CHALLENGES TO PARTICIPATORY DEMOCRACY: THE
POLITICS OF THE NEW DEVOLVED DEMOCRATIC SYSTEM
IN KENYA

By

JACQUELINE NTHANZE KIVUVA

A Thesis Submitted to the School of Humanities and Social Sciences in Partial Fulfilment of the Requirement for the Degree of Masters in International Relations

UNITED STATES INTERNATIONAL UNIVERSITY

SPRING 2014
DECLARATION

I hereby declare that this thesis is my own original work and has to the best of my knowledge not been presented or published in any other institution. All materials obtained from other sources are duly acknowledged.

Signed:

Jacqueline Nthanze Kivuva (I.D 623266)
Student

This thesis has been presented for examination with my approval as the appointed Supervisor.

Signed:

Prof. Kenneth Ormeje
Professor of International Relations

Signed:

Prof. Munyae Mulinge
Dean School of Humanities and Social Sciences

Signed:

Prof. Mathew O. Buyu
Deputy Vice Chancellor, Academic Affairs
Acknowledgment

I am indebted to my mother Florence for her financial support and personal sacrifice in ensuring I attain my dreams and goals. I also acknowledge my late father Kivuva whose spirit guides my every endeavour and my only sister Marjorie for her continuous support and encouragement throughout my studies. I also express great gratitude to Professor Kenneth Omeje, whose guidance in the writing of this thesis has been exemplary.
# TABLE OF CONTENTS

DECLARATION .................................................................................................................... 2
Acknowledgment ............................................................................................................. 3
List of Abbreviations ....................................................................................................... 6
Abstract ............................................................................................................................ 7
CHAPTER ONE: INTRODUCTION .................................................................................. 8
1.0 Background of Study ............................................................................................... 8
1.1 Statement of Research Problem .............................................................................. 11
1.2 Research Questions ................................................................................................. 13
1.3 Objectives of Study ................................................................................................ 13
1.4 Significance of Study ............................................................................................... 14
1.5 Literature Review ................................................................................................... 15
1.6 Theoretical Framework ......................................................................................... 21
1.7 Hypotheses .............................................................................................................. 23
1.8 Methodology ........................................................................................................... 24
1.9 Chapter Outline ...................................................................................................... 24
CHAPTER TWO: KENYA'S DEVOLUTION IN CONTEXT: REVIEW OF THE PAST AND PRESENT ......................................................... 25
2.0 Introduction .............................................................................................................. 25
2.1 Majimbo .................................................................................................................. 26
2.2 Devolution and Participatory Democracy ............................................................... 32
2.3 Conclusion .............................................................................................................. 36
CHAPTER THREE: PARTICIPATION: BRIDGE OR BARRIER? ......................................... 37
<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Full Form</th>
</tr>
</thead>
<tbody>
<tr>
<td>CoK</td>
<td>Constitution of Kenya</td>
</tr>
<tr>
<td>CIC</td>
<td>Commission for the Implementation of the Constitution</td>
</tr>
<tr>
<td>IEA</td>
<td>Institute of Economic Affairs Kenya</td>
</tr>
<tr>
<td>KADU</td>
<td>Kenya African Development Union</td>
</tr>
<tr>
<td>KANU</td>
<td>Kenya Africa National Union</td>
</tr>
<tr>
<td>PNU</td>
<td>Party of National Unity</td>
</tr>
<tr>
<td>ODM</td>
<td>Orange Democratic Movement</td>
</tr>
</tbody>
</table>
List of Abbreviations

CoK  Constitution of Kenya
CIC  Commission for the Implementation of the Constitution
IEA  Institute of Economic Affairs Kenya
KADU  Kenya African Development Union
KANU  Kenya Africa National Union
PNU  Party of National Unity
ODM  Orange Democratic Movement
Abstract

Participation is increasingly being viewed as a prerequisite to a democracy achieving its overall developmental objectives. The inclusion of participation to the concept of democracy makes it inherent for its consideration in democratic systems. The democratic transition being witnessed in most African countries is growing and slowly moving beyond representative electoral democracy to other forms such as participatory democracy, which have substantive and profound significance for the citizenry. Participatory democracy is a people centered democracy characterized by participatory and consultative national policy process and are viewed as slated to attain positive social and economic development. However, to relinquish the power for decision making from the ruling political elite to the people is precarious, even more for African countries where the concept of democracy is viewed as an alien form of governance blindly embraced from the West. The study offers an analysis of the on-going devolution processes in Kenya characteristics to participatory democracy. The study also investigates the intricate political dynamics and challenges brought about by devolution.
CHAPTER ONE: INTRODUCTION

1.0 Background of Study

Introduced in the colonial era as an instrument for central government control rather than a genuine arrangement for devolution of local government authorities, majimbo was the foundation of devolution in Kenya. During the transition to independence they were augmented to semi-autonomous regional governments. However, the authoritarian government of the Kenya Africa National Union (KANU) regime in its reign abolished this system. Majimbo at that point in time was viewed negatively as a characteristic of the exclusion of other ethnic groups. However, despite these perceptions towards it, majimbo as a system of government meet the theoretical parameters of popular participation and decentralization of power (Mitullah, 2005:199).

In 2005 Kenya held its first national referendum, a struggle for constitutional reforms. Kenyans overwhelming rejected it and this was precipitated by the contention over the devolution of powers. Amongst the leaders, it was perceived that reforming a highly centralised government would strip them of their powers by transferring power to the people (Institute of Economic Affairs, 2010).

According to Ghai (2008:212), the misleading remarks of Kenya’s most important leaders during the 2005 referendum process delayed the devolution process of the state. The heads of Anglican and Presbyterian churches asked their flock to reject majimbo. The Methodist church heads alleged that majimbo is unconstitutional and that the church viewed it as unworkable. Political leaders more importantly, also opposed to majimbo saying that it would balkanize the country, promote ethnicity and ignite land clashes.
CHAPTER ONE: INTRODUCTION

1.0 Background of Study

introduced in the colonial era as an instrument for central government control rather than a genuine arrangement for devolution of local government authorities, *majimbo* was the foundation of devolution in Kenya. During the transition to independence they were augmented to semi-autonomous regional governments. However, the authoritarian government of the Kenya Africa National Union (KANU) regime in its reign abolished this system. *Majimbo* at that point in time was viewed negatively as a characteristic of the exclusion of other ethnic groups. However, despite these perceptions towards it, *majimbo* as a system of government meet the theoretical parameters of popular participation and decentralization of power (Mitullah, 2005:199).

In 2005 Kenya held its first national referendum, a struggle for constitutional reforms. Kenyans overwhelming rejected it and this was precipitated by the contention over the devolution of powers. Amongst the leaders, it was perceived that reforming a highly centralised government would strip them of their powers by transferring power to the people (Institute of Economic Affairs, 2010).

According to Ghai (2008:212), the misleading remarks of Kenya's most important leaders during the 2005 referendum process delayed the devolution process of the state. The heads of Anglican and Presbyterian churches asked their flock to reject *majimbo*. The Methodist church heads alleged that *majimbo* is unconstitutional and that the church viewed it as unworkable. Political leaders more importantly, also opposed to *majimbo* saying that it would balkanize the country, promote ethnicity and ignite land clashes.
In the year 2010, the promulgation of the new constitution implied institutional change; the devolution of power to a two-tier devolved system of governance. The devolved government as provided in chapter 11 of the Constitution of Kenya (2010) essentially gives powers of self governance to the people thus enhancing participation of the local communities in making decisions on issues that affects them. Founded upon the concept of decentralization and devolution of power, according to Article 10(2) (a) of the CoK (2010), devolution and sharing of power are identified as values and principles that would guide Kenya governance system.

According to Kivuva, Odhiambo & Mbeya (2011:18-19), the system of Kenya’s devolved government albeit with major differences from initial design of devolution is comprised of counties as the main unit of devolution, complete with county assemblies. Chapter 11 of the CoK 2010 provides for county governments while the First Schedule lists all the 47 counties, the functions and powers of both levels of government. The objects and principles of devolution are enumerated in Articles 174 and 175 respectively. Emphasis is placed on giving “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 the making decisions affecting them” (Article 174 (c)).

The March 2013 election established the new governance structure this paved the way to the implementation of new constitution. The structure now shifted from a centralized government to the devolved 47 counties. This essentially moved power closer to the people. The full implementation of the new governance however is still underway.

According to the Commission for the Implementation of the Constitution (2013), there is increasing constitutional threats to the devolution process. It points out that various laws are being rushed through parliament without participation of the people as required by the constitution. Some of these laws seek to hijack the devolution process as
stipulated in Chapter 11 of the constitution. The Executive is also processing several policy positions that conflict with the constitutional provisions on devolution. There are numerous institutions that are being created that have a similar effect. This consequential crisis is being manifested, when the county governments are just setting up office. Conflicts of mandate between both levels of Government are exhibiting themselves, leading to extensive and wasteful litigation and unnecessary discord.

According to IEA (2010), the legislation regrettably most of the time is only symbolic and aimed at pushing off domestic and international pressures, with little or no intention of implementing it. The constitutional process toward the actualization of devolution was faced with reluctance to cede power by the government. The lack of political will is its greatest obstacle and now its realisation is proving more taxing.

According to Nyanjom, (2011:9), even though support for the 2010 constitution was overwhelming, in retrospect the fluidity of the political class means that their commitment to it is, and was not cast in stone. In Kenya the core elite have been notorious in mastering the art of self-reinvention, and with the changing times giving themselves the ability to entrench themselves strategically in order to reap the fruits of the state over weak political system and weakly performing institutions even with the existence of relatively substantive governance frameworks.

For the modern type African democracy to be relevant socially, politically functional, economically productive, and inclusive in entirety the people should own their own system of governance fully by actively participating in the decision making processes and collectively transforming their value systems. The question is if the broader optimism for an African defined democracy will get it right for the people external from the theoretical construct of democracy and participation (Edozie, 2009).
Citizen participation in the devolution process is aimed at strengthening democracy and bringing power to the people, the process of transforming the citizenry from passive subjects to active members of the state who legitimately demand services from the government. This is integral in the development in Kenya, however the level of awareness by the grassroots community and their involvement is a matter of inquiry. This poses grave pitfalls for the establishment of the devolved government system in its entirety.

Participation more importantly, in poor countries can help improve governance, and in rich countries it can help bolster the legitimacy of the present system. If citizens can participate or can decide on the disbursement of some public funds then, they “own” those decisions (Pateman, 2012). If the bottom up systems of institutions can be successfully put in place then the successes of participatory democracy can be realized.

In entirety, according to Edozie, (2009) African post independence states established social conceptions of democracy, a representation of African self-defined discourse on democracy. Mostly, a populist manifestation of democratic struggles in which social democracy fragments continue to shadow many of the continents’ popular conception of democracy does not limit the practice of political democracy but expands the meaning to include how a society’s resources are used and distributed. Some African states construed their manifestations of democracy connote democratic participation. Of inquiry is if Kenya’s conception of devolution is a valid inclusion in democracy precepts.

1.1 Statement of Research Problem

According to Ghai (2008), Kenya’s future is pegged on devolution/ugatuizi which throughout the country’s history was characteristic of and referred to as majimbo, a
matter that was viewed as uninformed, distorted, misleading, and profoundly polarising. The controversial and confusing evolution of devolution serves as the foundation for the present day devolved system of governance. Its history withstanding, what is uncertain is the present prominent promise of the great development potential and increased citizen participation in public policy making of the newly formed devolved government in Kenya.

Devolution is viewed as guaranteeing the Kenyan citizenry a people centred democracy. Kenya’s devolution is very ambitious therefore commensurately risky. It is an enormous undertaking and the integral predicament is if devolution concurrently leads to a people centred development. Frustrations over resource allocation and use, political wrangles, greed and the economic burden on the grass roots towards the setting up of the system that the citizenry did not foresee are overshadowing the constitutional milestone met by Kenya (World Bank, 2012:v-vi).

For the gains of the devolution process to be appreciated by all the constitution should be adhered to during the transition process. What is still to be enquired is if now in its current evolving state assures the people of Kenya some level of economic and political autonomy. The power-plays which have characterised debates on devolution still remain divisive especially to the government and policy makers in the country. The political wrangles being witnessed today shows the numerous challenges that the state is faced with in as it transitions. This is while elitism, government constraints, constitutional gaps and loopholes, and individual interests are the main features of the process.

From a political viewpoint, the devolution process has generated tremendous hope in the population, and unrealistic expectations of how quickly things can and will change in the ordinary lives of Kenyans. This is a highly complex undertaking, which Kenya has embarked upon in a context of political division. The challenge therefore is if the state is
able to manage expectations, and of how much. How quickly devolution can deliver and to make sure that the transition to devolved government causes as little disruption as possible? To ensure the delivery of services that is essential for the welfare of the people of Kenya, as well as for the health of its growing economy (World Bank, 2012:vi).

This study will examine the confluence of historical and ongoing political dynamics that have made it necessary to draw attention to the question of the role of today's devolution and its role in the democracy and development of Kenya. Devolution's key role is widening the democratic space for the Kenyan citizenry; with citizen participation constitutionally guaranteed, it is of importance to examine if devolution is serving its rightful role in participatory democracy. Also vital is to examine how the intergovernmental relations are interfering with the process; with the public goods seemingly in the hands of the people does it enhance public participation.

1.2 Research Questions

- How does the devolved government system in Kenya contribute to participatory democracy?

- What are the challenges facing the devolved government system with regard to intergovernmental relations?

1.3 Objectives of Study

- To analyse public participation in the devolved government system.
To investigate the intricacies of the greater levels of decision making and power sharing within the devolved government of Kenya.

To analyse the challenges being faced by the devolved system of government.

1.4 Significance of Study

Firstly, Kenya’s devolution process provides key lessons for the purposes of engendering academic and policy discourse. Kenya’s democracy has undergone major changes and obstacles in its evolution which have had the effect of influencing citizen participation. Some of the changes being witnessed have been perceived to be mainly interested in advancing the local elites and controversial and threatening the actualization of devolution. The extent to which these changes can be examined is integral academically.

Secondly, based on the problem stated the study also aims to examine devolution as a participatory space within the participatory democracy debate. The shift towards devolution is a reflection towards a more participatory form of government, improving the responsiveness and accountability of leaders (Mutua, 2008:271). Effective local citizen participation is integral for the full potential of the devolved state. This study will aim to engender the importance and benefits of the adoption of this form of democracy in Kenya.

Thirdly, in lieu of the facts with regards to the promise of success within devolution, it is integral to inquire explicitly on its implication to the relinquishment of power from the traditional political elite to empowering the citizens with the right to make decisions. The power sharing process is already proving to be tasking within the
government. There is a need to explore the implications of the complexities of the assumption of new roles between the state and the citizenry.

1.5 Literature Review

The requirement of democracies in fostering inclusion is pegged on conducting regular free and fair representative elections where participation is seemingly guaranteed for the citizenry. This is unfortunately viewed as unsatisfactory, despite holding representative elections the citizenry still feel excluded and dissatisfied by their democratic government.

In Participatory democratic theory Carole Pateman asserts that the main study of democratic theory does not clearly articulate the role of citizen participation, only limiting it to voting in the electoral process. Participatory democratic theory however, argues that national representative institutions are not sufficient to qualify a political system as democratic. Its assumption is; “For a democratic polity to exist it is necessary for a participatory society to exist i.e. a society where all political systems have been democratized”. Participatory democratic theory offers the relationship between an individual and the state within a society; the relationship between the state and citizens in participatory space within their society (Pateman, 1970: 42-43).

Heller (2009:5) supports the above argument and asserts that the study of democracy has always been on the institutional perspectives of formal political institutions and representation. This, a self limiting view of democracy based on competitive elections as the central mechanism of democracy, pointing out that the deepening of democracy and the consolidation of democratic practices are lacking in practice and scholarship.
Kateshumbwa (2012:1) examines that in developing countries the meaning and understanding of democracy and citizen participation as concepts is problematic. Both concepts in scholarly works lay emphasis on deliberate democracy, participation and participatory governance, and empowered participatory governance. For Africa however, the discourse has been continually placed on good governance. In her discourse she further emphasizes that;

...democracy as a necessary condition for local development and citizen participation...a degree of participation is required for democracy to achieve its intended objectives of more efficient and responsive local government. Democracy and participation thus have a symbiotic relationship, but the conception, definition and objectives of democracy are critical to this relationship. The widespread engagement with issues of participation and local governance creates enormous opportunity for re-defining and deepening the meanings of democracy, and for extending the rights of inclusive citizenship (Kateshumbwa 2012, 3-4).

Elsewhere Olarinmoye (2010:65) views participation as a concept broader than democracy that includes the involvement of people not only in choosing political representatives but in being included and empowered in the process through which decisions are reached in the various layers of society. There is greater interest in the seemingly democratic developing nations. For Kenya with its devolved government only commencing the extent for citizen participation to be feasible, some level of civic consciousness about the citizens’ political environment is necessary.

According to Lynch (2012), participation as a human right is an essential aspect in determining the democratic content of any political system. The analysis of the extent to which participation aids development through empowerment of the citizenry is potent. In addition development by means of a participatory democracy allows for sustained participation through inclusive debate and devolution of economic control, facilitating development through access to opportunities and improved standards of living.
Pateman (2012) in her analysis bolsters the argument above. Following the successful participatory budgeting programme in Port Alegre in Brazil where it facilitated the equal redistribution of resources to the poor, there is sufficient example of connection between participation, democratization and its developmental potential in a developing country. The institutionalization of participatory budgeting required considerable cleaning up and reforming of the city government so that the administration could rely on regular, and increased, tax revenues. Clientelism and corruption were greatly reduced and the openness of municipal government increased.

Lynch (2012) discusses the importance of supportive institutions as protective of individuals’ freedoms. The institutional commitment by the State and the civil society ensures the success of participatory programmes and stable development process. There is need to legitimize democratic participation to ensure accountability and restrain political interference in the process. Participation is likely to create a greater policy response and will allow for clearer conceptualization and comprehension of the needs of the citizenry.

ASPA (2012:33) argues that in directly challenging the control of politics by elites, participatory governance bolsters legitimacy and addresses the insufficiencies of representative democracy. More importantly though is that great effort should be largely placed in getting the balance between participation and all institutions. As stated below:

Too much reliance on institutions, with insufficient attention given to meaningful participation, runs the risk of co-optation, corruption and clientelism. On the other hand, too much participation can overwhelm weak or immature institutions, leading to disappointment and perhaps even instability. In balancing these risks, the associational capacity of the society or community must be considered in its historical, cultural and economic dimensions. Getting the role of institutions right is also crucial: too much formalization can stifle participation, but too little can make it difficult to translate participatory inputs into policy outcomes (ASPA 2012, 44-45).
Savini (2011) further discusses concepts of empowerment and endowment as central elements of participation. Empowering the grass root is a measure of the significance of the role of the citizen in public decision making. The term is used to assess the functioning of democratic institutions by determining citizens’ access to social power, political power and psychological power. Citizens are considered empowered if they have the effective capacity to access political arenas and to influence decisions that affect them. He however, faults the empowerment perspective in assessing citizen participation the empowerment approach may mislead especially due to its focus on decisions and not processes.

Ank & De Graaf (2010:488), in their analysis accredits participatory democracy to where citizens and other stakeholders take an active role in the policy process at an early stage. Their argument being that the early involvement will create a broader support for policy decisions and make it more effective and legitimate. However, they argue that citizen participation serves as an instrumental rather than expressive purpose, only serving to increase citizen engagement and information sharing rather than sharing the real power and decision making.

Ank & De Graaf (2010:479), state that some of the pessimistic conceptions of political participation emphasize and regard massive participation as even being dangerous. They argue that an increase in political activity among the lower socio-economic classes could lead to more authoritarian ideas and thus to a decline in consensus on the basic norms of democracy, also massive participation of the people could even lead to totalitarianism.
Further, Kateshumbwa (2012:3) points out that the view that simply reforming the system to include participation might not necessarily lead to a qualitative or fundamental shift in the way the structures operate. For some it is unlikely to change the development realities on the ground or to transform the power dynamics. Others hold the view that participatory rhetoric has been used as a tool by global elites to continue hegemonic influences and local elite to maintaining existing power relations.

In view of this, Heller (2009:3) also highlights an ignorable question on the shortcomings of participatory democracy, the ability for all citizens to participate equally in a political system. He sees that the societal gap in most global south countries as exceedingly wide thus likely to limit the capacity for effective participation even if the structures for participation are in place.

However to Mutua (2008:271), devolution from the centre to the region is at the core of the fight to self determination of a people. He alludes to the fact that there might not be any other arrangement that brings the government closer to the people. For Kenya, it is largely a reflection of the political evolution towards more democratic and participatory form of government that seeks to improve responsiveness and accountability of political leaders to their electorates.

Despite the advantages, IEA (2010) points out that devolution may not always lead to improved governance and economic performance. The redistribution of resources from the national level to sub-national may not be equal especially for the less developed regions. Further the local elite might still be able to consolidate their hold on resources especially if the rules and systems for devolution are not designed well.
Further, for Africa the existence of institutions of government and created space for citizens to participate in has been dominated by elite capture and lack of information to the constituents especially in the marginalised areas. Further an all-inclusive participation is barely encouraged thus the elite are capable of maintaining the already existing power relations (Kateshumbwa, 2012:3).

Elsewhere, Edozie (2009:xiii) points out and integral feature the study of African democracies. There has been persistent afro-pessimistic discourse on African democracies. The study of third wave of democracies has unfairly misrepresented the democratic evolution of the continent, basing the study on the historical monolithic view of Africa and by limiting the study on the limitations of the main theoretical themes of democracy. African countries may not necessarily conform to but does not imply that they are not democratic states.

These contributions from various scholars show the emphasis on citizen participation. Distinct from the traditional theories of democracy, participatory democracy focuses on a new concern that is aimed at the citizenry. It incorporates the new features of democracies at a time in history where popular participation, democratic institutions are being critiqued and existing democracies are redefining themselves.

Also notable from the scholars is the presence of a negative view of African democracies and studies focused on good governance only. Their evolution evidently has not been characteristic of the tenets of conventional democratic theory. Participatory democratic theory however could prove vital in justifying that African democracies are true democracies.
The main goal of this study following the contributions above is to further explore citizen participation looking at Kenya's newly devolved government. Despite it being new in Kenya, its participation concept is not well studied. Thus based on participatory democratic debate, it is imperative to examine the prospects and implications of devolution on Kenya's future.

1.6 Theoretical Framework

Democracy is today growing beyond representative democracy, regular elections. Participatory democracy expands the view of democracy to include the relationship between citizen participation in the state's devolved functions.

Participatory democratic theory argues that national representative institutions are insufficient to qualify a political system as democratic. "For a democratic polity to exist it is necessary for a participatory society to exist i.e. a society where all political systems have been democratised". Participatory democratic theory offers the study of the relationship between an individual and the state within a society; the relationship between the state and citizens in participatory space (Pateman, 1970: 42-43).

Pateman (1970) argues that the topic of participation raises a potent question of its place in a modern and viable democracy theory. The scholar saw it was highly paradoxical that participation played a small role in the theory of democracy. The insistence on maintaining political stability of states as the primary objective diluted the idea of complete participation of the citizenry.
In the present day, the key tenets of participatory democratic theory as outlined by Pateman (2012) are; first, the theory assumes that the capacities, skills and characteristics of individuals are interrelated with forms of authority structures through participation. Democratic institutions must be viewed in terms of individuals and the human values they are meant to serve. Individuals learn to participate by participating within the democratic structures.

Second, the participatory democratic argument is an argument about democratization. Pateman (2012) argues that it is about the changes that will make our own social and political life democratic, both as individuals in their own lives or individuals in the wider society. The future of Kenya’s democratization process lies on the devolved government, its structures and outcomes in relation to individual citizens and the country as a whole.

Third, for a meaningful participatory democratic theory to be actualized there is need for creating a participatory society. A society that recognizes and understands their role in the state, the citizenry must recognize that even with the structures in place for their participation their actual participation is a requisite for the success of the system. The devolved government requires local participation and in Kenya the 47 counties have provisions for their involvement of the local grass root people in decision and policy.

Kenya’s historical struggle to devolution witnessed the elite constantly creating stop gaps to the actualisation of the system. The negative view towards devolution inculcated throughout history into the citizenry to ensure the survival of the elite. The fourth tenet of the theory asserts that institutions are just a small part required for democracy. The required changes are structural in nature. They require the reforms of undemocratic socio-political structures which inhibit participatory processes.
Participatory democrats believe that participation has several functions in democracy. The first is the educative function where citizens may increase their civic skills and become more competent if they participate in public decision-making. Second function is the integrative function; Participation contributes to citizens’ feeling of being part of their community. They then feel responsible for public decisions. Thirdly, participatory democracy contributes to a greater legitimacy of decisions; participation plays an important role in creation of policies that are acceptable to all (Ank & De Graaf, 2010:480).

Participatory democratic theory focuses on the challenges of democratic institutions and of inclusion that directly involves the citizenry. The connection between the citizens’ contribution to policy and decision making and state and also the institutions supporting their interaction is of integral importance.

1.7 Hypotheses

- The devolved government system tends to contribute to participatory democracy by enhancing increased participation in a decentralised system.

- The devolved government is beset by power plays in intergovernmental relations.

- The devolved government system in Kenya enhances public participation in the grass roots.
1.8 Methodology

This study uses a qualitative approach in analysing participatory democracy and devolution. The study analyses Kenya’s participatory democratic process from its historical evolution of devolution to its manifestation today. It also examines the ongoing devolution process and the challenges being faced in its actualization.

The study is library based drawing mainly, but not limited to the United States International University library with the information solely being from secondary data sources. These sources generally include books, academic journals, newspapers, electronic journals, internet sources, existing laws and related legal documents and reports on the devolution process.

1.9 Chapter Outline

Chapter two of the study will be dedicated to tracing the history of Kenya’s devolution process. It will firstly examine majimbo, Kenya’s most controversial conception of devolution. It will also examine the present day devolved government and its characteristics in relation to participatory democracy.

Chapter three will examine public participation as enshrined in the devolved system. It will focus on the structure, legal provisions and constitutional foundations of the devolved government. It will look at the capacities of citizen to participate in the structure and the realities of the system. It will also look at the benefits of the system to the citizenry in their increased roles.
Chapter four will be a discussion of devolved Kenyan government. It will extensively examine the complex intergovernmental challenges being witnessed in the transition to a devolved state. It will take a look at how the political challenges are overshadowing the devolution process.

The final chapter will feature a summary of the study’s findings and conclusions. It will sum up the entire study. To highlight the key areas with regards to challenges being faced, thus aid the seemingly new devolved governance structure with regards to bolstering the positive characteristics of participatory democracy instinctive of devolution.

CHAPTER TWO: KENYA’S DEVOLUTION IN CONTEXT: REVIEW OF THE PAST AND PRESENT

2.0 Introduction

Views on *Majimbo* and present day devolution have been diverse throughout Kenya’s history. From independence, the topic has evolved in successive governance structures and featured prominently in Kenya’s constitutional and election processes. According to Mutua (2008), prior to Kenyan independence in 1963 devolution of power was fundamental, poised to bring isolated citizens closer to the core of public power to influence policy. However, Kenya being founded on ethnicity and an elite driving policy and political choices, the key purpose for any governance system was to remain a response to the power aspirations of certain groups whose goal was to exercise control.
Decades after independence the failure of the state has been strongly associated with the centralisation of power. Justified as a way of safeguarding territorial integrity and nation building, nationalism remained Kenya’s system of government for years. However, the evident failure of a centralised state has been the preoccupation of the Kenyan citizenry pushing for a devolved government (Oloo, 2006:1).

In Kenya today, preceding majimbo is devolution, a new form of government, characteristic of decentralisation. Poised to reform a previously centralised system of governance and exceedingly desired by the citizenry; the promise of its success is pegged on the clamour of Kenyans to rectify the failures of past governance systems that falls over the shadows of majimbo.

2.1 Majimbo

At independence Kenya inherited federal states or majimbos, a system designed by the British colonial power. However, the emergence of the Kenyan elite immediately after independence desired a change from the colonial system to something that best suited their needs.

The term majimboism means ‘regionalism,’ it was originally promoted by Kenya African Development Union (KADU) in the pre-independence negotiations between 1960 and 1963 as the basis for a devolved constitutional arrangement. But in the heated politics, KANU turned the federalist goal of majimboism into a slur that saw majimboists derided as tribalists who opposed the broader goals of nationalism (Anderson, 2005:547).
The Lancaster House talks between the Kenyan leaders and the British colonial masters established the independence constitution. It provided for the inception of decentralized governance. The structure was a region-based government, purportedly formed in favour of the party KADU. KANU, a much more powerful party however did not support the system of governance (Nyanjom, 2011:1).

The independence constitution provided for a devolved system that divided the country into seven regions each with its own legislature and executive powers. These regions were empowered to raise their own revenues and spend it on specific services. The constitution expressly protected minority rights of smaller indigenous communities that also included Asians and Europeans. The goal of this was to prevent the domination by larger communities over the rest (Oloo, 2006:3).

*Majimbo* according to Oucho (2011:510) has gone through three integral phases of interpretation: First, in the run up to independence where KADU made up of minority groups clamoured for regional autonomy that would safeguard their territoriality. Second was immediately before the 1992 multiparty elections when KANU zones were faced with ethnic clashes, especially in the Rift valley. KANU during this time used *majimbo* to help them retain power in the first ever multiparty general elections. The third distinctive phase of *majimbo* was the Bomas Draft constitution, debated between two political parties; the Orange Democratic Movement (ODM) in direct opposition to Party of National Unity (PNU).

The independence Lancaster model of *majimbo* was only accepted by KANU as a matter of political expediency to avoid KADU being handed power by the British colonials. The model which the party viewed as an unworkable and shortsighted featured the unstructured splitting of powers between the national government and local political entities (Munene, 2012:55).
According to Oloo (2006:16-17), as it was widely anticipated, a year into the Kenyan independence the KANU party government initiated reviews to the constitution that by 1966 changed the government into a de facto single party system moving away from the majimbo constitution. One key change was to strengthen the executive in comparisons to other state organs. They also denied regional authorities their revenues by refusing to implement financial provisions of the constitution. Further, they denied regional assemblies from enacting laws without reference to the constitution. Further, they denied regional assemblies from enacting laws without reference to the central government.

The result of the constitutional changes as described by Nyanjom (2011:7) had the effect of creating an ‘imperial presidency.’ This transferred power away from the peripheral institutions across the country to the centre and specifically to the individual in power rather than the office of the president. This dismantled majimbo completely by giving the central government an opportunity to interfere with the regions undermining the autonomy and capacity of regional governments.

According to Kivuva, Odhiambo & Mbeya (2011) the president, Jomo Kenyatta however kept close the concept by allowing the development of autonomous associational and institutional centres of power. The Gikuyu Embu Meru Association (GEMA), Luo Union, and the New Akamba Union (NAU) were some that were allowed to function without the interference of the state and acted as representation to serve their community.

Under Daniel Arap Moi’s rule the years 1991 and 1992 were the most trying for the ruling party KANU, opposition and the Kenyan citizenry with regards to majimbo. KANU was faced with growing opposition and according to Throup & Hornsby (1998:54) the regime was in crisis. There was a growing presence of opposition parties.
and in particular the National Democratic Party (NDP) and later, the Forum for the Restoration of democracy (FORD) that were both denied registration by the state. Their efforts towards greater democracy led to great agitation in the country.

Increasing trouble for KANU led its leaders namely Nicholas Biwott, the most prominent Kalenjin politician and the president’s closest ally in 1991, strongly front for *majimboism*. In his view it was to protect the interests of their ethnic group against minority groups in the highlands. He urged the Kalenjin community to vote for Daniel arap Moi in the coming elections to secure their interests as an ethnic community. Consequently this campaign only led to ethnic clashes within the region (Throup & Hornsby, 1998:80).

During the election year in 1992, both the opposition to the ruling party KANU and the clamour for a multiparty state fired up the *majimbo* debate. Discussion over ethnicity was negatively used by KANU during the multiparty election that year to mislead the citizenry over issues of ethnic loyalties. *Majimbo* at the time used in reference to immigrant communities who had occupied lands in Kalenjin territory that were previously owned by British settlers and never returned to the original owners. The interpretation of the term was mainly translated into an understanding that each community would be required to return to their ancestral lands (Rutten & Owuor, 2010).

In a bid to strengthen dominance in their ancestral lands, the campaign rather fuelled ethnic clashes arising from the tribal remarks made. The consequence of the political distortion of *majimbo* was cemented that year creating deep rooted misconceptions of the system in Kenyans.
Years later in 2004, the Bomas Draft Constitution stirred up the debate again. The devolution chapter of the draft was unacceptable to President Kibaki’s regime and his party PNU. The draft, a document created during a constitutional reform process was declined mainly because of the question of top heavy bureaucracies and legislatures. It granted to four levels; national, regional, district and location governments. Also, they were to be granted extensive powers over the regulation the economic, social and cultural activities (Mutua, 2008:198).

The Bomas Draft constitution was a federal constitution. Debates on political and fiscal feasibility of the Bomas Draft led to a functional compromise: devolution to the district level only, enhanced local development funding, and a prime minister appointed by the president and answerable to the president. However, still focused on a strong presidency and insistence on centralized core, the political elite disowned the agreement (Chege, 2008:131).

During the 2007 general election, the third distinct phase of the evolving debate, majimbo was the key feature of the elections. Ugatuzi was the term used to refer the governance system and there were immense debates on the adoption of the Bomas Draft style of governance after the elections. The debate at this time not dominated solely by political parties but a matter of the Kenyan population, civil society, media and scholars (Kagwe, 2010).

Just like the historical debates during the Lancaster talks between KADU and KANU, the 2007 debate was dominated by political parties ODM and PNU. ODM boldly advocating for ugatuzi, the transfer of resources and power to the people in organized sub-national jurisdictions. PNU, on the other hand criticized the system citing it balkanized the country and was regressive. The debate was extensively used as a tool for
political campaigns by the two political parties that further distorted the governance agenda drowning it into the marginalization debate (Kagwe, 2010:438-440).

According to Oucho (2011), although the Bomas draft discussed devolution and not the majimbo system of the pre-independence time or even the 1992 general elections version, PNU convinced Kenyans that it connoted the undesirable majimbo and not equitable distribution of resources to different regions.

ODM in its election manifesto had pledged to enact a new constitution based on the Bomas Draft if it won the elections. Promising to introduce devolution of economic and political power and in result they raised the stakes of the elections. Majimbo to ODM was used to refer to devolution. The debate consuming the entire campaign with the idea of devolution resonating well with most ethnic groups and regions in the country expect from Central and lower Eastern which were PNU and Orange Democratic Movement-Kenya (ODM-K) strongholds (Sihanya & Okello, 2011).

The debate even much more confusing with majimbo, ugatuzi and devolution being interchangeably being used in the campaign process; The political parties and many other commentators on the issue made it difficult for it to be conceptually discussed with the heightened competition over whose interpretation of the governance system best suited the country (Kagwe, 2011).

According to Chege (2008:138), the predicament over the years has been purely political. Some of those who advocated for majimbo equated it with ethnic purity and the denial of property rights to outsiders, while proponents of a centralized state consider regional autonomy to be a ruse for ethnic cleansing.
Kagwe (2011) suggests that the debate gets heated during the electoral process. Thus the only perceived role of majimbo is an avenue to spreading the wealth to the others, especially those who are most unlikely to have one of their own as a sitting president. The 2007 election showed the strength of this perception with ODM seeking to attract those marginalised in Kibaki’s first term in office.

Majimbo explicitly failed because of lack of sound political governance. This led to lack of political will to implement the system. The historical foundation of any form of devolved system in Kenya is cast on a dark shadow of ethnicity and violence. Majimbo seen as ethnic-based devolution could only lead to an ethnic based democracy. The future of the new devolved government is pegged on the widely accepted new constitution that is seen to foster greater democracy that is inclusive and participatory.

2.2 Devolution and Participatory Democracy

The promulgation of the new constitution that was endorsed by sixty six per cent of the Kenyan voters was held in August, 2010. It ushered in a constitution that provided for the transition to a new devolved government enshrined in Chapter eleven of the document (Nyanjom, 2011:9).

According to Kranom & Posner (2011:89), the peaceful promulgation of the new constitution marked a defining moment in Kenya’s democratic development. Devolving authority, formally guaranteed a host of social and economic rights to marginalized communities, women and minorities. By reducing the power of the executive, Kenya’s new constitutional government system is an example of an increasing trend to institutionalize of political power.
In the new constitution, at least fifteen percent of the national government's revenues would go to the forty seven county governments, each county having its own directly elected governor and lawmaking assembly. The decisions about resource allocations to the counties to be made in the Senate composed of representatives drawn from the counties rather than in ministries controlled by the executive. This provision further reducing presidential discretion in the allocation of resources (Kranom & Posner 2011:97).

Kenya’s new devolved government system is a form of participatory democracy. While combing both elements of democracy representation and inclusion, the Kenyan citizenry now have an institutionalized structure to influence policy and decision making. The constitution provides a legal foundation for governance through devolved structures at county level.

The elementary understanding of democracy is a country’s system of governance. It is supposed to give to all its citizens the right to participate in deciding their present and future. The challenge for democracy is to give citizens the opportunity to influence policies. This requires enabling the necessary structures for them to transmit their views (Bula & Espejo, 2012:340)

While aiming at revitalizing democracy, participation is arguably the key to achieving this (Pearce, 2010). Participatory democracy is the inclusive reaction to the limitations of representation, which over centuries has been minimum requirement to qualify a country as being democratic.
Centred on governance and participation, participatory democracy focuses on citizen engagement and direct involvement at the local level. The spaces for participation reflect on efforts to bring more people to the table, particularly those most affected by the decisions. The view of citizens as just as electors has been transformed by giving citizens an associational life in politics (Pearce, 2010:13-14).

Ank & De Graaf (2010:479) suggests that more direct forms of political involvement of citizens are brought forward in participatory democracy. The delegation of decision making power leads to citizens’ alienation from politics. Thus citizen political participation is vital to democracy; the participation of each citizen in political decision making is important to the functioning of the state.

Participation has several functions in democracy; to educate citizens increasing their civic skills and competence. Second, to integrate citizens giving them a feeling of being a part of their community and as a consequence, they also feel more responsible for public decisions. And thirdly, it contributes to a greater legitimacy of decisions (Ank & De Graaf 2010:479).

Devolution, as defined by Omollo (2010:17) is political arrangement where political, administrative and fiscal power distributed to semi-autonomous territorial and sub-national units. The sub-national units or counties, as in the Kenyan scenario are not directly accountable to the central government but work within statues and rules set by it. A sub-national system only goes to enhance democracy.

According to Mutua (2008:269), the devolution of power from the centre to the regions is at the core of the right to self determination. An arrangement like no other it brings the government closer to the people. Shifting towards devolution is for the most
part a reflection of the political evolution of Kenya. Moving towards a more democratic and participatory form of government aimed at improving the responsiveness and accountability of political leaders to their electorates.

Devolution is critical in achieving participatory democracy (Muia, 2006:5). Devolution reconstitutes the state in a democratic way by providing a process at local level through which diverse interests can be heard and negotiated and resource allocation decisions can be made based on public decisions. It takes the government closer to the people thus increasing opportunities for participation in governance.

Devolved governments basic characteristics include, first the existence of intent to grant autonomy and independence from centre as well as having the local units outside the central government’s control. Second, the local units ought to have clear and legally recognised geographical boundaries over which the exercise authority and within which they perform public functions. Third, local units have to be given corporate status and the power to raise sufficient resources to carry out specified functions. Fourth, it implies the need to develop local governments provide services that satisfy their needs and remain subject to people’s control direction and influence. (Olool, 2006:7).

The devolved government in Kenya has inspired the notion of participatory democracy. As enshrined in its new constitution, participation and promotion of democracy are the basis for great optimism towards equity and development in the state. Given Kenya’s history however, the realisation of this form of democracy is faced by an uncertain future.
2.3 Conclusion

Kenya’s history is rooted in a highly centralised governance system. One that was strongly opposed to decentralisation, *majimbo* or any other form of devolution. Devolution however, is about creating institutions for greater political participation. The new constitution is aimed at ending the tyranny of the central government over local communities.

While enhancing participatory arrangements within existing representative democracy, the key objective of devolution is the transfer of powers to foster democracy other than facilitating mere administrative decentralisation of institutions. There are great possibilities and potential of institutionalised participation, with inclusiveness and equality within the regions in Kenya widely desired.

The next chapter will aim to examine public participation as enshrined in the devolved system. It will focus on the structure, legal provisions and constitutional foundations of Kenya’s devolved government. It will look at the capacities of the Kenyan citizen to participate in the structure and the realities of the system. It will also look at the benefits of the system to the citizenry in their increased roles.
CHAPTER THREE: PARTICIPATION: BRIDGE OR BARRIER?

3.0 Introduction

New spaces for participation have been opened up because of the decentralization of governance in most states in the world. Participatory democracy emphasizes on levels of decentralization that is best suited for citizen engagement in policy making. In the tradition established by scholars, the requirement is that the decisions should be made where the citizens are. The justification for the connection between participation and forms of decentralization is on the decision-making processes being transferred from centralized levels of government to the local level; this then deems participation feasible. (Andrews & De Vries, 2011:428)

Participation is a critical feature in democracy. There is a great awareness that seeking public participation on social, political and public issues is important to promote people’s empowerment. Participation of people in governance, public debates and discussions, public opinion, involvement of community in the process of development at the local level and their representation and participation on different decision making and implementing is integral for the future of democracy (Jabeen & Iqbal, 2010:256).

Kenya has chosen devolution as a form of decentralization. According to Saito (2011:491), the process of devolution refers to a situation which authority for decision making and finance is transferred from central government to sub-national governments that enjoy a degree of autonomy. Devolved governments reflect an evolving paradigm shift in thinking regarding political, economic, social and economic roles of state and society. Devolution is aimed at putting people at the centre of development, promoting participation of all institutions and people.
For a country previously viewed as parochial, Ghai (2008:218) asserts that “devolution will certainly open up opportunities for public participation in state affairs.” There will be more debates about the purposes for which power should be exercised at the local level. Citizens will also be able to influence decisions on matters of local concern and to participate in greater number of debates and elections. Government officials closer to the people will probably make them more responsive and compel them to be more accountable. It is in this way that we can inculcate the values of democracy and participation.

3.1 Participation

Political-democratic theory definition of participation is the equal power position of all actors in a decision-making process. Participation holds many different meanings, which range from manipulation to full citizen control. The label participatory requires to be examined carefully at different participatory intensities. Some practices are labeled participatory that are simply not, or the level of participation is only minimal (Jenkins & Carpentier, 2013:267).

Spina (2013:2) suggests in studying participation there is skepticism over the relationship between forms of decentralization and political participation. The debate is over whether decentralized states stimulate greater citizen participation. An active citizenry should hold government accountable, ensures the enactment of public demands, and legitimizes the political system. However, the extent to which the degree of decentralization shapes these effects is of enquiry.
On the other hand, some scholars argue that some aspects of participation especially excessive participation as dangerous. While the degree of effective participation is not a constant measure, a substantial increase in political activity among the lower socio-economic classes could lead to more authoritarian ideas and thus to a decline in consensus on the basic norms of democracy (Ank & De Graaf, 2010:479).

To comprehensively embark on examining the concept of decentralization and participation, Kenya’s devolution offers an opportunity to examine the transferred powers, responsibilities and opportunities to participate, given in the sub-national units by and the where the citizenry are granted such authority.

### 3.2 Participatory Structure in Kenya’s County Government

Following the general elections in 2013, the devolved government came into place under the new constitution. Provided for in new government structure, is a process of decentralising the government into sub-national units. Transferring some power from the centre to the regions as provided for in article 1 (4), “that Sovereign power of the people is exercised at the (a) National level and (b) the county level” (CoK, 2010). Also article 6 (2), “the governments at the national and county levels are distinct and inter-dependent and shall conduct their mutual relations on the basis of consultation and cooperation”.

The centerpiece of participatory democracy, the county level system of government is aimed to develop a government with institutions that allow for popular participation at all levels. According to Ndulo, (2006:80-81) the multiple layers of activity at the county levels structures aims at bringing about enormous community participation. Through the 47 county governments created granted the right to convene to engage in a process of planning and decision making about their respective counties.
Participation features prominently in, but not limited to the following articles;

1. Article 174, “the objects of devolution are to (c) give powers of self-governance to the people and enhance their participation in the exercise of the powers of the State and in making decisions affecting them (d) recognize the rights of communities to manage their own affairs and to further their development.”

2. Article 196 (1), “states that a county assembly shall conduct its business in an open manner and hold its sittings and those of committees in public, and facilitate public participation and involvement in the legislative and other business of the assembly and its committees.”

3. Article 232 (1) “on the values and principles of public service which include: (d) involvement of the people in the process of policy making and: (e) accountability for administrative acts and (f) transparency and provision to the public of timely and accurate information.”

4. Fourth Schedule Part 2 (14) stipulates that the functions and powers of the county are to “ensuring and coordinating the participation of communities and locations in governance at the local level and assisting communities and locations to develop administrative capacity for the effective exercise of the functions and powers and participation in governance at the local level.”

The above articles clearly show the commitment to include the citizenry in decision making. It also underscores that participation is dependent on the county governments
and public service. They are both tasked to institute various forms of citizen participation forums and public policy making at the local level, under the premise that the citizens are provided for by law to take an active role in their undertakings.

As an aspect of citizen participation, Ank & De Graaf (2010:486) describe the openness and inclusion of forums to individual citizens and to their representatives the desired outcome. Constituting it not only provides for inclusion but gives the citizenry legitimacy by giving power self governance. The constitution explicitly bestows the rights to citizens to participate directly in the formulation, execution and control of public policy and affairs.

However, putting decision making closer to the people alone may not necessarily result in effective participation. Gaps existing between the legal and institutional mechanisms for enhancing participation and what actually occurs on the ground extend the reform agenda from not only constitutional but also including economic and social reforms that is vital to the success of participatory democracy.

3.3 Participation at the Grassroots

It is a general argument that people do not wish to actively participate in decision making. According to Pearce (2010:241), new forms of participation offer decision making power, however it is usually offered to participants who had no agenda in the participation process in the beginning.

Effective participation should relate not only to opportunities to participate, the relationship of non-participants to participants but also to the policy impact of the
participant. Important also is who participates and whether the views of those who participate are representative of the wider population and whether elite decision makers respond to the outcomes of the participation (Mc Laverty, 2011:414-413).

The determinants of participation are generally categorised in three groups. First the individual-level factors such as age, income, and political values represent one approach. The second category focuses on the role of community groups and social networks. Lastly the system-level variables, including economic conditions, corruption, and electoral systems, comprise the third group of determinants (Spina, 2013:3).

General research on participation also examines the role of education, gender and age. The findings of this research mostly point out that citizens with more education have higher rates of participation. Women are generally less active and interested in politics. With regards to age, younger individuals participate less often. However, there is a lack of consensus about the effect of economic conditions on participation. On the one hand, poor economic conditions may stimulate greater participation due to citizens’ discontent with the status quo. On the other hand, strong economic conditions in advanced democracies accord with higher rates of citizen participation (Spina, 2013:5-6).

Further studies also find that participants tend to be wealthier, more educated, of higher social status defined by caste or ethnicity, male, and more politically connected. This picture may partly reflect the higher opportunity cost of participation for the poor. Also the poor often benefit less from participatory processes. Studies from a variety of countries show that communities in which inequality is high have worse outcomes (Mansuri & Rao, 2013:5).
Taking the above into context, according to the World Bank (2013), Kenya a low income country has a population of 43.18 million and about 36% of this is the youth. 45.9% of the population are below the poverty line. According to the World Fact Book, Kenya’s unemployment rate stands high at an estimated 40% since 2008. Also, the Gini index that measures the degree of inequality in the distribution of family income in a country, Kenya was estimated to be at 42.5. According to the World Fact Book (2010), a Gini index of 0 represents perfect equality, while an index of 100 implies perfect inequality. Adult literacy, meaning basic reading and writing of simple everyday sentences for age 15 and above is about 87.4% while in total, the male population is at 90.6% while the female at 84.2%.

Against the background of the data above, while basic education levels are high a good indicator of participation, the economic status of many Kenyan citizens is weak thus negatively affecting participation. Inequality is also high, factors of which could significantly impact the ability of the citizenry to participate. This being taking into account, it might be presumptuous to ascertain if the socio-economic data above will directly affect the ability of citizens to participate, but taking into account previous studies taken on participation it cannot be ignored.

3.3.1 Challenges to Participatory Approaches

Some of the factors that inhibit participation include;

1. **Passive tendencies among the poor and rural population** - this mostly implies that the citizenry will rather wait for an outsider with expertise, aid, political power or money to tell them what to do (Berydall & Powell, 1997:91).
2. **Dependency reigns in most communities** - in direct relation to the first challenge, this does not necessarily mean that people are incapable of assuming responsibility, but it implies that the citizen who has never been a primary actor in policy and development is unlikely to participate (Berydall & Powell, 1997:91).

3. **Parity of participation in public debate** - parity is not achievable without socioeconomic equality. Inequality has a deep effect on participation because it impacts on internalised subjectivities on individual capacities to express ideas and even believe they have something to communicate (Pearce, 2010:12).

4. **Political efficacy** - defined as the ability to participate meaningfully politically usually because of one's education, social background, and self-esteem. It is viewed that people who believe it is possible to make a difference, who are self-confident and assertive are more likely to become engaged in public affairs and politics than people who lack such attributes (Magstadt, 2013:283).

5. **Ignorance and participation capacity of the citizenry** - the underlying logic of devolution is that it brings development prioritization nearer to its beneficiaries who are assumed to know their objective as opposed to subjective interests. Yet, this is not always so; a majority or popular decision can be misinformed and parochial to the disadvantage of intended beneficiaries (Nyjanom, 2011:5).

6. **Political apathy** - the lack of interest in politics resulting from self-satisfaction, ignorance or the conviction that “nobody cares what I think anyway.” Political apathy is viewed as a luxury in affluent societies where people do not feel threatened and are comfortable with the status quo. Apathetic citizens can afford
to be nonchalant about politics as they feel that they are not insecure or oppressed by it (Magstadts, 2013:287).

Based on the previous participatory opportunities to Kenyans Omolo (2011:11), states that a weakness found in the previous decentralization programs in Kenya such as the Constituency Development Fund (CDF) showed that even though a high 96% of the population was aware of the program, participation in it was a menial 39%.

7. **Leadership concerns** - this includes the community’s mistrust in the integrity of the political leaders, corruption, violence, and insecurity. Bullying and self-seeking leadership negatively influence the quality of participatory space and willingness to participate (Pearce, 2010:244).

8. **Elite capture** - citizen participation is about power and its exercise by different social actors in the spaces created for the interaction between citizens and local authorities. However, the control of the structure and processes for participation; defining spaces, actors, agendas, and procedures is usually in the hands of governmental institutions and can become a barrier for effective involvement of citizens.

9. **Lack of Information** - At times there are deliberate steps from leaders to lock out citizen participation. The postponement of meetings and lack of advertisement are some of the ways the used. Lack of the culture amongst public officials to share information is a factor that greatly affects the release of adequate information to citizens.
Although spaces for participation have been amply created, the capacity to engage in such spaces is in the midst of social and political barriers that are more than likely to affect the quality of participation. However, within the limitations the opportunities presented by devolution are still greater for the citizenry.

3.4 Conclusion

The clear legalization of participation has a significant positive impact in the securing of participatory democracy of Kenya. Despite the challenges that are likely to be faced in its actualization, the new constitutional concept of citizen participation places the initiative to the citizenry and the government to not only support but actively engage in its entirety to ensure its success.

Kenya however, harbours a highly centralized past that has had previous governments dismantling any form of decentralization putting devolution and citizen participation at risk. Following today’s democratic transition the future seem to hold a perceived threat to devolution of diluting of the powers of the sub-national regions.

According to Saito (2011:496), paying attention to political dynamics among diverse stakeholders is a necessary next step. A number of political issues such as political parties play crucial roles. Issues such as commitment to interference that have far reaching consequences of aggravating diverse interests linked to the sub-national and national levels.

Chapter four will look at the complex intergovernmental and political challenges being witnessed in the transition to a devolved state. It will take a look at how the political challenges are overshadowing the devolution process. Has citizen participation
in policy making led to a fundamental new division of roles between citizens and politicians?

CHAPTER FOUR: INTERGOVERNMENTAL RELATIONS CHALLENGES WITHIN DEVOLUTION

4.0 Introduction

Intergovernmental relations refer to the complex quilt of overlapping and interlocking roles within different levels of government. Predisposed to be oriented toward administrative issues rather than political issues, intergovernmental relations are devolution in action; a network of day to day interrelationships between central and regional governments within a devolved system. It is the political, fiscal, programmatic and administrative processes by which a higher unit of government shares revenues and other resources with lower unit of government (Bagaka 2011:7).

Kenyan politics has significantly changed because of devolution. The provisions for devolution in the 2010 constitution go beyond any previous governance reforms, a constitutional configuration of the state that has evolved from decades of debates. The 2010 constitution in large measure an attempt to undo the concentration of wealth and the centralized model that dominated power (Cornell & D’Arcy, 2014:175).

In spite of the constitutionalization of the transfer responsibilities to county governments, the transition is faced with a legacy of an exceedingly strong national elite society a complex patronage systems with strong credence on centralism. The
rebalancing power between the counties and the centre is likely to pose an unprecedented power struggle within the leadership.

4.2 History of Intergovernmental Relations in Kenya

According to Omolo (2010:20), after independence there was no constitutional limitation on the exercise of power by the centre. Power lay ultimately at the centre, with the head of state having immense power over all public policies.

The present intergovernmental framework can only be understood from this historical background. According to Branch and Cheeseman (2008:4), after independence Kenyan political life featured a ‘bureaucratic-executive’ state established in an all-powerful presidency, whose control was grounded in the ability to direct political activity at the grassroots via the provincial administration.

A colonial conception, the grassroots provincial administration represented highly concentrated powers of the centre at local levels. The post colonial context of this was represented by the extension of presidential authority using this system. The control of the provincial administration institutionally configured to Kenyatta’s presidency, he held the key to allocative and coercive powers and through it (Dar Nyawalo, 2011:58).

While the provincial administration system was abolished by the post independence, political linkages to the grass root was repackaged within the same structure. According to Bagaka (2011:3), under the office of the President, the system was transformed into 8 administrative structures headed under Provincial Commissioners as even stronger tools of executive decisions. Succeeding the first president Kenyatta,
President Moi continued strengthening the system despite popular dissidence to provincial administration by parliament.

Viewed as the first conception of intergovernmental relations, today’s constitution has no provisions for the provincial administration system. The duties and roles played by the provincial administration however form the basis of today’s relationship between the national and county government (Bagaka, 2011:6).

4.3 Intergovernmental Relations Framework within the New Devolved Government

The Constitution of Kenya provides power to two Houses of Parliament and the County Assemblies, the Executive at the two levels of government, the Judiciary and independent tribunals. In facilitating effective exercise of the delegated power, the Constitution gives powers, responsibilities and specific functions to the different organs. The Executive’s role is implementing national and county laws and policies. The Legislative Houses at both levels of government makes laws and exercises oversight over the Executive. While the Judiciary adjudicates any disputes by interpreting the Constitution (CIC, 2014).

Also in the 2010 constitution; political, administrative and fiscal responsibilities are shared between the national and the county governments. Political decentralization transfers political authority to the local level through sub-national governments as well as electoral and political party reforms. Administrative decentralization refers to the full or partial transfer of functional responsibilities to the sub-national units of governance. Fiscal decentralization refers to the transfer of financial authority to the sub-national governments by reducing the conditions on the intergovernmental fiscal transfer of resources and granting sub-national units greater authority to generate their own revenue (Mwenda, 2010:6).
The structure and functions of each level of government are distinctively provided for giving a mirage of seamless delineation of roles. However, regardless of this institutionalization, the maintenance of a cohesive and cooperative coexistence between the sub-national and national governments requires a mechanism to guide relations between governments.

This need for a framework to govern the intergovernmental relations is based on the provisions of Article 6(2) of the Constitution; “the government at the national and county levels are distinct and interdependent and shall conduct their mutual relations on the basis of consultation and cooperation.” Article 189 defines the scope and mechanisms for intergovernmental relations based on autonomy and interdependence, demanding closer liaison, consultation and exchange of information necessary for appropriate working of the governance structures. The intergovernmental framework is consolidated in the Intergovernmental Relations Act, 2012 (TA, 2013: 12).

However, despite distinct constitutional functioning of the levels of government, institutional arrangements, legal frameworks and interdependence and co-operation that define intergovernmental relations and separation of powers, they do not subscribe absolute autonomy for sub national units therefore they are intertwined into each others affairs (TA, 2013:12).

According to Mitullah (2012:2), Kenya’s intergovernmental relations mirror an overlapping authority model. In the model the constitution defines areas of autonomous actions by respective jurisdiction. Power relations are governed by the constitution with each level of government able to defend its powers, this making the powers limited and dispersed.
As a result of the overlap it is inevitable that jurisdictional conflicts between the arms of government will arise, restraint is therefore imperative as each level exercises its powers. This ensures that levels of government do not interfere with the exercise of another organ’s powers. The effective functioning of the institutions thus requires continuous consultation for sufficient commitment in ensuring that the boundaries of the exercise of power are agreed within the provisions of the constitution (CIC, 2014).

4.3.1 Intergovernmental Relations Act (2012)

While there are other provisions in the Constitution that inform the intergovernmental relations, the Intergovernmental Relations Act, 2012 is Kenya’s ideal mechanisms for ensuring smooth operation between the two levels of government. The act serves as reinforcement to the constitutional provision (Mitullah, 2012:1). According to IEA (2012), the strongest feature of the 2012 act is the principles and criteria for intergovernmental relations, its structures and dispute resolution that are derived largely from the Constitution. The weakest feature however, is that it downplays the role of the public and legislature.

The Act provides a framework for consultation and cooperation between the two levels of government. It provides institutional structures that employ the principles of peoples’ sovereignty, inclusive and participatory, respect of each level of government, promotion of national values, promotion of equality and equity in service delivery, impartiality, and minimization of disputes and institutionalized protection of marginalized groups. The intergovernmental structures provides for coordinating governments’ policies, legislation and functions. It as well as provides mechanisms for power transfers and functions to the two levels of government (Mitullah, 2012:4).
The intergovernmental relations structures in the act are; the National and County Government Coordinating Summit, the Intergovernmental Relations Technical Committee, the Intergovernmental Relations Technical Committee Secretariat and the Council of Governors (IEA, 2012:2).

When taking into consideration the principles of cooperation and coordination that guide intergovernmental relations, Mitullah (2012:2) asserts that it should be geared towards sustainable development. The integrated delivery of services by intergovernmental system ensures mutual consultation and coordinated strategic planning and accountability for performance and expenditure in terms of legislation. In adopting devolution, it is anticipated that the system is dynamic and whole, but made up of various parts. Each and every part should work together otherwise the system falls. No single level of government is able to deliver on its own.

4.3.2 Intergovernmental Fiscal Relations

Intergovernmental fiscal relations form an important cornerstone of Kenya's intergovernmental relations. The control over the distribution of financial resources and the amounts allocated to the different tiers of government is amongst the most contentious issues in intergovernmental relations. To ensure the functions of the counties are adequately provided for in line with national financial imperatives and objectives, it constitutes a formulated framework guiding the process.

Under the 2010 constitution, at least 15 percent of the national government’s revenues must go to the 47 county governments. A range of duties in areas such as the provision of primary health care, the implementation of agricultural policy are transferred to the county. Decisions about resource allocations to the counties are to be made in the
Central to this is the need to design an intergovernmental fiscal relations system that enhances the effectiveness of sub-national governments in mobilizing revenues and implementing expenditure programmes. According to Wachira (2010: 74-75), while fiscal decentralisation is not a new phenomenon, a plethora of challenges have been faced in the framework, conceptually and in implementation.

Today’s fiscal intergovernmental relations in Kenya are premised on a number of legislations that are poised to counter problems faced in the past. The Public Finance Management Act, 2012, is a harmonization of the County Government Financial Management Bill and The Intergovernmental Fiscal Relations Bill. The two bills were initially developed in recognition that the success of implementation of the devolved system of government depends on the financial resources and how the national government is able and willing to share these with the county governments (Nguri, 2012:10).

The Public Finance Act, 2012 having integrated these two important acts makes its good. Moreover, it is viewed to hold good provisions. However, the act is viewed to have omitted integral parts and ignored previous concerns of the original two documents. This has raised questions on the central government trying to stifle future funds to the counties (Wachira, 2010:11).

According to Wachira (2010:83), it is generally expected that with regard to fiscal decentralization, sub national units are more than likely to be faced with an array of shortcomings. While the central government is warranted to intervene when such matters
arise, they may however inhibit fiscal autonomy and responsibility of the sub national governments as they try to solve the problem.

Notably despite legislations, the central government has already started crippling the local authorities by systematic failure either deliberate or otherwise to allocate the required funds for them to undertake their functions effectively. Already the bills which are either passed or are in parliament for legislation portray this feeling. For example, matters surrounding financing the health sector are being deprived affecting counties functionality (Nguri, 2012:10-11).

4.4 Political Challenges within Intergovernmental Relations

Besides the formal relations between the county governments and the central government informal relations still exist. While there is a required governmental interaction to address the disputes and interdependencies, there also exists spill over interactions, as well as policy problems that defy the constitutional lines of division.

4.4.1 Power and Patronage

The organization of the devolved state necessitates the reorganization of the existing political units and the deconstruction of the patterns of power relationships; the recreation of the hierarchy of positions of power into a new mould. Each sub-national jurisdiction having its own affairs, devolution has governors enjoying unparalleled power within the county. The central government now having limited control over sub-national regions

Despite this, the ultimate goal for political devolution is the delivery of services by devolved government units. Basically dependent on the ability of regional
governments to understand and act on the needs and wishes of the local people, otherwise they become bosses unto themselves (Ndulo, 2006:6).

According to Sadanandan (2012:211), with decentralization patronage politics extends to sub-national levels. The devolution of governance opens up avenues for local politicians to distribute benefits not only to their central party leaders but to their own.

Leon (2012:1) emphasizes that a highly intertwined distribution of power across levels of government blurs clarity of responsibility. National politics impact on the regions is dependent upon the level of decentralization. However, this correlation tends to weaken as regional governments gain greater decision-making and financing powers. The greater the number of policy areas and resources placed in the hands of regional governments, the lesser the influence of national leaders on the regions.

The divergent goals within politics puts into play the extent to which devolution is reinforcing or challenging existing elites and patterns of patronage. According to Cornell & D’Arcy (2014:174), Kenya’s gubernatorial elections expressly reflected more than change in the existing dynamics of Kenyan politics. The local election process created the setting for important changes in political elitism and rebalancing between the centre and county. The gubernatorial election results reflected prevailing political dynamics in the country, most of the elected governors were ‘insiders,’ members of the existing political elite who used their networks and records of delivering patronage to win.

The distribution of patronage is primarily shaped by the nature of electoral competition that local politicians face. Central party leaders, aware that local elections generate incentives for local politicians to act independently, thus through the local elections it is easily identifiable and targeted patronage to key constituents. When such
distributions of patronage are aggregated, more decentralized states will have more extensive distribution of patronage than less decentralized states (Sadanandan, 2012:211).

The gubernatorial elections in 2013 showed the resilience of the national elites and further entrenched their existing networks of patronage. In most of the counties those who won were local ‘insiders’ from the ‘right’ ethnic group and the ‘right’ party: the majority ethnic group and the party representing their group at the national level (Cornell & D’Arcy, 2014:174). As demonstrated below;

"... the largest group of governors (34%) used to work in the public administration. The second largest group (21%) was elected officials, mostly MPs. This suggests that the majority of the elected governors (55%) were insiders. A minority of governors, 21%, had previously had an occupation clearly outside the state (from the corporate sector or civil society). If we also add the health and education professionals, who in principle could have experience both inside and outside the state, the group of outsiders is only 34% of the total. Thus, the winning governors in the majority of the counties were insiders." (Cornell & D’Arcy, 2014:182).

Cornell & D’Arcy (2014:174) however emphasize on a potentially significant change in future. While the majority of governors elected were insiders, there were still a significant percentage of outsiders who succeeded in the election. Some of the insiders not from the old national elite, won despite having limited support from party leaders. These powerful individuals from outside the national elite have acquired power bases anchored in the county rather than at the centre. These men constitute powerful adversaries for the old national elite, and strong advocates for devolution. In the struggle over the full implementation of devolution, they are a powerful and distinct group within the broader political elite fighting for the further entrenchment of the process, challenging the old national elite and the highly centralized character of the Kenyan state.
4.5 Conclusion

For Kenya, the establishment of an effective intergovernmental relations framework is integral to the success of the devolved government system. The framework and various legislations being already in place, the challenges to be tackled are reliant on the ability of the governments to pragmatically rationalize the system. Given the politically sensitive relations across new tiers it requires consensus by all the stakeholders, to not only aid the effective functioning of the intergovernmental system but also ensure that the gains of devolution are sustainable.

In the light of this, although the old elite might have been able to maintain their power bases in the regions, a new elite power outside the core elite has emerged. The slight shift in power relations is a significant dynamic of future politics in Kenya. Decentralization initially considered to drive patronage closer to the centre is now faced with ambitious local politicians who are reshaping distribution.

The relationship between the counties at the national government is a struggle to prove who is superior to the other. An expected challenge, the wrangles between the two governments is a permanent fixture in day-to-day relations. According to Obado, (2014), the current standoff between senators and governors has transformed into a constitutional crisis. Further, seemingly in a bid to subdue the governors, the Senate have deferred discussions on vital Finance Bills, thereby halting movement of cash to county governments.

The most contentious issues in intergovernmental relations are generally of a political nature, thus attempts to legislate intergovernmental relations might bring greater structure to the process, and it will not necessarily relieve intergovernmental challenges and may inadvertently aggravate them. As a consequence, the need to maintain a flexible
framework for promoting greater cooperation between different spheres of government should be ultimate goal.

CHAPTER FIVE: GENERAL CONCLUSION

5.1 Summary of Study

This study set out to explore the concept of participatory democracy within devolution in Kenya. The democratic process, devolution is a governance system that features greater inclusion and participation of the citizenry to foster equality and equitably share resources. The study has looked into the spaces created for citizen participation and the consequent challenges that arise from the transition to good constitutional governance.

The first chapter focused on the general introduction to the study topic. The main aim of the chapter was to highlight general discussions on participatory democracy and devolution; this is a new concept in many African democracies, Kenya included. Further, using participatory democratic theory as the theoretical lens the chapter delineates the tenets and underpinnings that act as guiding principles for the study of participation in democracies.

The second chapter traces the history of Kenya’s journey into devolution beginning with the first conception of decentralization majimbo, which features prominently in every stage of the country’s transition. Majimbo is the foundation of today’s devolution and serves as the historical reference of the study. The chapter also discusses Kenya’s devolution design that characteristically espouses participatory democracy.
Chapter three of the study delved into participation as enshrined in Kenya’s 2010 constitution. It set out to outline the provisions within the constitution that provide for participation and the structures that underpin it. While it is guaranteed in the constitution, the chapter also looks into grassroots participation. The chapter highlights general challenges to participation within the grassroots.

Chapter four of the study critically assessed the most crucial aspect of devolution, intergovernmental relations. Intergovernmental relations within the devolved structure, its structure and challenges, precede the ability for devolution to be wholly participatory. The study looks beyond the structural challenges and discusses the political challenges that face intergovernmental relations.

5.2 Research Findings and Conclusions

Kenya’s new governance structure has evolved from decades of clamouring for suitable constitutional reforms. The post-independence state characterised by centralization of power and devolution is a form of decentralisation that is viewed as a guarantee for an equitable share of power and resources within the counties. Thus following Kenya’s 2010 Constitution, the new dispensation entrenches the devolved government by unconditional transfer to counties.

*Majimbo* is an important part of Kenya’s decentralisation history. Its has been over the years used as a political tool by leaders during elections. This has not only caused major confusion to the citizenry about decentralization but has created a general mistrust over the new devolved system. In the light of its past, the new form of decentralization is set to successfully deliver effectively in great realisation of this history.
The 2010 constitution provides for a two tier government structure that gives power to the people. The county government being granted greater autonomy to run its own affairs, the constitution reduces executive control over all institutions that in previous governments were controlled by the presidency. The constitution also extensively provides for citizen participation and the county government serves as the stage for community engagement in governance.

Despite participation being provided for extensively in the constitution an array of challenges confound grassroots participation. For Kenyans, when it comes to a relatively new concept to the political culture, participation is faced with apathy, socio-economic inequalities, gender roles and general ignorance of citizen participation.

The study suggests that political culture and history of Kenya are pitted against participation. As observed, the institutions within Kenya’s government structures are weakening due to power struggles. The politics of devolution has been preceded by centralization and complex patronage systems, there is a high threat to devolution by long standing political elites to whom the changes stretch out the distribution of power. This study suggests that in such a context efforts to transition into a completely devolved system of governance in the long term must seek to strengthen intergovernmental relations through cooperation and coordination and overlook power plays.

Intergovernmental relations within devolution are a highly complex undertaking. The concept of separation of powers although clearly demarcated, the challenge being faced is in the overlapping roles in the tiers of government. Further intergovernmental relations in the Kenyan government features considerable degree of power wrangles. Who is the boss of whom? Is the question raised day after day that threatens the
foundation of the system. The issue of power is the root of not only the administrative but also in financial discord within devolution.

The study however, despite the challenges acknowledges that devolution is likely to be successful in strengthening democracy by addressing previous deficits in legitimacy and accountability through participation and decentralisation. The study makes it clear that the success of the system is however influenced by the broader context of institutional capacity in which the two governments carry out their mandate. Devolution demands strong capacity for cooperation, co-ordination and respect for the overall objective to be achieved.

Participatory democracy theory suggests that the most integral characteristic of a democratic polity features a participatory space where the state and the citizenry interact. This study observes that actual citizen participation is not a definite result of created spaces for participation. The individual's capacity to effectively contribute within the institutions is hindered by as the study highlights an array of challenges. However, according to the theory, the individual will only learn to contribute by taking participating in the governance structures. Participatory democracy is dependent among other things on structural changes within the society which enable meaningful participation.

In conclusion therefore, on one hand as devolution characteristic of participatory democracy is poised to bring much progress. But on the other hand, one can only be cautiously optimistic over the expectations of devolution, progress might not occur in the manner envisioned. The government system being particularly politically sensitive, the realisation of a participatory and inclusive democracy is pegged on broad political consensus between all stake holders.


