

# **A forecast of the role and effectiveness of devolved government in Kenya: Four scenarios**

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Research report presented in partial fulfilment  
of the requirements for the degree of  
Masters of Futures Studies  
at the University of Stellenbosch

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**Degree of confidentiality: A**

March 2012

## **Declaration**

By submitting this research report electronically, I, Jan Albertus Christiaan Bezuidenhout, declare that the entirety of the work contained therein is my own, original work, and that I have not previously in its entirety or in part submitted it for obtaining any qualification.

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January 2012

## Acknowledgements

I would like to thank:

- Prof. Christina Murray, for providing advice on the discussion points that were used during the expert interviews;
- David Gakere Ndegwa, who put me in touch with Conrad Bosire, who suggested that I rather do personal targeted interviews than attempt an emailed questionnaire, and who ultimately encouraged me to travel to Kenya; and
- Conrad Bosire, whom I first interviewed at the University of the Western Cape, Community Law Centre, and who then agreed that I may accompany him to interviews with the specialists sourced in the report. Our travelling and working together for five days in Nairobi and Nakuru, during which we had a thoroughly rewarding time together, enabled me to move towards a clearer picture of the topic in which we have a mutual interest.

In the introduction to the book, *Underdevelopment in Kenya, The Political Economy of Neo-Colonialism*, which was recommended to me by the aforementioned Conrad Bosire, Leys (1982) states that, although he will never be able to satisfy the views of all people from whom he has learned, he nevertheless feels indebted to them for their assistance. I share such feelings in relation to Conrad Bosire and the other specialists interviewed. All I can do is to thank them for their insights and hope that this report is sufficiently close to a product that may contribute in some way to a positive outcome in Kenya.

## **Abstract**

Kenya recently crossed the threshold of major political change. The new 2010 Constitution of Kenya has provided a system of devolved government that has undertaken to make a clean break from a past of what was mostly central government domination. Currently, 47 counties are being established, each with its own assembly, the membership of which is elected by the citizens living in the specific counties. Such a devolution of power could remedy the needs of diverse pressure and ethnic groups. That an attempt has been made to evolve a stronger local government than that of the past is nothing new to Kenya, so, besides conducting a multi-layered environmental scan and some expert interviews, in the current study a view was cast onto the past, to see what lessons could be taken into account for the future of the country. Based on the three sources of information stated and with the use of futures research methodology, four possible scenarios of the outcome of devolved government over the next 20 years were devised. The proposed actions to be taken in order to attain the ideal conditions are described as recommendations in the conclusion to the report. One of the major trends spotted is that it seems as if the history of Kenya, with regard to decentralisation, is based on reactions to previous systems and do not necessarily comprise the most sensible in terms of what is practically required. If the middle ground is reached and a realistic and pragmatic approach adopted sooner than is expected, the country might also switch up a gear in its pace of development and maintain its above-average economic growth, the benefits of which it will then be able to share with its population, the region, the continent and the world. Although the Constitution provides some possibility of stability, on its own it may not be the ultimate saviour, as its enactment is dependent on the actions of people, organisations and the government.

### **Key words:**

Kenya

Devolution

Scenarios

Future

Government

Revenue

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## **List of acronyms and abbreviations**

BOT	build, operate and transfer
BRIC	Brazil, Russia, India and China
CDF	Constituency Development Fund
CILOR	contribution in lieu of rates
CLA	causal layered analysis
COB	Controller of Budget
COMESA	Common Market for East and Southern Africa
CO <sup>2</sup>	carbon dioxide
CRA	Commission on Revenue Allocation
DFRD	District Focus for Rural Development
DRC	Democratic Republic of Congo
EAB	East Africa Bribery Index
EAC	East African Community
ECOWAS	Economic Community of West African States
GDP	gross domestic product
GNP	gross national product
ICT	information and communication technology
IMF	International Monetary Fund
KADU	Kenya African Democratic Union
KANU	Kenya African National Union
LA	local authority
LAIFOMS	Local Authority Integrated Financial Operations Management System
LASDAP	Local Authority Service Delivery Action Plan
LATF	Local Authority Transfer Fund
MP	Member of Parliament
OAU	Organisation for African Unity
PBO	Parliamentary Budget Office
SADC	Southern African Development Community
SRC	Salaries and Remuneration Commission
UN	United Nations
UNDP	United Nations Development Programme

# **CHAPTER 1**

## **ORIENTATION**

### **1.1 INTRODUCTION**

Kenya recently crossed the threshold of major political change. The new 2010 Constitution of Kenya has provided a system of devolved government that has undertaken to make a clean break from a past that was largely under central government domination. Currently, 47 counties are being established, each with its own assembly, the membership of which is elected by the citizens living in the specific counties. Such a devolution of power could remedy the needs of diverse pressure and ethnic groups. Furthermore, a growing population might be better served if there were improved institutions at a subnational government level. Figure A1 (attached) shows the geographical location of the counties being created.

That an attempt has been made to evolve a stronger local government than that of the past is nothing new to Kenya, so, besides conducting a multilayered environmental scan and some expert interviews, in the current study a view was cast into the past, to see what lessons could be taken into account for the future of the country. Based on the three sources of information stated and with the use of futures research methodology, four possible scenarios of the outcome of devolved government over the next 20 years were devised. The proposed actions to be taken in order to attain the ideal conditions are described as recommendations in the conclusion to the report. A description of the background to the study and the problem statement investigated follow.

### **1.2 BACKGROUND AND PROBLEM STATEMENT**

Most African national boundaries were originally drawn up by agreement between the colonial powers and make little sense in the local context. In many instances, such boundaries are one of the root causes of conflict.

At its formation in 1963, the Organisation for African Unity (OAU) accepted the boundaries of countries in Africa as they were. In some cases, an underlying cause for such a decision being made by the heads of state might have been the need to hold on to power by means of accepting the status quo. The avoidance of conflict and instability were the major reasons stated for the making of such a decision, however.

Post 1960, when most African states gained independence, a number of them experienced conflict related to attempted secession, or managed to change their borders, either uniting into a single state or splitting into two. Biafra experienced a war of secession in Nigeria during the 1970s, whereas Senegal and Gambia attempted to unify from 1982 to 1989. Eritrea seceded from Ethiopia in 1993.

The secession of South Sudan from Sudan on 9 July 2011 and recent and ongoing conflicts in parts of Cote d'Ivoire and the Democratic Republic of Congo (DRC), with a definite regional slant, triggered the question: What countries in Africa might experience boundary change during the next 20 or 30 years? Western Sahara, being part of Morocco, is a disputed territory and Somaliland, which declared independence from the rest of Somalia in 1991, is not yet recognised as a sovereign state by any country or international body. Previously, there was also a push in the other direction, when an attempt was made to attain a larger, unified Somalia. The effort resulted in the Ogaden War (1977–1978) that was fought with Ethiopia, when the country eventually made use of foreign military assistance to oust the Somali Defence Force from its southern parts.

The attempt at a pan Somali state in which all ethnic Somalis would be under one greater Somalia, including current parts of southern Ethiopia and north-eastern Kenya, had been placed on hold at the time at which the current report was written, as Somalia was splitting up into smaller, clan-based geographical areas. Figure A2 (attached) shows the area that was inhabited by ethnic Somalis at the time.

As stated above in general, but more specifically in application to Kenya, the north-eastern part that was, at the time of the current report, inhabited by mostly ethnic Somalis was proving to be problematic. On the eve of Kenyan independence and at the end of British rule, the Somalis concerned sought unification with Somalia. However, Kenya refused to consider them doing so. To date, after having undergone a war of secession (1963–1967), branded the Shifta War (Bandit War) by the Kenyan government, the Wagalla Massacre (1984) (in which approximately 5 000 ethnic Somalis were executed by Kenyan soldiers, with different reports and information sources varying in the numbers concerned) and a continuous feeling of discontent with being part of Kenya, the part of the country concerned remains unstable and a disputed territory. (The issue of Somali independence in Kenya was not the main reason for selecting the future of devolved government in Kenya, but rather formed part of the broader continental background.)

The immediate reaction by a 'futurist', in the negative sense of the word, might be to try to 'predict' where the next secession or border change in Africa will happen. However, consideration must be given to whether balkanisation would be the best solution for Kenya, for the continent and for its people in the long term. One would not want, outright, to reject the option of border change for some, but would also want to look at other alternatives and the environment and context in which border changes tend to take place.

Responsible foresight, as opposed to sensationalist 'futuology', should enable the finding of a preferred outcome and should suggest actions that might bring about the outcome. In other words, proactively taking part in the making of the future and not only reacting to circumstances that we believe are beyond our control is advisable. In parallel with the secession of South Sudan and with the internal regional conflicts in the DRC and Cote d'Ivoire, there has been a move towards more power for such regional organisations as the East African Community (EAC), the Southern African

Development Community (SADC) and the Economic Community of West African States (ECOWAS). Especially Rwanda and Burundi, which are both in the EAC, seem to be pushing for greater regional integration and powers as a way of addressing their internal divisions. Their countries are too small and their populations are too intertwined to divide. Later on in the course of this research report (under 4.2.3.1) the phenomenon will also be demonstrated for some of the newly established counties in Kenya. For many other countries, division is not an option, as there are too many groups of people and great strides have already been made towards the attainment of national unity.

The generally accepted worldview, in Africa, amongst decision-makers, is to move closer to one another and not further apart from one another. With improved regional integration and more powers being granted to regional bodies the order of the day, what the answer is to providing for the aspirations of diverse groups within one country requires much thought.

The devolution of government seems to be the answer, with the qualification that “it is important to recognize its limitations as a solution that contains, rather than eliminates, diversity” (Nyanyom, 2011). Setting up a system of devolved government is easier said than done, but is possibly a better option than splitting into several more nation states. The solution proposed is a move of greater powers to smaller, localised units of government and to such regional bodies as the EAC, SADC and ECOWAS, which, in effect, decreases some powers of the current national governments. The theory lies in the ‘what’ statement. The answer to the ‘so what?’ question will consist of a view of the implications of an attempt made at the devolution of government with specific reference to Kenya, that has recently, albeit not for the first time, taken a definite step towards developing a devolved government. Consideration is required of what scenarios (or futures) might transpire in Kenya concerning its system of devolved government over the next 20 years. The ‘now what?’ question will be answered by suggesting actions that might help towards reaching ideal realisable futures for devolved government in Kenya. The research objectives will provide additional clarity on the issue.

### **1.3 RESEARCH OBJECTIVES**

Cheema and Rondinelli (1983: 14-16) provide an extensive list of reasons why decentralisation could be a good idea: government decisions and actions based on local needs and aspirations; less red tape and bureaucracy to work through; improved compliance with national policy in areas distant from the national capital (government plans are often not known in remote areas or are sabotaged by local elites to their own benefit); improved representation for various political, religious, ethnic and tribal groups; a chance for improved local capacity and capabilities in government institutions and business; and improved skills at a local level, which could relieve central government officials of routine tasks, allowing them more time for planning and oversight.

Cheema and Rondinelli (1983: 17) qualify the above motivation with the following quotation from Griffen:

“it is conceivable, even likely in many countries, that power at the local level is more concentrated, more elitist and applied more ruthlessly against the poor than at the centre. Thus, greater decentralization does not necessarily imply greater democracy let alone ‘power to the people’. It all depends on the circumstances under which decentralization occurs.”

The above is a major part of what the current researcher is attempting to achieve in this report. First, what those circumstances, or for the purposes of the report, what variables or indicators are relevant to the issue at stake, are investigated. Following this, the current state of the circumstances/variables and the shape and form of the circumstances/variables that might occupy the next couple of decades, based on a number of identified drivers, are considered.

The objective of the research report is, further, to use the tools and techniques provided by futures study methodology to build a memory of the future regarding devolved government in Kenya. Even though a major structural change, with the ascension of the new Constitution, recently occurred, trends in the field of local government could be analysed using facts and figures about the local authorities (LAs) that would either be phased out or which would be likely to play a very different role from before.

An environmental scan, complemented by causal layered analysis (CLA), multiple perspectives and systems thinking, making use of some of the material accessed during the literature review, was done. Four scenarios were built based on the information gathered and on suggested actions, as part of the conclusion, to reach the ideal realisable outcome proposed.

#### **1.4 CLARIFICATION OF KEY CONCEPTS**

Within decentralisation, there are a number of nuances, but the main point of clarification is between decentralisation and the deconcentration of government. The nature of devolved government, as described by the Kenyan Constitution, falls within the realm of decentralisation and not within that of deconcentration. As can be seen in Table 1.1 below, deconcentration does not involve a degree of political and democratic independence of smaller units within a nation state, but consists rather of a delegation of responsibilities, dictated from the central government. The use of the term ‘prefectoral administration’ has a strong connection with the former French colonies in West Africa. In respect of such administration, each province/unit of local government had a prefect, although the individual concerned was not necessarily one who was accountable to the local population through elections, as decentralised or devolved government would imply.

**Table 1.1: Difference between decentralisation and deconcentration**

Term associated with	Decentralisation	Deconcentration
Organising principle	Democratic decentralisation	Bureaucratic decentralisation
	Political decentralisation	Administrative decentralisation
Structures in which the principle dominates	Local government	Field administration
	Local self-government	Regional administration
	Municipal administration	Prefectoral administration
Practice	Devolution of powers	Delegation of powers

Source: Mawhood, 1993: 3.

## 1.5 IMPORTANCE / BENEFITS OF THE STUDY

Successful decentralisation of certain government functions, along with improved regional integration, could decrease the possibility of conflict between the people within states, and thereby increase their chances of prospering. As is explained later on in the current report, there are many pitfalls on the way to devolved government. The devolution can, naturally, only work if it is implemented correctly.

Mawhood (1993) identifies a recurring trend in changes of government structure in the concluding chapter of a volume of case studies of decentralisation practice in seven lesser developed countries (the Sudan; Tanzania; Kenya; Botswana; Cameroon; Ghana; and Nigeria). When a central government becomes dissatisfied with the performance of local government, Mawhood (1993: 145) states:

“... the conclusion is drawn that it is the structure itself that is at fault, and new laws are brought in... This in its turn fails to give satisfaction, and the process begins over again. *It is easier to change structures than to deal with the underlying weaknesses of government.*”

This notion supports Peter Senge’s (1992) statement that “the easiest way out is usually the easiest way back in”.

Pointing out the possible pitfalls and including ideal realisable situations in scenarios should be of use for policy-makers and implementers in the area of devolved government. Building a ‘memory’ of the future of devolved government in Kenya should contribute to its successful implementation and should assist to inhibit the natural tendency to blame the structure, rather than deal with the underlying causes of challenges that are likely to emerge along the way.

## 1.6 NATURE AND FORM OF RESULTS

The literature review, supported by an environmental scan and interviews with experts on devolved government in Kenya, provides the major source of information in the current study. Results are presented and analysed in terms of the frameworks provided by CLA, multiple perspectives and systems thinking. The futures research methodologies used will be described in detail in the next chapter.

Ultimately, the building of the four scenarios will show the outcome of the study. The scenarios need to be informed by a set of variables or indicators, behind which lie a set of drivers. The indicators are motivated and indicated below, whilst the drivers are motivated and analysed in Chapter 4 on the context and impacting variables.

All sources accessed seem to agree that the key indicators of successful devolved government are its ability to plan, to budget, to raise revenue and then to implement what they set out to do.

According to Cheema, Rondinelli and Nellis (1984: 200), “[t]he ability to budget is the ability to govern” and then also “... it is widely accepted that a capacity to budget is a capacity to govern”. According to Reddy, Sing and Moodley (2003: 2269), “[o]ur analysis suggests that a council’s means of raising and deploying financial resources tells us more than could any other single factor about its existing (and immediate potential) capacities to increase or strengthen managerial/administrative and technical effectiveness for service delivery, to employ personnel, to co-opt political support and to fund social programmes”. One of the most neglected issues, according to Cheema *et al.* (1984: 68), “the heart of the matter, money, is placed on the edge and not at the centre of the discourse”.

Decentralisation is likely to be more effective in countries where governments have been in office and where regimes are not faced with imminent social or economic crisis (Cheema *et al.*, 1984: 68). Mawhood (1993: 258) also states that socio-economic development in lesser developed countries is likely to increase the need for effective and representative local government.

A key constraint that is true for any part of the world is that the types of taxation that can be applied in rural, mostly subsistence, economies are severely limited (Cheema *et al.*, 1984: 67). The constraint then also impacts on the type of services that can be rendered within such an economy.

Government structures are constantly changing. The pace at which the changes occur, and by whom they are driven may differ from situation to situation. Cheema and Rondinelli (1983) provide some of the reasons why changes are implemented below:

“advance the interests of some groups in society over others, alter the patterns of resource allocation among regions and localities, change the distribution of income and wealth, expand or contract the scope of political influence and increase or restrict citizens’ access to policy makers and to decision making processes.”



Based on the above reading, a set of indicators was used to inform some of the content of the four scenarios, as can be seen in Table 1.2 below.

**Table 1.2: Indicators to inform the four scenarios**

Scenario	A, B, C and D		
	2012–2017	2017–2022	2022–2032
Election of local representatives			
Scope of government functions in relation to central government			
Ability to budget and plan for what is required			
Amount of central government funding transferred to counties, as opposed to ability to raise own revenue			
Ability to transform own revenue and central government funding into tangible benefits for the population			
Presence of social or economic crises			

## 1.7 CHAPTER OUTLINE

Chapter 1 provided the reader with an overview of what to expect.

Chapter 2 outlines and defends the futures research methodologies employed in the study, namely environmental scanning, CLA, multiple perspectives and systems thinking.

Chapter 3 describes the nature of devolved government as it is conceptualised by The Constitution of Kenya (Republic of Kenya, 2010), the Urban Areas and Cities Act (Republic of Kenya, 2011) and The Transition to Devolved Government Bill (Republic of Kenya, 2011).

Chapter 4 sets the context by means of an environmental scan and then analyses the variables at hand through the application of the futures research methodologies: CLA, multiple perspectives and systems thinking. Based on a number of indicators, a broad statement regarding the revenue available to county governments is made.

Chapter 5 provides four narrative scenarios of what might transpire over the next 5, 10 and 20 years.

Chapter 6 summarises the findings and also makes some recommendations for the citizens of the country, the county governments, the national government, as well as the region going forward. The limitations of the current research report, as well as valuable other areas of study, are provided.

## CHAPTER 2

### RESEARCH METHODOLOGY

#### 2.1 INTRODUCTION

Selecting the correct methods for scoping and scanning the future is crucial in an attempt to get as close to the truth as possible. Harman (1976: 14-15) describes the limitations that one might experience. The focus of the methods available usually leans in a certain direction, whether quantitative or qualitative, holistic or particular. Therefore, it makes sense to make use of a variety of methods in relation to the future.

Perspectives suggested for environmental scanning were used to provide categories for the literature review undertaken. Political, economic, social, technological, institutional and natural resource perspectives were assessed.

CLA and multiple perspectives, as described by the Millennium Project Futures Research Methodology v3.0, were used to distil the information gathered by means of the literature review, as well as by means of the survey conducted amongst specialists. Systems thinking methods, as described by Ackoff-Gharajedaghi and Senge, were used to show the interrelationships amongst variables and also to stimulate thinking to inform solutions to the challenges that might arise.

No quantitative forecast methods were attempted. Demographic forecasts were sourced 'out of the box' from the United Nations (UN, 2011) population forecasts. A limitation on doing any forecast on the financial side was the fact that counties were only being established at the time that the current report was compiled, making it impossible to draw on previous financial records that related directly to them. As finances were emphasised as one of the key indicators, any other related information was sought to enable the making of broad statements regarding, for instance, the revenue that might be available to county governments to deliver on their mandate.

Expert opinion was gathered by way of interviews. Participants were sought from the task force on devolved government in Kenya, as well as by means of referrals from specialists in the field. The interviews were used to identify the drivers and then to gather detailed qualitative information to inform the narration of the four scenarios.

Firstly, a statement is made regarding the researcher's own possible subjectivity and then each method is briefly reviewed and defended for use.

#### 2.2 WRITER SUBJECTIVITY

Harman (1976: 14) states that overcoming one's own bias due to cultural background and personal history is not possible. This is a further limitation on objectivity when practising futures research. In the study of history, one often learns more about a particular *zeitgeist* by reading what historians of

the period in question wrote and what their thoughts and perceptions were of another earlier period. Since we are all captured in the present, use of the method is unfortunately not of much help in the case of futures studies. The above-mentioned limitation is one of the factors by which, when we try to practise forecasting, we are influenced in terms of what is currently happening and do not look far enough back into the past. Various other methods for improving the objectivity of the writer may exist, but the point will not be belaboured in the current research report. A remedy of some slight merit is for the writer to describe his or her personal background in order to inform the reader about what possible biases might be present in the work produced.

Even though the current report is the present writer's first time of applying futures studies methods to the study of Kenya, his previous studies of history resulted in the reading of such Kenyan writers as Ali Mazrui (editor of the *UNESCO General History of Africa Volume VIII, Africa since 1935*) and Ngũgĩ Wa Thiong'o (*Moving the Centre – The Struggle for Cultural Freedoms*). Nevertheless, the fact that the current author is of European descent could have made his perspective Eurocentric. However, especially reading Ngugi's work assisted in mitigating this factor, as it clearly set out to explain the impact of colonisation on the minds of Africans and how, often, perspectives on Africa in general, and on Kenya specifically, have come from the West. What is required is a break with the colonial past and the accessing of African home-grown perspectives not only due to physical location, but ones that break with the past hold of Eurocentric cultural hegemony. Making such a break could be challenging in an environment in which a significant amount of technical assistance and funding for the endeavour of devolved government comes from UN agencies and the World Bank. If we want to view the world as one system and not as a set of segregated nation states, the value of such 'foreign' assistance, may, of course, also not be negated. The truth lies somewhere between Ngugi's activism striving towards a form of black consciousness and the world acting as a host to the human race in a way transcends national borders, skin colour and ethnic groups.

Concepts of what an ideal situation could be should be universal and hold true for any part of the world. Africa, from a western perspective, seems to be treated always as a special case, and as a stepchild of, rather than just part of, the world community. The tendency to view Africa, or, for that matter, any part of the world not familiar to the self, as something that differs from the 'norm' is likely to cause further segregation amongst people who are, in many ways, more similar than they are different. If one were to ask a Kikuyu or Luo what their idea of an ideal life situation is, the broad principles involved would most probably be exactly the same as those that are stated anywhere else in the world. The Millennium Project (V3.0), through interaction with a number of participants over a two-year period, created a list of 15 universally accepted norms. In order of preference, the norms provided were: environmental sustainability; plenty; identified and accepted global ethics; peace; health; freedom; universal access to education; equity; the preservation of the human species; enlightenment; an exciting and meaningful life; self-actualisation; longevity;

satisfaction of all basic requirements; and security. All the norms specified lie within the normative realm and will be qualified in the second proposition that follows.

The above-mentioned precepts might seem directly to contradict the first proposition: each country and, in this case, county (or if we look at the world as a system and not as a set of nation states, geographical area), has its own unique characteristics with regards to its stage of development and what it could hope to achieve, starting from the current status quo. The characteristics concerned include the status quo in the county itself, in its neighbouring counties, in Kenya as a whole, and in the wider region and continent and the world as a system. What each of the counties can hope to achieve must be placed within the context of their respective situations.

Rick Ross's Ladder of Inference (1994) casts some further light on how we may be influenced by past experience in our selection of data and in the creation of possible, probable and plausible futures. The current research report is the first time that the present writer is engaging in depth with the topic of local/devolved government in Kenya and the politics around such government, so one could argue that a fair amount of objectivity is present, as the data selection conducted was only based on value systems and beliefs, rather than on any previous experience of local conditions in Kenya.

In the light of the above, the potentially limited insight into the content of the topic had to be overcome by means of an extensive literature review and a considerable amount of research. According to Senge (1992: 11), having to conduct such an exhaustive exploratory study could be a highly frustrating experience, as "the more you learn the more acutely aware you become of your ignorance".

In the current study, methods and tools of futures research were applied to a certain subject matter. The current writer does not wish to claim any specialisation in the field of local government in Kenya. In-depth interviews that were held with scholars, who had years of taking part in, and actively following, the situation in Kenya, provided advice on the content of the report. In writing the report, the author was in the process of becoming a specialist in the field of forecasting. Being seen against such a background, the contribution made by the study should, in an ideal world, be of use in any field, no matter the content.

The utmost care was taken by the current researcher not to make pronouncements on the content, but to leave such utterances to be informed by the information conveyed in the specialist interviews. The reader should also take into account that devolved government is currently a sensitive topic, and that the specialists' views might also be influenced by present-day subjectivities. In this regard, the writer had the advantage, being far removed from the topic, of being able to gain exposure to the voicing of opposing viewpoints. By being responsive to one another, opposing parties could gain a more in-depth view of the reasoning behind their opponents' arguments.

With regard specifically to the background and experience in the field of local government, the current writer gained experience in the practicalities of management within district and local municipalities in South Africa through working at the Development Bank of Southern Africa. His experience included that of making assessments of municipal capacity together with a team of specialists at a number of municipalities across the country and of being deployed, as a project manager, for a year to a local municipality (The King Sabatha Dalindyebo Municipality, Mthatha) in the Eastern Cape province of South Africa. The tacit knowledge gained thereby in the practicalities of management within a local government institution should benefit the *real* political perspective of the present research report.

## 2.3 FUTURES STUDIES METHODOLOGY

### 2.3.1 Environmental scan

Environmental scanning is an ideal tool for gathering information from a broad range of perspectives, without which one might easily leave out a very important aspect without securing a broader view. Such scanning provides for the taking of a 'horizontal' view, but, on its own, might only serve to scratch the surface. As stated earlier, the scan will be complemented by CLA that will provide for the taking of a more 'vertical' view that will penetrate deep into the realm of, amongst others, world views, myths and personalities.

The focus of the scan with regards to institutional and political perspectives was on the internal and transactional environment and with regards to the economic, social, technological and natural resources perspectives on the external environment. In this way, a broad framework to the discussion was obtained and, so as not to limit the view, every variable discovered was placed in a category according to its individual characteristics. Table 2.1 below provides a framework for impacting variables or drivers and for the possible control that a business might have over them. The framework can be applied, to an extent, to county government as well, although one should take into account that a county or any structure of government might attempt to have an impact on the external environment as well.

**Table 2.1: Internal, transactional and external environment and the potential hierarchy of influence and control of a business**

Nature of the environment	Hierarchy of influence or control
Internal processes, structures and functions	Total control (depending on relationship with central government)
Transactional environment of organisational stakeholders	Influential, but with little control
External: multiple environmental forces	Little influence and no control, with the ability only to adapt

Source: Roux, course slides, 2010.

### 2.3.2 Causal layered analysis (CLA)

CLA provides a deeper and more meaningful look at the future. Such analysis is used to improve environmental scanning that used to be open to criticism due to its heavy reliance on empirical data. Slaughter (1999: 450) provides a strong argument for use of the method.

CLA, which uses four different perspectives or layers from which to consider the surrounding world, is a fairly recent futures theory and method provided by Sohail Inayatullah. A continuous endeavour has been made to update the method. The description that was used in the current case can be found in the Millennium Project Futures Research Methodology V3.0 (Inayatullah, 2009).

The focus of the first layer, or 'litany', is on quantitative trends, such as, for instance, that of overpopulation. The perspective concerns numbers, with scant analysis taking place. In this layer, the discussion, which is rarely about multiple factors and influences, often results in a 'politics of fear', characterised by such utterances as "There are too many people!", "What can we do!?" or "They must do something!" (Inayatullah, 2009: 8).

In the second layer, such social causes as economic, cultural, political, and historical factors are discussed. Some degree of analysis occurs of the actions taken by governments and other role-players. Technical explanations, albeit still within the same paradigm as that of the first layer, are sought (Inayatullah, 2009: 8).

Thirdly, at a deeper level, the paradigm of, for example, world views about population growth is explored to find out the deeper social, linguistic and cultural structures. Possibly opposing world views, such as a Roman Catholic view that one should not use contraception ('go forth and multiply') view, as opposed to a feminist view that proposes greater control for women over the number of children that they would like to have, are analysed. It is at this level that abstract structures and cultural constraints, which are most probably beyond the direct control of governments, are reviewed (Inayatullah, 2009: 8). The practices of the first layer of the litany form part of the societal structures that might be the topic of conversation in the third layer.

The fourth layer, which provides analysis in the realm of metaphor and myth, describes emotional, subconscious views, in the absence of data or analysis of the information. The perspective takes a step back from the actual future to where deeper assumptions about the future are discussed, with specific reference to the non- or post-rational world (Inayatullah, 2009: 8). The spiritual realm in Kenya might bring beliefs in the ancestors, Christian or Islamic faiths into play here.

CLA is very useful in stimulating out-of-the-box thinking. Combining movement up and down the various layers and then horizontally within them is very useful in the creation of a more nuanced view. As the layers are intended to foster new thinking, one should not fret too much about what concept fits into what layer. The analysis is very useful in ensuring that there is more depth in scenario sketching and it improves policy decision-making, as it allows for suggestions to be made

regarding the actions to be taken on any of the levels. Simple short-term solutions usually address a concern in the first two layers, whilst more complex actions are required to address issues in the third and fourth layers (Inyatullah, 2009: 9).

Slaughter (1999: 450) provides details of some criticism that was lodged against the above method by the Millennium Project in 1999. There seems to be a view that one is likely to stray from the original purpose of futures studies if one digs too deep, with the results of the studies becoming 'narrow or parochial'. Slaughter argues that it is rather the narrowing of futures studies to horizontal views that causes the forming of superficial and uninformed results. A combination of vertical methods, such as CLA, of more horizontal views, such as environmental scanning, and of multiple perspective concepts, of which the latter is discussed next, should allow for the development of a better understanding of what the future might hold.

### **2.3.3 Multiple perspectives**

Multiple perspectives provide three types of perspectives, with a combination of the three providing a more informed view of possible futures. They are the technical perspective (T), the organisational perspective (O) and the personal perspective (P) (Linestone, 1984: 44). In the Millennium Project Futures Research Methodology V3.0, under a heading, *frontiers of the method*, two recent developments are described. They are a religious/spiritual/mythological (R) perspective and an oriental set of three multiple perspective types that are labelled WSR (*wuli, sulī, renli*) (Linestone, 2009). Further explanation of the perspectives follow.

The technical perspective focus on quantifiable data that could be transformed into graphs, processed and analysed. The fields of probability, econometrics, cost-benefit analysis and system dynamics are some that could be used from this perspective (Linestone, 1984: 46). The perspective could also involve anything numerical, such as the Human Development Index of the United Nations Development Programme (UNDP) that attempts to assign numbers to aspects of human development in terms of an index.

The organisational perspective involves looking at the world through a different pair of glasses to that which is normally worn. The viewpoint comes from organisations that are affecting, or that are affected by, the events in question. The power play amongst organisations and their ability to influence events is analysed. A cultural aspect, as opposed to the clear rational data provided by the T perspective, comes into play. Individuals could have an impact on the O perspective. For instance, Adolf Hitler as an individual played a big role in influencing the creation of Nazi Germany. In other cases, the O perspective might be so strong that it influences individual action. An executive of a company might be forced to make a certain decision on behalf of his company that he might not have made in his personal life (Linestone, 1984: 47-53). The organisational perspective provides a framework for looking at many of the relevant issues within Kenya today. What the role of the current Kenyan prime minister, Mr Odinga, the State President, Mr Kibai, and the future heads of states is as individuals and what their influences over government actions are

require investigation. What the power relations between future heads of state and government as a whole are should be considered. The power relations between the central government and the county governments require analysis.

The personal perspective is the most difficult to define. In terms of such a perspective, the world is viewed through another pair of glasses, that of the individual. He excludes the physical impact of technological development on humans and vice versa, such as is evidenced in the inter-relationship between a farmers' group and an example of agricultural technology.

Linestone (1984: 53) describes Freud's three perceived layers: professional, political and the persona. The professional layer is the most, and the persona the least, easily assessed. Identifying individuals who have an impact in society can be relatively difficult, especially in those instances where one has a figurehead (i.e. the head of state), but many role-players actually play a role behind the scenes in influencing the figurehead's actions, despite not taking a prominent role in society. Four uses for the P perspective are proposed: understanding of the total decision-making process is enhanced through the participating actors, as a precursor to better understanding of the O perspective; individuals may matter, with the perspective allowing for the identification of their characteristics and behaviours; and the communication of complex problems and issues may be made more effective by means of the adoption of a personal perspective (Linestone, 1984: 53-61).

The oriental addition (Linestone, 2009: 13), which is labelled WSR, has the following three perspectives:

- "Wuli – knowledge about physical world phenomena, material conditions, as well as man-made constructions;
- Shili – ways of seeing, modelling, doing, relating humans to the physical world; and
- Renli – relations among human beings."

The R perspective seems to be directly related to the mythological (fourth) dimension of CLA. Religion deals with questions of ultimate meaning and moral values. As the perspective should never overlap with that of science, it should form a perspective completely on its own (Linestone, 2009: 12).

Since CLA already provides for the analysis of such spaces, the WSR and R perspectives is not belaboured in the current report in questioning the future of devolved government in Kenya. The perspectives are, however, kept in mind, and could serve to reinforce the use of the dimensions in question.

#### **2.3.4 Systems thinking**

Such systems thinking concepts as 'emergence', 'change of phase' and 'recursive causality' are valuable tools for thinking in foresight development. System thinking provides a method of identifying holistic notions, patterns of change and interrelationships, rather than unrelated static



snapshots lacking in explanation. The method is useful for problem-solving and for identifying actions that require little effort, but that could solve problems that seem beyond our reach (Senge, 1992: 114). The reason then, to include a description of systems thinking is rather a way of providing a framework for problem-solving than analysis for the sake of taking all factors into account. The method rather assists with looking at the interactions between the factors that are identified through the other frameworks mentioned.

Gharajedaghi (2004: 11) describes four characteristics of *emergence* and its application in systems thinking:

- Traditionally, we tend to describe variables in the way in which they are, rather than in the way in which they may change shape or in terms of what they might become.
- A team with the best individual players might not be the best team, but rather the one that can come up with the most creativity / synergised view as a result of the nature of its interaction.
- The compatibility between the variables and the sum total of the interaction of their forces may provide a greater force than the variables viewed in isolation would have.
- “Emergent properties are the spontaneous outcome of ongoing processes – life, love, happiness and success are not the one-time propositions; they have to be reproduced continuously. If the process that generates them ends, the phenomena will also cease to exist.”

Taking a nuanced view of systems that are in flux and that exist of various components that make the systems greater than the sum total of the components apart, could lead to insights into present-day conditions and the past that will inform our measuring and scoping of the future.

The conditions that are necessary for the cultivation of life, love, happiness are valuable areas of study if forecasting entails the making of the future as well as its measuring and scoping. As the word ‘emergence’ sounds closely similar to the expression ‘what we may become’, it might well be used in the area of normative forecasting. Senge (1994) argues that one often only needs a point of leverage that requires little effort to create a huge positive effect. For instance, one could say that a feeling of unity amongst the South African population emerged right after the Springboks had won the Rugby World Cup in 1995. When the then South African State President Mr Nelson Mandela lifted the trophy high into the air the previously largely divided nation shared in the joy of the victory as one. With the addition of a single variable to the existing situation, a whole new characteristic, in the form of the feeling of unity, emerged within the country.

Gharajedaghi (2011: 52) also provides an explanation of the concept of ‘change of phase’:

“A commonly accepted principle of systems dynamics is that a quantitative change, beyond a critical point, results in a qualitative change. Accordingly, a difference in degree may become

a difference in kind. This doesn't mean that an increased quantity of a given variable will bring a qualitative change in the variable itself. However, when the state of a system depends on a set of variables, a quantitative change in one variable beyond the inflection point will result in a *change of phase* in the state of the system. This change is a qualitative one, bringing about a whole new set of relationships between the variables involved."

A similar inflection point is also described in catastrophe theory, which states that, usually, at an inflection point, systems tend to display catastrophic behaviour.

If a key activity in forecasting is looking for tipping points, then *change of phase* could be one of the most important concepts in systems thinking. For example, if the Gini coefficient (a way of measuring the income gap between rich and poor) increases to a certain level, a stable society might move towards becoming a conflict-ridden society. In conflict studies, a key variable that might be a cause for conflict in a society is the number of unemployed young males present in the society under consideration. The state of the variables, in combination with a number of others, is analysed in the field of conflict studies to create early warning signals for peacekeeping or conflict prevention interventions. Although the terms 'emergence' and 'change of phase' are not used as separate headings in the analysis that is described as occurring later on in the current study, but they might be used where they are applicable in the environmental scan, the CLA and the multiple perspectives approach.

*Recursive causality* provides a framework for a break away from linear thinking. Circles of influence are identified in preference to the description of straight lines that might end up in unconnected statements about outcomes without seeing how events interact with one another and form a whole. According to Senge (1992: 75), "by tracing the flows of influence, you can see patterns repeat themselves, time after time, making situations better or worse."

A systems thinking map (figure 4.10) was drawn up to show the relationships between some of the most important drivers and indicators dealt with in the study.

### **2.3.5 Scenario building**

The word 'scenario' was conceived of in the performing arts, where the outline of a movie or a theatre piece and its plot was called a scenario – in other words, a shorter version of the original work, pointing out major impacting events within the work (Glen, 2009). With the specified word having its origin in the arts, the next thought that comes to mind is the advice that one receives from Bertrand de Jouvenell in the *Art of Conjecture*. Futures research should really practise the art of creating a picture of what we may become and not try and predict what will happen.

Since the 1950s, when Herman Kahn (Glen, 2009) introduced the term 'scenario' in the field of futures research, a number of debates have taken place about, for instance, the number of such that are appropriate to use when conducting the business of forecasting. Kahn used three scenarios:

- A surprise-free scenario that would transpire if current, identified trends continued.
- A worst case scenario that would describe the situation if bad decisions were made and things went mostly wrong.
- A best case scenario, in which most decisions that were taken were the correct ones and a fair amount of good fortune was present.

Even though Kahn emphasised the fact that the chances of the surprise-free scenario being the closest to the truth would have been the biggest surprise to him, the three sets of scenarios were criticised. The reason for such criticism was that readers of the scenarios might start to use the surprise-free one as a prediction, instead of trying to use the existence of the scenarios to help inform decision-making (Glen, 2009).

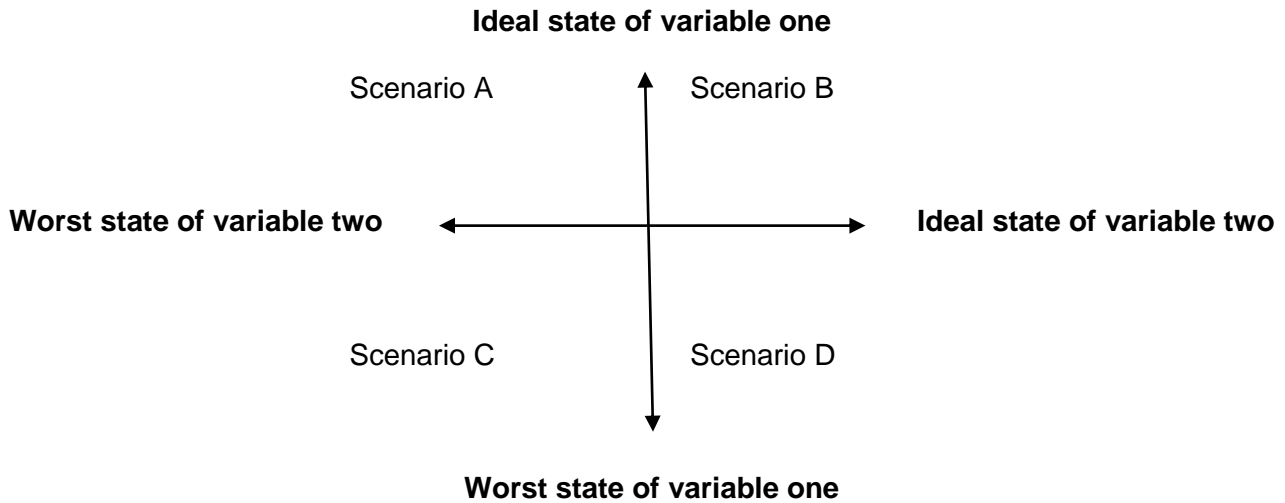
The currently suggested way of conducting scenario building is to produce four scenarios, none of which would be seen as the middle road or 'business as usual' scenario. Such production would be conducive to more serious consideration of alternative outcomes and the actions, policies and decisions that should help to bring it about. It could also provide for improved flexibility in reaction, should alternative events occur (Glen, 2009).

Some of the many methods that have been developed for building scenarios are described, discussed and analysed (Glen, 2009). A method that is unique to the current study is proposed in the next few paragraphs, based on the information provided.

In the first place, the form and function of devolved government in Kenya are described through a review of the implications of the Kenyan Constitution and of a number of pieces of legislation that have been passed or that were, at the time at which the current report was written, in the process of being passed. Then an environmental scan was undertaken of the current situation, which was also analysed by means of the previously mentioned futures research methodologies. The undertaking of such a process relates to Michel Godet's method, which "begins the scenario development process by constructing a base image of the present state of a system" (Glen, 2009).

Some advice was taken from the former Coates and Jarret consulting firm (Glen, 2009). They suggest the compilation of a list of six to 30 variables that might shape the future, followed by filtering and reducing the variables concerned to a set of between six and 20. In the current study, a set of drivers (see Appendix A) was identified by means of specialist consultation. Those drivers that were most emphasised by the experts were given a more prominent role in the drafting of the scenarios for the study.

Advice regarding not attempting to craft a 'surprise-free' or 'business-as-usual' scenario is taken. The scenarios will be four stories of what may be and neither of them will be classified as a preferred scenario. Advice was taken from the way that the Dinokeng scenarios were constructed around the future of South Africa. Two major variables were identified and placed on two axes (see Figure 2.1).



**Figure 2.1: Compilation of scenarios simplified**

Source: Roux, 2011.

A combination of the ideal state of variable one and of the worst state of variable two informed the background to scenario A; a combination of the ideal state of variable one with the ideal state of variable two informed the background to scenario B; and so on. In addition, the indicators mentioned earlier will be described for each of the scenarios for each of the time periods 2012–2017, 2018–2022 and 2023–2032 concerned.

## **2.4 PRIMARY SOURCES ACCESSED THROUGH EXPERT CONTRIBUTIONS**

Based on the literature review for purposes of the current study, a number of experts were asked to give their opinion on the role that a number of drivers would play in the situation. The consultation took place in the form of interviews, with the participants being asked to discuss the drivers that might have an impact on devolved government in Kenya. The outcomes of the interviews were used to inform the scenarios and also to identify the major two variables concerned.

### **2.4.1 Identification of discussion points for interviews**

The indicators were selected after the literature review regarding decentralised government. The list of drivers was compiled after an interview with a subject matter expert. Then, a questionnaire was drafted and shared by email with two more subject matter experts and one social research expert in order to obtain their comments and suggested alterations of the research design. The subject matter experts provided additional drivers that might impact on the devolution of government in Kenya.

### **2.4.2 Data collection**

The social research expert consulted suggested that personal interviews might be more appropriate for the type of study undertaken by the current researcher than any other form of obtaining information from the respondents. The original idea was to conduct a Delphi survey, so that the questionnaire that was drafted requested the respondents for scores and ratings. However, the researcher still felt inclined to undertake some form of a watered-down attempt of a Delphi study, which of course would not have held any scientific credibility. It was finally agreed that it would be wise rather to steer away from any quantitative attempt completely and to conduct qualitative interviews instead, based on the specific field of expertise of the specialist interviewed. Personal interviews were, therefore, conducted with six specialists in Nairobi and Nakuru between 10 and 13 January 2012. The names of the specialists and the dates and places of the interviews are mentioned in the references at the end of the current research report.

### **2.4.3 Data analysis**

The interviews with the specialists were used to inform the importance of the various drivers. Although no attempt was made to identify subjectivity on the part of the participants, an attempt was made to gather data from a wide field of perspectives. The contributions from the experts were synergised and the scenarios adapted according to the writer's own attempt at achieving an objective opinion.

## **2.5 CONCLUSION**

The combination of futures research methods should provide an understanding of what events might transpire, as indicators of which factors could have an impact on devolved government. The interactions with the specialists proved fruitful. In an ideal situation and with resources at hand, a fully funded Delphi survey could have increased the quality of the outcome. The quantitative financial indicators from the past were few, with more detailed financial forecasts possibly having provided additional insight. The structural change from LAs to county governments places limitations on what financial forecasts can be made for specific counties. The performance of the LAs cannot be directly applied to the possible future performance of the counties concerned, but does provide some context and lessons that may be of use in future.

## **CHAPTER 3**

### **THE NATURE OF DEVOLVED GOVERNMENT IN KENYA**

#### **3.1 INTRODUCTION**

The current chapter describes what devolved government in Kenya looks like on paper – in ink that is still wet. The chapter was aimed at providing a summary of the nature and form of devolved government as described by the Constitution, the Transition to Devolved Government Bill and the recently passed Urban Areas and Cities Act. The following chapter will provide more details about the current reality and also about what other drivers will impact on the findings discussed in the current chapter.

The summary might seem to be long-winded and much text is quoted directly from the Constitution and other draft legislation and legislation. Reading other summaries of the contents of the Constitution brought about the realisation that such overviews often detract from the seriousness of what is at hand and also dilute some of the intended meaning of the Constitution, which many people debated before the Act was finally passed by Parliament. Some comment and opinion is provided, but a discussion of the implications of what is said and of interactions with other factors will mostly be done in the following chapter.

#### **3.2 THE CONSTITUTION OF KENYA AND DEVOLVED GOVERNMENT**

Attempts at bringing about a new Constitution had been made in Kenya since the early 1990s, but anti-reformists had managed to block such attempts until the final promulgation of the current Constitution. On 4 August 2010, 66 per cent of those taking part in the referendum voiced their approval of the need for a new Constitution. The major push to pass the Constitution then was an agreement that was concluded with a group of eminent African persons, including Kofi Anan, who provided a timetable for the conclusion of the constitutional review after the election violence that occurred during 2007 and the signing of the National Peace Accord on 28 February 2008.

In futures studies terms, one could say that the events of 2007/08 provided the ‘tipping point’ in the move towards the agreement to the new Constitution and also to attracting the major attention of, and assistance from, other African states. To a certain extent, the new Constitution could be described as a joint African success story.

Viewed from another angle, the intervention and pressure from outside Kenya could have brought about a similar situation to that which occurred in the 1960s when the Constitution at independence was accepted, but only in name, and then done away with over a period of seven years (see 4.2.2 on the history of devolved government in Chapter 4). Circumstances will, of course, not be the same in 2012, and the concept of devolution and the Constitution seemed, at the time at which the present study was undertaken, to be embraced by the broad population of

Kenya. Attempts to tamper with the implications of the Constitution are likely to encounter more opposition than they did under previous governments. Both Kunga (2012) and Oloo (2012) point out the fact that the Kenyan president attempted, in 2010, to make senior appointments that conflicted with the prescripts of the Constitution. In fact, there was such an outcry from civil society and other arms of government that he had to withdraw his attempt and was deeply embarrassed by the situation.

Only the chapters within the Constitution that directly correlated with the topic at hand are summarised and briefly analysed below.

### **3.2.1 Chapter Two – The Republic**

The Constitution declares Kenya to be a republic, with section 6(1) in Chapter Two stating: “The territory of Kenya is divided into the counties specified in the First Schedule” (see Appendix B). In addition, article 6(2) states: “The governments at the national and county levels are distinct and independent and shall conduct their mutual relations on the basis of consultation and co-operation.”

### **3.2.2 Chapter Eight – The Legislature**

Chapter Eight, part 1 describes the establishment and role of the national legislator, which consists of two houses: the National Assembly and the Senate. Article 96 (1) states: “The Senate represents the counties, and serves to protect the interests of the counties and their governments.” Article 98 declares: “The Senate consists of forty seven members each elected by the registered voters in the counties.” Besides that, provision is also made for 16 female members to be nominated by political parties in proportion to the number of members that were selected to the Senate, with two members, of whom one is a man and the other a woman, representing the youth, and two members, of whom one is a man and the other a woman, who represent people with disabilities. The National Assembly consisted of 290 seats relating to the number of constituencies, with 47 women elected by registered voters in the counties and 12 members nominated from such special interest groups as the youth, people with disabilities and workers.

### **3.2.3 Chapter Eleven – Devolved Government**

Chapter Eleven, consisting of articles 174 to 200, is dedicated to the devolution of government. The chapter is divided into the following seven parts:

- Part 1: Objects and Principles of Devolved Government;
- Part 2: County Governments;
- Part 3: Functions and Powers of County Governments;
- Part 4: The Boundaries of Counties;
- Part 5: Relationships Between Governments;

- Part 6: Suspension of County Governments; and
- Part 7: General.

In some cases, it makes no sense to reword the sections, especially those that have a strong link to the selected drivers and indicators, so they are quoted directly from the Constitution. Those provisions that are of particular relevance in the quoted text to the present study are given added emphasis by placing them in **bold**. In those cases in which the matters covered are purely administrative, or are only weakly linked to the identified drivers and indicators, only a brief summary is provided.

The first part of the chapter, which is on the objectives and principles of devolved government, has a strong correlation to the identified drivers and indicators.

In terms of section 174, the objectives of the devolution of government are given as:

- “to promote democratic and accountable exercise of power;
- **to foster national unity by recognising diversity;**
- to give powers of self-governance to the people and enhance the participation of the people in the exercise of the powers of the State and in making decisions affecting them;
- **to recognise 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 marginalised communities;
- **to promote social and economic development and the provision of proximate, easily accessible services throughout Kenya;**
- to ensure equitable sharing of national and local resources throughout Kenya;
- to facilitate the decentralisation of State organs, their functions and services, from the capital of Kenya; and
- to enhance checks and balances and the separation of powers.”

Section 175 follows with the principles reflected by the county governments, namely that:

- “county governments shall be based on democratic principles and the separation of powers;
- **county governments shall have reliable sources of revenue to enable them to govern and deliver services effectively;** and
- no more than two-thirds of the members of representative bodies in each county government shall be of the same gender.”



The second part 'County Governments' includes an important article that provides for national legislation regarding urban areas and cities. Article 184 (1) states that: "National legislation shall provide for the governance and management of urban areas and cities and shall, in particular:

- establish criteria for classifying areas as urban areas and cities;
- establish the principles of governance and management of urban areas and cities; and
- provide for participation by residents in the governance of urban areas and cities."

Other sections in Part 2 state how the different parts of the county government, consisting of a County Assembly and a County Executive, are composed and set up. The County Assembly is elected every five years (an exact date is given for the elections – the second Tuesday of August every five years), and makes provision for special seat members. Such provisos are to ensure the application of the principle of there being no more than two-thirds of members from the same gender, as well as of there being representation of marginalised groups, such as persons with disabilities and the youth. The county Executive Committee consists of the governor, a deputy governor and the rest of the Executive, who are not members of the Assembly, and who are appointed by the governor. The county governor is elected by the voting population on the same day as the national and county assembly elections are held. The County Assembly is responsible for making laws to enable the executive to perform the functions provided for in the Fourth Schedule of the Constitution (see Appendix C).

Part 3, the Functions and Powers of County Governments, stipulates the responsibility of county governments to perform their functions, as described in the Fourth Schedule (see Appendix C). Part 3 also deals with the division of government functions between the national government and the county governments. Of particular relevance and importance to the role of county government, section 187 (1) states:

**"A function or power of government at one level may be transferred to a government at the other level by agreement between the governments if:**

- the function or power could be more effectively performed or exercised by the receiving government; and
- the transfer of the function or power is not prohibited by the legislation under which it is to be performed or exercised."

Section 187(2) states:

"If a function or power is transferred from a government at one level to a government at the other level:

- **arrangements shall be put in place to ensure that the resources necessary for the performance of the function or exercise of the power are transferred;** and

- **constitutional responsibility for the performance of the function or exercise of the power shall remain with the government to which it is assigned by the Fourth Schedule.**

Part 4 of Chapter 11 deals with the alteration of boundaries of counties that may only take place if recommended by an independent commission that was established by Parliament and only if the National Assembly and the Senate passed legislation effecting it with a two-thirds majority. Part 4 also mentions the reasoning behind the alteration of county borders that could include “**historical and cultural ties**” and “**the cost of administration**”, amongst others.

In part 5, the relations between governments are described. A number of articles in part 5 are of importance as, amongst others, they deal with situations under which the national government may take over the functions of the county government. Provisions are also made for dispute resolution and cooperation.

Article 190 reads:

“(1) **Parliament shall by legislation ensure that county governments have adequate support to enable them to perform their functions.**

(2) **County governments shall operate financial management systems that comply with any requirements prescribed by national legislation.**

(3) **Parliament shall, by legislation, provide for intervention by national government if a county government –**

- **is unable to perform its functions**
- **does not operate a financial management system that complies with the requirements prescribed by national legislation**

(4) **Legislation under Article (3) may, in particular, authorise national government –**

- **to take appropriate steps to ensure that the county government’s functions are performed and that it operates a financial management system that complies with the prescribed requirements**
- **if necessary, to assume responsibility for the relevant functions.”**

Article 190 goes on further to state that, should national government take control of a county’s finances, it should do so with the intention of empowering the county to take back their responsibilities and also allows for a process by which the Senate may bring an end to an intervention undertaken by the national government.

Article 191 provides details regarding the legislation of national government that might be enacted to stop a county from passing legislation that could damage “economic, health or security issues of Kenya or another country, or [that] impedes the implementation of national economic policy”. It also

describes in which cases national legislation is more relevant than that of the county, due to the related issues being those of national interest.

Part 6 of Chapter 11 deals with conditions under which a county government may be suspended altogether. Article 192 reads:

“The President may suspend a county government –

- in an emergency arising out of internal conflict or war; or
- in any other exceptional circumstances.”

In addition, Article 192 states that a county government may only be suspended due to any other exceptional circumstance if an independent commission of inquiry recommends that it be so. The Senate may also terminate such a suspension.

Part 7 of Chapter 11 includes a number of general and administrative articles. Amongst others, it is stated that county Assembly gatherings should be open to the public and that the Assembly should also initiate public participation in its processes of drafting legislation. The county Assembly also has the power to summon any Kenyan citizen to appear before it to provide information or evidence.

### 3.2.4 Chapter Twelve – Public Finance

As was noted earlier, experience from previous studies on local government stated that finance, which is usually negated and placed on the sidelines of the debate, should, in fact, form the heart of the matter. Due to the fact that many of the counties, under present-day conditions, have little possibility of raising their own revenue, Chapter Twelve contains crucial provisions relating to the public financier. The same approach is followed as with the previous chapter. Additional emphasis will again be placed on those articles that relates closely to the identified drivers and indicators by placing the relevant text in **bold**.

Chapter Twelve (articles 201 to 231) consists of the following seven parts:

- Part 1: Principles and Framework of Public Finance;
- Part 2: Other Public Funds;
- Part 3: Revenue-Raising and the Public Debt;
- Part 4: Revenue Allocation;
- Part 5: Budgets and Spending;
- Part 6: Control of Public Money; and
- Part 7: Financial Officers and Institutions.

In Part 1, which contains the principles under Article 201 relating to devolved government, the following is of note:

- “the public finance system shall promote and equitable society, and in particular –
  - the burden of taxation shall be shared fairly;
  - revenue raised nationally shall be shared equitably among national and county governments;
  - expenditure shall promote the equitable development of the country, including making special provision for marginalised groups and areas.”

The above is repeated, to some extent, in Article 202 in which it is further elaborated on:

- “Revenue raised nationally shall be shared equitably among the national and county governments.
- County governments may be given additional allocations from the national government’s share of the revenue, either conditionally or unconditionally.”

Article 203 states the criteria that must be taken into account when calculating the equitable shares between county governments and the national government:

- “any provision that must be made in respect of the public debt and other national obligations;
- the needs of the national government, determined by objective criteria;
- **the need to ensure that county governments are able to perform the functions allocated to them;**
- **the fiscal capacity and efficiency of county governments;**
- **developmental and other needs of counties;**
- economic disparities within and among counties and the need to remedy them;
- the need for affirmative action in respect of disadvantaged areas and groups;
- **the need for economic optimisation of each county and to provide incentives for each county to optimise its capacity to raise revenue;**
- **the desirability of stable and predictable allocations of revenue;** and
- the need for flexibility in responding to emergencies and other temporary needs, based on similar objective criteria.”

Article 203 further goes on to state that:

- **“For every financial year, the equitable share of the revenue raised nationally that is allocated to county governments shall be not less than fifteen per cent of all revenue collected by the national government.”**

Article 204 provides for the establishment of an Equalisation Fund, into which one half per cent of national revenue will be placed annually. The scope of the Fund is to provide such basic services as “water, roads, health facilities and electricity” to marginalised areas. The transfer of funding through conditional grants requires vetting by means of the passing of an Appropriation Bill by both Houses in Parliament after consultation with the Commission on Revenue Allocation (CRA).

Finally, in part 1, Article 205 states that when “a Bill that includes provisions dealing with the sharing of revenue, or any financial matter concerning county governments is published, the Commission on Revenue Allocation shall consider those provisions and make recommendations to the National Assembly and the Senate”. After the recommendations concerned are tabled in Parliament, both Houses are obliged to consider them before voting on the Bill.

In Part 2, Article 206 makes provision for the establishment of the Consolidated Fund, which is the national treasure chest, into which all national government revenue must be paid. Two exceptions are provided for: where an Act of Parliament provides for a special purpose fund, or where an Act of Parliament provides for another state organ to receive income, with the specific purpose of defraying its own expenses.

In Part 3, Article 207 provides for the establishment of a Revenue Fund for each of the county governments. Money may be withdrawn from the fund of a county government

- “as a charge against the Revenue Fund that is provided for by an Act of Parliament or by legislation of the county; or
- as authorised by an appropriation by legislation of the county.

Money shall not be withdrawn from a Revenue Fund unless the Controller of Budget has approved the withdrawal.

An Act of Parliament may –

- make further provision for the withdrawal of funds from a county Revenue Fund; and
- provide for the establishment of other funds by counties and the management of those funds.”

The crucial aspect of revenue generation raising, as well as under what conditions national government or a county may borrow money, is set out in part 3.

The whole of Article 209 describes the power to impose taxes and charges:

“Only the national government may impose –

- income tax;
- value-added tax;
- customs duties and other duties on import and export goods; and
- excise tax.

A county may impose –

- property rates;
- entertainment taxes; and
- any other tax that it is authorised to impose by an Act of Parliament.

The national and county governments may impose charges for the services they provide.

The taxation and other revenue-raising powers of a county shall not be exercised in a way that prejudices national economic policies, economic activities across county boundaries or the national mobility of goods, services, capital or labour.”

Article 210 states that any tax or licensing fee that is due to the government and that is waived for any reason, should be reported to, and recorded by, the Auditor General.

Article 211 describes the terms under which national government may borrow money and Article 212 describes the terms under which county governments may do so:

“A county government may borrow only –

- if the national government guarantees the loan; and
- with the approval of the county government’ assembly”

Part 4 of Chapter 12 deals with revenue allocation. As stated earlier, many of the counties, under present-day conditions, have few and limited sources of revenue, apart from the monies that it will receive from the Consolidated Fund.

A crucial institution that will provide the calculations and recommendations regarding the split of the minimum 15 per cent of annual government revenue between counties to the Senate, the CRA, is established through Article 215. Article 216 (in its entirety) describes the function of the Commission:

“The principal function of the Commission on Revenue Allocation is to make recommendations concerning the basis for the equitable sharing of revenue raised by the national government –

- between the national and county governments; and

- among the county governments.

The Commission shall also make recommendations on other matters concerning the financing of, and financial management by, county governments, as required by this Constitution and national legislation.

In formulating recommendations, the Commission shall seek –

- to promote and give effect to the criteria mentioned in Article 203 (mentioned and quoted earlier);
- when appropriate, to define and enhance the revenue sources of the national and county governments; and
- to encourage fiscal responsibility.

The Commission shall determine, publish and regularly review a policy in which it sets out the criteria by which to identify the marginalised areas for purposes of Article 204.

The Commission shall submit its recommendations to the Senate, the National Assembly, the national executive, county assemblies and county executives.”

Article 217 gives the Senate the responsibility to determine and to review, on a five-yearly basis, the amount of that national revenue that must be allocated to the county level of government. When doing this, the Senate is required to take the following into account:

- the criteria in Article 203 (mentioned earlier);
- recommendations from the CRA;
- consultations with county governors, with the finance Cabinet Secretary and with any other organisation that might have been established by county governments; and
- the need to invite the public and professional bodies to make submissions.

If the National Assembly remains quiet on the resolution by the Senate, after 60 days have passed the resolution will be considered to have been approved. The National Assembly may only reject the resolution by a two-thirds majority or amend it with a two-thirds majority. Should the Senate and the National Assembly not agree on the resolution, the matter will be “referred to a joint committee of the two houses of Parliament for mediation...”.

Article 218 makes provision for the annual passing of two bills: The Division of Revenue Bill that “shall divide revenue raised by the national government among national and county levels of government...” and the County Allocation Bill, “which shall divide among the counties the revenue allocated to the county level of government...”.

A proactive stance is taken in Article 219 against the possibility of slow transfers from the Consolidated Fund to the counties. Delays in such transfers cannot be afforded, as the counties

would then still have to transfer some funding to cities and municipalities within their jurisdiction. “A county’s share of revenue raised by the national government shall be transferred to the county without undue delay and without deduction, except when the transfer has been stopped under Article 225.” Article 225 is discussed below.

Part 5 deals with one of the following topics that was identified as an indicator at the start of the research report, namely budgets and spending.

Article 220 stipulates the form, content and timing of budgets:

“Budgets of the national and county governments shall contain—

- estimates of revenue and expenditure, differentiating between recurrent and development expenditure;
- proposals for financing any anticipated deficit for the period to which they apply; and proposals regarding borrowing and other forms of public liability that will increase public debt during the following year.

National legislation shall prescribe –

- the structure of the development plans and budgets of counties;
- when the plans and budgets of the counties shall be tabled in the county assemblies; and
- the form and manner of consultation between the national government and county governments in the process of preparing plans and budgets.”

Article 224 makes provision for county appropriation Bills: “each county government shall prepare and adopt its own annual budget and appropriation Bill in the form, and according to the procedure, prescribed in an Act of Parliament”,

Part 6 provides guidance with regards to financial controls over public money.

Article 225 makes provision for the Cabinet Secretary being responsible for finance to stop the transfer of funds to a state organ or any other public entity when authorised to do so by legislation. In relation to county governments, with the withholding of public funds to a county may not be more than fifty per cent due to them. The withholding of funds may also only be for a period of sixty days and only renewed for another sixty days. The Controller of Budget (COB) should also, at this stage, present a report to Parliament regarding the matter. The public entity in question should also be given an opportunity to make a representation to the relevant Parliamentary committee.

Article 226 states that an Act of Parliament should be passed to provide for:

- “the keeping of financial records and the auditing of accounts of all governments and other public entities, and prescribe other measures for securing efficient and transparent fiscal management; and



- The designation of an accounting officer in every public entity at the national and county level of government.”

Furthermore, “... the accounting officer of a county public entity is accountable to the county assembly for its financial management”.

Article 227 states the need for an Act of Parliament to be passed that will regulate procurement of goods and services.

Part 6 describes the responsibilities and functions of the COB and of the Auditor General.

Article 228 states that there shall be a COB. This person is appointed for a period of eight years, to which the appointment is limited. The COB must:

- “oversee the implementation of the budgets of the national and county governments by authorising withdrawals from public funds;
- not approve any withdrawal from a public fund unless satisfied that the withdrawal is authorised by law; and
- submit to each House of Parliament a report on the implementation of the budgets of the national and county governments.” (The report in question must be submitted every four months.)

Article 229 describes the tasks of the Auditor General, who may also only be appointed for a period of eight years. He/she must report, six months after the end of each financial year, on, amongst other matters:

- “the accounts of national and county governments;
- the accounts of all funds and authorities of the national and county governments...”; and
- “the accounts of the National Assembly, the Senate and the county assemblies.”

The audit reports per county must be submitted to the relevant county assembly for debate and consideration within the space of three months and for the taking of the required action.

Another identified driver is the availability of the appropriate skills to the county governments. Article 230 relates to a certain extent to the issue, as the article provides for the establishment of the Salaries and Remuneration Commission. Its powers and functions are to set and review salaries and benefits of all government officials and to advise the national and county governments on these matters. It is also mentioned that the Commission should take into account “the need to ensure that the public services are able to attract and retain skills required to execute their functions”.

### 3.2.5 Chapter Thirteen – The Public Service

In Chapter Thirteen, Article 235 has direct relevance to the county governments. Through uniform norms and standards prescribed by an Act of Parliament the governments concerned should make provision for:

- “establishing and abolishing offices in its public service;
- appointing persons to hold or act in those offices, and confirming appointments; and
- exercising disciplinary control over and removing persons holding or acting in those offices”.

### 3.3 THE TRANSITION TO DEVOLVED GOVERNMENT BILL

The Transition to Devolved Government Bill makes provision for the making of interim arrangements and timeframes for the implementation of devolved government during the period from 2012 until 2015. The Bill provides for make-or-break actions that need to take place in terms of the arrangements required for a major reengineering of the way in which the Kenyan government operates. The Bill also provides for a central County Transition Authority, of which the primary function is “to facilitate a coordinated transition to the first elected county government”. At the time of writing the current report, the Bill was about to be passed, and especially the set-up of the County Transition Authority was still a bone of contention, as it seemed as though the Ministry of Finance were questioning the need for such an institution or for having an independent one with members who are not government officials. The Bill consists of six parts:

- Part 1: Preliminary;
- Part 2: The County Transition Authority;
- Part 3: Financial Provisions;
- Part 4: Phased Transfer of Functions;
- Part 5: Information; and
- Part 6: Miscellaneous Provisions.

In Part 1, Article 3 provides the objectives and purposes of the Act, which are to:

“provide a legal and institutional framework for a coordinated transition to devolved government while ensuring continuity of service to citizens... for the phased transfer, over a period of not more than three years from the date of the first election of county assemblies, from the national government to county governments of the functions assigned to them [as well as to “provide for the way in which national government shall, facilitate the devolution of power; assist the Commission for the Implementation of the Constitution in the review of bills that require revision to ensure they are consistent with the constitutional provisions on

devolution; assist county governments in building their capacity to govern effectively and provide the services for which they are responsible and support county governments during the transition process.”

The Act will also:

“provide for policy and operational mechanisms during the transition period for audit, verification and transfer from central and local governments to national and county governments of; assets and liabilities; personnel; pensions and other benefits of personnel of central government and local authorities; or any other matters connected thereto... Provide for closure and transfer of public records. Facilitate the asymmetrical devolution of powers to ensure that functions are devolved promptly to counties that have the capacity to perform them but that no county is given functions it cannot perform. Identify the capacity building requirements of the different county governments and make arrangements for the gaps to be addressed.”

Part 2 deals with the County Transition Authority and its functions, of which Article 5 describes the composition:

- “a Chairperson and eight members appointed by the President on the recommendation of the Cabinet Secretary responsible [on a full-time basis] for devolved government;
- the Principal Secretary in the Ministry responsible for devolved government;
- the Principal Secretary in the Ministry responsible for public service;
- the Principal Secretary in the Ministry responsible for finance;
- the Principal Secretary in the Ministry responsible for justice;
- the Attorney General who shall be ex-officio with no right to vote.”

Article 9 (2) goes into specifics of the tasks assigned to the authority, with the tasks concerned being to:

- “facilitate a comprehensive and effective transfer of functions as provided for under paragraph 15 of the Sixth Schedule of the Constitution;
- carry out an audit of the existing assets and infrastructure of the national government and local authorities with respect to the devolved functions and oversee their reallocation, disposal or transfer to either level of government;
- carry out an audit of the existing human resource in the national government and local authorities and advise on effective and efficient rationalization and deployment of the human resource to either level of government;

- determine the capacity needs of county governments and undertake the necessary measures to ensure that they have adequate capacity within the three years to enable them undertake the assigned functions;
- carry out an audit of ongoing reform processes, development programmes and projects and advise on their coordinated management, reallocation or transfer to either level of government during the transition period;
- facilitate the transfer of assets, liabilities and staff of national government and local authorities to county governments;
- facilitate asymmetric transfer of functions to county governments;
- monitor and report to the Commission on Implementation of the Constitution and the Commission on Revenue Allocation through the Cabinet Secretary on continuity of services and ensure efficient transfer of service provision during the transition period;
- coordinate and facilitate the provision of support and assistance to national and county governments in building their capacity to govern and provide services effectively;
- advise county governments in developing inter-governmental agreements relating to transfer of functions;
- liaise with government agencies and other training institutions to develop and implement capacity building training programmes to ensure adequate capacity of national and county government staff to perform their functions;
- facilitate the implementation of civic education as provided for in the Devolved Government Act;
- coordinate with any government ministry, department, commissions or agency to ensure a successful transition to county governments;
- facilitate classification of urban areas and confirmation of city, municipality and town status; and
- perform any other function as may be assigned by national or county government legislation.”

Article 9 (2) further describes the two-phased approach to the transition to devolved government. Such an approach surpasses a single-phased approach, and is, in more detail, summarised by schedule 4 of the bill, which is attached to the current report as Appendix D.

Part 3 provides for financial arrangements of the transitional authority’s own operations. Parliament will assign funds to enable the authority to function. Accruals and income are not paid back into the country’s consolidated fund. It is retained for purposes of implementing the Act.

Part 4 provides for important arrangements regarding the phased transfer of functions from national and provincial government to the counties.

Article 25 reads:

- “(1) Every county government shall make a request to the Authority for a transfer of a function in accordance with section 15 of the Sixth Schedule to the Constitution in the prescribed manner.
- (2) The Authority shall, upon the request of a county government under sub Article (1), determine whether a county government meets the prescribed criteria to enable the transfer of a function.
- (3) The Authority shall expeditiously consider and dispose of any application under subsection (2) and shall in any case make its determination within sixty days of receipt of such application.
- (4) A decision of the Authority under subsection (3) shall be in the form of an objective capacity assessment report which shall contain the function which is the subject of the application and the concise reasons on which on which the determination is based.
- (5) Where the Authority determines that a county government does not merit a transfer of function under sub clause (2), it shall propose clear and proactive measures to build the capacity of the county government during the transition period to enable the county government to assume their functions.”

Article 26 provides what more or less amounts to a summary of what the current research report would like to assess of the future of devolved government in Kenya. The Article provides the criteria on which the transitional authority will base its decisions regarding the transfer of functions to county governments in relation to:

- “the existence of legislative procedures and standing orders of the county assembly;
- existence of the requisite and appropriate legislation or regulations related to the function;
- whether a framework for service delivery has been put into place to implement the function;
- taking due cognisance of the need for shared services;
- whether, where applicable, the county government has identified or established administrative units related to the function;
- whether the county government has undertaken a capacity assessment in relation to the function;

- the arrangements for and the extent of further decentralization of the function and provision of related services by the county government;
- whether the county government has the requisite infrastructure to deliver the function;
- whether the county government has the necessary financial management systems in place;
- whether the county government has an approved budget in relation to the function; and
- any other variable as may be prescribed after consultations between the Authority, county governments and the Commission on the Implementation of the Constitution and the Commission on Revenue Allocation.”

Article 27 provides for a county to object to a decision that is made by the transitional authority to the Cabinet Secretary. If the county should still not be satisfied with the outcome, they may refer it further to the Commission on the Implementation of the Constitution to resolve the matter.

Article 28 states that the national government will be responsible for paying the salaries of any staff seconded to the counties.

Part 5 deals with information that the transitional authority is supposed to supply in the form of progress reports and annual reports. It must submit a progress report every three months to the Cabinet Secretary, the President, the National Assembly, the Commission for the Implementation of the Constitution, and the CRA. The progress report must:

- “state the progress in the transition to county governments;
- identify any impediments to the transition programme;
- recommend any legal and administrative measures to address specific concerns identified by the Authority; and
- state any other information relating to its function that the Authority considers necessary.”

The annual report should include the following information:

- “the financial statements of the Authority;
- a description of the activities of the Authority;
- details of its plan of work;
- details of applications for transfer of functions submitted to it and the outcome thereof;
- such other statistical information as the Authority considers appropriate relating to the Authority’s functions; and
- any other information relating to its functions that the Authority considers necessary.”

Part 6 provides for a number of other arrangements. The first section deals with the cooperation of other government functions and officials with the authority. Non cooperation of a government official may be punishable with a fine of up to a hundred thousand shillings or with a jail sentence of up to six months. The second section provides for Authority to be dissolved three years after the first general elections under the Constitution or “at the full transition to county governments, whichever comes first, but the National Assembly may, by resolution, extend its life for not more than one year.”

### **3.4 THE URBAN AREAS AND CITIES ACT**

The Urban Areas and Cities Act (Kenya, 2011) was passed in August 2011. Some analysts believe that it was promulgated premature to the establishment of the counties. Another concern is the establishment of appointed boards for cities and urban areas, rather than elected town councils (Bosire, 2010). The fact that the boards are appointed and not elected is mitigated to an extent, as they are in part appointed by the county executive, which is answerable to the county assembly.

The Act consists of the following eight parts:

- Part 1: Preliminary;
- Part 2: Classification and Establishment of Urban Areas and Cities;
- Part 3: Governance and Management of Urban Areas and Cities;
- Part 4: Delivery of Services;
- Part 5: Integrated Development Planning;
- Part 6: Financial Provisions;
- Part 7: Miscellaneous Provisions; and
- Part 8: Transitional Provisions.

Part 1, Article 3 provides for the objects and purposes of the Act, which is to put in place a legislative framework for the classification, governance and management of cities and urban areas. Furthermore, the Act provides for the “participation by the residents in the governance of urban areas and cities”.

Part 2 deals with the classification and establishment of urban areas and cities. An area may be classified as a city or an urban area if it “satisfies the criteria set out under this Act or any other written law.” The classification criteria for cities, municipalities and towns are summarised in Table 3.1 below.

**Table 3.1: Classification criteria of cities, municipalities and towns**

City	Municipality	Town
“The board of a municipality may, upon a resolution, apply to the county executive committee for consideration for the conferment of city status.” An ad hoc committee is established to investigate the application, if the outcome is positive and also if it is approved by the county assembly and the Senate at the national legislature, the President of Kenya finally confers the applied for status by the granting of a charter.	“The county governor may, on the resolution of the county assembly, confer the status of municipality on a town that meets the criteria...”	“The county governor may, in consultation with the committee... confer the status of a town on an area that meets the criteria...”
Population of at least 500 000	Population of at least 250 000	Population of at least 10 000
Must have an integrated development plan in accordance with the Act.		
Must have the capacity to “effectively and efficiently deliver services to its residents as provided in the First Schedule of the act”.		
“has demonstrable capacity to generate sufficient revenue to sustain its operation”	“has demonstrable revenue collection or revenue collection potential” and “has demonstrable capacity to generate sufficient revenue to sustain its operations.”	“demonstrable economic, functional and financial viability”
“has demonstrable good system and records of prudent management”		
“has institutionalised active participation by its residents in the management of its affairs”		
“has infrastructure facilities, including, but not limited to roads, street lighting, markets and fire stations and an adequate capacity for disaster management”	“has infrastructure facilities, including, but not limited to street lighting, markets and fire stations”	
“has a capacity for functional and effective waste disposal”		
	“has sufficient space for expansion”	



The numbers involved are significant, as only Nairobi currently qualifies to be classified as a city, and Mombasa, Kisumu, Nakuru, Eldoret as municipalities. They will have appointed boards that are accountable to the counties and most probably a considerable public service of their own. All the other urban areas, with populations below 250 000, will be classified as towns and services to these and the rural areas will be provided by the county public service, depending on the decisions made by the governor of the county, who could decide to put in place a 'team' to manage a particular town (Bosibori, 2012).

Part 3, which deals with the governance and management of urban areas and cities, pre-empts some of the concerns of power struggles and the duplication of functions that might arise between county governments and the cities and municipalities within their areas of jurisdiction.

Article 11 provides for the following principles that must guide the management and governance of urban areas and cities:

- “recognition and respect for the constitutional status of county governments;
- recognition of the principle and agency relationships between the boards of urban areas and cities and their respective county governments including:
  - the carrying out by a board of such functions as may be delegated by the county government;
  - financial accountability to the county government; and
  - the governance by each board for and on behalf of the county government;
- promotion of accountability to the county government and residents of the urban area or city;
- institutionalised active participation by its residents in the management of the urban area and city affairs;
- efficient and effective service delivery; and
- clear assignment of functions.”

Articles 12 to 14 provide for the establishment of the city and municipal boards that are appointed, in part, by the county executive and by various professional bodies and associations, and then approved by the county assembly.

Article 12 states that the “management of a city and a municipality shall be vested in the county government and administered on its behalf by” a board, a manager and “such other staff or officers as a county public service may determine”. The board, in its corporate name shall be capable of

- “suing and being sued;

- taking, purchasing or otherwise acquiring, holding, charging or disposing of movable and immovable property;
- borrowing money or making investments;
- entering into contracts; and
- doing or performing all other acts or things for the proper performance of its functions...”

It further states that a city will be managed and governed in the same way as is provided for by legislation relating to county governments.

Article 15 states that the term of office of board members shall be for five years and on a part-time basis and Article 16 provides for a number of circumstances under which a board member's position might be terminated.

Article 17 provides for the election of a chairperson and of a vice-chairperson of the boards by its members. Except in the cases of city boards, the chairperson shall be considered the head of the board.

Article 20 lists the functions of the board, which largely relate to the responsibilities assigned to county government as per the Fourth Schedule of the Constitution. The Article does, however, mention, in a number of cases, the relation of the board to the county government and that the former will have the ultimate say over where the function will be located. The board will:

- “oversee the affairs of the city or municipality;
- develop and adopt policies, plans, strategies and programmes, and may set targets for delivery of services;
- formulate and implement an integrated development plan;
- control land use, land sub-division, land development and zoning by public and private sectors for any purpose, including industry, commerce, markets, shopping and other employment centres, residential areas, recreational areas, parks, entertainment, passenger transport, agriculture, and freight and transit stations within the framework of the spatial and master plans for the city or municipality as may be delegated by the county government;
- as may be delegated by the county government, promote and undertake infrastructural development and services within the city or municipality;
- develop and manage schemes, including site development in collaboration with the relevant national and county agencies;

- maintain a comprehensive database and information system of the administration and provide public access thereto upon payment of a nominal fee to be determined by the board;
- administer and regulate its internal affairs;
- implement applicable national and county legislation;
- enter into such contracts, partnerships or joint ventures as it may consider necessary for the discharge of its functions under this Act or other written law;
- monitor and, where appropriate, regulate city and municipal services where those services are provided by service providers other than the board of the city or municipality;
- prepare its budget for approval by the county executive committee and administer the budget as approved;
- as may be delegated by the county government, collect rates, taxes levies, duties, fees and surcharges on fees;
- settle and implement tariff, rates and tax and debt collection policies as delegated by the county government;
- monitor the impact and effectiveness of any services, policies, programmes or plans;
- establish, implement and monitor performance management systems;
- promote a safe and healthy environment;
- facilitate and regulate public transport; and
- perform such other functions as may be delegated to it by the county government or as may be provided for by any written law.

The functions performed by the board of a city or municipality under this Act shall, in the case of a town, be performed by a committee appointed by the county governor and approved by the county assembly.”

Article 21 provides for the powers of the boards in cities and municipalities. Even though they are accountable to the county government, they lack the power to make by-laws, but are empowered to:

- “exercise executive authority as delegated by the county executive;
- ensure provision of services to its residents;
- impose such fees, levies and charges as may be authorised by the county government for delivery of services by the municipality or the city;

- promote constitutional values and principles;
- ensure the implementation and compliance with policies formulated by both the national and county government;
- make bye-laws or make recommendations for issues to be included in bye-laws;
- ensure participation of the residents in decision making, its activities and programmes in accordance with the Schedule to this Act; and
- exercise such other powers as may be delegated by the county executive committee.”

### **3.5 CONCLUSION**

One needs to take into account that what is on paper, especially when it is in the form of the Constitution, is also a major driver or custodian in itself. How Kenyans engage with what they have agreed to on paper, will have a major impact on the possible success of devolved government. Of course, the Constitution and legislation on its own will not make a difference if the people of Kenya do not embrace it and make it their central point of guidance in the administration of matters of state. So far, at the time at which the current report was written, it seemed as though the Constitution was being taken seriously. In contrast, Kangu (2012) warns that the experience and practice of constitutional law in Kenya is so limited that he suggests the need to invest in the development of the capacity to deal with constitutional matters. More details about such factors will follow. In essence, the current chapter provided answers to the “What?” question. Possible answers to the “So what?” question follow in the next two chapters.

## **CHAPTER 4**

### **CONTEXT AND IMPACTING VARIABLES**

#### **4.1 INTRODUCTION**

Providing, concisely, the political, economic, social, technological, institutional and natural resources context of a country, and then further processing it through the tools and techniques of scoping the future, is no easy feat. Almost any factor within the mentioned perspectives could have an effect on devolved government, as it is difficult to draw a line between those that can have an effect and those that cannot. The focus on the future of a system of devolved government provides somewhat of an answer and the interviews with six experts also helped to place emphasis on the most important factors concerned. In the previous chapter, a summary of what is proposed was provided (in answer to the 'What?' question). What follows is an attempt at informing the context within which this project of devolved government will play itself out (in answer to the 'So what?' question).

#### **4.2 HISTORICAL CONTEXT**

To enable informed forecasting about an issue such as the way in which people coordinate their society, one would want to identify influences as far into the past as is feasible. The sources that were accessed about the history of local government in Kenya for the current study started off at the time of the introduction of colonial government. The reason is that nation states in Africa were only really formed with their current borders at the end of the 19<sup>th</sup> century, when the Congress of Berlin and the 'scramble for Africa' took place. The other stated reason for starting with such sources is that there were no specialist written records on which to report (Mawhood, 1993: 257).

Pre-colonial society local government in Kenya, inland, was mainly practised by a council of village elders and there was no lineage of chiefs or headmen as there was in many other parts of Africa (Bosire, 2010). On the coast, such settlements as Mombasa were first under Arabic rule, and controlled from Zanzibar, later coming under Portuguese, and then under Arabic, rule once more. Traditional pre-colonial Kenyan councils of elders and the coastal communities and how their systems of government relate to local government practice in Kenya today might be an area that warrants another study.

The historical context will focus on the history of local government since colonial times. The time period is further split up into three: colonial; independence from 1963 to 2001; and the period of reform from 2002 to date.

##### **4.2.1 Local government during colonial times**

In the reading matter reviewed, Oyugi (1993) provides the most comprehensive account of the colonial pre-independence era. This period saw little or no involvement of the local population in

governance. Different from the Roman Empire, which usually, within one or two generations, made citizens of the people within the territories that it occupied, the British Empire had no such project as one of its primary aims in Kenya. The focus was on extracting resources from the country for the benefit of the population of the United Kingdom (Leys, 1982. Nairobi (which developed around a railway camp) and Mombasa (which had, by the time of British rule, existed for almost a thousand years as a harbour and slave and ivory trade centre under Arabic and Portuguese rule interchangeably) were declared to be under town council rule in 1919. At first, the councils were made up of official and unofficial members, which was followed, a decade later, by the majority of seats in the councils being elective. The same model of local governance was used in other urban centres that were developing in the country. The local population lacked the right to vote until the 1950s, and were also pushed towards the outskirts of the urban centres through laws of segregation. The debates that were held within the councils were not bent on giving the local population a say in things, but were rather about the disparities between the European and Indian settler communities (Oyugi, 1993).

#### **4.2.2 Local government during independence up to 2001**

At the time of independence in 1963, Nyanyom (2010), in an introduction to a working paper on the Kenyan Constitution with the title 'Devolution in Kenya's New Constitution', places devolution and pluralism in opposition to a strong central state at the centre of political discourse. He describes how the independence Constitution provided for the rights of ethnic minorities to counter manipulation by the larger tribes. The party that supported the Kenya African Democratic Union (KADU) dissolved in 1964 and integrated into the Kenya African National Union (KANU), leaving the devolution of government powers without a champion. There is also strong evidence that the Kenyan leaders, at the time, agreed to the independence Constitution only, as they were under the impression that independence would not be granted by the British and would be delayed to the 1970s if they did not do so. Between 1964 and 1970, the Kenyan government did away with the regional governments, centralised authority over finances, and abolished the Senate (Kangu, 2012).

Proponents of the independence Constitution believed that "regional autonomy sought to empower the local communities to be responsible for local governance" (Final Report of the Task Force on Devolved Government, 2011: 12). In contrast, the Constitution concerned was referred to as the 'Majimbo' Constitution by those who did not agree with it. The Constitution under debate had a negative connotation, as it was perceived as an attempt by the colonialists to entrench and to create divisions among the African people in Kenya, with the main aim of protecting the interests of the white minority in Kenya. Not only were divisions caused between people, but also the citizens of Kenya were forced to return to their areas of origin in the same way that various people in South Africa were forced to settle in the 'Bantustans' (Kangu, 2012).

With hindsight, the eventually increasingly centralised state might have caused more division amongst people than a decentralised system might have done, due to the state favouring their own ethnic groups on a national level and possibly some of their business associates amongst the white minority, by awarding government contracts during the economic boom that was experienced in the 1970s (Bosire, 2010).

The above issue remains central to the debate about whether devolution of powers could create 'unity in diversity' or whether it will increase the existing divisions. The impressions that were created around 'Majimbo' might still have an impact on some of the debate today (Kangu, 2012). The argument of the current report remains that it all depends on the underlying conditions and actions of government and the people concerned, and not on the particular system of government. Unity in diversity or increased hostility because of polarisation was, then, one of the major variables identified to inform the four scenarios.

The point emphasised for the period covered, however, was the centralisation of political power around the head of state. From 1963 to 1990, more than 30 constitutional amendments were passed to give increasing powers to the head of state. By the 1970s, any characteristics of decentralisation were removed and by the 1980s (under the rule of Moi) decision-making in the country was centred in the executive. During the 1960s and 1970s the Kenyan government stated that its central government had "superior service delivery capacity" (Nyanyom, 2010).

By the 1980s, which was the third decade of independence, government failure to deliver services to the population had led to 'putrid' attempts at decentralised government, such as Daniel arap Moi's District Focus for Rural Development (DFRD). After about 20 years of the political repression of opposition parties and civil society, along with the second wind of change that swept across Africa after the fall of apartheid in South Africa and the defeat of communism in the global arena, in 1991 Kenya returned to plural party politics (Nyanyom, 2011). Even though the process of establishing a constitutional democracy had started, Daniel arap Moi clung on to power for another ten years – by all accounts corruption was endemic under his administration, with him being personally implicated in a major financial scandal.

#### **4.2.3 Local government during the period of reform 2002 to date**

In 2002, following on the rule of Daniel arap Moi came that of Mwai Kibaki, with a variety of complicated political coalitions (Jennings, 2008). Kenyans were once again disappointed, as it seemed as though the new government, in which there were a number of people who had had to endure suffering in order to oust Daniel arap Moi, kept power centralised (Bosire, 2010).

Even though the Local Authorities Transfer Fund (LATF) and the Local Authority Service Delivery Action Plan (LASDAP) were initiated during Moi's time in 1999 and 2000 respectively, it was only really under Kibaki's rule that the two kicked into action. LATF was established to "enable local authorities to improve local service delivery, improve financial management and accountability

systems and reduce local authorities outstanding debts”, whereas the LASDAP is a three-year rolling programme of projects and actions showing a LA’s prioritisation of facilities and services (Oyugi & Kibua, 2008: 199).

LAs were introduced by the colonial government in 1950, but were always controlled from the centre. Cifuentes (2008: 237) provides the details of such authorities, describing the wide-ranging powers that were conferred over the LAs to the then Minister of Local Government, with various national sector departments and ministries being given the ultimate responsibility for service delivery. The financial records of LATF and the successes of LASDAP will be used, in the following chapter, to inform a description of the part to be played in future by devolved government. As stated earlier, one needs to take into account the limitations due to structural changes that took place, as are provided for in the Constitution and other legislation. County governments will look substantially different to the LAs. Although one cannot draw direct correlations from what happened in previous institutions of local government, but it does provide a context of some sort.

Following on the introduction of the LAs, although not specific to the history of devolved government itself, but, nevertheless, a very significant event, was the matter of the disputed elections that took place in 2007. Ethnicity, as well as religious and generational differences, played a role in the disputation, with those below the age of 35 mainly supporting Raila Odinga, whereas those who were older than 50 years at the time tending to support the election of Kibaki. Violent clashes broke out in December 2007 and January 2008. Only by the end of February 2008 was a settlement reached between Odinga and Kibaki, helped on by the intervention of the former UN Secretary General, Kofi Annan (Jennings, 2008).

With hindsight, the two decades that have been taken, with the peace efforts after the election violence in 2007 providing the final push, might have been time well spent in conceiving the Constitution that was promulgated on 27 August 2010. The adoption of a new Constitution that provides for a system of devolved government, which was described earlier on, and the clear separation of powers, is viewed as a major tipping point in Kenya’s political history. A BBC journalist commented as follows after the promulgation of the new Constitution: “the nation that is about to be reborn is far wiser than the one that emerged at independence almost half a century ago” (Grest, 2010). If that statement is true, and if lessons were taken from the past in Kenya and from other similar situations in Africa, Kenyans should evolve the answer over the next ten to twenty years.

### **4.3 CURRENT CONTEXT AND SOME POSSIBLE FUTURE CONTEXTS**

#### **4.2.1 Political**

The upcoming elections (with a recent court ruling indicating that the latest date set for elections may be March 2013) provide most of the fuel for the current political context within Kenya. Which political party comes into power could also be one of the major impacting factors on the future of



devolved government over the five years thereafter (Kangu, 2012), as will every election that will take place after that, perhaps being a lesser factor every five years on, if true devolved government is entrenched during the first five years of such government.

Political jostling in the coming year might also impact negatively on the amount of attention required to implement the required actions suggested by the Transition to Devolved Government Bill. Assurance was given on 12 January 2012 regarding the passing of the required bills that will give effect to the devolved government (*Daily Nation*, 2012). Experience has shown that legislation, on its own, is insufficient. Implementing the implications of legislation often goes amiss. (See Appendix D for the list of actions that are required to take place.) Amongst others, an audit of assets and liabilities of the government, in order to prepare for transfers to county governments, as well as an audit of human resources in the various government departments and LAs, is required.

Debate is not only about the Presidential and National Assembly elections, but is also about the Senate, County Governors and the County Assemblies. Due to the centralised nature of the state in Kenya to date, the material available with which to work regarding the elections at county level is little. The lack of quality discourse regarding politics at the county level is one of the major drawbacks. The amount of fear that is felt amongst the current administration of the unknown, alongside a number of other factors, could cause it to try to sabotage a successful move to devolved government (Kangu, 2012). Only during the second set of elections will the voting population have something substantial on which to base their vote at county level. County politics will then also, most probably, centre around service delivery.

One view that shows how devolved government may help to decrease the strong focus on the individual leader of state and to remove power from being invested in only one person holds that many politicians might attempt to become a county governor, rather than to become a member of the national parliament (Oloo, 2012). The argument is supported by Kangu (2012), who provides the following reasons why current politicians might rather opt to stand for the position of governor than for that of senator or for becoming a member of the national assembly. A county governor

- is elected by a much larger voting population than a senator or a member of the national assembly;
- has considerable control over resources, as substantial transfers of national government revenue will go to counties; and
- makes appointments to his/her executive council and a number of senior positions in the county.

In a very negative light, having one's own 'little country' and resources to distribute and abuse might hold strong appeal for power-hungry politicians. In a positive light, building up and developing an under-resourced area and delivering results that benefit all those living in a specific county could also appeal more to those who aspire to being true servants of the people than would

serving in the national government. The difference between the two calibres of leaders will show in the outcomes in their counties. Competition between county governors to perform well could only be healthy for the total combined national outcome. The removal of power-hungry individuals from the centre towards the counties might also assist in the short term to dilute power at the top and to draw away attention from the position of head of state (Kangu, 2012). This position was previously, and might still to some extent be, seen as the major prize that an ethnic group must take possession of in order to access resources of state

Ethnicity, which plays a major role in Kenyan politics, features in many conversations. The membership of Bantu, Nilotic and Cushitic groups in the first place, followed by various ethnic groups within said groups, is relevant. Further analysis is provided in subsection 4.2.3.1.

A possible fear amongst the minorities within counties is that the governor might only apply resources in such a way that will only benefit his/her own ethnic group. In addition, the governor might only provide employment within the county administration to members of the same ethnic group (Kangu, 2012), much in the same way as what is claimed happened nationally in Kenya in the past. Such a possibility is acknowledged and discussed amongst those interviewed and is among the measures discussed that could counter it. It remains to be seen whether the situation, as such, will be addressed. Another possibility mentioned is that one might have a governor from a certain ethnic group and a county assembly that consists mainly of the representative of another, which could cause the development of a stalemate and prevent a county assembly from passing its budget (Whimp, 2012).

At the national level, a coalition government is a very probable outcome after the next elections are held. Previous elections showed that a narrow margin of victory will always be present in the near and medium-term future of elections in Kenya. The achievement of a coalition government always comes with trade-offs, possibly including those of principles. A trend of corruption and nepotism in the awarding of government contracts within the civil service is not easily broken and surely has an influence on political power (being the tail that wags the dog). However, the other way round is also possible: if the political will were there to make Kenya a modern middle-income state, elected political leaders might manage to root out corruption in the civil service. Corruption is discussed further under the societal perspective (4.2.3.2).

Devolved government will, once again, have an impact on the above-mentioned phenomena as a large amount (15% of the national revenue) will go to the counties, to which the power over awarding contracts will shift to that extent. The relevant questions to be asked relate to whether the portion of corrupt government officials, who were used to having their say over the expenditure of resources, will be able to influence their political masters to keep the resources away from the counties and try to keep procurement decisions at a national level, or whether they will follow the resources and become more prone to apply for work in county governments (Oyugi, 2012). Such a contention is confirmed by Oloo (2012).

All of the above-mentioned factors, in turn, might impact on the success of a county government in delivering services to its population and on their success in the next election. The next election is, as always when a major new system of governance is introduced, a crucial point to watch out for in future (Whimp, 2012), in accordance with the promises that were made during the first elections of county governors, is that assemblies might be recalled by the voting population. In contrast, ethnicity seems to play such a strong role in voting patterns that the same government might be re-elected, regardless of their performance. Further relations between the complete set of identified drivers will be demonstrated by means of a system thinking, recursive causality map.

#### 4.2.2 Economic

##### 4.2.2.1 Global

Based on how the relationships pan out, the future economic power of India and China might be of benefit to Kenya or not. Brazil, Russia, India and China (BRIC) countries now hold 40 per cent of the world's foreign exchange reserves (*The Economist*, 2011). The countries concerned are, however, not a homogeneous block, with multiple relations between the countries and their respective regions in existence. A former Chinese ambassador to the UN provides his perspective on relations between China and the rest of the world, quoting a Chinese minister at a cultural event in the United States (Jianmin, 2009):

“The Chinese and Americans have different cultures. You Americans are always looking for an enemy. When you don't have an enemy, you are worried. We Chinese don't need an enemy, we need friends. When we don't have friends, we are worried.”

If the above is true and China takes to heart Africa's development and global security, Kenya might benefit from the situation.

Looking further into the future, to what a new economic system or order in the world might become over the next twenty years, the top ranking system elements are significant for Kenya. The high rate of corruption in Kenya (see subsection 4.2.3.3 below), if correctly forecasted by those taking part in the study, will have to be reduced, as doing business successfully might increasingly require improved ethics and transparency.

**Table 4.1: Possible system elements of a new economic system over the next 10 to 20 years**

Rank	System elements	Importance
1	Ethics becomes a key element in most work relations and economic exchanges.	8.36
2	New gross national product (GNP) / gross domestic product (GDP) definitions that include all forms of national wealth, such as energy, materials, ecosystems, and social and human capital.	7.96

**Table 4.1: Possible system elements of a new economic system over the next 10 to 20 years  
(continued)**

Rank	System elements (continued)	Importance
3	Global commons – air, climate, oceans, biodiversity (such as the encouraging of bees that are necessary for agriculture, etc.) – supported by international agreements among countries for very small (less than 1%) tax on selected categories, including currency trading and international travel. The funds collected would amount to several hundred billion per year for global public goods.	7.75
4	Collective intelligence – global commons for the knowledge economy.	7.74
5	Online and in educational systems: continually updated curriculum on the evolving economic system and its elements.	7.64
6	Simultaneous knowing – time lags changed or eliminated in information dissemination, with much greater transparency.	7.61
7	Value of natural resources used in production included when pricing goods.	7.56
8	Women's politico-economic roles essentially on par with men (including the recognition that women are penalised more than men in an economic crisis).	7.25
9	Greatly increased public disclosure required of 'tax havens' and secret accounts.	7.10
10	Wealth, redefined as experience and no longer simply the accumulation of money or physical objects.	6.83
11	Alternatives to continuously creating artificial demand and growth.	6.80
12	New, simple ways for individuals to invest directly in start-up companies and in individual researchers.	6.73
13	Flexi-time (when work can begin and end at any time).	6.68
14	Self-employment via the Internet – individuals seek markets for their abilities rather than jobs – individual as global-holding company, working together with many other companies, each with different products/services.	6.64
15	Non-ownership, as distinct from private ownership or collective/state ownership, a current example of which is open source software.	6.60
16	Synergistic intelligence vs. competitive intelligence.	6.60
17	New economic theory that accommodates many new 'goods' that grossly violate the classical assumptions of 'private goods', namely information, which has a negligible marginal cost post production.	6.59
18	Individual and national intelligence as an economic competitive advantage, such as improved individual brain functioning and quality of national collective intelligence systems.	6.59
19	Globalisation – Geographic location increasingly less of a factor.	6.51

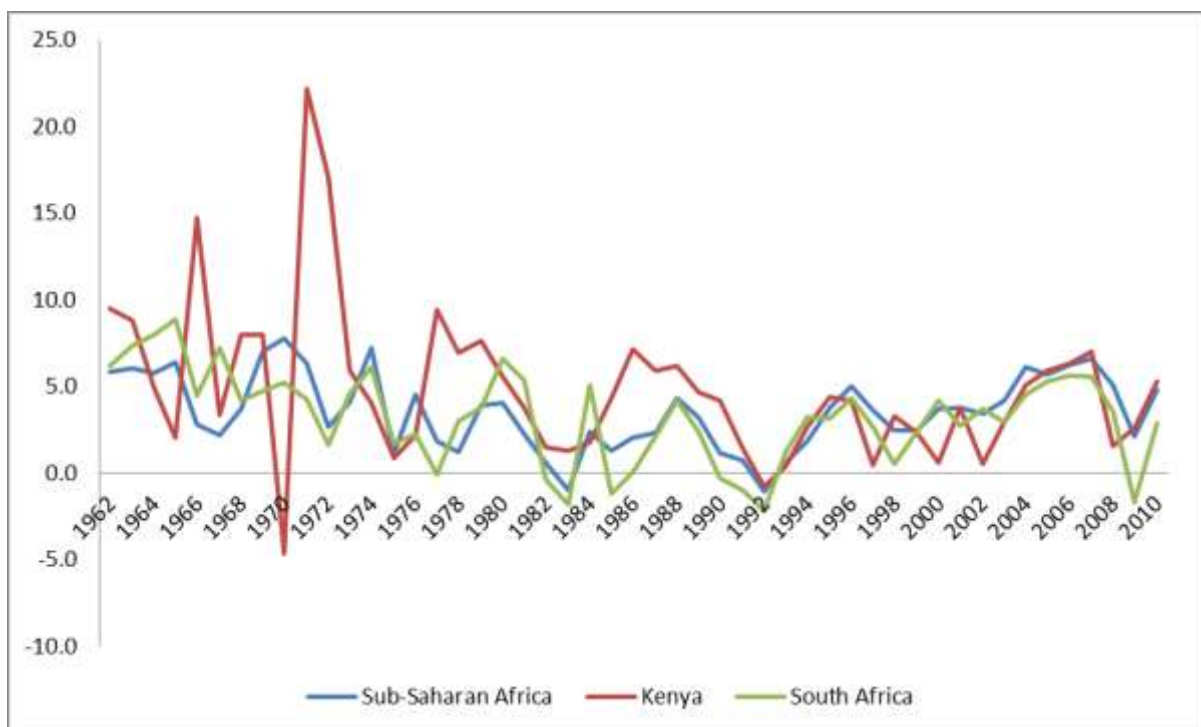
<b>Table 4.1: Possible system elements of a new economic system over the next 10 to 20 years (continued)</b>		
<b>Rank</b>	<b>System elements (continued)</b>	<b>Importance</b>
20	Tele- everything, connecting essentially everything not yet connected.	6.49
21	New financial rules, such as reinstating the uptick rule on all stock exchanges, the per cent of leverage, the number of financial instruments between value and investor.	6.45
22	Management by understanding, as distinct from management by objectives or authority, with each employee understanding the whole organisation, making decisions in the fast-changing environment.	6.25
23	Transinstitutions, combining institutional actions, and conducted across institutional lines.	6.24
24	Global minimum living wage applied per local conditions.	6.21
25	Internet as the principle trading market, bypassing New York, London, and other current trading floors.	6.15
26	A new global reserve currency to relieve pressure on the US dollar (e.g. Special Drawing Rights from the International Monetary Fund (IMF), as in the Chinese proposal, or a basket of other currencies).	6.03
27	Labels on financial instruments, resembling nutrition labels on food.	5.86
28	Permanent property rights of indigenous peoples' bio-resources.	5.77
29	Global mechanisms for automatic financial stabilisation, such as an international convention for automated system (expert software) to make financial policy changes as economic conditions change, conducted initially in larger economic countries.	5.02
30	Single global currency.	4.94
31	Artificial life (as computers were a key element in the information economy, so, too, artificial life might be a key to the next economy).	4.58
32	Internationalisation of labor unions.	4.40
33	Automatic annual assessment of individuals' economic performance in the previous year (similar to credit rating).	4.03
34	Artificial economies emerging in virtual worlds (e.g. Second Life), which include both mirror images of our real world economy and a far richer palette of values and metaphors driving these virtual economies.	3.98
35	New local currencies that are valid only in some cities and local areas.	2.73

Source: State of the Future, 2011.

#### 4.2.2.2 National

A report by the Poverty Reduction and Management Unit: Africa of the World Bank states that Kenya might be at a 'tipping point', with sustained economic growth of between 5 per cent and 6 per cent for 2012, providing an opportunity for the country to make a significant change in the wealth of its citizens (World Bank, 2010).

Kenya's average GDP growth over the past 50 years was 4.84 per cent, with outliers during the early 1970s. Since independence, the country has only posted negative growth twice within a specific year, in 1970 and again in 1992. Current forecasts suggest that GDP growth will remain above 5 per cent for 2012. As is demonstrated in Figure 4.1 below, the GDP in Kenya since 1974 has oscillated between about -0.5 per cent and 10 per cent. The economic cycle, which grows and contracts, should be taken into account when scenarios are built. At some stage in the future, a skills or equipment shortage may cause the economy to contract. In the next twenty years, there might be some times of economic hardship that should be taken into account when scenarios are built.



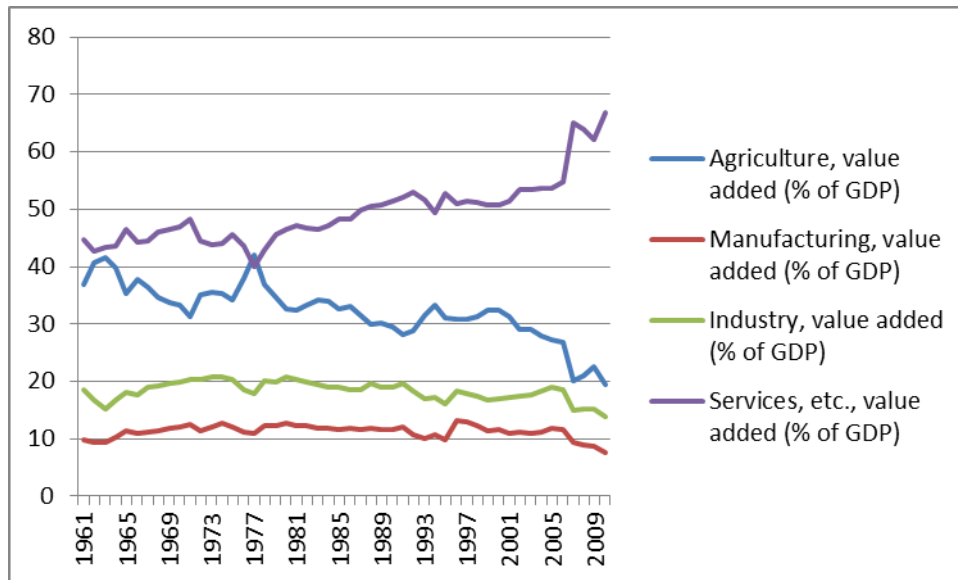
**Figure 4.1: Kenya's GDP growth rate since 1962, in relation to sub-Saharan Africa and South Africa**

Source: World Bank, 2011.

Figure 4.2 below shows that, overall, Kenya needs to decrease its dependence on tourism. Tourism is, of course, also something that can easily be affected by perceptions of how safe the country concerned is. The rise of Islamist extremism and the presence of Al Shabaab on the Kenyan border could have an impact on their tourism industry. The Kenyan government was so

well aware of this at the time of the current investigation that it was engaging contemporaneously cross-border with the Islamist militant organisation based in southern Somalia.

The establishment of a common market and free trade with its neighbours by means of the EAC and the Common Market for East and Southern Africa (COMESA) could provide further impetus for investment in the information and communication technology (ICT) sector (African Economic Outlook, 2011).



**Figure 4.2: Major sectors in the Kenyan economy**

Source: World Bank, 2011.

In an index ranking of 183 countries across the world regarding the ease of starting up a business, of registering a property and of trading across borders, there was still much room for improvement at the time of the current study (see Table 4.3 below).

**Table 4.2: Indicators relating to ease of doing trade in East Africa**

Area of interest	Burundi	Kenya	Rwanda	Tanzania	Uganda
Starting a business	135	125	9	122	137
Registering a property	115	129	41	151	150
Trading across borders	176	144	159	109	148

Source: World Bank and International Finance Corporation, 2011.

The implications of the delays encountered can be explained by an example of where a garment producer in a large urban centre, Nakuru, received a contract to deliver school items to Tesco in the United Kingdom. Due to the holdups associated with trading across borders, the product did not reach the market in time and the order was cancelled, with severe consequences for the manufacturer concerned (World Bank, 2011: 13).

On the positive side, Kenya recently improved the ease of doing business by “reducing the time required to get incorporation documents stamped, digitizing records at the registrar and merging the tax and value added tax registration processes. It made trade easier by implementing an electronic cargo tracking system” (World Bank, 2011: 15). At the time of the current investigation, Kenya was doing well in terms of how easy it was to obtain a construction permit, ranking 35th out of 183 countries.

#### **4.2.2.3 County**

Kangu (2012) states that counties are “ready for action”. Some of them have enormous untapped potential and they are just waiting for the devolved government to be activated so that they may start working on developing their area that was previously neglected by the national government. A large new economic injection might be provided by the expenditure of the county governments, which, at the time of the current study, was receiving at least 15 per cent of the total national revenue, up from the 5 per cent provided by LATF. More will be said about the matter in the section relating to the total revenue available to counties (4.3).

Whimp (2012) raises the concern that some of the counties might not be able to spend their budgets and that they could embark on supply-driven projects that could become mothballed, like big business parks in the absence of businesses to take up the facilities made available. She cites an example of where the Queensland government in Australia built a railway between a national and domestic airline terminal and the city, mainly with the aim of attracting more votes and of impressing the population with their superior service delivery capacity. The company that won the contract on a build, operate and transfer (BOT) basis was primarily a construction company and had very inefficient income collection practices. The airports company was also forced to make use of the service between the different airports for transfers between domestic and international flights. At first, there were trains every fifteen minutes. Then there were too many empty seats and the frequency of trains became less. Their frequency was so reduced that the airports company was unable to transport the airline passengers in time for their flights, so that they returned to making use of their own buses, which obviously had dire consequences for the viability of the railway service concerned. Three points are relevant to counties in the above example: the sensibility of projects undertaken, the capability to collect revenue, and the temptation to impress the population in the short term, whilst, in the long term, the chance that the actions undertaken might backfire.

### **4.2.3 Social**

#### **4.2.3.1 Ethnicity**

Kenya is composed of three major ethnic groups: Bantu, Nilotic and Cushitic. Within the three groups mentioned, there are several other smaller groups as well. Table 4.3 below also shows the area in which the groups concerned predominantly live. (See Figure A3 attached, which shows the



geographic locations used in the table.) It needs to be emphasised that many people have moved around the country, with the indicated locations being only an indication of their concentration.

**Table 4.3: Kenya's ethnic composition**

Group	%	Language	Area
Kikuyu	20.12	Bantu	Central
Luo	13.91	Nilotic	Nyanza
Luhya	13.28	Bantu	Western
Kamba	10.95	Bantu	Eastern
Kalenjin	10.88	Paranilotic	Rift Valley
Kisii	6.41	Bantu	Nyanza
Meru	5.07	Bantu	Eastern
Mijikenda	4.76	Bantu	Coast
Somali	2.29	Cushitic	Northeastern
Turkana	1.86	Paranilotic	Rift Valley
Masai	1.42	Paranilotic	Rift Valley
Embu	1.08	Bantu	Eastern
Taita	1.00	Bantu	Coast
Iteso	0.78	Paranilotic	Western
Kuria	0.54	Bantu	Nyanza
Samburu	0.50	Paranilotic	Rift Valley
Tharaka	0.45	Bantu	Eastern
Mbere	0.45	Bantu	Eastern
Pokomo	0.32	Bantu	Coast
Boran	0.31	Cushitic	Eastern
Bajun	0.22	Bantu	Coast
Nderobo	0.19	Paranilotic	Rift Valley
Rendille	0.17	Cushitic	Eastern
Orma	0.15	Cushitic	Coast
Gabbra	0.15	Cushitic	Eastern
Swahili	0.09	Bantu	Coast
Njemps	0.06	Paranilotic	Rift Valley
Taveta	0.06	Bantu	Coast
Sakuya	0.04	Cushitic	Eastern
Bani & Sanye	0.07	Cushitic	Coast

Source: African Studies Centre, University of Pennsylvania, 1992.

Ethnicity historically remains, and will most probably continue to do so over the next 20 years, a strong factor in Kenyan society, politics and business. In all formal interviews, ethnicity was named as a factor. The material for the second column in Table 4.4 below was found on a website of a university in the United States. The statements made are not called 'stereotypes' on their website,

but noted as facts in the *East Africa Living Encyclopaedia*, which forms part of the site. However difficult it is to include such labels in an academic research report, doing so has relevance for the CLA part and demonstrates the importance of ethnicity in the country. The stereotypes are not necessarily negative stereotypes and also provide information on how the colonial government perceived people and how certain groups benefited from education and modernisation, due to their proximity to major areas of European settlement. In contrast, of course, was the trade-off, in the loss of land to settlers.

**Table 4.4: Brief history and commonly found stereotypes of some of Kenya's ethnic groups**

Group	Stereotypes
Kikuyu	<ul style="list-style-type: none"> <li>– most actively involved in the independence and Mau Mau movements</li> <li>– disproportionately represented in public life, government, business and the professions were neighbors of the Maasai and although there were raids for cattle between them, there was also a lot of trade and intermarriage</li> <li>– the Kikuyu god, <i>Ngai</i>, resides on Mt. Kenya which they call <i>Kirinyaga</i></li> <li>– the traditional healer was held in high esteem</li> <li>– land ownership is the most important social, political, religious, and economic factor</li> <li>– complex system of land ownership that revolves around close kin brought them into conflict with the colonial government when white settlers and farmers occupied their traditional lands</li> <li>– produce most of the fresh produce that is consumed in Nairobi, as well as coffee and tea for export</li> <li>– the Kikuyu were governed by a council of elders based on clans”</li> </ul>
Luo	<ul style="list-style-type: none"> <li>– migrated from the Nile region of the Sudan around the 15th century</li> <li>– originally pastoralists, but when rinderpest decimated their herds, they became fishermen and farmers</li> <li>– also played an important role during the independence struggle and many leading politicians have been Luo, including Oginga Odinga, Tom Mboya, and Robert Ouko</li> <li>– mainly traders and artisans</li> <li>– in Luo music, they use a one-stringed lute, the <i>orutu</i>, and an eight-stringed instrument, the <i>thum</i>, to produce haunting melodies...</li> <li>– have a different puberty rite than their neighbors that involves extracting four or six bottom teeth, this is no longer widely practiced”</li> </ul>
Luhya	<ul style="list-style-type: none"> <li>– suffer from high population density which effects their farming economy, as cultivation occurs on plots that get smaller with each generation</li> <li>– important producers of sugar-cane”</li> </ul>
Kamba	<ul style="list-style-type: none"> <li>– exceptional traders participating in commerce from the coast to Lake Victoria all the way up to Lake Turkana, main trade items were ivory, beer, honey, iron weapons, ornaments, and beads</li> <li>– they settled on arid land, they also traded for food with their neighbors the Maasai and the Kikuyu</li> <li>– the British respected them for their intelligence and fighting skill, many were drafted into the Army and fought in World War One</li> <li>– the British did not respect their land or right to own cattle and tried to restrict the number of cattle the Akamba could own and confiscated cattle above the set amount, in response, the Akamba created the Ukamba Members Association that led a peaceful march and protest to Nairobi</li> <li>– well represented in defence and law enforcement</li> <li>– have a series of age sets and the men are initiated into adulthood at around age 12</li> <li>– elders were responsible for administrative and judicial functions, as well as [for] overseeing religious rituals and observances”</li> </ul>
Somali	<ul style="list-style-type: none"> <li>– tend large herds of cattle, goats, sheep, and camels in the dry, arid lands of Northern Kenya</li> <li>– politically well organized and are united by both family allegiances and political treaties</li> <li>– produce exquisitely carved headrests and woven artifacts”</li> </ul>
Meru	<ul style="list-style-type: none"> <li>– actually eight different groups of people</li> <li>– migrated to the North East side of Mount Kenya around the 14th century from the coast, probably displaced by Somalis</li> <li>– until 1974, the Meru were governed by a chief called the <i>mogwe</i>, but in 1974, the chief converted to Christianity and the practice was abandoned.”</li> </ul>

Group	Stereotypes (continued)
Kalenjin	<ul style="list-style-type: none"> <li>– mainly farmers</li> <li>– the Kalenjin are actually the name the British gave to several different ethnic groups that speak the same language but different dialects</li> <li>– some of the ethnic groups that comprise the Kalenjin are the Kipsigis (who have produced some of Kenya's best runners), Nandi, Tugen, and Elyogo</li> <li>– Daniel Toroitich arap Moi, is a Tugen, because of his previous political power, the Kalenjin were politically powerful</li> <li>– mostly live in the Rift Valley and probably migrated from the Sudan about 2,000 years ago mainly pastoralists, but the Kalenjin have taken up some agriculture and also produce honey"</li> </ul>
Masai	<ul style="list-style-type: none"> <li>– migrated to Kenya from what is today the Sudan about 1,000 years ago and constitute about 2% of the total population</li> <li>– their comparatively small number does not equate with their reputation and fame outside of Kenya</li> <li>– nomadic cattle and goat herders, and for them cattle is the most important social, economic, and political factor</li> <li>– cattle are a sign of wealth, social standing as well as a food source</li> <li>– traditional homeland is southern Kenya and northern Tanzania in an area that has the most visited game parks</li> <li>– many tourists come in contact with the Maasai <i>morani</i> (warriors) clad in red blankets, red ochre covering their heads and carrying spears and clubs as well as Maasai women wearing colorful beads</li> <li>– help to manage and maintain the Maasai Mara National Park and receive a percentage of the park fees"</li> </ul>
Embu	<ul style="list-style-type: none"> <li>– well known for their honey and also for dancing on stilts which is performed by men wearing long black coats and white masks"</li> </ul>
Swahili	<ul style="list-style-type: none"> <li>– not really one ethnic group</li> <li>– term Swahili refers to different peoples who share a common link, the Swahili language, although it is spoken with different variations and dialects up and down the coast</li> <li>– sub-groups of the Swahili include Bajun, Siyu, Vumba, Pate, Mvita, Shela, Fundi, Ozi, and Amu who live in Lamu</li> <li>– a long-standing trading civilization</li> <li>– traded with people as far away as the Chinese for porcelain</li> <li>– possess excellent ship building skills (their dhows trade up and down the east African coast), as well as renown[ed] wood carving skills</li> <li>– around the 7th century, Islam became the predominant religion"</li> </ul>

Source: African Studies Centre, University of Pennsylvania, 1992.

One of the common challenges mentioned by the numerous specialists who were interviewed for purposes of the current study is that the county governors and administration might only appoint people from their own ethnic group, providing examples of the danger of devolving dictatorship to a localised level that was mentioned in the introduction to the current report.

The following account was written by a Kuria peace monitor in Migori county, where members of the Kuria group, in general, fear being discriminated against by the Luo. He was shocked when he realised that, even within the broader Kuria group, there were divisions. The narrative that is quoted below is of a very recent individual experience that was described in a post on a blog and is not provided as an instance of a factual account, but rather to emphasise and show the kind of discourse that might be taking place within some counties, running up to the elections. The example should be viewed as extreme, and not used to generalise the issues about devolved government.

"A meeting was called, for purportedly Kuria leaders. It was expected to focus on devolution, Chapter Eleven of the new Constitution. I marshaled all my resources and training; acquired from the numerous workshops that I had attended before, and the experience and understanding that I had cultivated in the dynamic political sphere both at local and national levels. I sauntered into the conference hall at the Border Point Hotel trying to keep time. Finding a handful of participants, I selected my seat and sunk into the comfort of the premises. I was called outside and asked who invited me, to which I responded that a Kuria lady, Jane Moronge, in Nairobi had asked me to represent her as she could not make it home. 'This is a meeting meant for only the leaders from the BAKIRA CLAN! I am sorry there seems to be some mix-up. Kindly just greet the participants and...sorry just leave', said the usher. I was tongue-tied!! I just couldn't find words to respond; me, a Kuria being discriminated by my fellow Kurias just because I belong to another clan, a Mugumbe and not a Mukira? Oh no! I went inside, took to the floor, and said: 'I am sorry, that I seem to have gate-crashed a meeting not meant for all. I am sorry that I am a black sheep in the midst of white sheep. I wish you well and bye', I said; very hurt and concerned. Concerned that the Kurias have been echoing fears that the Luos will discriminate against them, marginalize them and have no time and space for them. Yet they can do exactly that to those they perceive as being not of their group. What a shame! In that meeting there were people with degrees; some with big appointments. How can someone of such a character stoop too low! Later it emerged that this was a meeting meant to ensure that this particular clan clinches the top county positions! Talk of devolution, and there is very wrong understanding; that devolution also means devolving clan/ethnic identities to as far as possible" (Chacha, 2011).

As was stated earlier, ethnicity and how the factor will be managed was identified as one of the major drivers and formed a key to providing guidance in the construction of the scenarios.

#### **4.2.3.2 Corruption**

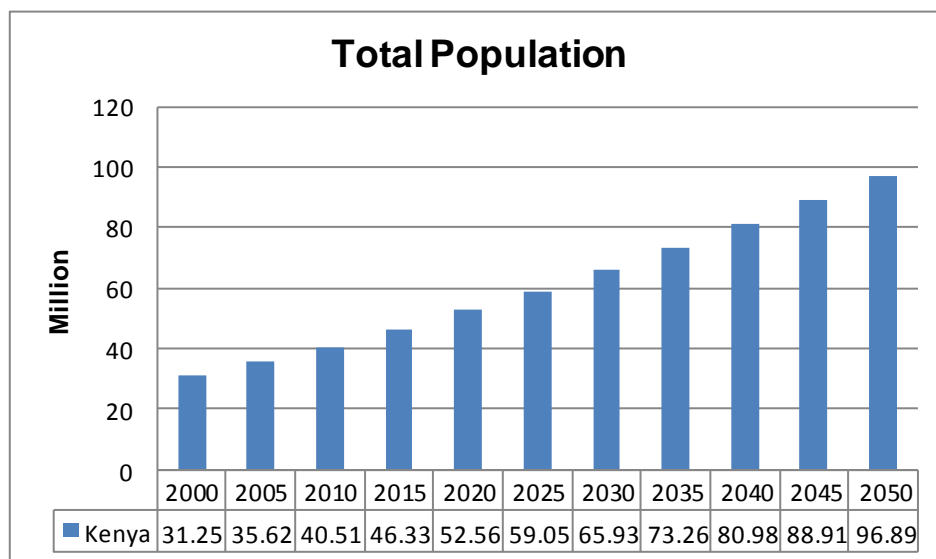
According to the East Africa Bribery Index (Mwanda, 2010) 2010, "since 2003, Kenya has made notable strides towards developing legislative and administrative measures to curb corruption in the public sector." Still, almost 90 per cent of the Kenyans surveyed described the country as being somewhere between corrupt and extremely corrupt. Only 8.5 per cent of the Kenyan respondents described Kenya as being slightly corrupt.

Of the participants in the survey, 68 per cent stated that they believed that corruption levels would rise or remain the same over the next year. The expression of such a belief reflects an increase in optimism among Kenyans compared with the previous recording amongst the same respondents. The EABI in 2009 showed that 62.4 per cent of the sample population said that the level of corruption was likely to increase, with only 11.3 per cent hoping for a decline in the level. This time around, almost 20 per cent of the respondents stated that they believed that a decline in the level of corruption would take place during the coming year. Amongst organisations in Kenya, the

picture does not look good for devolved government, as the city council of Nairobi ranked the 5<sup>th</sup> most corrupt, and LAs as a whole the 8<sup>th</sup> most corrupt.

#### 4.2.3.3 Demographic indicators

By 2030, Kenya is forecasted as adding an additional 25 million people to its current approximate population of 40 million, and by 2050 it is forecasted to have more than doubled its population to 96 million (see Figure 4.3 below). Major expenditure will be required on additional infrastructure to provide services in education, health and transportation. There are possibilities of channelling some of that investment into appropriate technologies as a replacement for, or augmentation of, expenditure on infrastructure and additional human resources. It is possible that more people could become employed as, for instance, data capturers and ICT technicians and network administrators, in order to maintain a comprehensive online collaboration system between town planners and architects with counterparts in remote areas who are other than manual labourers and farm workers.

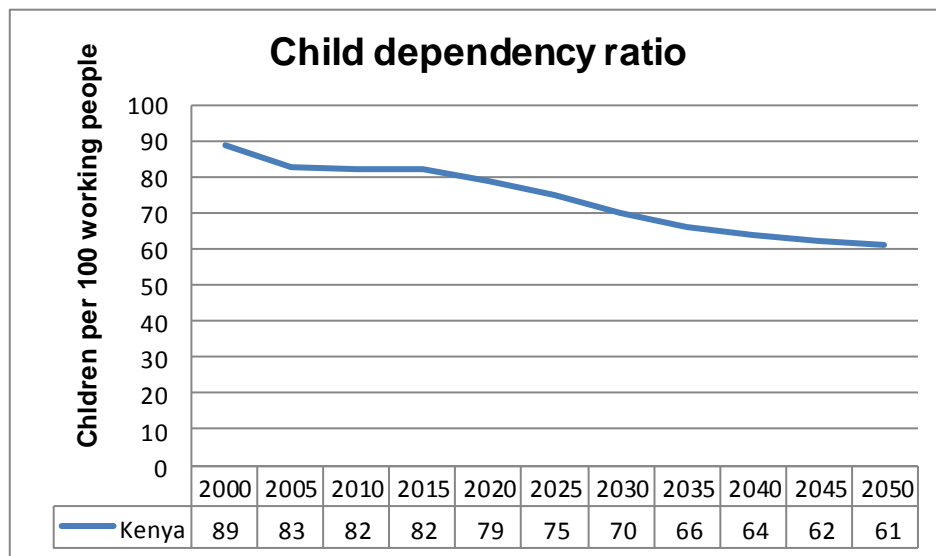


**Figure 4.3: Forecast of Kenya's total population**

Source: UN, 2011.

Kenya's current youth literacy rate (in terms of % of people aged from between 15 and 24 years) is 93% and its adult literacy (% of people aged above 24 years) rate is 87 per cent. The Kenyan population already seems to be quite vocal and critical of their government in the urban areas. The theory is that, with a higher literacy rate, a population could change from one that is easily manipulated to one that is increasingly politically active. The high percentage concerned stands out amongst the countries around it and also points towards a possible *change of phase* (with the terminology being taken from systems thinking, as explained in Chapter 2). Within the literacy rate, there could also be further causes of *change of phase*, as one might have more tertiary-educated students of constitutional law, who could assist to safeguard the Constitution, thus helping to contribute towards the development of a more stable society.

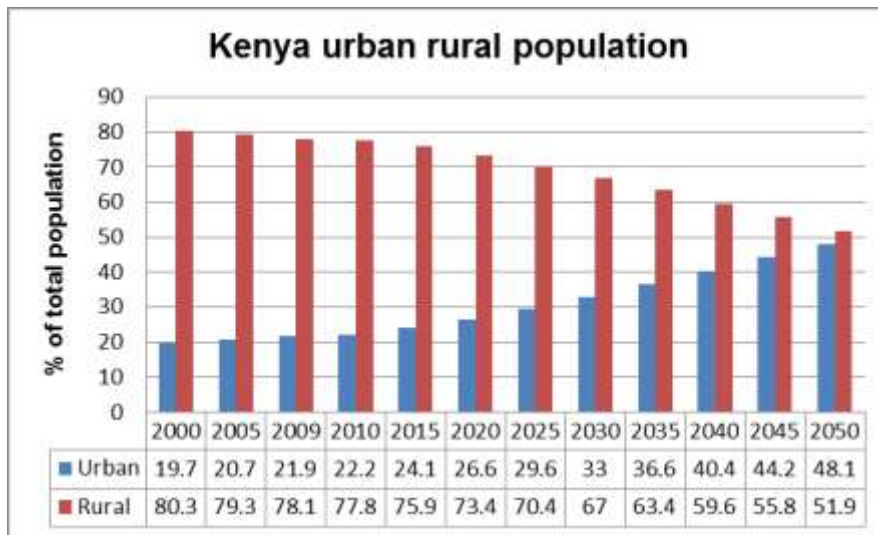
At the time of the current study, the number of people per household was set to most probably decrease in the future. The significant forecasted decreasing child dependency ratio over the next 10 to 20 years (see Figure 4.4 below) meant that adults would tend to have fewer children to which to attend in the future. Smaller families might cause a better quality of interaction between children and parents, who were both found to be more educated than they were before.



**Figure 4.4: Forecast of Kenya's child dependency ratio**

Source: UN, 2011.

Urbanisation will be a major factor that will affect devolved government (see Figure 4.5 below). By 2030, the percentage of the total population that will live in urban areas is likely to have increased from 22.2 per cent in 2010 to 33 per cent in 2030. As a percentage of the total population, at the time of the current investigation, 8.1 million Kenyans were living in urban areas. By 2030, the total number of Kenyan citizens in urban areas should be 21.75 million, meaning that between the time of the current report and 2030 an additional 13.6 million people should be located there. Nairobi's current population is approximately 4 million. In other words, a number of people, constituting the population of about three and a half cities the size of Nairobi will require services and place stress on the existing transport systems. Cities and urban areas will, by that time, have had to start gearing up for an even greater upswing between 2030 and 2050, when the total urbanised population could be 46.6 million, up from the current 8.1 million and the 21.75 million in 2030.



**Figure 4.5: Forecast of Kenya's percentages of urban and rural population**

Source: UN, 2011.

The absence of governance in urban areas have twice contributed to the setting up of alternative structures of governance that were, to a certain extent, run by criminals.

Mamdani (2005) describes how a lack of formal government structure in the African areas of racially divided colonial Kenya led to criminal elements setting up a form of informal government, which was eventually taken over by the Mau Mau: "Nairobi was a racialized city where police patrolled first European and then Asian quarters, leaving criminal gangs to control African shanties and housing estates. All Mau Mau had to do to control African areas was to penetrate criminal gangs."

The Mungiki, who are described by different sources as a cult, street gang or even a political force, seemed to have been formed in the late 1980s. They took control of certain bus routes, forced Matatu operators to pay them in order to be able to operate, and even charged fees to people who wanted to connect water and electricity. There are claims that certain politicians used Mungiki support to gain political power. There are also claims that they have infiltrated the police and the military, and that they were partly responsible for the election violence that took place in 2007. The Kenyan government seemed to be dealing with the problem, however, as more than 2 400 suspected Mungiki members were arrested after six young people, who were accused of trying to leave their ranks, were beheaded (Safer Access, 2011).

The advent of improved local government through implementation of the system of devolved government could provide a formal structure, where it was previously missing. Once again, the achievement of such a structure will not only depend on the set-up of the structure, but on how it performs. The city of Nairobi, for instance, will be managed by an appointed board and only the

county council members will be elected. They will have large constituencies, with the public participation process in shanty towns needing to be conducted with great care.

The most visible effect of rapid urbanisation, the development of shanty towns, was receiving attention from the Kenyan government at the time of the current report. In November 2011, a slum of 4 km<sup>2</sup> adjoining the airport was cleaned up. The effort, which was counted as the sixth eviction that has taken place in that area, involved the deployment of 200 police officers (Angira, 2011). Looking at the rates of urbanisation (see Figure 4.5 above), the chances of many more such evictions taking place are high. In the long-term future, it will depend on the actions and level of preparedness of cities and municipalities for the influx that is coming. High-density residential and business areas with appropriate transport systems will have to be ready at the right times. It is also hoped that the system of devolved government will spread resources, and that many people will opt rather to move to other urban areas and fewer will target Nairobi for the opportunities that are available.

Housing estates, with their own rules and regulations, are currently causing friction between the new rich and those who are settled into their wealth. One such example is the building regulations that are imposed on Runda Estate, that do not allow for construction works to continue after 6 pm, whilst the city council of Nairobi has no such regulation. Those new residents who are currently building also say that they are being forced to buy water from Runda Estate, and that they are not allowed to drill their own boreholes (Ng'etich, 2011).

A considerable amount of construction on homes, transport and other infrastructure might take place over the next 20 to 40 years. Living on what is effectively a site that is under continuous construction might negatively influence the living conditions of Kenyan citizens. Keeping in mind that Brazil built a number of cities from scratch, doing so might be a policy option that the Kenyan government could also follow if they do not want continuously to disrupt the lives of their citizens. Economic opportunities for citizens of new cities could lie in the field of ICT and biotechnologies.

#### **4.2.4 Technology**

##### **4.2.4.1 ICT**

According to the World Bank (2010),

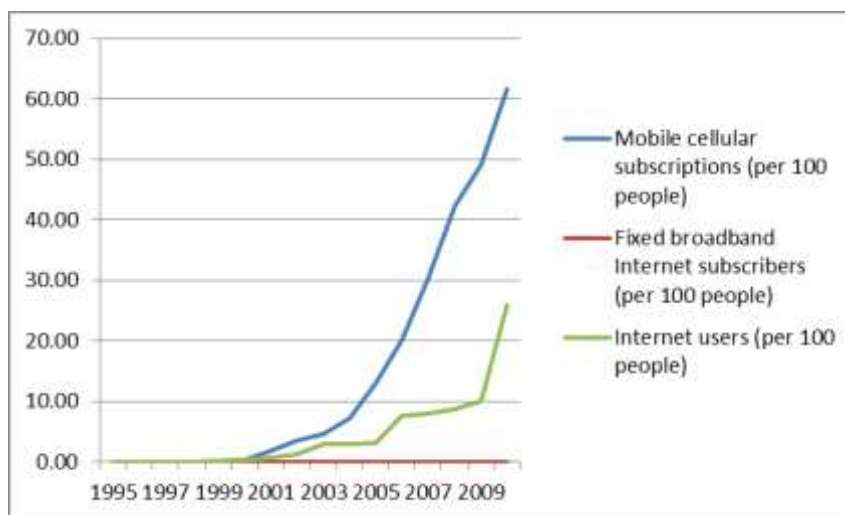
“Today, Kenya has the largest mobile money platform in the world. An estimated 15 million mobile phone users are expected to be using mobile money by end 2010, the equivalent of three out of every four adult Kenyans. Kenya has positioned itself to become a global ICT hub, attracting investors who want to extend the ICT revolution domestically as well as look for applications in other developing countries.”

Due to urbanisation, smaller cities of populations between 100 000 and 400 000 could also become the order of the day (World Bank, 2010). Such a situation places the economies of scale



for the implementation of faster and better wireless networks within the reach of cell phone companies and other service providers.

Fixed broad-band internet subscribers in Kenya remain below 1 out of each 100 people, whilst the use of mobile phones increased to more than 60 per 100 people in 2010 and continues to rise (see Figure 4.6 below). It seems as though mobile phone devices with wireless access to the internet will become the method of accessing the World Wide Web and other online resources. Internet users increased to just below 30 per 100 in 2010 from 10 per 100 in 2008, most probably due to connections through mobile phones and modems. With recent developments, such as the android operating system and touch screen devices, it is quite possible that the rate concerned will very soon increase rapidly as well.



**Figure 4.6: Indicators of mobile cellular subscriptions and internet access**

Source: World Bank, 2011.

It was forecasted in the late 1990s that the ability to browse the Web successfully would have a major impact on one's ability to interact with the World Wide Web. The advent of such search engines as Google provided exactly the required access platform. A popular term, 'apps', is currently used to describe the access points that make interacting with the World Wide Web from mobile devices easier for initial users. The introduction of such access points could have a similar impact on the usability of the Web from mobile devices.

Werner, Otieno and Wakhungu (2011) agree that the climate is ripe for major strides to be taken. The county councils of Nakuru and Makueni are cited as examples of where ICT is being used to improve local governance. One example is where the 52 councillors of Makueni were taken on a day-long ICT training course. Those who lacked email addresses were assisted to open Gmail email accounts. There is still a long way to go in addressing underlying problems, as only 16 of the councillors concerned replied to an email about which they were informed and only 6 replied with all the details required.

Technology is used to modernise systems within local government. By 2010, the Local Authority Integrated Financial Operations Management System (LAIFOMS) was implemented in 175 LAs. Even though its “functionality is incomplete, system security is far from perfect and user support is chaotic. ... financial management in many of them, at least, become orderly” (Werner, Otieno & Wakhungu, 2011: 52).

In conclusion, the digital divide is becoming less of a concern in Kenya in general, but not necessarily in the government. Much room for improvement is available in government departments and new county councils. The business opportunity concerned might be major for Kenya’s ICT sector. Integration and coordination might be required from central government in the provision of these services, while simultaneously not holding back the innovative and active counties from going ahead on their own.

#### **4.2.4.2 Agriculture**

According to the State of the Future, 2011, Kenya is closest to the growing of genetically modified crops amongst other African countries outside of South Africa, Burkina Faso and Egypt. Trials and research are conducted and bio-safety regulations were passed in February 2009. Africa as a whole is also in need of more investment in agricultural research and development. The editor-in-chief of the *African Food and Agricultural Journal* is quoted in the State of the Future, 2011, as saying: ““Africa must protect its food supplies from contamination by prioritising and investing in food production systems”. The article cites the example of Kenya destroying \$8 million worth of maize, the country’s staple food, because of aflatoxin contamination. She went on to say,

“Many developing countries lack the human resource capacity to be able to compete in international food trade. As such, whatever capacity exists gets focused on trying to meet recipient country standards requirements. The result is that internal food systems are highly threatened by exposure to contaminating forces and thus food associated morbidity and mortality rise rapidly.”

#### **4.2.4.3 Transport**

Nairobi was already, at the time at which the current report was written, locked in traffic jams for a large part of each day. Before the advent of mobile devices with computing ICT powers, the digital divide was of great concern between more and less developed countries. The same situation might become true of methods of transport. Several other means of transport to the motorcar exist, and it is forecast by specialists that railway-related technology in railways will keep on improving. The urbanisation and population growth means that Kenya cannot afford not to look at alternative transport methods to that of the car. The local airline industry is already taking off with cheap flights offered between Nairobi and Mombasa and a number of other centres.

#### 4.2.4.4 Construction materials and methods

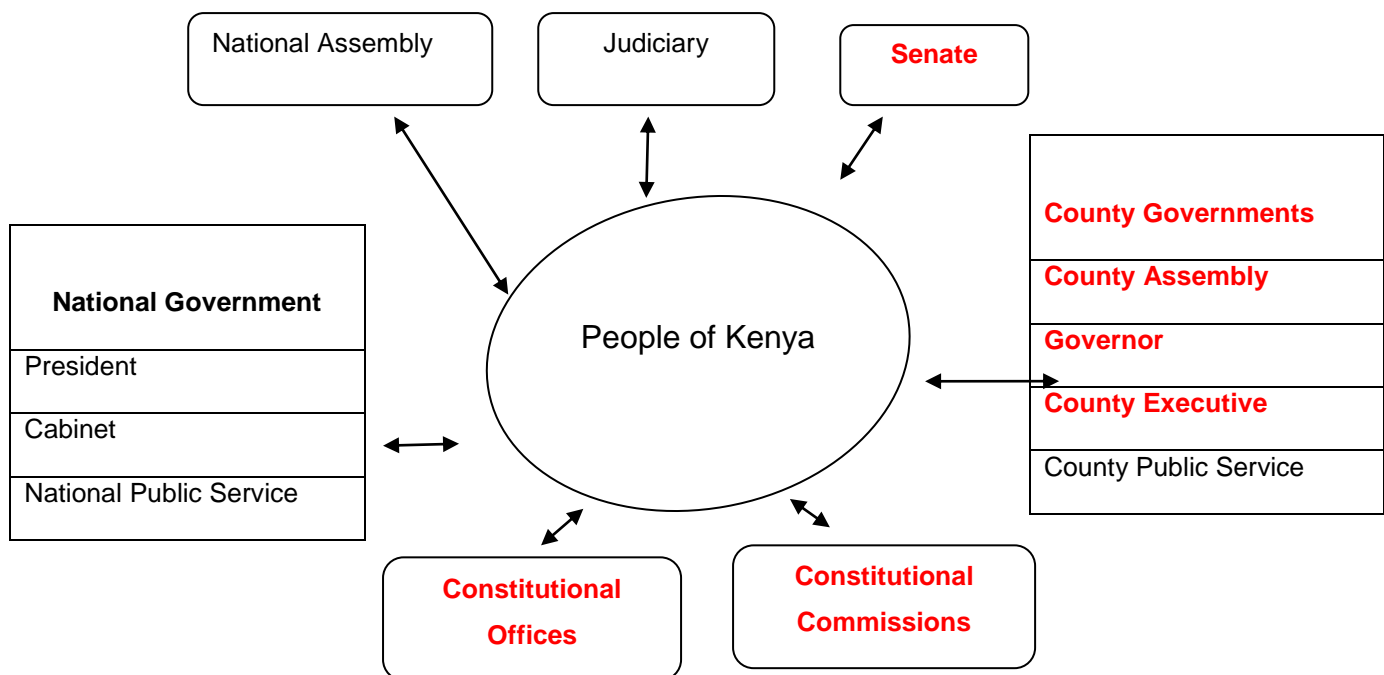
Once again, the rapid population growth provides an impetus to make use of the latest in construction methods and materials. Especially the urban county governments and their cities and municipalities will have to implement to scale. Some of the technology that is forecast to become available is airborne, flying cranes that could move building materials around more easily than current stationary cranes.

#### 4.2.5 Institutional

Chapter 3 provides extensive details of how the various institutions relate to one another on paper. Figure 4.7 below, which is based on an advertisement that was placed in the *Daily Nation* (a weekly supplement on the counties) by the CRA, provides additional clarity on the issue.

Even though the Senate will have the final say on the share of various counties in the 15 per cent minimum of national revenue, the CRA itself will be a crucial institution. Kiriria (2011: 14) believes that previous behaviours show that there is a possibility that political interests might take precedence over national interest in the CRA. Commissioners might become prone to attempting to support the interests of the political party by which they were nominated. The existence of the CRA, as it currently stands, is also entrenched in the Constitution and the way in which it is composed may not easily be changed (Kiriria, 2011: 14).

#### New/Current institutions



**Figure 4.7: Kenya's new system of devolved government**

Source: *Daily Nation*, 12 January 2012.

Officials within the now defunct institutions, such as the provincial administration, which has been called “the notorious arm of post-colonial Kenya’s authoritarian rule” in an article about the history of devolved government, and LAs might find it difficult to accept the changes that are due after the next elections. There also seems to be a power struggle between the current Minister of Finance and the Minister of Local Government over how much power will actually be given to the county governments (Kangu, 2012). Whimp (2012) believes that, due to the past experience of central government autocracy and corruption, there is an unnaturally high level of distrust of the executive. The existence of such a situation might cause those who are strong proponents of devolved government to discard the good with the bad. She believes that there are sufficient checks and balances in the Constitution to keep the national government from interfering too much in the affairs of counties. The national treasury (Consolidated Fund) custodians need to exercise their role to make sure that finances are managed well at county level.

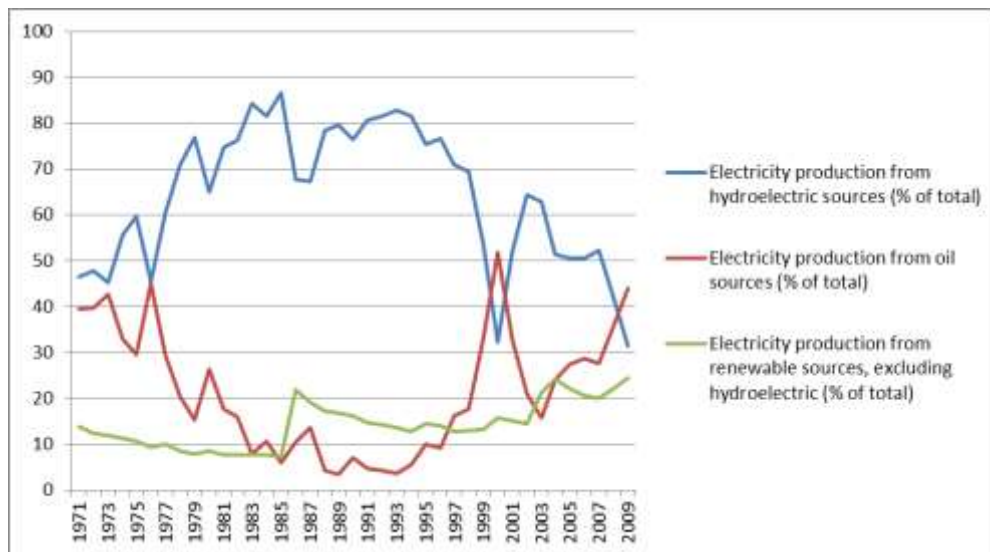
Another crucial bone of contention is the set-up of the Transitional Authority for Devolved Government. Some of the current national executive are of the opinion that it should either not be set up at all, or that it should only be composed of current cabinet ministers and their permanent secretaries. The current draft bill, which is due to be passed in February 2012, provides for at least half of the members of the Authority to be independents from civil society. Kangu (2012) is of the opinion that the administering of the process and all the actions that are required under Appendix D would not be done appropriately and not in time for a smooth transition if it were only composed of government officials. One of its tasks would be to oversee the audit of assets and liabilities of LAs and central government. If the Authority consisted only of government officials and cabinet ministers, the chances of covering up skeletons that might come out during the process would stand to increase.

At the time at which the current report was written, the World Bank was set to finance the audit of the assets and liabilities of the 15 largest LAs. Although the terms of reference for the audit had been drawn up, the risk still remained that the holding of such an audit might be overtaken by legal events. The Local Government Act was to be repealed on the date of the elections, by when the audit might not be complete. The holding of such an audit was required in order to transfer assets to counties and to make a decision on what to do with the liabilities of the LAs (Whimp, 2012). Such a process supported the need for the Transitional Authority for Devolved Government to be established sooner than later.

The print media was lively, continuously commenting on the devolved government. *The Nation*, over 47 weeks, was bringing out weekly eight-page special supplements about each of the counties that showed the history of the area, what economic opportunities might exist in the area, and a large number of other facts and figures about it.

#### 4.2.6 Natural resources and the environment

Kenya currently only uses oil, hydro power and other renewable forms of energy (see Figure 4.8 below). Vision 2030, however, suggests the use of coal-fired power stations and transport infrastructure, mainly based on the use of private cars (State of the Future, 2011).

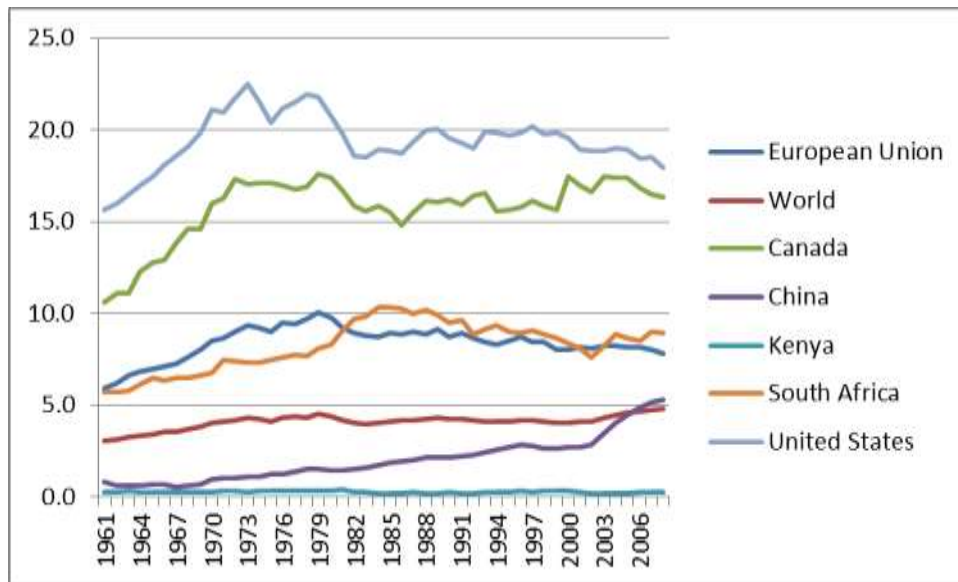


**Figure 4.8: Sources of energy in Kenya from 1971 to 2009**

Source: World Bank, 2011.

Kenya's emissions per capita were amongst the lowest in the world (see Figure 4.9 below), never rising above 0.4 metric ton per capita and, at the time of the report, being 0.3 metric ton per capita. Projections are that, if coal-fired power stations are introduced and the use of private cars is the major transport strategy, the total number of megatons of carbon emissions will rise from 42 megatons in 2005 to 91 megatons in 2030 (State of the Future, 2011). The amount, however, is minute against what other economies are emitting. However, this would not support the use of the suggested solutions, as there are several other reasons, such as congestion, why it is wise not to plan around the use of private cars. Coal-fired power stations, making use of improved cleaner technology, might still be a short-term solution.

Kenya is rather in the position to benefit from its status as a low emitter of carbon emissions, having declared an intention to establish a regional centre for carbon emissions trading in order to steer the market in Africa (State of the Future, 2011).



**Figure 4.9: Carbon dioxide (CO<sub>2</sub>) emissions, metric ton per capita**

Source: World Bank, 2011.

### 4.3 INDICATORS OF FUTURE PLANNING, REVENUE COLLECTION AND IMPLEMENTATION CAPACITY

The Constituency Development Fund (CDF) is a devolved fund, but has very strong ties to the Member of Parliament (MP) of the area concerned, who has control over the monies assigned to their own constituency. Although he is not entirely satisfied with its performance, Kangu (2012) believes that it was a step in the direction of devolved government, where communities started to have a say in how government spending is applied in their area. Werner *et al.* (2011: 30) point out that it had the Fund had severe institutional weaknesses, as it was only the MP of that area who really provided any administrative capability. A number of cases were reported where monies were not managed appropriately and even misappropriated. The goal to attain greater community participation in decisions around government spending also seemed not to have been met.

Werner *et al.* (2011: 31-34) also provide an evaluation of the LASDAP. The median budget for a LASDAP project is approximately 1 million KS (USD 11 000). They are often once-off projects, such as the construction of market sheds and health care dispensaries, with little regard for maintenance, staffing or operating revenue. The size of projects tends to be very small in comparison to what is required if one looks at the population growth and infrastructure backlogs that the counties will have to take into account. The experience gained through the implementation of LASDAP, in other words, can most probably not be directly applied in the new county public service, which is another argument for the fact that county governments will have to search for new implementation capacity in addition to LA's current personnel. They emphasise a statement by Mr. Patrick Obath, chairman of Kenya Private Sector Alliance, by placing it in a text box with his

picture. The accompanying text reads: “You have to think out of the box. We cannot implement the devolved government worrying about the existing structures” (Werner *et al.*, 2011: 8).

Werner *et al.* (2011: xi) aptly summarise the debate regarding the crossover from the current system to the new system in the field of local government in the introduction to their book, *Kenya’s urban development in the 21<sup>st</sup> century*:

“In municipal councils in Kenya, urban development plans are drawn up but not followed through. In rural councils, environment development plans are not made at all and therefore development comes about in a haphazard manner. Community development efforts led by local government are minimal and have little impact. Local government, within the new framework of devolved management in Kenya, has the capacity to re-invent itself so as to play a leading role in the development of living space for the country’s citizens.”

The LATF was established in 1999 to facilitate the transfers of central government to LAs. The Fund is the responsibility of the Minister of Finance and is administered by a Permanent Secretary (Republic of Kenya, 2010: 19). Even though the structure of devolved government will look substantially different from the current situation, some of the facts and figures drawn from the LATF annual reports may provide some insight into the future raising of revenues and transfers from central government, as well as into the implementation thereof, to the benefit of the Kenyan population.

In the 2008/09 annual report of LATF the three issues outlined below are identified with regards to LA’s finances. Firstly, contribution in lieu of rates (CILOR) was supposed to be paid by central government to LAs by sector departments with land and offices within their geographical area. The amount of monies owed to LAs was under dispute. Secondly, even though capital expenditure in LAs was on the increase, there were significant examples of projects that were incomplete or that had been commenced, but that were not viable. Thirdly, the debt burden of LAs rose from Ksh 13.6bn to Ksh 37.9bn in 2009/10. This was mainly due to Nairobi, for the first time, reporting properly on its outstanding debt. The 13 most indebted LAs made up 95 per cent of the debt (Republic of Kenya, 2010: xii).

The last statement supports the case that one could never generalise averages to the whole of a devolved government system. Each county is an organisation in its own right and should be managed and engaged with in such a way by central government.

**Table 4.5: Relative contribution of own revenues by LA type, 2008/09**

Revenue source	Nairobi City	Municipalities	Towns	Counties
CILOR	1%	5%	5%	5%
Property taxes	26%	25%	6%	6%
SBP	12%	18%	19%	20%
Vehicle parking	14%	15%	20%	3%
Market fees	2%	9%	16%	9%
Plot rents	1%	1%	6%	5%
Water and sewerage fees	3%	7%	2%	1%
Total cess recipients	2%	2%	12%	20%
Game park fees	0%	0%	0%	22%
House rents	8%	3%	2%	1%
Others	30%	15%	12%	8%
% of total revenues collected by LA type	35%	30%	7%	28%
% of total own revenues	43%	31%	6%	20%
% of total no. of LAs	1%	26%	35%	38%

Source: Republic of Kenya, 2008: 8.

The report points out that “while the towns represent 35% of the total local authorities by number, they only collect 6% of their own revenues and 7% of total revenues” by LA type. This shows that, as a group, they “face considerable challenges as to their viability as service delivering entities”. In this context, their management, as proposed by the Urban Areas and Cities Act, makes sense.

No official figures exist, but Oyugi (2012) estimates that only half of what is due to municipalities and cities reaches their coffers, as (for instance) it is common practice for parking attendants to take cash from vehicle owners for their own pockets rather than submitting it where it is supposed to be paid in. Furthermore, few records are available electronically and the possibilities for mistakes and cover-up in financial records are prevalent.

The ratio of personnel cost to operations, maintenance and capital expenditure, as given in Table 4.6 below, gives the impression that not much is delivered, or maintained, by the current LAs. The ratio of personnel costs to what is actually delivered to the population is a crucial aspect that should be addressed when county governments are activated.



**Table 4.6: Relative expenditure pattern by LA type, FY 2008/09**

<b>Expenditure classification</b>	<b>Nairobi City</b>	<b>Munici- palities</b>	<b>Towns</b>	<b>Counties</b>
Civic expenditure	1%	6%	12%	19%
Personnel	42%	39%	30%	27%
Operations	8%	22%	22%	23%
Maintenance	9%	6%	8%	6%
Total recurrent	60%	73%	72%	75%
Capital expenditure	22%	15%	20%	18%
Debt resolution	15%	12%	8%	7%
Loan repayments	4%	0%	0%	0%
Total	100%	100%	100%	100%

Source: Republic of Kenya, 2010: 11.

What should be emphasised in Table 4.7 below is that the small percentage of total government revenue of, at the most, 2.25 per cent in 2007/2008 and the latest reported figure of 2.23 per cent was going to change to at least 15 per cent of the total national revenue. Much needs to happen to see that the county governments are provided with the required capacity to implement their budgets. It might be wise for the CRA to at first keep the transfer to the minimum of 15 per cent and then, after the first three years, to look at the budgets and planning of those counties to implement. The CRA can also not count on previous expenditure patterns, and will have to do a fair amount of guesswork when they allocate budgets to counties. The contribution of county governments' own revenue against the central government transfer will be at a much smaller ratio than what the LAs used to contribute. Even if the counties were to be stronger politically, they would hold little of their own revenues. In practice, power relations will be affected by who holds the purse, and they should brace themselves for much central government examination of their affairs.

**Table 4.7: Five-year comparison, from FY 2004/05 to FY 2008/09 actual revenues (Ksh Millions)**

Revenue source	04/05	05/06	06/07	07/08	08/09
LATF and other central government	4 453	4 986	8 329	9 717	11 423
LAs' own revenues	8 495	10 112	12 289	13 716	15 696
Total	12 948	15 604	20 619	23 433	27 118
Central government transfers as % of total LA revenues	30.0%	34.0%	35.0%	41.0%	42.0%
Increase in central government transfers	32.7%	23.3%	51.7%	16.7%	17.6%
Increase in LA revenues	4.4%	19.0%	21.5%	11.6%	14.4%
Increase in total revenues	11.5%	20.5%	32.1%	13.6%	15.7%
Total government revenues	285 823	313 448	376 039	432 219	512 770
Central government transfers to LAs as % of total government revenues	1.6%	1.6%	1.8%	2.25%	2.23%
Inflation rate	10.3%	12.1%	11.1%	29.3%	18.2%

Source: Republic of Kenya, 2010: 9.

Table 4.8 below provides some details regarding the planning, budgeting and implementation capacity of LAs. The implementation of projects relating to council premises fared worst in money terms. This might possibly be because there was a 'stall' of projects, whilst the LAs waited to hear their fate after the new county public service was in place. Other significant underperformers in money terms were housing, solid waste, equipment and education. Even if there were a lag in services due to uncertainty, the discrepancy between what was planned and what was actually spent remains to show the lack of a link between reality and what was planned. Oyugi (2012) is also of the opinion that there is a severe lack of skills and capacity in the current LAs to plan, budget and implement. Once again, this is an argument that the county public service will need to be considerably improved to enable performance.

**Table 4.8: LAs, planned and actual capital expenditure by project type**

Project type	Planned		Actual		Realisation	
	No. of projects	Amt. Ksh	No. of projects	Amt. Ksh	No. %	Amt Ksh %
Administrative support	47	46 718 414	66	41 965 190	140%	90%
Bus parks	104	67 076 824	107	104 418 264	103%	156%
Council premises	165	913 351 736	140	140 228 285	85%	15%
Education	1 149	798 739 630	1 040	496 188 167	91%	62%
Equipment	143	134 089 314	149	80 695 273	104%	60%
Health	445	287 829 100	357	170 578 623	80%	59%
Housing	48	64 858 547	26	12 904 562	54%	20%
Markets	122	123 684 667	180	219 287 099	148%	177%
Public lighting	102	124 666 133	68	258 871 103	67%	208%
Roads	464	618 704 717	706	2 153 351 791	152%	348%
Slaughter slabs	25	85 239 888	18	5 527 277	72%	6%
Solid waste	40	25 347 220	25	12 993 328	63%	51%
Sports/Recreation	67	41 923 561	67	36 425 987	100%	87%

Source: Republic of Kenya, 2010: 12,

Kiriria (2011) points out the following current trends in the national parliament that might also impact negatively on public finances in the near future:

- “...many MP’s have limited knowledge on many technical issues, especially public finance;
- politicians have a tendency to pay more attention to self and vested interests, which may compromise national interests; and
- the PBO (Parliamentary Budget Office) is new and yet to consolidate and build the necessary capacity to support the members.”

A major change that has been brought into place by the new Constitution is that counties will have the right to raise property taxes, which used to be the domain of the cities and municipalities in urban areas (Kiriria, 2011:15). The matter will have to be clarified and addressed as soon as the county public service is set up. The recently promulgated Urban Areas and Cities Act (Republic of Kenya, 2011) does, however, provide some guidance.

The COB is also a new role that might have some impact on improving the planning and budgeting abilities within counties. Kiriria (2011: 16) believes that the COB should build capacity and infrastructure in each of the 47 counties so that it can perform its tasks, which include:

- the final release of money from a County Revenue Fund;
- releasing of funds from the Consolidated Fund; and
- oversight of budget implementation.

However, this is also a position that may be abused, should a government be in power that does not have the best interest of the population at heart.

The Salaries and Remuneration Commission (SRC) will also have a crucial role to play, as it is clear that the skills required to run a professional county public service are not necessarily going to be available, based on current levels of remuneration.

In summary, the amount of government funding available to the county public service will be much higher than what was available to the LAs. A professional public service that can plan, budget, procure and implement in the best interest of the people and not in that of lining their own pockets will be a key factor in the future of devolved government, and is also identified as one of the major states of being that will be used as background to the scenarios. The issue is covered in greater detail in Chapter Five.

#### 4.4 CAUSAL LAYERED ANALYSIS (CLA)

The following CLA diagramme provides a more vertical view (as described in Chapter 2) of the context that has been covered in this chapter so far – moving from clear data, under quantitative trends, to such increasingly abstract factors as worldviews, myth and metaphor. It is useful to enrich the variety of factors that might have an influence. Some of the factors mentioned were gathered through informal conversations on a field trip to Kenya, and others were gathered through the expert interviews. Although one would want to defend and motivate some of the analysis done, one should also keep in mind that futures research is not a science and that the effort described below should not be viewed as an attempt at social science. The analysis should also help to assist in providing a framework for the further distillation and categorisation of the current situations and trends that may be used to inform the scenarios concerned.

**Table 4.9: Analysis of quantitative trends and world views**

<p><b>Quantitative trends</b></p> <p>Positive GDP growth rate outlook for the near future, followed by economic cycles over the next 10 to 20 years</p> <p>Lack of access to running water by 60% of citizens in Nairobi</p>
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Increase from 2.25% of national revenue share to at least 15% of national revenue share to be implemented by local government

Current low base of own revenue for devolved government

Current LAs' lack of budgeting, planning and implementation capacity

Moving from high youth dependency ratio (current) to larger working age population from 2020 to 2030

Underspent budgets and weak financial management in current LAs

Population growth, addition of approximately 4 × current population of Nairobi by 2030

Low carbon footprint, but policies of energy generation required for economic growth influenced and dictated by the industrialised West

Tourism major contributor to foreign earnings

Ranks low in ease of doing business index, but easy-to-start construction firm

Corruption rate high, but perceived to be decreasing

High rate of literacy

Urbanisation and population growth combined

Mobile phone penetration and M-pesa, as well as internet access increasing rapidly

Number of UN major offices in Nairobi

Number of overseas aid agencies with head offices in Nairobi

### **Social causes and explanations of quantitative trends**

History of centralisation, with consequent lack of experience in running responsible, devolved government

Godlike status assigned to leaders, and blind obedience to bosses

Urbanisation due to perceived possibilities for accessing better life in city

History of corruption amongst top leaders, setting bad example

Relatively large traditional population, with relatively high fertility, although decreasing

Only oil as non-renewable energy source, with plans to use coal

Lack of proper financial management and control in current local government

Lack of budgeting, planning and implementation, due to bad organisation and leadership, not because of lack of potential and level of education in country – resultant lack of experience

Competition of private sector and aid agencies for skilled people

### **World views**

Swahili 'harambee' (meaning unity) on national coat of arms

New emphasis on concept of unity in diversity – possible change of phase to nation that works as a team

Ethics and transparent business becomes a global requirement

Ethnicity and favouring of own tribe – emphasis on differences, rather than similarities, between people

History of friendship with the West

Willing buyer, willing seller – buying of land after independence

Importance of land ownership

Government not viewed as preferred employer, negativity amongst youth about government and stigma of criminality in government – possible change of phase as county governments recruit new people

Focus on female involvement within Parliament and county assemblies by making specific provision for their

inclusion
<b>Myth and metaphor</b> Ngai god of Kikuyus at Mount Kenya Islamic extremism on border Long history of Islamic faith on coast Two major candidates for head of state sons of previous heads of state

## 4.5 MULTIPLE PERSPECTIVES ANALYSIS

### 4.6.1 Technical

Various technical matters came up during the political, economical, social, technological, institutional and natural resources scan. Technical analysis, as practised in the multiple perspective approach, can be found in the various figures in the previous sections of the current report.

### 4.6.2 Organisational

The power struggle between the central and the devolved government is a hotly debated topic in the field of local government all over the world. Sansom (2010) writes in the editorial of a special issue of the *Commonwealth Journal of Local Governance* that

“while central government support for stronger local government is essential, it cannot be assumed that ‘political will’ is sufficient to bring about necessary change (such as through policies for decentralisation). Ways need to be found to overcome often entrenched bureaucratic opposition, and bureaucratic discretion in implementing policy should be reduced. Local government(s) may need to devise strategies to ‘draw down power’ where or when higher tiers of government are reluctant to relinquish this.”

The issues of technical skills capacity in the public service of country governments, cities and municipality should be a major concern when one looks at the under-expenditure by LAs and the increase in the amount of monies that will, in future, be available to implement.

Mitullah (2012) believes that the skills for populating the county public service within Kenya are available, but that the LAs and even the central government does not currently employ them. She believes that the strategy one should take in staffing the public service of counties is to first look at what kind of skills are required and then to approach such current structures as the LAs and the provincial administration to see whether they have the right people to take up the jobs. Her concern is that staffing will be conducted the other way round, in that the current LAs and provincial administration personnel will be placed in jobs for which they are not necessarily qualified.

A very common problem in Africa is that highly skilled people are drawn to work for overseas aid agencies and the private sector and local government structures are not able to draw the right skills due to the lower salaries that they offer. There is also a rural/urban divide, as highly skilled

people tend to want to live in the urban centres or in major cities (Binns, Porter, Nel & Kyei, 2005: 22-23).

McGill (2010: 92) expresses his frustration with reports like the one above, stating:

“How often has it been reported that central government staff members have been posted to outlying or remote regions and that they either go reluctantly or they resign; a loss to the public service? It should be within the scope and imagination of governments committed to local development, to recognise the need to build incentives for staff members to move.”

Both Kangu (2012) and Oloo (2012) believe that working for a county government in Kenya might have a certain amount of prestige connected to it. The impression gained from their reports is that the above issue will not be solved as a result of the factor, but that it might contribute to drawing skilled people to some of the counties. More positions will also be available, with less competition, so that one might see a considerable amount of movement in the direction of the county's public service.

The fear of job losses by current personnel in LAs, the provincial administration and central government is most probably unfounded. The amount of revenue available to counties will be considerably more than what was available before, and if the system of devolved government is implemented successfully, several employment opportunities should emanate therefrom. What is crucial is for counties to have the right engineering, town planning and financial management skills at their disposal.

#### **4.6.3 Personal**

According to Kangu (2012), the success of the Constitution and of devolved government hinges on which individual will be the next head of state. Someone who can effectively implement the Constitution and who understands a system of devolved government and who does not feel the need to centre power around him/herself would be ideal.

In addition, there are five important appointments made by the head of state that will have an impact on the setting up of the county governments, as well as on their ultimate success (Kangu, 2012).

- Cabinet secretary responsible for finance (who must be capable of understanding and supporting the devolution of the government);
- Principal secretary for finance (who must have the same capability as that which is stated above);
- Cabinet secretary for devolved government;
- Principal secretary for devolved government; and

- Speaker of Senate (must have interests of devolved government at heart and understand the Constitution well, must fight for the Senate to be involved at any level, i.e. counties must even be involved in foreign relations concerning the attraction of foreign investors).

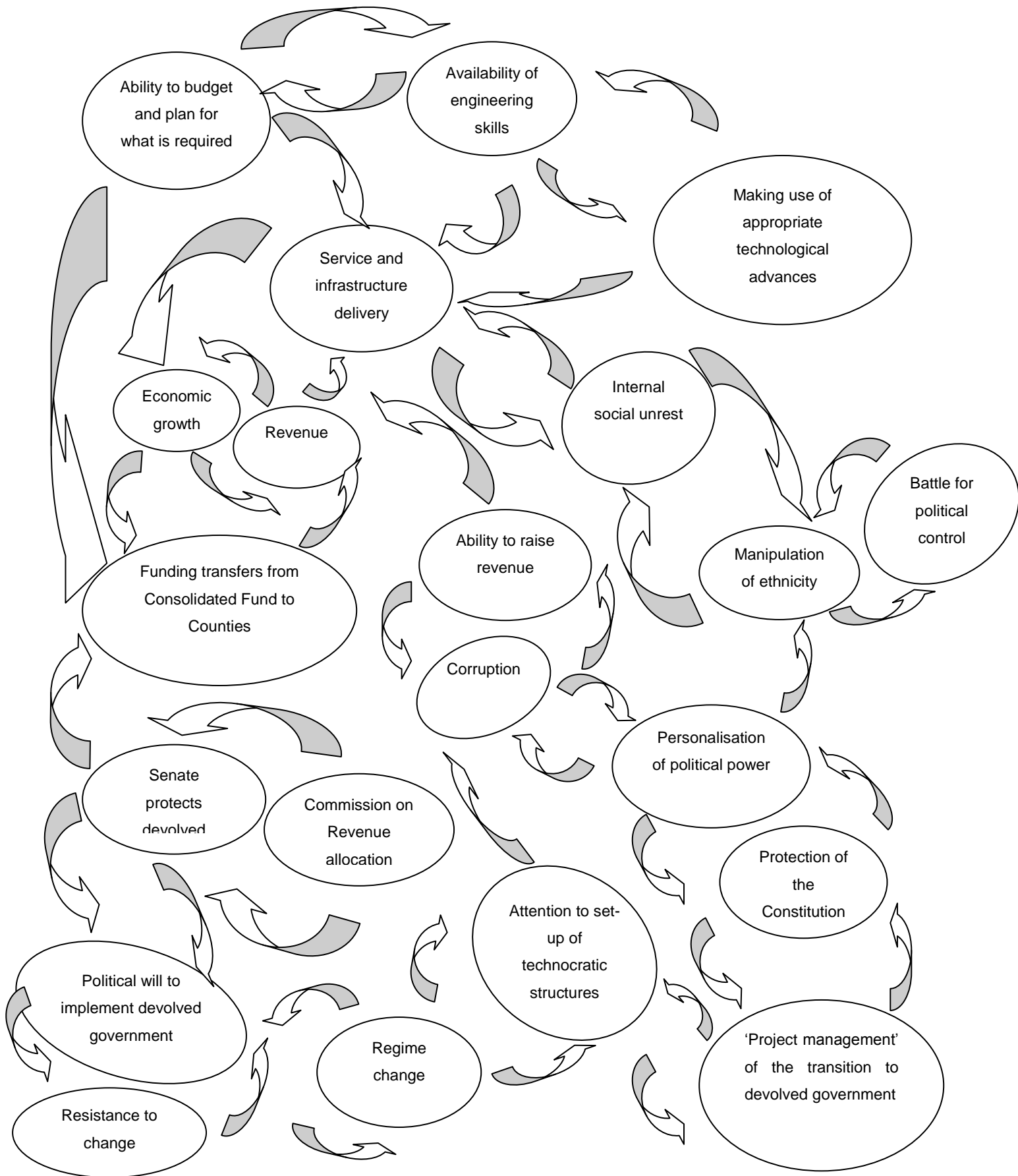
The personal perspective would ideally also include analysing the personalities and world views of crucial individual role-players. Suffice to say that, for devolved government to be a success, it is crucial that the head of state should be someone who is not overly power hungry and who is a democrat at heart.

The influence that the head of state yields in Kenya, especially over the central government public service, is considerable and can make or break a successful transition and devolved government in future, as the current public service and their vested interests might be a major obstacle to such a transition if not handled appropriately.

#### **4.6 SYSTEMS THINKING RECURSIVE CAUSALITY MAP**

The systems thinking map shows the interrelatedness of some of the drivers and indicators. Positive and negative impacts are not shown on the map. As an illustration, the battle for political control might increase the manipulation of ethnicity, which might, in turn, increase the amount of social unrest. Additional unrest might decrease the chance to deliver infrastructure and services, which might, in turn, decrease the number of opportunities for economic growth, which might decrease the amount of revenue, which might decrease the amount of service delivery and infrastructure available, which might increase the amount of social unrest, which might increase the ethnic tensions. Service delivery, the ability to budget and plan for what is required and revenue stands out clearly as drivers/indicators in a large number of direct relationships.





**Figure 4.10: Systems thinking map showing the interrelatedness of drivers and indicators**

## **4.7 CONCLUSION**

The previous chapter provided a picture of what is proposed regarding the devolution of government in Kenya, whereas the current chapter placed the situation within its context, in answer to the 'so what?' question. The context provides a variety of challenges and opportunities. Scanning and analysing the environment for what might impact on the success of devolved government is a task that will never be complete. Trends change over time. One should attempt to stand still at different times during the coming years, to close one's eyes and to imagine a stream of trends. Then try to imagine how relevant each one is in relation to the other at that specific time. One can also think what actions there are that might decrease the probability of undesired outcomes and increase the possibility of desired outcomes. The next chapter further unravels the 'so what?' question by providing four scenarios of what might be or of what might not take place, but hopefully enabling the provision of some insights for policy-makers and the broadening of the body of knowledge regarding devolved government in Kenya.

## CHAPTER 5

### FOUR SCENARIOS

#### 5.1 INTRODUCTION

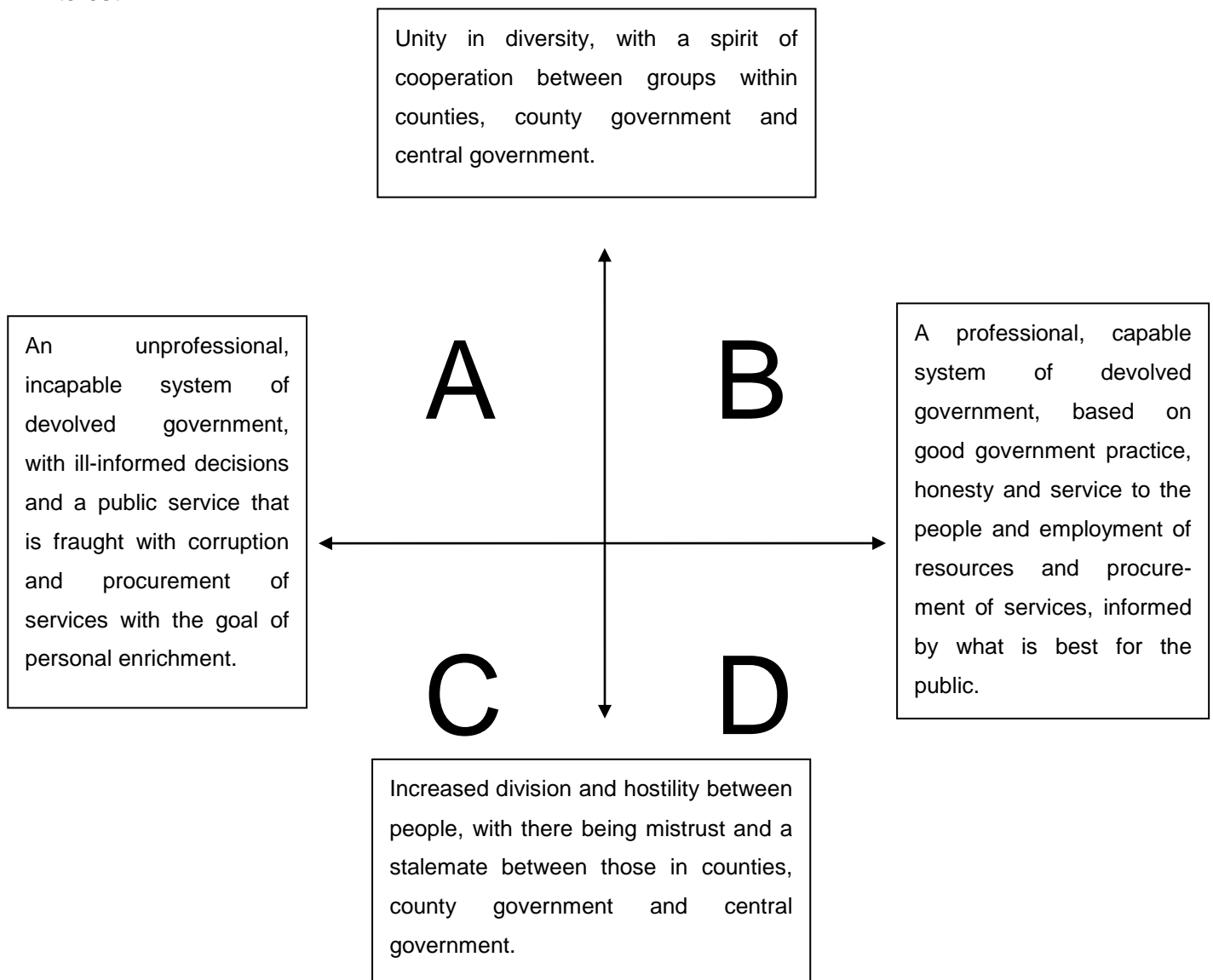
As described earlier, in chapters 1 and 2, a framework was used as a background to the composition of four scenarios. Two major states of being were described. Four different combinations of the positive or negative outcomes of the states of being were used as the background and reference point for the composition of each of the scenarios, as per Figure 5.1 below.

Experts identified the following driving forces:

- Technical skills capacity in counties/cities/municipalities/towns;
- Culture of centralisation and personalisation of political power;
- Manipulation of ethnicity for political gain;
- Regime change at election time;
- Civil society and opposition party protection of the Constitution;
- Battle for political control taking precedence over the setting up of required technocratic structures;
- Corruption;
- Urbanisation;
- Youth unemployment;
- Resistance to change from such current structures as provincial administration;
- Such central government checks as the Senate and CRA;
- Political will;
- 'Project management' of the transition to devolved government;
- Contributions of the UN and donor agencies;
- Foreign technical assistance;
- Availability of engineering skills, with the private sector as preferred employer above the public sector resulting in a lack of engineering skills;
- Technological advances;
- Environmental factors (e.g. drought);

- Internal social unrest;
- War; and
- Adequacy/sufficiency and promptness of central government transfers to counties and county transfers to cities and municipalities.

Depending on the field of expertise, the above topics were used as discussion points during the interviews. It became clear that two major issues in Kenya might be used to inform the major states of being on the X and the Y axis of the framework that provides some background to the scenarios. The first issue relates to relations between people, based on ethnicity, as well as to relations between various government structures. The second issue has to do with whether the required skills and capacity will be available to the counties and government as a whole. and to whether the public service will operate in the best interests of the public of Kenya or primarily in their own interest.



**Figure 5.1: Outline of four scenarios on X and Y axis of framework**

Besides the drivers mentioned above, each of the scenarios also includes references to the following indicators that provide an idea of the success of devolved government. The following indicators were identified early on in the literature review, and also discussed in more detail in Chapter 1:

- Election of local representatives;
- Scope of government functions, in relation to central government;
- Ability to budget and plan for what is required;
- Amount of central government funding transferred to counties, as opposed to the ability to raise own revenue;
- Ability to transform own revenue and central government funding into tangible benefits for the population; and
- Presence of social or economic crises.

The scenarios tend to start with a fair amount of detail, which becomes less in later years. In later years, it is mainly demographic trends and the actions that took place in the previous years of that particular scenario that inform the situation.

## **5.2 SCENARIO A – GOOD INTENT, BUT OPPORTUNITY MISSED**

### **2012–2017**

The Transition Authority for Devolved Government was established with representation from independent candidates. They were prevented from completing any of their work in time for the elections, as a senior official from the provincial administration, supported by a network of corrupt politicians, managed to keep irregularities in the provincial and LA public service under wraps, when he was appointed to oversee the implementation of all required actions. The elections took place in December 2012, with the new national head of state being supportive of devolved government, but weak in rooting out corruption. Some violence erupted just after the elections in isolated cases in particular counties, but was easily stopped, as facilitators and the Defence Force were on standby. Many county governors attained their positions as they were candidates who satisfied the requirements of all the various ethnic groups, but lacked the required management experience. The salaries on offer at the county public service did not attract those with the correct skills, so that the positions were mostly filled by previous employees of the LAs and the provincial administration. Many of them knew how the old system worked, but were slow to accept the new way of doing things. The type of projects that the county public service submitted for funding were small, unimaginative and not at the scale required to prepare the counties for the major population growth anticipated. The county assemblies and Senate passed most budgets in a record time, but

within two years major under-expenditure had occurred and a number of contracts were awarded to service providers who proved incapable of completing their work properly or in time. An attempt was made to improve own revenue generation, but economic activity was not sufficient to boost county revenue. Besides that, the valuations of properties were fraught with corruption and very little revenue ended in the county coffers. A minority group in one of the counties took to the streets and protested the non-delivery of services. After the governor met with them and explained that there were bureaucratic holdups, they agreed to return home peacefully. Towards the end of 2015 several counties in urban areas experienced unrest as inhabitants of growing shantytowns started to regenerate alternative structures of government, controlled by criminal elements, to try and provide some level of governance. Crime was rife, and one of the alternative structures decided to adopt a form of Sharia law to try and bring order to the area. The police turned a blind eye to the doings of the alternative structures, as they believed that their existence made their work easier. Several more young people joined the alternative structures, which started to form a paramilitary force. Even if the world economy had made major leaps forward, growth in Kenya would have started to stagnate, as the required infrastructure was not present to enable the movement of goods to markets. Kenya as a country, and the counties specifically, lagged far behind the rest of the world in the application of most fields of technology relating to infrastructure.

## **2018–2022**

Due to major unspent budgets, it was clear that the counties' public service was not up to the job in most of the rural counties. However, the same government was voted back into power, but this time with a much smaller margin. Their charismatic leader managed to keep the support of the politicians, but an increasingly corrupt public service, and, in many instances, one that was infiltrated by criminal elements, prevented him from making any improvements. Most county governors struggled to deliver services to their citizenry, as the county public service lacked the capacity to deliver on the promises that they had made during the previous elections. The public within counties started to vote less according to ethnicity, and started focusing on the lack of service delivery. A number of new, much younger county assembly members and governors were voted into power, based on their message of unification of the people within the counties, as well as within the country as a whole. They had little experience of governance and, in addition, the lack of availability of technical skills in the county public service caused a lack of service delivery. The new guard also seemed to have been infiltrated by alternative structures of government in the shantytowns, with the structures concerned mostly being composed of young men in their late twenties who had lived on the streets during their teens. Despite an economic boom helping to boost the revenues of urban counties, they failed to come close to what was required to cover their own salaries or maintenance and operation activities. The counties as a whole, nevertheless, kept receiving the minimum allocation of 15 per cent of national revenue. The rural counties were then left with only sufficient funding to pay salaries, leaving almost no funding for capital infrastructure projects, and causing the rate of urbanisation to increase even more. Some of the urban counties

managed to have some funds left over for spending on capital projects, but most of the projects were planned haphazardly, causing major traffic delays and disruptions in the urban areas. The government decided to build a new capital in the centre of the country, and started to work on plans to move the central government offices there, causing major unhappiness amongst UN and aid agencies that had their head offices in Nairobi.

## **2023–2032**

By 2025, the government had managed to move the capital city to the centre of the country, which assisted in helping to create a better image of it trying to serve the whole country, but losing touch with many of its main stakeholders and other agencies that remained in Nairobi. Nairobi, Mombasa, Nakuru, Eldoret and Kisumu were bursting at their seams, with a large number of the city-dwellers living in squalor. Despite there being fewer children of which to take care, the presence of a very large number of unemployed young males, between the ages of 20 and 30, caused a very volatile situation. One of the political parties had been hijacked by an underground movement of young men, who ran their election campaigns based on populist sentiment, calling their party the ‘young guns’ and managing to take control of government. They had complete disregard for good financial management practices and awarded large government contracts to friends and family who were not capable of doing the work required. Kenya became increasingly isolated from the international arena. Citizens and corporations in more developed parts of the world refused to go on holiday, or to do business, in Kenya. Only after a major intervention from the African Union, did the ‘young guns’ agree to reinstate some of the government officials in their old positions, which enabled the public service to start functioning again. Only those counties that had their own revenues managed to deliver some form of service during the reign of the ‘young guns’, with the others being completely unable to function. Rural counties in the northern parts of the country were hit hard by a drought that lasted for seven years, whilst other parts were flooded, as a result of severe thunderstorms. A global relief fund, with country contributions based on the amount of CO<sup>2</sup> emitted per capita, helped to mitigate the effects of the inclement weather to some extent, but, nevertheless, many people starved. Kenya still lagged far behind in the use of the latest transport and biotechnologies. Even though, above the surface, the situation appeared to be bleak for Kenya as a whole, a number of Kenyans in the diaspora formed an online community of Kenyans who created their own virtual country, called Harambee, where Swahili was the spoken language.

## **5.3 SCENARIO B – OPPORTUNITY TAKEN**

### **2012–2017**

The Transition Authority for Devolved Government was established with representation from independent candidates, and oversaw a comprehensive audit of LAs’ assets and liabilities. A number of officials were implicated in shady land deals, conspiring with politicians to acquire major

portions of land where development was due to take place. Court cases were made against most of the officials concerned, but a number of white-collar criminals were given amnesty in return for their full cooperation in providing all the required information. Assessments of available and required human resource capacity were completed. A major drive was undertaken to motivate highly professional (e.g. engineers, demographers, town planners and lawyers), but disillusioned, Kenyans in the diaspora, and young graduates were encouraged to apply for government positions. The election date was moved forward to 1 March 2013 in order to ensure that all asset registers were ready for the counties to take onto their books, and that the current staff of LAs could be taken up in the correct place in transitional teams. A head of state and coalition of political parties with a deep understanding of, and support for, devolved government came into power and continued to support the work of the Transitional Authority. The celebration of 50 years of independence was carefully orchestrated to create a feeling of national unity right after the announcements were made of the outcome of the elections. Each county, and all ethnic groups within counties, were recognised on stage in a spectacular two-hour-long concert broadcast on television and radio and screened in public places, celebrating unity in diversity. At a conference of county governors and of selected representatives of county assemblies held together with the Senate, a charter of service delivery was signed. The major part of the charter focused on the concept of unity in diversity and a pledge by, not only the national government, but also by the county governments to serve all its people, including all members of minority groups. In cases where ethnic minorities were present in a county, it was agreed to add the name of their group to the name of that county, with, for example, Migori county being renamed Migori-Kuria county. The recruitment drive to bring the right skills on board were further improved by offering competitive salaries for such specialist skills as those possessed by engineers and town planners so that such professionals would be encouraged to join the county public service. In central government, the Ministry of Local Government put in place a 'one-stop shop' to make specialist skills available on request to counties that failed to attract the required skills. Counties that managed to pass their budgets in time during the first cycle only received sufficient funding to pay their salaries and were then assisted within the year to be ready for the next cycle. Central government and the county governments formed a specialist task team to put in place a new human resources and financial administration system that could be customised to the need of each county, but which was still standard in form and function, so that it could be utilised for central financial reporting purposes. By 2015, a new geographical planning system had been put in place for use by the local county public service with the tele/video support of the Ministry of Local Government's 'one-stop shop' of specialist skills on standby. By 2017, a lean professional, well-paid county public service was busy implementing a record number of projects, spurring economic growth and new business in the manufacturing of environmentally friendly building materials and basic equipment. Towards the end of 2017, the urban counties were covering 70 per cent on average of their own salaries and



operations and maintenance budgets. Plans were starting to take shape to build Harambee city – a new city that was approximately 50 km from Nairobi.

### **2018–2022**

The transition to county public service was evaluated by a group of specialists and recognised as having attained an 85 per cent success rate, pointing out that there were still some constraints in some of the rural counties with a low revenue base. Additional attention was given to such counties. Due to population growth, Mombasa also reached city status and increased its capacity to serve as a major port for the import and export of goods to and from Kenya, Uganda, Rwanda and Burundi. The same central government remained in power and consolidated their power base through providing the various counties with the correct impetus to grow their own county public service, by means of support granted through the one-stop shop. By 2020, the one-stop shop had been dissolved, as most counties had sufficient internal capacity to provide all their own town planning, engineering and financial management services. Most of the team of specialists concerned had become focused on the implementation of infrastructure for phase one of Harambee city. By 2022, the first business had started operating in Harambee City, mainly in the field of ICT services, with call centres serving other East African countries and biotechnology research. A superfast railway linking Nairobi and Harambee City provided transport to and from residential areas. The county assemblies held an annual conference, and the Senate managed to become involved, under the prescripts of new legislation, in foreign relations providing for investment opportunities between Kenya and the BRIC's countries. An annual trade fair was started, at which each of the counties could display the opportunities in their own area. The trade fair provided for healthy competition, but was coordinated by a subcommittee of the Senate to ensure that there was national cohesion in the offering provided. By 2022, the bulk of counties managed to have attained the targeted 99 per cent success rate of budget implementation and had raised sufficient revenue to cover their own salaries, maintenance and operations expenditure.

### **2023–2032**

By then, the active working population formed the major part of the population. Unemployment was at the lowest level ever, and Kenya had established itself in the region and on the continent as one of the leaders in the fields of ICT and biotechnology. The East African parliament was in place, making the need for central government less and less. Few leaders were interested in the position of head of state, and many rather attempted to become county governors of some of the big city-states. By 2030, six formal city-states were in place: Nairobi; Harambee City; Mombasa; Kisumu; Nakuru; and Eldoret. Many people also did not mind living in rural lifestyle villages, as transport networks connected all major centres by means of a fast-speed train service. Electrical foldup cars were used to move around within the cities. All the counties were raising sufficient revenue to cover all of their own operations, maintenance and capital programmes. Due to the all-year-round good weather and the popularity of Harambee City, many ICT and biotechnology professionals

from all over the world came to settle in Kenya. Scientists made first contact with a much more advanced society than with those on Earth, of which representatives were prepared to engage with the governor of Harambee City regarding their first formal contact and for discussions about a road map of engagement.

#### **5.4 SCENARIO C – OPPORTUNITY MISSED**

##### **2012–2017**

The Transition Authority for Devolved Government was established, but only with representation from cabinet ministers and principal secretaries, with the authority concerned becoming known as the Transfer to Devolved Government Committee. In the elections took place in December 2012, a coalition of political parties with a leader who had little interest in devolved government was elected. Violence broke out during the elections and sporadic attacks continued for about another year. The county governors were all sworn in, and county assemblies reported for duty during the first month after the elections. Most of the counties did not manage to pass their first budgets, as they lacked the staff to prepare them and the central government had also not made any other contingency plans. The Commission on Revue Allocation suggested that the first transfer should only cover the costs of the county assembly, the governor and senior executive positions. The Senate approved the motion concerned across the board for all counties. Four of the counties that were ready with their budgets threatened to take their case to the constitutional court. After a short legal battle, they were provided with an additional transfer. Those counties with ethnic groups that were mostly different from that of the head of state's affairs were placed under the control of the central government after heated debates had taken place in the national assembly and the Senate. The counties concerned also took their case to the constitutional court after government withheld their budget for longer than the allowed period of time. The court ruled that the counties lacked the capacity to run their own affairs, and agreed that central government could withhold their budget as long as the period was renewed following the correct procedures. An assessment of the human resources within the LAs was completed only by April 2014, and, in the meantime, the LAs kept operating until such time as county governments could appoint their staff. By 2015, most of the counties were staffed, but only 34 counties submitted budgets that were approved. A county capacity building programme was planned by the Transfer to Devolved Government Committee, but never came off the ground, as there were battles between the county governments and central government about who should be responsible for the procurement of an ICT service provider to set up a financial and human resources management system. By 2017, all the counties were up and running, although most of their budgets were spent on staff costs. Their budgets, in many cases, consisted only of the central government grant and only some counties with major urban areas had any revenue that covered only 10 per cent of the costs of salaries of the governor, the county assembly members and a people-heavy, but inefficient, public service. Minority groups in four of the counties applied for their own new counties, but their application was ignored. Tension was

brewing between the different groups in the counties. In the major urban areas, alternative structures resurfaced in the shantytowns, taking protection money from small traders attempting to make a living there.

## **2018–2022**

A new government with stronger centralist tendencies came into power. Only a few counties were not under central government administration. The new government managed to amend the Constitution to allow for only five of the counties to continue operating their own county assemblies and to have their own governors. One of their major arguments was the occurrence of a few isolated examples of civil unrest in those counties where minority groups were protesting their exclusion from services. A report later showed that their exclusion was not due to targeted discrimination, but rather due to the general non-performance of the counties' public services. The report received no attention. In the other counties, only the public service remained, controlled by central government. A major overhaul of the overall public service started with technical assistance being granted by Chinese, Indian and Brazilian advisors in a south–south governance improvement co-operation agreement. The technical assistance project had ambitious targets. Chinese and Indian construction firms were awarded major contracts to build infrastructure, causing an outflow of reserves, and the pace of growth of the Kenyan economy to slow down, with very few jobs being created outside those in the temporary construction works. Alternative government structures in some of the shantytowns then formed bigger organised networks of criminals that also had links with the Chinese Triads. All of the counties continued to generate their own revenue, although the amount generated was insignificant in the rural areas. In the urban areas, the amount of revenue generated was still more or less at the same rate as it had been in 2011. The county public service became a major burden on central government, and towards 2023 the central government started proposing doing away with the rural counties' public services altogether and only having five city states with a public service of their own. A small-scale civil war broke out in some of the counties between the minority and larger groups, resulting in the Defence Force having to step in. After ten years of military intervention and a negotiation process, in 2021 Somalia once again unified. During the negotiations, facilitated by the African Union, the issue of Somali independence arose again and, at independence, Somalia insisted that the north-eastern part of Kenya join Somalia. The local population in north-east Kenya were almost all in support of such a move, but they were manipulated and misrepresented by Kenyan Somali members of parliament and business people who had vested interests in Nairobi and who did not want to lose their positions of privilege that they would have done if the area had joined Somalia.

## **2023–2032**

Some of the infrastructure built by the Chinese and Indians firms started to crumble by the mid-2020s and it was clear that much work that had been done was about to collapse. A small earthquake caused the entire ring road that was built around Nairobi to become impassable for half a year. Few Kenyans with good qualifications remained behind after the incident. Many became naturalised in other countries and did not wish to return to their mother country. Initially, they sent back remittances to their families, but the amounts concerned dried up as they became increasingly more self-orientated. Central government was attempting to put in place a new electronic governance system dictated to it by an international body. A major ICT contract to implement the system was awarded to a businessman with strong links to organised crime, but with no relevance to the situation in Kenya. The amount of government revenue in relation to the population decreased considerably, leaving the cities basically bankrupt. Relations with India, China and Brazil soured, and no more bailouts were made available. China was courting Somalia as a strategic partner on the horn of Africa, and Kenya accused them of supporting Somali militants in north-east Kenya. Kenya was on the course of becoming a failed state.

## **5.5 SCENARIO D – OPPORTUNITY TAKEN, BUT FAILED, DUE TO DIVISIONS**

### **2012–2017**

The Transitional Authority for Devolved Government was established, but only with representation from cabinet ministers and permanent secretaries. They completed their audit of government assets and liabilities and the assessment of skills required in time for the set-up of the county public service, but a number of issues could not be cleared up, as some of the LAs in areas of minority ethnic groups did not want to cooperate and were also not given much attention by the team that was mostly composed of a majority group. The elections took place at the end of February 2013 and a head of state who had supreme technical skills, but little regard for unifying the nation, came into power. Election violence broke out, but was quelled by the Kenyan Defence Force in a very short space of time, leaving underlying tensions unchecked. The opportunity to use the celebration of the 50 years of independence to unite the nation passed without creating any deepening of national unity. The CRA did calculations based on a formula of which the outcome was that it would not be feasible to transfer even the minimum 15 per cent of national revenue to the counties and to deposit a large amount into a contingency fund that might be used as soon as counties were ready to implement their budgets. In four of the counties, minority ethnic groups were unhappy with the pace of service delivery in their area and took to the streets in protest. In one of the counties, the Defence Force was called in to block the assembled crowds from approaching the governor's residence and a shootout took place, in which five of the protestors were killed. County governments composed of mainly one group progressed better, and by 2015 a number of them started to undertake major projects. Them doing so further skewed the allocation

of resources in the country and the differences between 'rich' and 'poor' counties caused a further major influx of people into Nairobi. The Transitional Authority started a programme of capacity-building to assist those counties that were underperforming. The assistance did not result in any sustainable improvement in the counties concerned, however, as the team was composed of technologists who were mostly prejudiced towards those they were trying to assist, and who failed to recognise any potential in them. The counties that were assisted, in general, did not take kindly to the central government's attempts, tending to see the assistance offered as interference in their own affairs, rather than genuine aid. After a debate in the Senate in 2016, just before the elections, it was agreed that the programme of assistance would be stopped and that the counties concerned would once again resume work on their own projects, causing a major slump in service delivery, to the benefit of the political party in control of the central government.

### **2018–2022**

An assessment of county public services showed that the major urban areas and only a few counties would be able to sustain their own salaries and operations in the medium term if government funding were withdrawn. The report was skewed negatively towards those counties that were made up of minority groups and a number of public management decisions were made based on stereotypes, which further entrenched such thinking. The same government was voted back into power. Within the counties, most people voted according to ethnic allegiances and the same county governments also remained operational in most cases. The urban-based counties and a number of other counties started to improve their ability to raise revenue, but, in some counties, it was clear that the benefits were only applied to the gain of the predominant ethnic groups in those counties. Underperforming counties remained in a state of underdevelopment, causing increasingly greater divisions between the urban rich and those living in the shantytowns around the cities and the rural areas. Central government kept transferring sufficient funding to such counties to sustain their assemblies and public service salaries, despite them becoming increasingly irrelevant. After a ten-year military intervention and a negotiation process, in 2021, Somalia once again unified. During the negotiations, facilitated by the African Union, the issue of bringing all Kenyan Somalis under Somali rule again arose. Somalia insisted that the north-eastern part of Kenya should join Somalia. The local population in north-east Kenya was almost all in support of such a move, and started to organise themselves into a formal resistance. The Kenyan Defence Force was ordered to scale up their actions against the Somali population, who remained dissatisfied with their situation.

### **2023–2032**

The five major city states of Nairobi, Mombasa, Kisumu, Nakuru and Eldoret came into being. They were managed fairly well, but were still not prepared for the major influx of people. Infrastructure was in place, but served mainly the urban areas. To a certain extent, it was sufficient to stimulate economic growth somewhat, but the required good will was not there, as international companies

were afraid to invest in Kenya, sensing the tension existing between groups and especially the problems that were experienced on the border with Somalia. Young people found sufficient employment opportunities, but not in the fields in which they were really interested. A large segment of the population started to suffer from depression, losing their previously important family structures due to the decreasing size of families. New technologies were implemented and mobile phone technology was used in business to serve customers, but could not be used in government services, as there were no agreements about the single integrated system that was required. In the rural areas, tensions flared up between smaller and bigger groups within the counties. The central government sent in the Defence Force and facilitators to assist in keeping the calm, but doing so resulted in the opposite effect. Several of their leaders of one of the minority groups that took up arms were incarcerated. A Somali militant group recruited sufficient Kenyan Somalis to attempt an armed attack on Mombasa. The governors of the north-eastern provinces managed to keep them from launching further attacks.

## **CHAPTER 6**

### **SUMMARY, CONCLUSION AND RECOMMENDATIONS**

#### **6.1 INTRODUCTION**

The summary of the most important findings (which were made in relation to the question ‘so what?’) and the recommendations (which were made in relation to the question ‘now what?’) will be provided in the current chapter. The discussion concerned provides the opportunity to make an attempt at a contribution and suggests actions to be taken by the Kenyan government and its people on how they can make the best out of their new system of devolved government. Only in the future can people be free, as the past is past and the present is where the power lies for influencing the future.

#### **6.2 SUMMARY OF MAIN FINDINGS**

A major initiative was required to provide the county governments with the required capacity to implement their budgets. Even if the counties were to be stronger politically than they were at the time of the current study, they would hold few of their own revenues. Many new systems, processes and procedures would have to be established. Besides that, many actions that require taking place currently, might have an impact, reaching far into the future. Kenya may take this opportunity in the next couple of years and reap the fruits over many years to come, or may miss the opportunity and have to play catch-up. One such crucial initial action is the set-up of the Transitional Authority for Devolved Government and its composition. If all the actions in Appendix D are taken into account, it seems clear that a full-time, dedicated, senior, qualified body should oversee it.

The issues of technical skills capacity in country governments, cities and municipalities public service should be a major concern when one looks at the underexpenditure in LAs and the increase in monies that will be available to implement. Even though some of the funding will go to the newly established structures in the counties, an increase from the 2.5 per cent of national revenue available to a minimum of 15 per cent of national revenue is, initially, a major leap. It could be realistic within a couple of years, but the first few years will most probably have to be spent on planning and preparation activities. In contrast, if the counties are allowed to accrue this money and it could not be used wisely elsewhere, it could place them in a strong position to make investments, to grow their own funds and to acquire the correct skills.

Mitullah (2012) believes that the skills required for populating the county public service within Kenya or amongst Kenyans are available, but that neither the LAs nor even the central government currently employs them. Mitullah believes that the strategy one should adopt for staffing the public service of counties entails first looking at what kind of skills are required and then approaching

such current structures as the LAs and the provincial administration to see whether they have the right people who could take up the positions needing to be filled. Mitullah's concern is that the staffing will be done the other way round, with the current LAs and provincial administration personnel being placed in positions for which they are not necessarily qualified.

Consideration must be given to what comes first: education and social services, or economic growth. This false dichotomy that was debated by two opposing sides might have also caused some paralysis in actually starting up many development programmes. Both are, in fact, potentially possible. Western academics have often seemed to argue that it must be either the one or the other. This obsession with stating two options in contrast with each other instead of allowing for the possible coexistence of two options might possibly flow from the dialectics that the Greek philosophers instilled around thesis, antithesis and synthesis. The sentiment could also be a hangover from the cold war, when the African continent was used as a proxy battlefield for ideologies of the communist world and free market capitalism, which was continuously characterised by two opposing viewpoints. Since the late 1990s, there seems to have been an agreement that it takes both economic development with a thriving private sector alongside spending on social development and an improvement of basic living conditions. Spending on, for instance, education cannot be neglected in the hope that economic growth will take place and that the private sector will eventually cause the existence of an equal and just society.

The same is currently true of the debate in Kenya regarding central government control or decentralisation. The debate forms the longest term trend or wave that has been identified in the current report. The response to the previously strong-handed central government and to any form of central intervention and guidance is that they might be fought off (Whimp, 2012). The answer, once again, might lie in between the two. The focus should be on the realistic division of powers and on the functions between central government and the counties, provided that a proper independent audit is done of current central and local government assets and liabilities. The middle road usually also requires the most energy, as one cannot use the same criteria to deal similarly with counties that are extremely diverse and unique in nature.

The question of what type of state, whether a centralised or a decentralised one, has better service delivery capacity is not straightforward to answer. If the matter were purely based on the implementation of projects by professionals, a centralised state might come first. If the matter were based on oversight, local relevance, equitable development and local economic development, a decentralised state might be a better option.

In the final days of writing the current report, news surfaced that two of the major presidential hopefuls might have been implicated in turning a blind eye on the planning of atrocities against other groups during and after the elections that took place at the end of 2007. Fears were starting to surface that the elections might cause tensions to flare again. The goal of the current report was in no way to try to make pronouncements on events that were likely to happen in the short term.



One of the goals of the report, though, was to show that many things are possible, depending on the actions of individuals, governments and organisations. Violence during the upcoming elections at the end of 2012 and at the beginning of 2013 may be averted, or may not be, depending on what the government and civil society decide to do about the situation.

### **6.3 RECOMMENDATIONS**

The Kenyan government should actively engage in a programme of nation-building, undertaking an initiative creating unity in diversity, from which it should never cease. The structure of devolved government will not create greater unity amongst people. Remembering Peter Senge's advice, that it often takes small actions to have major effects, those in Kenya who would like to unite the people, not only of Kenya, but all over the world should look out for those chances and make use of them. One such chance that has been identified is the 50-years of independence celebrations that are due to take place in 2013. The event(s) should be managed with great care, so that they have the best impact. The emphasis on events in the plural, possibly in each county, presenting a stage for all groups in the counties, is of relevance, as it seems as though ethnicity and power struggles will now take stage in the counties, and no longer only nationally any more.

In conclusion, it is appropriate to remember the following statement made by Mawhood (1993),

“... the conclusion is drawn that it is the structure itself that is at fault, and new laws are brought in... This in its turn fails to give satisfaction, and the process begins over again. *It is easier to change structures than to deal with the underlying weaknesses of government.*”

Kenyans should not look at structures to resolve their problems, as only people can do so. It seems as though the history of Kenya with regards to decentralisation is based on reactions to previous systems and not necessarily on what makes the most sense for what is practically required. If the middle ground and a realistic and pragmatic approach are reached sooner, the country might also switch up a gear in its pace of development and maintain its above-average economic growth, the benefits of which it can share with its population, with the region, with the continent and with the world. The Constitution provides some possibility of stability, but on its own may not be the saviour of the situation; the solution will still depend on the actions of people, organisations and the government.

### **6.4 FURTHER RESEARCH**

As mentioned earlier, it could be of value to look at traditional African systems of governance before colonial times. Such an examination would, of course, include the coastal communities of Kenya that had strong Arabic and Portuguese links. Even though the current report could be of use, a fully-funded policy Delphi study amongst specialists could spur on further thought and provide more detailed analysis and solutions to specific events.

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**Figure A1: The counties of Kenya, as per the First Schedule of the Constitution, 2010**

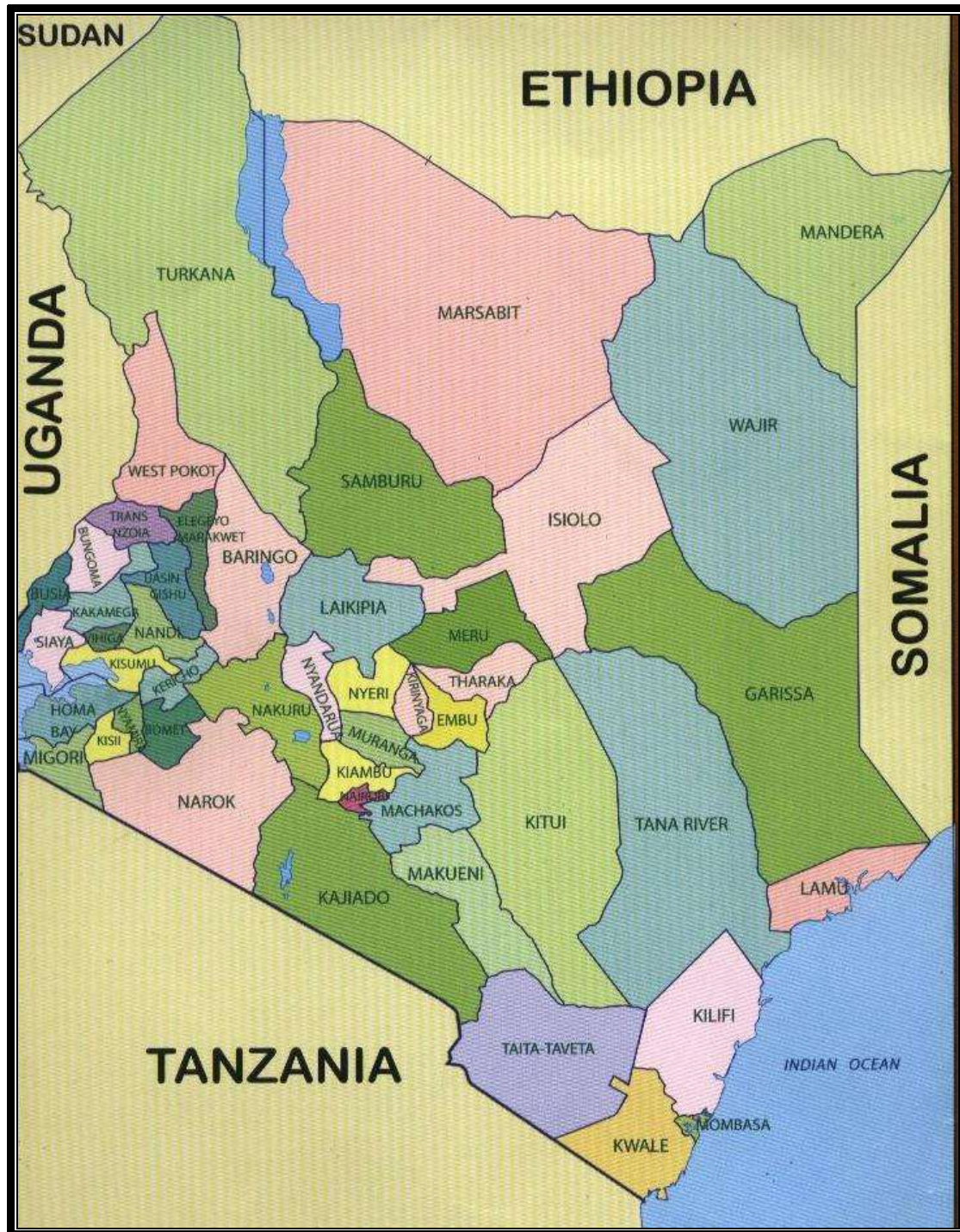


Figure A2: Pan Somaliland – estimated territory in relation to neighbouring countries





Figure A3: The provinces of Kenya





## APPENDIX A: TOPICS OF DISCUSSION FOR EXPERT INTERVIEWS

The following drivers that might have an impact on the role and effectiveness of devolved government in Kenya were identified through subject matter research and from advice from Mr Conrad Bosire. Kindly provide your thoughts on how you perceive these indicators could impact on the current and future situations regarding devolved government in Kenya over the next 10 to 20 years. You may also add any additional drivers of which you think.

Driver
Technical skills capacity in counties/cities/municipalities/towns
Culture of centralisation and personalisation of political power
Manipulation of ethnicity for political gain
Regime change at election time
Civil society and opposition party protection of the Constitution
Battle for political control taking precedence over setting up of required technocratic structures
Corruption
Urbanisation
Youth unemployment
Resistance to change from such current structures as provincial administration
Such central government checks as the Senate and Commission on Revenue Allocation
Political will
'Project management' of the transition to devolved government
Contributions of the United Nations and donor agencies
Foreign technical assistance
Availability of engineering skills, e.g. private sector as preferred employer above public sector causing a lack of engineering skills
Technological advances
Environmental factors (e.g. drought)
Internal social unrest
War
Adequacy/Sufficiency and promptness of central government transfers to counties and county transfers to cities / municipalities and towns
Indicators and additional discussion points
Free and fair elections
Ability of the county assemblies to pass legislation that creates an enabling environment for development
Ability of the county administrations to manage functions that are assigned to them
Percentage of the total county budget that will be required as transfers from central government
Ability to budget and plan for what is required to serve their population
Ability to collect revenue
Ability to transform own revenue, grants from central government, loans and donor funding into tangible benefits
Significant social or economic crises

**APPENDIX B: FIRST SCHEDULE TO THE CONSTITUTION OF KENYA**

## Article 6 (1) – Counties

1. Mombasa
2. Kwale
3. Kilifi
4. Tana River
5. Lamu
6. Taita/Taveta
7. Garissa
8. Wajir
9. Mandera
10. Marsabit
11. Isiolo
12. Meru
13. Tharaka-Nithi
14. Embu
15. Kitui
16. Machakos
17. Makueni
18. Nyandarua
19. Nyeri
20. Kirinyaga
21. Murang'a
22. Kiambu
23. Turkana
24. West Pokot
25. Samburu
26. Trans Nzoia
27. Uasin Gishu

28. Elgeyo/Marakwet

29. Nandi

30. Baringo

31. Laikipia

32. Nakuru

33. Narok

34. Kajiado

35. Kericho

36. Bomet

37. Kakamega

38. Vihiga

39. Bungoma

40. Busia

41. Siaya

42. Kisumu

43. Homa Bay

44. Migori

45. Kisii

46. Nyamira

47. Nairobi City

## **APPENDIX C: FOURTH SCHEDULE OF THE CONSTITUTION OF KENYA**

(Article 185 (2), 186 (1) and 187 (2)) – DISTRIBUTION OF FUNCTIONS BETWEEN THE NATIONAL GOVERNMENT AND THE COUNTY GOVERNMENTS

### **Part 1 – National Government**

1. Foreign affairs, foreign policy and international trade.
2. The use of international waters and water resources.
3. Immigration and citizenship.
4. The relationship between religion and state.
5. Language policy and the promotion of official and local languages.
6. National defence and the use of the national defence services.
7. Police services, including—
  - (a) the setting of standards of recruitment, training of police and use of police services;
  - (b) criminal law; and
  - (c) correctional services.
8. Courts.
9. National economic policy and planning.
10. Monetary policy, currency, banking (including central banking), the incorporation and regulation of banking, insurance and financial corporations.
11. National statistics and data on population, the economy and society generally.
12. Intellectual property rights.
13. Labour standards.
14. Consumer protection, including standards for social security and professional pension plans.
15. Education policy, standards, curricula, examinations and the granting of university charters.
16. Universities, tertiary educational institutions and other institutions of research and higher learning and primary schools, special education, secondary schools and special education institutions.
17. Promotion of sports and sports education.
18. Transport and communications, including, in particular—
  - (a) road traffic;
  - (b) the construction and operation of national trunk roads;

- (c) standards for the construction and maintenance of other roads by counties;
- (d) railways;
- (e) pipelines;
- (f) marine navigation;
- (g) civil aviation;
- (h) space travel;
- (i) postal services;
- (j) telecommunications; and
- (k) radio and television broadcasting.

19. National public works.

20. Housing policy.

21. General principles of land planning and the coordination of planning by the counties.

22. Protection of the environment and natural resources with a view to establishing a durable and sustainable system of development, including, in particular—

- (a) fishing, hunting and gathering;
- (b) protection of animals and wildlife;
- (c) water protection, securing sufficient residual water, hydraulic engineering and the safety of dams; and
- (d) energy policy.

23. National referral health facilities.

24. Disaster management.

25. Ancient and historical monuments of national importance.

26. National elections.

28. Health policy.

29. Agricultural policy.

30. Veterinary policy.

31. Energy policy, including electricity and gas reticulation and energy regulation.

32. Capacity building and technical assistance to the counties.

33. Public investment.

34. National betting, casinos and other forms of gambling.

### 35. Tourism policy and development.

## **Part 2 – County Governments**

The functions and powers of the county are –

1. Agriculture, including –
  - (a) crop and animal husbandry;
  - (b) livestock sale yards;
  - (c) county abattoirs;
  - (d) plant and animal disease control; and
  - (e) fisheries.
2. County health services, including, in particular –
  - (a) county health facilities and pharmacies;
  - (b) ambulance services;
  - (c) promotion of primary health care;
  - (d) licensing and control of undertakings that sell food to the public;
  - (e) veterinary services (excluding regulation of the profession);
  - (f) cemeteries, funeral parlours and crematoria; and
  - (g) refuse removal, refuse dumps and solid waste disposal.
3. Control of air pollution, noise pollution, other public nuisances and outdoor advertising.
4. Cultural activities, public entertainment and public amenities, including –
  - (a) betting, casinos and other forms of gambling;
  - (b) racing;
  - (c) liquor licensing;
  - (d) cinemas;
  - (e) video shows and hiring;
  - (f) libraries;
  - (g) museums;
  - (h) sports and cultural activities and facilities; and
  - (i) county parks, beaches and recreation facilities.

5. County transport, including –
  - (a) county roads;
  - (b) street lighting;
  - (c) traffic and parking;
  - (d) public road transport; and
  - (e) ferries and harbours, excluding the regulation of international and national shipping and matters related thereto.
6. Animal control and welfare, including –
  - (a) licensing of dogs; and
  - (b) facilities for the accommodation, care and burial of animals.
7. Trade development and regulation, including –
  - (a) markets;
  - (b) trade licences (excluding regulation of professions);
  - (c) fair trading practices;
  - (d) local tourism; and
  - (e) cooperative societies.
8. County planning and development, including –
  - (a) statistics;
  - (b) land survey and mapping;
  - (c) boundaries and fencing;
  - (d) housing; and
  - (e) electricity and gas reticulation and energy regulation.
9. Pre-primary education, village polytechnics, home craft centres and childcare facilities.
10. Implementation of specific national government policies on natural resources and environmental conservation, including –
  - (a) soil and water conservation; and
  - (b) forestry.
11. County public works and services, including –
  - (a) storm water management systems in built-up areas; and
  - (b) water and sanitation services.

12. Fire-fighting services and disaster management.
13. Control of drugs and pornography.
14. Ensuring and coordinating the participation of communities and locations in governance at the local level and assisting communities and locations to develop the administrative capacity for the effective exercise of the functions and powers and participation in governance at the local level.





## APPENDIX D: REQUIRED ACTIONS, TIMEFRAMES AND RESPONSIBILITIES TO GIVE EFFECT TO DEVOLVED GOVERNMENT

Draft of 1<sup>st</sup> August, 2011

### The Transition to Devolved Government Bill, 2011

#### FOURTH SCHEDULE

s.10

Transition Period Phase I

ACTIONS	JUSTIFICATION	ACTOR(S)	OUTCOME	TIME FRAME
AUDIT OF ASSETS AND LIABILITIES OF LAs	Clearing of outstanding financial obligations of LAs	ODPM/MoLG, LAs, Transition Secretariat	Debts and liabilities of each LA established	May 2011-June 2012
AUDIT OF LA INFRASTRUCTURE COUNTIES	Vesting of plant & equipment to county governments	Ministry of Public Works, LAs, ODPM/MoLG and Transition Secretariat	Number and functionality of plant & equipment established	July 2011- March 2012
AUDIT OF CENTRAL GOVERNMENT INFRASTRUCTURE IN COUNTIES	Vesting of some plant & equipment to county governments	MoPW, MDAs and Transition Secretariat	Number and functionality of plant & equipment established	July 2011- March 2012
AUDIT OF CENTRAL GOVERNMENT STAFF IN COUNTIES	Secondment of central government staff to county governments	MoSPS and MDAs	Number of staff in each county by cadre, grades, gender, age & qualification	March 2011- December 2011
AUDIT OF LA STAFF IN	Secondment of LA staff to county	ODPM/MoLG, LAs &	Number of LA staff in each county by cadre, grades, gender, age &	July 2011- March 2012



Draft of 1<sup>st</sup> August, 2011

## The Transition to Devolved Government Bill, 2011

COUNTIES	governments	Transition Authority	qualification	
CIVIC EDUCATION	Sensitisation of the public on Acts related to county governments	ODPM/MoLG, MOJCA, and stakeholders	Civic education on devolution started	August 2011- June 2012
COUNTY BUDGETS	Agreement on initial budgets for counties	ODPM/MoF, CRA, CIC & Transition Secretariat	Initial County budgets agreed	March 2012
COUNTY PROFILES	Establishment of basic data and framework for data collection and analysis in counties	MoPND & VISION 2030	Profiles of counties produced and printed	May 2011- Dec 2011
ANALYSIS OF FUNCTIONS	Development of understanding & framework for devolving functions to counties by MDAs	All MDAs	Definition and plan for distribution of functions published & necessary Acts amended	Sept. 2011- March 2012
CLASSIFICATION OF URBAN AREAS	To re-establish cities, municipalities and towns	Transition Authority, MoLG	Gazettement of new cities, municipalities and towns	Jan. 2012 - Aug. 2012

Draft of 1<sup>st</sup> August, 2011

## The Transition to Devolved Government Bill, 2011

## Transition Period Phase II

ACTIONS	JUSTIFICATION	ACTOR(S)	OUTCOME	TIME FRAME
Formation of county governments	Swearing in of Governor and Deputy Governor	Presiding Judge of the County High Court	Governor and Deputy Governor sworn in	Aug. 2012
	Swearing of County Assembly	Presiding Judge of the County High Court	County assembly sworn in	Aug. 2012
	Appointment and swearing in of Speaker of County Assembly	County Assembly & County Executive & Presiding Judge of the County High Court	Speaker appointed	Aug. 2012
	Appointment of Clerk of County Assembly	County Assembly & County Executive	Clerk of the National Assembly appointed	Aug. 2012
	Appointment, confirmation and swearing in of County Executive committee	Governor & County Assembly	county executive committee appointed and sworn in.	September 2012
	Establishment of county public service	County executive committee	County public service established	Nov. 2012

*Draft of 1<sup>st</sup> August, 2011*

*The Transition to Devolved Government Bill, 2011*

	board	County assembly		
	Appointment of county public service staff	County Executive	County public service staff recruited	March 2013
	Appointment of staff for County Assembly	County Executive	County public service staff recruited	September 2012
Capacity Building	To develop capacity of county governments	National government County governments Transition Authority	Capacity of county governments developed.	August 2012 – August 2015
Transfer of functions	To transfer functions from national government to county governments	National government ministries County governments Transition Authority	Functions transferred to county governments	August 2012 – August 2015