
- Civic education by the government which has to rely to other actors.
- Inadequate capacity.
- Delay in reviewing or re-alignment of policy and legislative framework.
- Numerous litigation and judicial proceedings.
- Problems of concurrency of functions
- Slow pace in consultations and consensus building.
- Reluctance to provide norms and standards for service delivery.
- Lack of coordinated implementation of capacity building framework by the national government.
- Implementation of the recommendation of the technical committee on the best pension arrangement.

Opportunities



- Create opportunities for decision-making by establishing platforms for discussion, debate and planning.(Public participation forums)
- Improve legal literacy so that local people can make informed responses to existing policy.(dealing with local inequalities and exploitative social relations, and addressing inter-community problems and opportunities.)
- Assure accountability of local organizations and assist in conflict management.
- Monitor policy impacts.
- Make livelihoods enhancement central to devolution policies.
- Support the building of democratic organizations that are representative, accountable, and transparent. Technical choice in NR management should be left to users.