

# **Devolution without Devolution: Centralized Police Service Implications in a Decentralized Government in Kenya**

by

Jospeter M. Mbuba, Ph.D.  
Purdue University Fort Wayne

## **Abstract**

This paper utilizes document analysis, including the review of the Constitution of Kenya and acts of Parliament and other relevant literature to examine the implications of a centralized police service in a decentralized system of government, and it evaluates the lateral relationships between the national government holders of police power and county government executives. The paper also highlights the convoluted pecking order and lateral disharmony between the national government police commanders at the county level, and county government leaders. The findings support the necessity of creating law enforcement agencies for entities that have law-making responsibilities, and offer recommendations for improvement.

**Keywords:** Devolution, county governments, centralized police, decentralized police, Kenya police

## **Introduction**

The Constitution adopted in Kenya in 2010 paved the way for a form of decentralization that has been hailed by the World Bank (2015) as “among the most rapid and ambitious devolution processes going on in the world ... as the country builds a new set of county governments from scratch.” The Constitution divided the country into forty seven county governments, which have jurisdiction over the provision of services in several sectors such as agriculture, health services, cultural activities, transportation, animal control, trade development, disaster management, and local governance, among others (Steeves, 2015, p. 461). This jurisdiction, however, was not extended to the police service, which is still the preserve of the national government.

Operationally, although the concepts of decentralization and devolution are loosely used interchangeably, there are definitional and functional differences that may impact the way in which law enforcement agencies operate in decentralized and devolved governments.

Decentralization has been found to have no concrete definition but to be rather controversial in the literature where its usage has been “restricted to abstraction” (Kessy, 2013, p. 215). Even when the term embodies a somewhat concrete phenomenon, the embodiment is not static but finds incrementally new meanings over time. According to Kanyinga (2016, p. 166), “in the 1970s and ’80s the term [decentralization] was used to refer to the transfer of authority, responsibility, and resources from the center to lower levels of government through various forms of deconcentration, delegation, and devolution”. Kanyinga further notes that “the concept now encompasses, in addition, the sharing of power, resources, and authority for shaping policies in the society” (p. 166).

This definitional fluidity is particularly true considering the existing variations in the functions of local governments across the country. Kessy (2013, p. 216) views decentralization as “an initiative engineered to empower people by giving them an opportunity to decide on matters of significance to their lives”. The primary emphasis in decentralization, especially administrative decentralization as opposed to political decentralization, is in the transfer of some government functions from the national government to lower level units of the same government for implementation purposes.

Devolution has a deeper, broader, and legally guaranteed and therefore more enduring transfer of the national government’s functions to lower-level semi-autonomous government entities. It focuses more on political decentralization, which is usually entrenched in the Constitution so that defined power and authority transferred from the national government are systematically and predictably passed on to constitutionally elected leaders of sub-national units. In the Kenyan experience, the Constitution delineates the powers and authority of the devolved and semi-autonomous county governments in the Fourth Schedule, titled, “Distribution of functions between the national government and the county governments” (Constitution of Kenya, 2010, p. 174).

The Constitution is unequivocal, that policing, law enforcement, and security matters are functions of the national government. To be clear about the centrality of security to the national government, the National Security Council, which manages all security matters, is chaired by the president who also serves as the country’s head of state and commander-in-chief of the defense forces. However, there are regional, county and local levels of security administration, but they are manned by officials of the national government. At the county level, county police commanders and county commissioners are in charge of law enforcement and the national security apparatus respectively.

Since county police commanders and county commissioners are not answerable to the governor but to the national government, the subservient position of governors with respect to control of law enforcement and security matters creates tensions in some counties between the elective leadership of counties and the appointive members of the national government security system (Cheeseman *et. al.*, 2016).

As a result of these tensions, Cheeseman *et. al.* report that “governors complained both that the security forces were not guaranteeing the safety of their people, and that they were abusing their powers; and they demanded some kind of control over security” (ibid, p. 25). Even more profoundly, county governors find it anomalous that even their personal security is determined and arranged by other forces at the county level while they (governors) don county flags on their official cars, which symbolizes executive power, and are addressed with the highest salutation in the country – “Your Excellency”. Since the main function of the police is to serve as the law enforcement arm of the government, and since functionally devolved governments with centralized police services are a rare combination, this paper aims to provide a critical assessment of the effects of retaining the police at the national level while most other essential services are devolved and provided by the county governments. The paper also aims to highlight the nature of the lateral relations existing between the national government holders of police power at the county level, on one hand, and the leadership of the semi-autonomous county governments, on the other.

## **The Onset of Devolution in Kenya**

The concept of devolution is not a new phenomenon in Kenya; several attempts have previously been made to decentralize state resources, although the state power always remained with the presidency until the enactment of the 2010 Constitution. Elaborate post-independence decentralization efforts can be traced to as early as 1969, when the government initiated the District Development Grant Program, which was to later transform into Rural Development Fund (Cheshire, Mutiso, & Chege, 2015). The objective of the District Development Fund was to “set aside funds in each district to implement specific development projects” (ibid, p. 250). In another major attempt to decentralize state resources, the government unveiled, in 1983, what was touted as the District Focus for Rural Development strategy, which entailed decentralization of development activities to the district level (Sigei, 1987; Kirori, 2015; Auya, Bunei, & Kimeu, 2015; Cheshire, Mutiso, & Chege, 2015). Under this strategy, administrative districts were responsible for identifying the needs of their communities and implementing the government plans with resources being sent directly from the national government.

A more comprehensive form of decentralization was launched in 2003 under the banner of the Constituency Development Fund (CDF), which sought to decentralize government resources to constituencies under the supervision of political leaders at the constituency levels (Auya, Bunei, & Kimeu, 2015; Cheshire, Mutiso, & Chege, 2015).

The CDF programs as encapsulated in the National Government Constituencies Development Fund Act of 2015 (Laws of Kenya), have, however, been judged to be politically driven initiatives, at least to the extent that they “nurture the integration of diverse communities into a common set of political and social values in support of the existing system” (Baskin, 2010, p. 3).

But as Baskin further notes, “constituency-based initiatives can protect communities from the impersonal administration of inflexible and centralized state organizations that often overlook individual communities in the name of administrative rationality” (ibid., p. 3).

The common denominator in all these initiatives is the transfer of resources and some power to the lower levels of government that are relatively independent of national government, referred to as “democratic decentralization” (Hope (2014, p. 339). Although there was a political will to transfer power to the people to prioritize their own needs, the piecemeal transfer failed to contain the surge for devolution and perhaps even added impetus to the clamor for devolution. Ultimately, the full devolution was availed through the new Constitution enacted in 2010. That full devolution, however, did not include the police service.

The magnitude of power sharing that was decreed by the 2010 Constitution as is currently practiced remains unmatched by any of the previous attempts at decentralization. The Constitution, either directly or through calling on Parliament to create new legislation, provides sufficient structures to run and sustain a devolved government, in addition to creating county governments. Under article six, the Constitution divides the territory of Kenya into counties and decrees that “the governments at the national and county levels are distinct and interdependent and shall conduct their mutual relations on the basis of consultation and cooperation.” To entrench it even further, the Constitution identifies sharing and devolution of power as one of the “national values and principles of governance” (Constitution of Kenya). Chapter eleven, titled “devolved government”, aims among other things “to give powers of self-governance to the people and enhance the participation of the people in the exercise of the powers of the state and in making decisions affecting them” and “to facilitate the decentralization of state organs, their functions, and services, from the capital of Kenya” (ibid).

A critical twin question emerges from the foregoing observations. What led to the concerted outcry for the new law and what kind of Constitution existed prior to the much acclaimed 2010 Constitution? The first post-independence Constitution in Kenya, which was framed in the early 1960s following independence from British colonial rule, allowed for competitive multi-party politics. But the Constitution was replaced in 1969 by a new version that consolidated the plethora of amendments to the initial Constitution, with the latent effect of concentrating most of the powers around the presidency (Mbuba, 2017). The most repugnant amendment was the introduction of a clause that disallowed multi-party politics and declared Kenya a single-party state with Kenya African National Union (KANU) as the only party. This meant that expulsion from KANU, which was the ultimate penalty for errant politicians, caused a sure and sudden death of a political career (ibid.).

This amendment triggered an outcry that grew over time into a spirited clamor for constitutional change to not only re-introduce multi-party politics, but also to address the burgeoning powers of the presidency. The single-party clause was ultimately repealed in 1991 and numerous political parties were formed.

Although the opposition dislodged KANU from power in the 2002 general election, the Constitution still remained contentious, leading to the 2005 referendum for the enactment of a new constitutional order. The government-sponsored referendum was defeated and the country went to the 2007 election with the old Constitution, leading to an unprecedented eruption of violence. The intervention by a high-profile team of mediators from the African continent recommended short-term power sharing among the contending parties and long-term constitutional, legal, and institutional reforms. Those reforms led to, among other outcomes, the drafting, debating, and the ultimate passing of another Constitution in a national referendum held in 2010.

## **Structure of Kenya's National Government**

The promulgation of the new Constitution in 2010 radically replaced the all-time colonial imperial presidency with a devolved government that balanced power between the national government and the sub-national units. As a result, the government consists of a two-tier administration that includes the central or national government and the county governments. The national government comprises three branches, namely, the legislature, the executive, and the judiciary. The Constitution decrees at Article 94 that, "the legislative authority of the Republic is derived from the people and, at the national level, is vested in and exercised by Parliament." Parliament is a bi-cameral house comprising the National Assembly and the Senate. The National Assembly consists of 350 members who include 290 members, each elected by the registered voters from single member constituencies; 47 women representatives, one elected by the registered voters of each of the 47 counties; 12 members nominated by parliamentary political parties according to each party's proportion of elected members in the National Assembly; and an *ex officio* speaker. The Senate consists of 68 members including 47 members, each elected by the registered voters of the counties, each county constituting a single member constituency; 16 women representatives nominated by political parties according to each party's proportion of elected members in the Senate; 2 members including one man and one woman representing the youth; 2 members including one man and one woman representing persons with disabilities; and an *ex officio* speaker. The inclusion of "women representatives" in various legislative levels is meant to mitigate historical male-dominance in political decision making and to enhance gender parity.

The executive is established by Article 130 of the Constitution and includes the president, deputy president, and the rest of the cabinet. The president is elected by registered voters in a national election that takes place every five years. The president serves as the head of state and government, the commander-in-chief of the Kenya Defense Forces, and as the chairperson of the National Security Council whose members include, among others, the Inspector-General of the National Police Service. The deputy president is usually the running mate of the candidate who wins the presidential election and serves as the principal assistant of the president.

The third branch of the national government, the judiciary, consists of the judges of the superior courts (supreme court, court of appeal, and the high court), the magistrates of the subordinate courts (magistrates courts, Kadhis' courts, courts martial), and other courts or local tribunals. The Constitution recognizes that the judicial officers represent the will of the people as all "judicial authority is derived from the people and vests in, and shall be exercised by, the courts and tribunals" (Constitution of Kenya, 2010, Article 159).

As is common to contemporary national governments, issues of national security are central to Kenya's national government policy. The onus of national security rests with three constitutional agencies, namely, the National Intelligence Service, which is responsible for gathering security intelligence and counter-intelligence; the Kenya Defense Forces, which is responsible for managing emergencies and disasters and restoring peace where there is unrest; and the National Police Service, which is responsible for crime control and law enforcement. Although the essential role of the police in the structure of the national security may explain and even justify the desire by the national government to retain the police at the national level, this paper addresses the implications of the total absence of any form of official law enforcement at the command of the county governments with respect to the full realization of the semi-autonomous status granted to county governments by the Constitution.

## **County Governments in Kenya**

Kenya's devolution of government involved the creation of counties and county governments with an intricate administrative design akin to the national government organization. County governments were created "to give powers of self-governance to the people and [to] enhance the participation of the people in the exercise of the powers of the State and in making decisions affecting them" (Constitution of Kenya, 2010, Article 174 (c)). The Article specifies other objectives of devolution: to recognize the right of communities to manage their own affairs and to further their development; to protect and promote the interests and rights of minorities and marginalized communities; to promote social and economic development and to provide accessibility of services throughout the country; to facilitate the decentralization of state agencies along with their functions and services from the capital city; and to ensure equitable sharing of national and local resources throughout the country.

The mandate under the Constitution for counties to make their own decisions in furtherance of the rights of marginalized communities may be confounded by the varying needs of counties as some need more police resources than others. The counties in the northern regions of the country, for example, tend to experience more conflict and terrorists' instigated violence (see Lind, 2017), which renders those counties more needy of police resources and, by extrapolation, more reliant on the national government for the centralized service.

Similarly, in counties that house refugee camps where strong community policing would represent strong local ownership of security needs (Brankamp, 2016), the heightened reliance on the national government for police resources and other security needs might lower the competitiveness of those counties in claiming the degree of autonomy enjoyed by other counties in which security needs are not as pronounced. According to Lind (2017, p. 2) “while devolution provides unprecedented powers and resources for county governments to pursue their own development plans, forces and drivers at the national and regional levels continue to influence patterns of violence and the governance of security more widely”.

Unlike the national government, which comprises the legislature, the executive and the judiciary, county governments comprise a legislature and a county executive but no judiciary. According to Article 185 of the Constitution, “the legislative authority of a county is vested in, and exercised by, its County Assembly”. Members of County Assemblies, commonly referred to as MCAs, include two categories – those elected directly by voters of wards, each ward constituting a single member constituency, and those nominated by political parties according to the party’s representation in the assembly, a measure that is meant to remedy gender imbalances by ensuring that at least one-third of the MCAs are of each gender. The speaker of the assembly is elected by the members of the assembly from among persons who are not members of the assembly. The county executive power is vested in the County Executive Committee (CEC), which is the equivalence of the cabinet in the national government, with each CEC member heading a county department or a section thereof. The full committee comprises the governor and deputy governor, and committee members appointed by the county governor and approved by the county assembly, from among persons who are not members of the assembly. The governor serves as the county chief executive and the deputy governor as deputy chief executive.

## **Centralized Versus Decentralized Policing**

In a centralized police system, the police service is a national agency in which all police personnel follow a singular chain of command that traces authority to a central chief executive. Kenya’s police service is centralized and police recruitments, training, deployment, and promotion are controlled and organized by an independent civilian body – National Police Service Commission – which is answerable to the national government.

Conversely, a decentralized police system comprises several police agencies, each of which has its own chain of command that traces authority to as many chief executives as there are police agencies. For example, the United States utilizes a decentralized police system with autonomous state police agencies for each of the mainland states and numerous separate agencies for counties, municipalities, cities, airports, universities, and many other local entities. Police recruitment, training, and other organizational matters are left to be determined by individual agencies.

In a decentralized system, the country usually has no national police service. In Kenya, all police authority is vested on one national chief of police, officially designated as the Inspector-General of Police (Mbuba, 2017). Although the National Police Service is not devolved, it maintains field offices for the purpose of de-concentrating from the capital city and for ease of implementation of the national government law enforcement agenda.

Although the security agencies and the police service are national government entities, there are some areas in which the county-level national government security agents interact with the county government leadership as they strive to serve a common populace. In respect of this interaction, County Government Act of 2012 decrees that, “the governor shall receive regular briefings from county security committees”. The county security committees are chaired by the county commissioner and the membership to the committees includes the county heads of the Kenya Police Service, Administration Police Service, Criminal Investigations Directorate, National Intelligence Service, and, where possible, representatives from the Kenya Defense Forces and the immigration department in the county.

## **County Policing Authorities**

A growing phenomenon in police operations throughout the world today is external or civilian oversight of police (Porter & Prenzler, 2012). Each of the counties in Kenya has a County Policing Authority, akin to the central government’s Independent Policing Oversight Authority, whose objectives are to hold the police accountable to the public, to ensure professionalism and discipline in the police service, and to ensure that complaints by the public are handled appropriately. According to the National Police Service Act of 2011 (Revised 2016), County Policing Authorities were created, among other functions, to develop proposals on priorities for police performance in the county; to monitor trends and patterns of crime in the county including those with a specific impact on women and children; to provide oversight of the budget of the Authority; and to provide feedback on performance of the police service at the county. Due to the widespread inability of the police to effectively investigate possible misconduct of their own members in what would appear like self-incrimination, civilian oversight is utilized for such investigations in an effort to provide independence, boost public confidence in investigations of police conduct, and thereby increase police accountability (Porter & Prenzler, 2012).

Although the County Policing Authorities are staffed mainly by several members who are *ex officio* or have automatic membership by virtue of the offices they hold within the police ranks, there is still a significant presence of appointed civilians into the Authorities, which bolsters the perception of a civilian oversight. According to the National Police Service Act of 2011 (Revised 2016), the *ex officio* members include the county heads of the Kenya Police Service, Administration Police Service, and Directorate of Criminal Investigations; the chairperson of the county security committee; and a representative of the National Intelligence Service. The governor appoints another six members from various sectors of the general public.



In order to account for each of their functions, County Policing Authorities are required by law to submit quarterly reports to the county governor, the Inspector-General of the National Police Service, the cabinet secretary in charge of policing, and the respective county assembly. While the meetings of the County Policing Authorities are chaired by the governor or the governor's designee, it is imperative to note that the secretary to the authority, who must be a senior police officer, is appointed by the county police commander, whose allegiance is to the national government.

## **Policing in Kenya Before and after Devolution**

Prior to Kenya's devolution, police administration was centralized with respect to the chain of command, but functionally, the police service was somewhat organized in what Kessy (2013, p. 217) refers to as "de-concentration" or "a situation where specific responsibilities and services are transferred from the central government to the lower levels such as regional offices and branches." The two parallel police services that currently trace their authority to a joint command center headed by the Inspector-General were initially parallel, quite literally, tracing their authority to two different command centers. The regular police answered to the police commissioner while the Administration Police answered to the minister in charge of internal security.

The provincial administration included a hierarchy beginning at the top with provincial commissioners who were in charge of provinces, district commissioners who were responsible for districts, district officers who headed divisions, and chiefs and assistant chiefs who were in charge of locations and sub-locations, respectively. The provincial commissioner was the de facto head of Administration Police at the provincial level. As noted by Mbuba & Mugambi (2011, p. 5), "the ultimate control of Administration Police officers rests with the provincial commissioners who delegate the services of Administration Police officers to district commissioners and the delegation continues all the way to the sub-chiefs." In essence, the provincial administration was directly in charge of the operations of the Administration Police. Indeed, the district commissioners had the authority to govern the Administration Police officers, subject to the directions of the provincial commissioners (Mbuba & Mugambi, 2011).

Moreover, the commissioners were trained in police administration and would inspect guards of honor mounted by the police in their respective jurisdictions. The district commissioners, for example, had such authority over Administration Police that "upon the successful completion of the training, Administration Police officers [were] appointed and issued with a certificate as evidence of appointment by the district commissioners of the districts where they [were] to serve (ibid., p. 5). Subsequently, the commissioners would authorize the police to undergo additional drills as necessary.

The new Constitution structured the Provincial Administration system of government to align it with the devolved government. In its place is the national government administration, which was created by the National Government Coordination Act of 2013 with officers whose primary function is the “coordination of national government functions ... at the county level and other decentralized units as far as may be necessary”. The officers, who were to head the various devolved units, include a county commissioner in respect of each county, a deputy county commissioner for each sub-county, an assistant county commissioner for each ward, and a chief and assistant chief for each location and sub-location, respectively. County commissioners are featured more strongly in this paper as they are the representatives of the national government at the county level. A statement attributed to the Presidential Press in 2012 directed that, “county commissioners shall be responsible (for) coordinating security management, national government functions and delivery of services, facilitate conflict management and peace-building, mobilize national government agencies for national events and programs” (Steeves, 2015, p. 467).

There is a strikingly parallel lineup of an administrative hierarchy within counties under the control of the governor, similar to the restructured provincial administration. The parallel system, according to the County Governments Act 24 of 2017, was established for the purpose of “enhancing devolution and encouraging citizens to participate in their governance”. The system emanates from the governor at the county level and trickles down through sub-county administrators, ward administrators, to village administrators at the village level. Working with the help of a village council, each village administrator is responsible to the respective ward administrator, who answers to the sub-county administrator. A sub-county administrator is responsible to the county chief officer who is an appointee of the governor.

The lineup of the national government administrative officers within counties and the existence of administrators within the devolved units creates considerable confusion and supremacy disputes between the national government and the county government officials (Cornell and D’Arcy, 2016). The possibility of the disputes was anticipated by the law, which lead to the National Government Coordination Act (2013) decreeing that, “where a dispute arises as to the mandate or powers of any of the officers, or roles of respective officers of the county governments and those of the national government, a mediation team shall be constituted to deal with the dispute”. In the event that the mediation team is unable to resolve a dispute, the same shall be sent to the summit that comprises the president, the deputy president and all county governors.

The restructuring of the provincial administration and the introduction of counties by the new Constitution altered the dynamics of police power at the various administrative units. In contrast to the relationship that existed between the police and the provincial administration officers, the governors as heads of the counties have no control or supervisory role over the police within the counties.

Instead, the Inspector-General of Police, according to the National Police Service Act (2011), “designate from among the county commanders in each county the most senior officer from either the Kenya Police Service or the Administration Police Service to coordinate the operational command and control of the county.”

## **Superiority Battles between County Commissioners and County Governors**

The superiority of public officers in Kenya is displayed by the order in which the officers speak in public gatherings; the last to speak is usually the most superior. Thus, superiority battles between county government officers and county-level national government administration officers, namely, county commissioners, is evident in many counties (Cheeseman *et. al.*, 2016). A study on appointive and elective judicial positions by Boyea (2010) found the impact of a judicial officer to be more powerful for appointive officers who serve without fear of electoral retaliation. If this finding were to be generalized to include other appointive and elective positions, appointive officers of the national government would have an edge over elective county leaders. However, a case can also be made that the power of the county leaders, which derives from the electorate, naturally becomes more pronounced in a bid to please the electorate. The interplay between the competitive advantage for appointed national government officials and the inherent backing of the electorate for county leaders spurs superiority contests. A county governor was quoted expressing their common stand that, “*we are the head of county governments. This is why we have resisted attempts by the national government to treat us as if we are junior to county commissioners*” (Oywa & Michira, 2013).

County leaders sponsored by the political party that wins the election may experience more cordial working relationships with national government administrators who, by definition, serve the national government of the day. In contrast, county leaders elected on sponsorship by political parties that end up losing the election must cozy up to the national government at the county level to strike a meaningful working relationship, but much to the chagrin of their electorate. As noted by Cheeseman *et. al.* (2016, p. 6), opposition party governors may find it dangerous to be seen to be too close to the national government “given the dispositions of their electorates, especially given the political polarization and inter-ethnic tensions that have characterized Kenyan politics in recent years”. This presents a dilemma and a major challenge to the opposition party governors as counties must rely on the national government for services that are not devolved, one of which is the security apparatus or the police service, which may explain why governors have “demanded some kind of control over security” (Cheeseman *et. al.*, 2016; Nation Editorial, January 9th, 2017).

## Summary and Discussion

This paper examines the implications of a centralized police service within a decentralized government. It traces the introduction and impact of a new Constitution that devolved government services in Kenya but retained the police service at the national level. It also highlights the various forms of devolution and explores the outcomes of devolution that resulted from the passage and adoption of the 2010 Constitution. In addition, the article provides juxtaposed definitions of centralized and decentralized forms of policing in order to provide context to policing in Kenya before and after the introduction of the new Constitution. The article further explores the power relations that exist between the county leadership and the county-level officers of the national government, especially those with the power to control the police functions.

Noting that the primary function of the police in any society is to control crime and enforce the law, this paper raises some fundamental questions. First, if county assemblies have a free hand to legislate and pass county-level laws, how are such laws to be effectively enforced especially if they are not congruent with the national needs, when county governments have to rely on the benevolence of the national government for law enforcement? Or, faced with law-making institutions at national and county-levels, how do the police, as a national entity, prioritize between enforcing national and county laws and who picks up the slack in county law enforcement if police allegiance leans toward the enforcement of national laws? Secondly, while devolution in Kenya is still a new experience and not much inter-county variation has occurred yet with respect to county-specific laws, how will the anticipated proliferation of county-specific laws be harmonized for effective enforcement by a national agency? Thirdly, since they are national government employees, police officers can be posted to any of the forty seven counties within the republic. In light of the expected idiosyncratic variations in county laws and the frequent reshuffles that already characterize the national police posting and deployment, what will it take for officers to acclimate themselves to the laws of the counties to which they are posted? These and other progressively emerging issues may seem innocuous at the implementation of devolution but if unchecked, their effect may complicate or slow down the realization of full devolution as contemplated by the Constitution.

Wielding the power to control any section of the law enforcement machinery may by itself not be a pointer to seniority between the county and national government officials at the county level. Even so, such power confers upon the official the capacity to enforce their will in cases of imminent or turbulent confrontations as witnessed in the coastal and western counties in the period leading up to the 2017 general election, when many governors claimed that disagreements between them and the national government led to the withdrawal of their security by the national government officials (see Muraya, 2016).

When the security detail of the governor is controlled by extraneous forces that are not under the purview of the governor, the pecking order in the county is distorted and the working relations between the national and county governments are strained as governors perceive themselves to be the bona fide heads of their counties, over and above the county commissioners and county police commanders (see Nation Editorial, January 9, 2007; Oywa & Michira, 2013).

Moreover, having the power to determine the security needs of county officials allows the state the control over any such county official whose policies, philosophies or activities appear to be incongruous with those of the national government. In the same way, the state may reward county heads whose policies or activities are in tandem with those of the national government by providing them with the police protection that accords with their needs. If these arguments hold true, it is hard to conceptualize the full realization of devolution in which county officials respond to the unique needs of their residents without considering whether the national policy is contradicted or not. This is consistent with the sentiments by Cheeseman *et. al.* (2016), who noted that “county-level political leaders ... fear that the government would seek to stymie devolution, retain as much power as possible in its own hands, and manipulate county level politicians and bureaucrats to ensure compliance with central priorities.”

In addition to extending the powers of self-governance to the people, county governments were established to “enhance the participation of the people in the exercise of the powers of the state and in making decisions affecting them” (Constitution of Kenya). As already established, different counties have different needs due to cultural and historical differences, which place some counties at a higher need for police resources than others. Counties that are prone to cattle-rustling, and counties that are home to refugee camps may be in need of more police attention and resources. The framers of the Constitution were apparently not oblivious of inter county variations as they created an “equalization fund” into which half of one percent of all revenue collected by the national government each year is deposited for use in easing out disparities in county needs. Unluckily for county governments, the fund cannot mitigate the disparity in policing needs, as counties cannot invest directly in police recruitment or retention.

## **Implications and Conclusion**

A centralized police service existing in a devolved system of government has two overarching implications. The first is the benign control of the devolved units by the national government especially when the interests of the devolved units are at variance with those of the national government. In the Kenyan experience, prior to the enactment of the 2010 Constitution, the government’s crackdown on errant entities was made generally possible by the unfettered use of police power. Officials of the national government, who may not have fully embraced devolution as shared authority, may still use the police against county government leaders perceived to be either non-supportive or subversive of the ideals of the national government.

The use of the police against county government leaders may be done in either of two ways. It may be exercised directly by dispensing “the full force of the law”, which, in Kenya’s political and administrative lingua franca, is the code expression for unleashing police brutality against a subject. The use of police may also be exercised indirectly by sudden withdrawal or a programmed recall of the officers attached to the targeted county leader for personal security.

The second and equally ubiquitous implication of a centralized police service in a devolved system of government is the widespread distrust and its corollaries between national government officials at the sub-national level, and the executives of the sub-national unit. In the case of Kenya, county governors perceive themselves as, and indeed are, the *de facto* supremos of their respective counties. Yet, national government officials at the county level, namely, county commissioners and county police commanders, have the law enforcement powers that are not nearly bestowed upon any county governor. This disparity opens up an avenue for both county executives and the representatives of the national government at the county level to stake superiority claims under certain circumstances, and thereby distorting the pecking orders. Still, while superiority contests in power relations may be construed as normal in a democracy, their strong potential in slowing down the county government’s development programs cannot be so construed.

In conclusion, the new Constitution in Kenya envisions cooperation and mutual co-existence between the national and county governments. Yet, the competitive disadvantage of not having any police power in the counties will keep undermining that cooperation and coexistence when county leaders appear to be at odds with the police command at the county level, and as long as counties must rely on the national government’s goodwill for police and security-related matters. The ultimate consequence of this tug-of-war is not only to slow down the implementation of devolution of government but also to threaten the full realization of the ideals of devolution.

## **Recommendations**

Law enforcement is an integral component of government. A government that has no means of dealing with offenders and enforcing its law would find it onerous to enact its own policy. Consequently, it is common for government units that have the power of making law to have the means of enforcing those laws. Over the years, cities and larger towns in Kenya have utilized special enforcement arms locally referred to as city or municipal *askaris* to enforce ordinances, mostly parking and environmental maintenance statutes. The *askaris*, who are simply security personnel hired to protect the interests of the hiring authority, are usually not armed and do not possess any police authority, but the amount of authority and capabilities they possess are consistent with the ordinances they enforce. Given that county governments have much more elaborate legislative assemblies that pass much more comprehensive laws than city ordinances, some type of county-controlled law enforcement agency is suggested and recommended.

Further studies are recommended to establish the type of police agency that would be ideal for county governments and the relationship between the recommended county police agencies and the National Police Service. Additional studies are also recommended to establish the real-time status of devolution implementation and to examine the challenges that the National Police Service faces in the enforcement of county legislation. It is also recommended that a systematic comparison be conducted between countries with centralized police agencies and those with decentralized agencies in order to reveal any challenges or opportunities experienced in either system while controlling for the presence or absence of devolution in other sectors of government.

Finally, the implementation of devolution in Kenya is still in its early stages and the effect of having a centralized police service in the devolved system of government is yet to be fully felt. Since the implementation of devolution is a process, there is need to exercise caution in interpreting the findings of this study. That notwithstanding, a lasting framework of administrative coexistence between county leaders and county-level national government officials is recommended in order to streamline pecking orders as a primary means of realizing the full devolution of government.

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