

# U4 Helpdesk Answer

U4 Helpdesk Answer 2021

## Corruption and devolution in Kenya

The effect of devolution on corruption is ambiguous. On the one hand, bringing government closer to the people could increase transparency and accountability. On the other hand, devolution of government may also result in devolution of corruption as the local governments become prone to corruption challenges such as capture by local elites, bribery in provision of services to citizens and patronage systems.

Kenya introduced the concept of devolution in the 2010 constitution. Although devolution has brought some success in bringing the government closer to Kenyan citizens and advancing development, evidence show that corruption is a major challenge affecting county governments. Nonetheless, various legal and institutional frameworks are in place which may be useful to address corruption in the devolved government. In addition, various donor-funded devolution programmes support transparency and accountability in Kenyan counties.

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### AUTHOR

**Jorum Duri (TI)**

[tihelpdesk@transparency.org](mailto:tihelpdesk@transparency.org)

### REVIEWED BY

**Guillaume Nicaise (U4)**

[guillaume.nicaise@cmi.no](mailto:guillaume.nicaise@cmi.no)

**Mary Maneno and Fidualice Wanjiru  
Muthike (Transparency International  
Kenya)**

[tihelpdesk@transparency.org](mailto:tihelpdesk@transparency.org)

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# Query

Please provide a Helpdesk answer on corruption and devolution in Kenya, including a section on advantages/disadvantages of devolution to counter corruption as well as examples of how anti-corruption measures can be integrated into devolution programmes.

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## Introduction

Devolution refers to the transfer of authority, financial and human resources from the national or central government level to sub-national governments (D’Arcy and Cornell 2016). It should be noted that devolution is not equivalent to decentralisation, which refers to the redistribution of functions – whether political, administrative, fiscal or market– from central government to sub-national levels (Yuliani 2004: 1-2).

Devolution is merely a form of decentralisation, with other forms including delegation and deconcentration (Independent Evaluation Group 2008: 4; see also UNDP 1999: 6). It is regarded as the “most ambitious form of decentralisation” where responsibility, authority, and accountability is given to subnational governments that enjoy

## MAIN POINTS

- County governments in Kenya have become hotspots for corruption. A number of county governors and country officials have been implicated in corruption cases over the years
- Reports from the Ethics and Anti-Corruption Commission, Transparency International Kenya and the Kenya National Audit Office indicate the prevalence of corruption in counties, ranging from bribery, nepotism and patronage to embezzlement and mismanagement of public resources.
- Kenya has established anti-corruption legal and institutional framework that are useful to address corruption in counties. In addition, donor-funded devolution programmes have incorporated measures to support transparency and accountability in the country

some degree of political autonomy from the central government (Independent Evaluation Group 2008: xi). Whereas delegation refers to the transfer of some authority and responsibilities from the central government to lower level government “but with a principal-agent relationship” between the two levels of government. Deconcentration is

regarded as the weakest form of decentralisation, which includes the transfer of responsibilities to an administrative unit of the national government, such as to a field, regional, or municipal office (Independent Evaluation Group 2008: 4; UNDP 1999: 7).

In Africa, there are contrasted periods of decentralisation or devolution in the history of the continent. For instance, decentralisation during the colonial era was aimed at dominating and controlling traditional leaders who were given administrative authority over the local communities (Ranger 1983: 229; Lechler and McNamee 2017). The post-independence period from the 1960s to the 1980s saw emphasis being placed on establishing stronger central state institutions, though local governments existed in some countries but with little power and resources (Crawford and Hartmann 2008: 8). From the 1990s until date, scholars and donor communities began regarding decentralisation or devolution as an institutional “fix” for governance problems faced by developing states in Africa (Seabright 1996; Ndegwa 2002; D’Arcy and Cornell 2016: 247).

There are a number of perceived benefits of devolution to governance. First, devolution is understood to bring the government closer to the people and place sub-national governments in a better position to bring greater responsiveness to the needs of the local people or communities (Fonshell 2018: 6; PwC 2016: 1). A devolved government is perceived to have superior information on local needs and costs, permitting local authorities to tailor policies that are more closely related to local conditions (Kolstad et al. 2014: 3). Challenges are quickly identified, reported to local government rather than waiting for the national government, and could be fixed

more quickly with reduced bureaucratic red tape (Fonshell 2018: 6).

Second, decentralisation is regarded as a mechanism to address regional inequalities, instability and poverty. However, there is no scientific proof that decentralisation or devolution alone would lead to poverty reduction (Bossuyt and Gould 2000: 3; Jütting et al. 2005: 2). Evidence shows that there are other determinants such as political commitments, clear administrative functions and availability of resources that are key for decentralisation or devolution to address poverty effectively (Bossuyt and Gould 2000; Crook 2003; Jütting et al. 2005: 3; Asante and Ayee 2004).

Some scholars have even argued that decentralisation can address or defuse ethnic-related conflict or marginalisation (Roeder 2009). Whereas extreme centralisation is deemed to undermine democracy and development and enable debilitating forms of politics, such as rent-seeking and ethnic patronage, decentralisation is currently regarded as the “necessary corrective” (D’Arcy and Cornell 2016: 246).

Third, it is argued that decentralisation increases the accountability of government officials. As the government moves closer to the people, it becomes clearer to citizens who is responsible for policies and their implementation, and may make it easier for citizens to access information on the conduct of public officials (Kolstad et al. 2014: 3). Citizens may become more active in government decisions, monitor conduct and demand accountability. The proximity of local government may also make it easier for citizens to register their indignation and to sanction misconduct, through various mechanisms,

such as protests, local elections, or social sanctions (Kolstad et al. 2014: 3; PwC 2016: 1).

## The effect of devolution on corruption

The effect of devolution on corruption is ambiguous. On one hand, bringing government closer to the people could increase accountability and reduce corruption. Devolution has for long been theoretically regarded as establishing downward accountability mechanisms, which could motivate politicians to efficiently provide more public services (Wallis and Oates 1988). It would allow electorates to closely monitor politicians and bureaucrats to ensure they do not engage in corrupt deals (Seabright 1996). As such, devolution is expected to improve service delivery and boost local development as politicians and bureaucrats become more responsive to local needs on the assumption that voters will punish corrupt local authorities (D'Arcy and Cornell 2016: 250). In addition, the increased monitoring by local people and fear of punishment should disincentivise politicians and bureaucrats to engage in corrupt activities.

A number of empirical studies support the position that devolution results in decreased levels of corruption. For instance, Lederman, Loayza and Soares (2005) analysed the impact of devolved political institutions on corruption based on a panel dataset for several developed and developing countries. Using the International Country Risk Guide's corruption index, they noted that central government transfers to other levels of national

government was a factor associated with decreased corruption.

Freille, Haque and Kneller (2007) analysed the effect of different fiscal and constitutional decentralisation (federalism)<sup>1</sup> measures on corruption using data from 177 countries. The results of the analysis suggested that fiscal decentralisation was associated with lower corruption (see also Fisman and Gatti 2002). Whereas constitutional decentralisation was found to be associated with higher corruption as a result of overlapping layers of government that cause accountability problems as well as “overgrazing” of the bribe base by different layers of government (Freille, Haque and Kneller 2007: 8; see also Treisman 2000; 401).

Lessmann and Markwardt (2010) used cross-country data to analyse the relationship between decentralisation and corruption using cross-country data, taking into account different levels of press freedom in countries. Their main finding was that decentralisation reduces corruption in countries with high degrees of press freedom, whereas countries without effective monitoring suffer from decentralisation.

On the other hand, the implementation of devolution does not necessarily guarantee improvement of anti-corruption measures and, in fact, may worsen corruption. As pointed out by Kolstad et al. (2014: 3), it is not obvious that devolution of government will increase accountability. In other words, as the government decentralises, so may corruption. Devolution could also lead to the inefficient use of public resources

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<sup>1</sup> Fiscal decentralisation relates to transfer of responsibilities for revenues and expenditures to lower levels of government, and constitutional

decentralisation (federalism) relates to distribution of power between the national government and some other local governments.

and a lack of accountability, something that has been highlighted in reports by independent oversight institutions such as the auditor general and controller of budget in some countries (Odour 2015: 11).

Corruption may resurface in decentralised governments for a number of reasons (PwC 2016: 2):

- A lack of established anti-corruption frameworks, procurement controls and enforcement capacities at local and regional governments can result in opaque financial decisions and transactions by authorities, and less monitoring by citizens and oversight institutions. Where there is a lack of established county infrastructure and public participation guidelines, it permits corrupt officials to take advantage of the loopholes in the implementation process to mismanage public funds (Ngigi and Busolo 2019: 15).
- There is inevitable closer and more frequent contact between citizens, politicians and bureaucrats, which increases the probability of bribery (see Kolstad et al. 2014: 4).
- Powerful political and business elites may easily control and capture local authorities and influence their decision making for their own benefit, such as in awarding licences, permits and government contracts.
- The potential increase in government's interaction with third parties (e.g. joint venture partners, contractors and consultants) may increase the potential of undue influence or even capture.

A decentralised political system may even become more corruptible and easier to capture as only a segment of the government needs to be influenced, and it may be difficult to enforce integrity in a more fragmented system. Local officials can enjoy substantial discretionary powers, and local bureaucrats and politicians become easy targets for local powerful groups, resulting in overprovision of services and policies to local elites at the expense of ordinary people. (Prud'homme 1995; Kolstad et al. 2014: 3). Economically, it is also challenging for developing countries to finance decentralisation and ensure effective controls at the local level, thereby making it easier for political elites to capture and control decentralised governments.

A number of studies point out the possibility of more corruptible or captured decentralised government systems. Kolstad et al. (2014) estimated the effect of devolution on corruption, using individual-level bribery data from 36 countries. They found little evidence to support the argument that bringing the government closer to citizens through devolution leads to more accountability. They also found that decentralisation does not change the propensity to pay bribes given contact with a public official but increases the number or frequency of contacts between citizens and public officials, which suggest that the total incidence of corruption could be higher in decentralised societies (Kolstad et al. 2014: 14).

It has also been argued that an ill-implemented devolution may exacerbate inequalities due to the marginalisation of minority communities and counties based on ethnicity, clan or religion, among other factors particularly where public participation requirements are not adhered to (Odour 2015: 11). In addition, elite capture of county governments may also exacerbate inequalities within communities through patronage or provision of targeted benefits that give

advantages to politicians who are up for re-election (Odour 2015: 12). Other scholars have argued that, under conditions of underdevelopment and inequality, voters may often demand private rather than public goods from politicians, which may result in a prevalence of clientelism, patronage and rent-seeking (Kitschelt and Wilkinson 2009; D'Arcy and Cornell 2016: 250-251).

## Corruption issues affecting devolution in Kenya

Corruption is a major challenge affecting devolution in Kenya. According to reports, the transfer of power and financial resources to the counties has created ample opportunities for corrupt practices in counties due to their involvement in public contracting, recruitment of county officials, implementation of development projects, as well as offering services to local communities (Tödting et al. 2018: 37-38; Ngigi and Busolo 2019:18).

Fornshell (2018) undertook a study on public perception on the impact of devolution in Kisumu county in Kenya. While respondents generally agreed that devolution had improved service delivery, the majority of respondents believed that there were still high levels of corruption in the county manifested in different forms, such as corrupt tendering, embezzlement and misuse of funds, and devolution had not really helped in curbing corruption (Fornshell 2018: 20-21).

According to the 2019 County Governance Status Report<sup>2</sup> by Transparency International Kenya,

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<sup>2</sup> Available at <https://tikenya.org/wp-content/uploads/2020/10/CGSR-REPORT-Final-design.pdf>

which assessed the levels of transparency, accountability, integrity and service delivery within 16 counties, two-thirds (66%) of respondents believed that corruption in counties had increased in the previous 12 months. In addition, 55% of respondents predicted that corruption would increase in the following 12 months after the survey (Transparency International Kenya 2020: 35).

Corruption manifests in different forms such as bribery, patronage and nepotism, procurement corruption, embezzlement and mismanagement of resources.

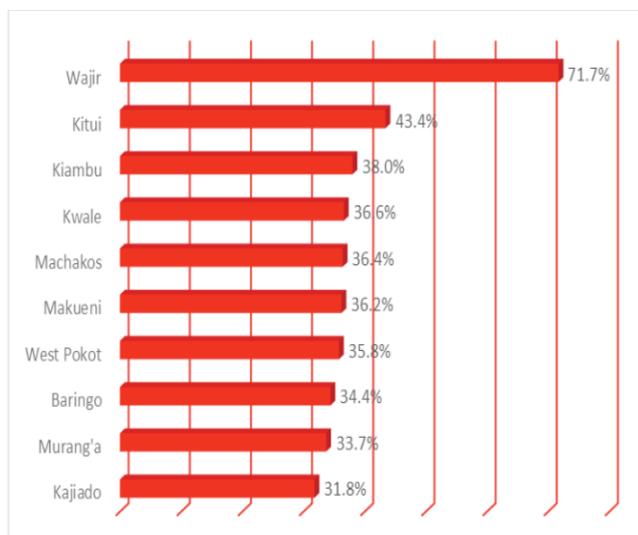
### Bribery

Bribery is a major challenge in public institutions throughout Kenya. As indicated in the 2019 Global Corruption Barometer for sub-Saharan Africa, 45% of respondents perceived that most or all local government officials in Kenya are corrupt, and 45% of public service users reported to have paid a bribe in the previous 12 months (Transparency International 2019: 38).

According to the 2018 National Ethics and Corruption Survey, commissioned by the Ethics and Anti-Corruption Commission to assess, among other issues, the magnitude and perception of corruption in Kenya, bribery was cited by 87.4% of respondents as the most prevalent form of corruption encountered while seeking services. This was followed by abuse of office (28.1%), intimidating or abusive behaviour (5.4%) and conflict of interest (4.1%) (Ethics and Anti-Corruption Commission 2018: 11).

The report proceeded to list the top 10 countries with high prevalence of bribery, as presented below:

**Figure 1: Top 10 counties with high prevalence of bribery**



Ethics and Anti-Corruption Commission. 2018. *National Ethics and Corruption Survey*, p.11.

Demands for a bribe when accessing public services were highest in Wajir county (71.7%) for the third year running, followed by Kitui (43.4%), Kiambu (38%) and Kwale (36.6%).

Half of the respondents who paid bribes to access services indicated that this was their only option available to access a service, 28% said they wanted to make the process quicker, while 8% percent wanted to avoid problems with the authorities (Ethics and Anti-Corruption Commission 2018: 13). However, the reasons for payment of bribers varied significantly from one county to another. For instance, in Bomet, all respondents who paid a bribe indicated that they did so because it was the only way they could access the service. Whereas in other counties, such as Kiambu, the majority (66.9%) of respondents said they paid bribes to quicken the service process, or in Nyeri where 27.8% paid bribes to avoid paying the full cost of a

service (Ethics and Anti-Corruption Commission 2018: 14-15).

When asked about the institutions where bribery is prominent, 19.9% of respondents had paid bribes at the registrar of persons (19.9%), followed by public hospitals (19.7%), police (17.2%), chiefs office (16%), ministry of lands (6.3%) and the county government offices (4.7%) (Ethics and Anti-Corruption Commission 2018: 16).

Worryingly, only 5.8% of respondents indicated that they had reported corruption to the authorities, while the vast majority (94.2%) chose not to. From those who reported, 59.5% indicated no action was taken by the authorities, 12.8% said the corrupt official was transferred, 11.6% said the officials were warned, whereas 5.9% said the officials were investigated (Ethics and Anti-Corruption Commission 2018: 26).

Apart from the National Ethics and Corruption Survey discussed above, the biennial bribery index by Transparency International Kenya which draws on experiences from respondents in various parts of the country, gives an overview of the bribery challenge in counties. According to the 2019 bribery index, only 23% of citizens encountered bribe incidents when accessing public services, which was a decrease from 37% in 2017. Out of the participants who encountered bribery incidents, the results showed that the majority (63%) had paid a bribe. The highest bribery incidence for citizens was recorded in the judiciary (47.6%), followed by the police (46.5%), motor vehicle licence centres (43.8%), civil registration (34.5), as well as Huduma centre services (18.2%), medical and health services (17.5%), land services (17.1%), tax services (16.3%) and educational institutions (7.9%) (Transparency International Kenya 2019).

## Patronage and nepotism

Patronage networks remain a challenge in Kenyan counties, and this is manifested in elections where voters and political players see opportunities to access public resources through patronage and ethnic networks (Ranta 2017; D’Arcy and Cornell 2016: 261; Bertelsmann Stiftung 2020: 14).

D’Arcy and Cornell (2016) analysed the effects of devolution in Kenya on patronage and rent-seeking in the run-up to and after the 2013 elections. They found that there were expectations during electoral campaigns that it was “everyone’s turn to eat”, as new local political elites and every ethnic group perceive new decentralisation governments as their turn to “eat” state resources that traditionally had been only available to national leaders with central power (D’Arcy and Cornell 2016: 248).

According to Ranta (2017), patronage networks at local level in Kenya are inseparably tied to ethnicity and the ability of the elected official to access to resources. She writes that, “instead of the state or municipality functioning as a redistributive agent, the distribution – or non-distribution – of resources is seen by community members to be strongly dependent on individual political leaders and their networks” (Ranta 2017: 234).

In 2016, the National Cohesion and Integration Commission revealed that tribalism, nepotism and corruption still influenced public recruitment in county public service despite existing legal provisions. Only 13 county assemblies (27.6%) had recruited at least 30% of their employees from the non-dominant ethnic group, while 34 county assemblies had employed more than 70% from one dominant ethnic group in the county or have recruited entirely from one ethnic group (National Cohesion and Integration Commission 2016: 26).

Political parties usually serve the interests of strongmen, established around ethnic loyalties and patronage instead of platforms or principles (Bertelsmann Stiftung 2020: 14). It is alleged that several political actors in county executives, legislatures and assemblies usually belong to same ethnic group as the president, and are given such important positions that allow them to veto the set-up of or effective operations of the county (Bertelsmann Stiftung 2020: 10).

High levels of unemployment in some counties exacerbate nepotism and favouritism in recruitment. According to a short survey on unemployment in Garissa county, more than two-thirds of the respondents said that corruption was the major cause of unemployment. As corruption begets corruption, unemployment also worsened corruption, as 32% of respondents indicated that nepotism and favouritism was a major effect of unemployment in the county (Farah and Abdi Ali 2018: 185-187).

## Procurement corruption

A number of county governors and officials have been implicated in procurement corruption in recent years. For instance, in 2019, the governor of Nairobi county, Mike Sonko, was reportedly arrested for allegedly having gained US\$3.5 million dollars through illegal procurement and payment schemes (Ombuor 2019). Again in 2019, the Ethics and Anti-Corruption Commission (EACC) opened investigations regarding allegations of irregular award tenders worth KSh588 million that were awarded to companies allegedly associated with the county governor of Kiambu, Ferdinand Waititu, and his immediate family members (Ethics and Anti-Corruption Commission 2019). In the criminal court, the EACC produced evidence which revealed that kick-backs were paid to the governor

through his bank accounts and accounts of companies for contracts awarded by the county government (Maichuhie 2020).

According to news reports, the EACC permanently barred the former Nairobi governor Mike Sonko and his Kiambu counterpart, Waititu, from holding public office due to their alleged involvement in corruption (Kimuyu 2020).

In January 2021, the EACC was granted a court order to freeze assets associated with Muranga governor Mwangi Wa Iria. According to the commission, Wa Iria had allegedly influenced the award of a tender worth nearly KSh550 million to Top Image Media Consultants Ltd, which was reportedly owned by the governor's relatives and associates. The company then transferred the money to the governor, who reportedly used it to buy two properties (Kamau 2021).

Conflict of interest in public procurement has also been flagged as a corruption challenge. For instance, a report by the EACC showed that a total of 267 suppliers (46%) confessed to know firms either directly or indirectly owned by public officials such as senior public officials, procurement officials and cabinet members that submitted tenders to government and won (Ethics and Anti-Corruption Commission 2015: 17).

The report also revealed that potential bidders were unlawfully passed information by procurement officials and public institution's management. About 7% of suppliers had prior information on estimated price of procurement entities before they even submitted their bid; about 6% of suppliers had information during the bidding process, whereas 26% had information after they had submitted their bid (Ethics and Anti-Corruption Commission 2015: 17).

Worryingly, the report indicated that most corruption and unlawful practices in the procurement process remain unreported. For instance, only 73 cases were reported compared to 228 cases that were not reported. The main rationale for not reporting cases was the suppliers' fear of missing lucrative government contracts (Ethics and Anti-Corruption Commission 2015: 18).

## Embezzlement and mismanagement of funds

As with public procurement, a number of governors and county officials have been implicated in embezzlement, misappropriation and mismanagement of public resources. In 2020, local community members protested against Siaya county officials for allegedly misappropriating funds for a water project. They accused the county government officials and the office of the Sidindi ward member of the county assembly of colluding with contractors to loot public funds after submitting counterfeit documents claiming completion of the project in contrast to the actual reality on the ground (Onyango 2020).

Again in 2020, the governor of Busia county in Western Kenya and three other officials faced charges of conspiracy to defraud the government and abuse of office related to a solid waste management system in Busia. It was alleged that the governor and officials conspired to defraud the county government of KSh8 million by concluding an agreement for a feasibility study on solid waste management with a company that had not yet been established (Muthoni 2020; Malalo 2020). The criminal case has not been finalised.

The COVID-19 pandemic has also exacerbated corruption in counties due to the huge influx of financial resources and emergency procurement.

According to media reports, the EACC reportedly investigated several counties for the alleged embezzlement of funds allocated to counter the coronavirus pandemic (Wako 2020).

A special report by the auditor general revealed irregularities by county governments in the use of COVID-19 funds. These irregularities included non-adherence to procurement procedures, misappropriation of funds in Bungoma and Kitui, inadequate record keeping on procured goods by county governments and inconsistencies between quantities supplied by Kenya Medical Supplies Authority and those received by counties (Office of the Auditor General 2021).

In 2020, Migori governor Okoth Obado and his four children faced corruption charges amounting to KSh73 million (approximately US\$670,000). According to the director of public prosecutions, the governor children allegedly directly benefitted from public funds paid to companies that traded with the county government of Migori during his first term in office (Muriuki 2020).

In recent years, the auditor general has unearthed most counties as non-compliant to the government financial regulations and procedures. This ranges from entering into commitments without approved budgets or funds budgeted, huge pending bills whose accuracy and validity cannot be verified, a lack of proper documentation, payments to dubious contractors, inflation of prices of goods and services, misappropriation of resources and the irregular award of tenders. For instance, the 2018-2019 audit of the Nakuru county executive revealed the misappropriation of revenue amounting to

more than KSh8 million (approximately US\$74,000) from the Bahati sub-county hospital (Office of the Auditor General 2019: 4).

However, the lack of clarity regarding who takes precedence in reviewing and following up on audit reports between the county assembly and the senate has been a challenge. Article 229 of the constitution stipulates that the auditor general shall submit an audit report to parliament or the relevant county assembly, which creates an overlap of oversight duties. As a result, there is back and forth between the two assemblies, which delays critical analysis and interrogation of counties' performance and leaves corrupt activities detected in the audit report unaddressed (Mukaindo 2014: 37; Wafula 2015: 80).

## Anti-corruption measures relevant to devolution in Kenya

There are various anti-corruption measures in Kenya that could improve transparency and accountability in the devolved government.

### Legal instruments

Key legal instruments on anti-corruption, which are relevant to devolution include the following:

- The Constitution of Kenya 2010 provides key measures on devolution and anti-corruption. For instance, section 232 of the constitution provides for values and principles of public service applicable in both national and county governments.<sup>3</sup>

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<sup>3</sup> According to 232(2) of the Constitution, these principles and value apply to public service in both national and country levels of government.

These include: maintaining high standards of professional ethics; efficient, effective and economic use of resources; provision of resources in a responsive, prompt, effective and impartial manner; and involvement of citizens in the process of policymaking. In addition, both national and county governments are required to: ensure transparency and provision of timely and accurate information to the public; fair competition and merit in recruitment and promotions; and opportunities for all genders, ethnic groups and persons with disabilities.

- The Leadership and Integrity Act of 2012 aims to ensure that public officials respect the values, principles and requirements of the constitution. It requires officials to refrain from engaging in activities that amount to abuse of office, misuse of public funds or falsification of documents to defeat justice. It also regulates the provision of gifts and benefits to public officials, prevention and management of conflicts of interest and prohibition of participation in a tender for the provision of goods or services to a public entity in which the public official is serving or is otherwise similarly associated.
- The Public Finance Management Act of 2012 requires budget documents, such as the budget estimates and approvals, county fiscal strategy paper, audited accounts, annual reports, and quarterly reports to be publicly published in timely and user-friendly formats for meaningful input and engagements from citizens (see sections 48, 123(3), 139 and 166(4c) of the Act). Section 79 of the act gives national and county governments the responsibility to ensure accountability in resource use.
- The County Government Act of 2012 provides for county governments' powers, functions and responsibilities to deliver services. It also outlines matters related to public administration at the local level, like civic participation, access to information and the protection of minorities. The act further requires county governments to develop plans including: five year county integrated development plan (CIDP), 10 year programme based the county sectoral plan as parts of the CIDP, county spatial plans and cities and urban areas plans. The county planning facilitates the development of a well-balanced system of settlements and ensures the productive use of resources (Section 103 (b)). It also ensures the meaningful engagement of citizens in the planning process (Section 105 (d)) and mandatory public participation in the county planning process (Section 115). This act is essentially the guiding framework on the operation of county governments.
- Anti-Corruption and Economic Crimes Act of 2003 is the main anti-corruption instrument in Kenya. It provides for the prevention, investigation and punishment of corruption, economic crime and related offences. Criminalised acts of corruption provided in the act include bribery, fraud, embezzlement or misappropriation of public funds, abuse of office and breach of trust.
- The Public Officers Ethics Act of 2003 provides the code of conduct and ethics for public officers at both national and local levels of government, with measures to enforce the code. It also requires public officials to declare their income, assets and liabilities.

- The Public Procurement and Disposal Act of 2015 provides measures on public procurement, open tendering, alternative procurement procedures, administrative review of procedures and authority powers to ensure compliance.
- Access to Information Act of 2016 regulates the disclosure of information by public entities, including counties, and provides limitations on the right of access to information.

## Key institutions

### Kenya National Audit Office

The Kenya National Audit Office, better known as also the Office of the Auditor General, is an independent oversight institution established in terms of Article 229 of the constitution. It has a mandate to audit and report on the accounts of any public entity, including county entities, to ensure that public funds were used lawfully and effectively. Since devolution was implemented, the auditor general has scrutinised and audited the financial activities of each county government, the county assemblies and any county entity provided by law.<sup>4</sup>

### The Commission on Administrative Justice

The Commission on Administrative Justice (CAJ), also known as the Office of the Ombudsman, is an independent commission established by the Commission on Administrative Justice Act, 2011. It investigates any government conduct that is alleged or suspected to be prejudicial or improper or to result in any impropriety or prejudice. It has the

authority to investigate any matter arising from the administrative conduct of a public official or any government department or organ. The Access to Information Act of 2016 confers the commission with oversight and enforcement functions on access to information in Kenyan public entities, including counties.

### The Office of the Controller of Budget

The Office of the Controller of Budget is an independent institution established in terms of Article 228 of the constitution. Its core mandate includes overseeing implementation of the budgets of the national and county governments, authorising the withdrawal of public funds and publicly reporting on budget implementation. The controller prepares and publicly publishes statutory reports, conducts investigations *proprio motu* or through complaints by public, and conducts alternative dispute resolution mechanisms such as conciliation, mediation and negotiation.<sup>5</sup>

### Ethics and Anti-Corruption Commission

The Ethics and Anti-Corruption Commission (EACC) was in terms of section 3(1) of the Ethics and Anti-Corruption Commission Act, 2011. The commission has a mandate to combat and prevent corruption in Kenya through preventive measures, public education and promotion of standards and practices of integrity, and law enforcement mechanisms.

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<sup>4</sup> See the Office of the Auditor General for the reports on counties:

[http://oagkenya.oagkenya.go.ke/index.php/reports/cat\\_view/2-reports/11-county-governments](http://oagkenya.oagkenya.go.ke/index.php/reports/cat_view/2-reports/11-county-governments)

<sup>5</sup> See Article 252(1) of the Constitution of Kenya.

## County assembly

The county assembly is the legislative arm of a county government. Its mandate includes: overseeing the county executive, including approval of budget estimates from the county executive; monitor county budgets and public finances and related matters; and approve the County Fiscal Strategy Paper (CFSP) and the county budget review and outlook paper. It also approves plans and policies for the management and exploitation of the county's resources, as well as the development and management of the county's infrastructure and institutions (see section 185 of the constitution).

## Office of the Director of Public Prosecutions (ODPP)

The mandate of the ODPP, as provided under Article 157 of the Constitution of Kenya 2010, is to exercise state powers of prosecution in criminal matters. Another function is to direct and supervise the conduct of criminal and anti-corruption investigations.

## Examples of how anti-corruption measures have been integrated in donor funded devolution programmes in Kenya

Donors have played an important part in supporting devolution in Kenya through various programmes. Most importantly and relevant to this discussion is that these donor programmes have incorporated anti-corruption measures that have assisted in enhancing transparency and accountability in the devolved governments.

From the different identified donor programmes discussed below, the anti-corruption measures focus on areas such as the following:

- improving the legal and institutional framework by county and national governments, for instance on issues such as whistleblowing laws, access to information laws
- strengthening capacity of county authorities on planning, budgeting, implementation, and monitoring and evaluation for accountable service delivery
- strengthening public financial management in counties to ensure equitable, efficient and accountable service delivery; for instance, training on fiscal transparency and citizen consultation and informative in budget processes.
- access to information and improving public knowledge on key governance issues; for example, on fiscal matters.
- improving social accountability, supporting civil society organisation and enhancing citizen reporting of corruption
- improved integrity in elections and political financing at national and local levels
- strengthening horizontal accountability mechanisms at county and national levels

## UNDP Integrated Support Programme to the Devolution Process in Kenya

The programme aims to provide technical support on the policy, legal and institutional mechanisms for the implementation of devolution. The project started in 2012 and is projected to end in mid-2021 (UNDP 2021). The programme is organised around five pillars with the following outputs:

- i) policies, laws and institutional reforms for the effective implementation of the constitution at national and county levels are adopted
- ii) strengthened institutional and human capacities at national and county level evident in supporting national and local development
- iii) improved service delivery mechanisms and response to opportunities and threats of insecurity and disaster
- iv) strengthened citizen participation mechanisms and processes to ensure effective and equitable service delivery, transparent and accountable use of resources
- v) an integrated service delivery framework pilot implemented

According to the mid-term evaluation report, the project had a significant impact. For instance, training on performance management systems led to county governments having a better understanding of their role and of setting their performance targets; there was promotion of accountability through record keeping, and improved resource allocation and management (UNDP 2016: 11). Similarly, the end term report pointed out that trainings of county officials on public financial management revitalised public service delivery and staff accountability (UNDP 2019a: 68).

The end term report also offered some lessons learnt. For instance, weak communication strategy and capacity during the implementation of the programme was a challenge, and the report pointed out that it is important for counties to establish coordinating offices for future programmes. According to the report, programmes should put in place measures to mitigate political transitions during implementation stages, as such transition may cut the political will or affect staffing and calendar implementation of activities. Another

lesson was that the project scope was broad both thematically and geographically, and in future, it would be important for UNDP to be strategic in selecting intervention areas and partners or counties to receive support (UNDP 2019a: 69-70).

On a positive note, the report pointed out that though weak transparency and accountability was a major challenge for donor programmes in Kenya, this was mitigated successfully by the centralisation of programme expenditures (UNDP 2019a: 70).

### Consolidated Gains and Deepening Devolution in Kenya (2019-2023)

This programme, funded by the governments of Finland and Italy, Swedish International Development Cooperation and UNDP, aims to improve county governance capacity in areas related to public financial management, performance monitoring and reporting, resilience to environmental risks, citizen engagement and inclusiveness. It targets 14 counties: Garissa, Wajir, Mandera, Marsabit, Isiolo, Lamu, Tana River, Turkana, Samburu, Kilifi, Kajiado, Narok, West Pokot, and Busia. The expected outcomes include the following:

- strengthened capacities of national and county governments to formulate and implement policy, legal and institutional frameworks and mechanisms for coordinated, inclusive and effective service delivery at the devolved level
- strengthened processes and systems for public financial management institutions which ensure equitable, efficient and accountable service delivery
- strengthened capacity of county level institutions to carry out evidence based

planning, budgeting, implementation, and monitoring and evaluation for accountable service delivery

- increased capacity of Kenyan citizens to engage, deepen accountability and transparency in devolution, especially among women, youth and persons with a disability (UNDP 2019b)

According to the 2020 review report, notable progress so far includes the increased allocation of county budgets to women, youth and persons with a disability, enhanced public participation systems in budgeting and production of the first comprehensive county government open budget index, support to the county executive and assemblies' committees to improve public finance management, and enhanced public scrutiny of county planning and budgeting processes (UNDP Kenya 2020).

A lesson learnt is how national disasters such as the COVID-19 pandemic have impact on projects, as the project programmes had to be realigned to emergency response and prevention. The rearranged activities included generating awareness on prevention and response to the pandemic and boosting access to health and gender-based violence services, providing hygiene and sanitary kits for vulnerable women and girls, enhancing human resources in counties through the provision of health experts, as well as providing social protection to vulnerable people through cash payments (UNDP Kenya 2020: 24).

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<sup>6</sup> Supported by funding from the governments of Denmark, Finland, Sweden, United Kingdom, the United States and the European Union. See

## Kenya Accountable Devolution Programme

This is a World Bank funded programme<sup>6</sup> established in 2012 which addresses key capacity deficits to make devolution more responsive to the needs of citizens through strengthened institutions, improved service delivery and citizen engagement (World Bank 2018a).

The programme targets six key areas, with more than half of areas relevant for improved transparency and accountability. These are:

- improving fiscal knowledge with a specific deliverable to make fiscal data easily accessible for improved decision-making, transparency and accountability
- public financial management and human resource management
- monitoring and evaluation, performance management systems and open data
- social accountability and citizen engagement (World Bank 2018a).

According to the World Bank, the programme has been useful in assisting the government to build and strengthen systems and capacity to engage citizens, in line with the constitution. For example, it provided the government with analysis and concrete examples on transparency measures in other country public financial acts and systems, and also supported the national treasury and Kenya School of Government to develop four public financial management courses for counties that incorporate training on citizen consultation and public reporting (World Bank 2014a: 13).

<https://documents.worldbank.org/en/publication/documents-reports/documentdetail/898461518702311127/kenya-accountable-devolution-program>

## Drivers of Accountability Programme

The programme was funded by the former UK Department for International Development (now Foreign, Commonwealth & Development Office) and the Danish International Development Agency from 2010 to 2015 to improve the accountability of the Kenyan government to its citizens. It offered support in key areas such as democratic participation, public sector policy and administrative management, decentralisation and support to sub-national government, public finance management and support to anti-corruption organisations and institutions (Department for International Development 2016a).

According to its annual review, it was relatively successful in achieving its objective on increased accountability. For instance, it collaborated with the African Centre for Open Governance (AFRICOG) whose advocacy work was instrumental to a series of important amendments to anti-corruption legislation being adopted, as well as reporting on high level corruption. AFRICOG also reached a further 807,000 people with anti-corruption messages through a variety of media. The project also improved integrity in elections and political financing, and was instrumental in the counties' adoption of access to information bills (Department for International Development 2016b).

On lessons learnt, the annual report pointed that the key assumption that the formal oversight bodies would join hands to the fight against impunity did not come into effect. Specifically, party allegiances and self-interest in the parliament hindered corruption investigations and enabled laws that protected the executive from scrutiny (Department for International Development 2016b)

According to the report, civil society coalitions were instrumental in the achievement of many policy and

legislative goals. The lesson was that investments in coalitions, which may need not be very formal arrangements, could be a good value for money in devolution programmes (Department for International Development 2016b).

## Deepening Democracy Programme

This UK funded programme, which commenced in 2016, builds on the previous Drivers of Accountability Programme. It is aimed at improving the Kenyan government's accountability to its citizens by delivering peaceful, transparent, inclusive elections and providing support to non-governmental organisations, oversight bodies and independent commissions that can influence and deliver reforms and support the goal of a more stable democracy in Kenya (Foreign, Commonwealth and Development Office 2020a).

It seeks to achieve a credible electoral process and improved accountability in the management of public goods and services through five interrelated outputs:

- support for electoral management agencies
- increased citizen engagement in the election process
- increased citizen and government engagement in: i) delivery of goods and services; and ii) climate change governance
- strengthened public oversight institutions
- promotion of learning and adaptation in project programme and project management (Foreign, Commonwealth and Development Office 2020b)

According to the 2020 annual review, the project recorded success despite COVID challenges. This includes a contribution to the Election Campaign Financing Act Amendment Bill of 2020 and support to the development of the amendments of the Political

Parties Act of 2020. It also improved citizen participation in county governance processes, especially embracing marginalised groups, and increased use of both social accountability tools and collective action as the basis of more effective citizen led advocacy. In addition, it provided technical assistance to the Ethics and Anti-Corruption Commission, the Office of the Auditor General, eight county assemblies, the County Assemblies Forum, the Senate County Public Accounts and Investment Committee, and civil society organisations (Foreign, Commonwealth and Development Office 2020b).

On the support to electoral management agencies, some of the lessons learnt are that legislative reform is not a straightforward process as it is usually complex and needs early engagement as well as buy in from all political parties. In addition, there is need for long-term interventions and strategies in institutional building that go beyond one electoral cycle to another, and there should a focus on early consultation and involvement of all actors (Foreign, Commonwealth and Development Office 2020b).

Regarding the output on increased citizen participation in the election process, the project learnt that there is need to align projects with county government plans and policy cycles in order to enhance relevance and effectiveness. In addition, private actors with capacity to strengthen service provision and community voices are important actors who should be involved more in future programme (Foreign, Commonwealth and Development Office 2020b).

On strengthening public oversight institutions, the programme learnt that joint programme planning involving beneficiaries maximised results. For instance, commitments from the top leaders at

auditor general and county assemblies guaranteed ownership of the programme, which smoothed its implementation. There was also notable success in the use of auditor general's reports as accountability tools due to investments by the programme, and the report pointed out that future programmes could aim to build on that success through enhancing citizen and county government understanding of and access to auditor general's reports (Foreign, Commonwealth and Development Office 2020b).

#### **Amkeni Wakenya Civil Society Democratic Governance Facility, 2015-2022**

The project, funded by the UNDP, European Commission, and governments of Japan and Netherlands, aims to empower citizens to participate effectively in democratic governance by providing support through civil society organisations. The first project cycle was from 2008-2014, and was renewed in 2017 but with a focus on civil society led legal aid and assistance for the poor and marginalised, and policy support and advice to judicial institutions to strengthen the status of para-legalism in Kenya as well as operationalise and raise awareness to national legal aid services (UNDP, no date).

According to the project website, it contributes to UNDP's strategic priority on transformational governance with a focused outcome: "By 2022 people in Kenya access high quality services at devolved level that are well coordinated, integrated, transparent, equitably resourced and accountable" (UNDP, no date).

No further information is available on the public domain about this project's evaluation. However, evaluation of the previous project cycle (2008-2014) identified various lessons. These include the need to develop risk assessments for project

partners who may be exposed to political challenges, and to establish risk mitigation plans that are regularly monitored and updated. In addition, it was pointed out that strategic collaboration, partnership and networking with key institutional actors were crucial for the sustainability of results. Another lesson learnt was that building public understanding and changing attitude on matters of peace, conflict resolution, human rights and democratic governance requires time and sustained investments. Hence, it should be seen as a long-term process and not as a short-term objective (Ruteere et al. 2015: 59).

### Examples of devolution programmes that supported transparency and accountability in other countries (Rwanda)

In the aftermath of the 1994 genocide, Rwanda began the implementation of decentralisation to address the social, political and economic marginalisation of communities. Over the years, donors have supported decentralisation programmes aimed at increasing transparency and accountability in the decentralised government.

#### Quality of Decentralised Service Delivery Support Development Policy Operation Program in Rwanda (2013-2014)

This was a World Bank funded programme with development objectives of supporting the government in clarifying institutional roles and responsibilities for decentralised service delivery, and enhancing public transparency, fiduciary

accountability and local government capacity for improved access to quality services (World Bank 2018b). Four policy areas mapped to the objectives:

- strengthening the policy framework for decentralisation
- developing capacity for quality service delivery by local governments
- improving government accountability and transparency to citizens; in particular, it aimed to support initiatives that improve citizens' participation in policy formulation, district budgetary processes, and *Imihigo*<sup>7</sup> activities
- enhancing local government fiduciary accountability; in particular, the policy area aimed to support the government to improve fiduciary accountability of districts and their subsidiary budgetary entities such as schools and health centres through the establishment of an internal and external audit function and following up on the implementation of audit recommendations to improve the quality of financial reports (World Bank 2018b: 6)

According to the project performance assessment report, some of the achievements of the project include improved access to information by citizens through awareness campaigns and media literacy campaigns, enhanced public participation in different aspects of governance and service delivery, and improvement in the districts' financial statements submitted to the auditor general (World Bank 2018b: 12-21).

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<sup>7</sup> *Imihigo* is a traditional concept to increase transparency and accountability of government activities. See <https://www.springerprofessional.de/en/case-study->

[imihigo-a-traditional-rwandan-concept-as-a-rbapp/11238086](https://www.springerprofessional.de/en/case-study-imihigo-a-traditional-rwandan-concept-as-a-rbapp/11238086)

On lessons learnt, the project completion report pointed out that understanding and navigating through the political economy conditions was crucial for the project. Teams had to be sensitive to the political context and challenges faced during the implementation stage and also had to be innovative on how to respond to challenges. The report also indicated that government commitment and leadership were critical ingredients for the success of the project, without which it would have been challenging to operate and get results (World Bank 2014b: 27-28).

Likewise, the project performance assessment report stated that strong government ownership and leadership of the reform agenda were very crucial drivers behind the success of the project. In this case, the reform agenda supported by the project was directly taken from the government's own well-defined decentralisation strategy, which involved various stakeholders including the World Bank from its preparation to monitoring using the government's own monitoring and evaluation framework (World Bank 2018b: 25-26).

#### **Decentralisation and Good Governance in Rwanda (2016-2018)**

The programme was commissioned by the German Federal Ministry for Economic Cooperation and Development and offered technical support in the following four intervention areas:

- local service delivery, focused on supporting district authorities in improving the quality of their citizen-oriented local administrative services
- fiscal decentralisation and local public financial management, which supported the review and implementation of the legal framework and guiding policies for local revenue management as well as the

- assignment of fiscal responsibilities between central and local government
- citizen-oriented local governance, which focused on strengthening the ability of districts and civil society organisations to implement mechanisms of citizen-oriented good local governance
- capacity development, which was implemented as a crosscutting issue and focused on strengthening the individual and institutional capacities of governmental and non-governmental organisations (Schlutz 2017)

The project reported success on strengthening transparency and accountability. For instance, public accountability was increased through the support to civil society organisations that encouraged greater public participation in the planning and monitoring of local government service provision. It supported the participation of citizens in designing and monitoring civil servants' performance contracts; monitoring local public procurement; and supported public engagement between citizens and local leaders on key governance issues (Schlutz 2017).

## **Conclusion**

This paper has demonstrated that there is no clear picture on whether devolution has a positive or negative effect on corruption. On the one hand, bringing government closer to the people could increase accountability and reduce corruption in a devolved government, a position supported by numerous empirical studies. On the other hand, devolution of governance may also result in devolution of corruption as the local governments are prone to capture by local elites, bribery in provision of services to citizens and patronage systems.

Although devolution has brought considerable success in bringing the government closer to Kenyan citizens, evidence shows that corruption has become a major challenge affecting these county governments. These corruption challenges include bribery, patronage and nepotism, procurement corruption, embezzlement and the mismanagement of public resources. To mitigate the problem of corruption in devolution, there are established anti-corruption legal and institutional frameworks. In addition, various donor funded devolution programmes have also supported transparency and accountability in Kenyan counties in areas such as strengthening public financial management, improving legal and institutional frameworks, enhancing political integrity and supporting democratic accountability.

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[www.U4.no](http://www.U4.no)

[U4@cmi.no](mailto:U4@cmi.no)

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