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Abstract

The success of the county governments in Kenya is pegged on the quality of legislation by the members of the county assemblies (MCAs). Therefore, the study analyzed the competencies and the legislative performance of the MCAs in Kenya. The specific objectives of the study were to examine the constitutional mandates of the MCAs; analyze the legislative competencies of the MCAs and the challenges they face in executing their legislative mandate; and compare the legislative competencies of Kenyan MCAs with those of Rwanda and South Africa to draw lessons for Kenya. The study adopted the structural functionalism and the critical legal theories and was based on the exploratory research design. The target population comprised of 517 executive members of the 47 counties. Yamane's formula and the stratified random sampling were adopted to select 100 respondents. The questionnaire and the interview guide were used to collect data which was analyzed using the critical content analysis process. The study concluded that the MCAs had weak capacity to conduct legislative research and utilize evidence for policy formulation which hindered them from performing their legislative functions. Conflict of interests hindered the MCAs from performing their legislative functions. Comparisons from Rwanda and South Africa comparison illustrated a need to promote power sharing and consultation to enhance the legislative performance of the Kenyan MCAs. It is recommended that the national assembly should enact legislations regulating the legislative performance of the MCAs. The IEBC should also ensure that laws governing the election of MCAs are strictly adhered to.

Keywords: *Devolved Governance, Legislative Competence, County Assemblies, Legislative Performance, Kenya*

1.0 Introduction

The devolved units of governance play a critical part in the realization of national development. Therefore, it is essential that the legislative wing of the devolved units of governance conform to the enshrined constitutional mandate. This need is informed by the fact that there are instances when the legislative wing of the devolved units of governance often acts in contravention of their legislative functions. In this regard, quality legislation and legislative

oversight functions of the devolved units of governance remain the most fundamental tenets of governance¹. Developing quality legislation is critical in enhancing good governance in the devolved units of governance. It is important for the legislature to not only understand the process of legislation but also to ensure strict adherence to established legal standards and procedures. The basic function of the legislative body is to make, amend or repeal laws. The legislative process in relation to the county assemblies may be defined as the process by which legislative proposals are brought before it, is translated into the law of the land².

In Kenya, the 2010 Constitution of Kenya (CoK) heralded various changes in the legislative process. Among these were the bicameral parliament consisting of the national assembly and the county assemblies, the creation of 47 county assemblies in each of the 47 counties. Under the devolved system of government, the county assemblies and the national assembly are the primary legislative organs. Used well, the new legislative regime could have a huge impact on development³. But this is only possible if constitutional principles and the legislative requirements are given sufficient consideration throughout the implementation of the constitution (COK⁴). Devolution is regarded as part of the exercise of power of the people, the national values and principles of governance and the basic structure of the constitution. In line with the devolved system, CoK created the county assemblies and charged them with the duties of representing and protecting the interests of the counties (COK)⁵.

The current legal philosophies and practices of governance guide county assemblies to execute legislative authority by making and unmaking laws to facilitate the due execution of the powers and functions of the county governments under the existing statute⁶. The county governments also exercise oversight over all issues and matters of governance, especially, the operation of the county executive committee and all the organs of the county executive. The MCAs receive, deliberate on and approve all development plans, programmes, policies and budget of the county government and vet all the nominees for appointment as county secretary and chief officers of the county public service⁷. They also approve or disapprove borrowing by the county governments, appointment of Clerks of the County Assemblies (CCA) on recommendation of the County Assembly Service Board (CASB).

However, the MCAs do not get directly involved in the executive functions of a county government or in the delivery of services meant to be done by the county public service. They protect the interests of the counties through legislation and oversight functions may undertake an important role of impeaching the executive⁸. However, questions have been raised concerning the effectiveness of the county assemblies in representing the interests of the counties amidst reports of inability to interpret and make laws as well as limitations in their oversight roles due to low levels of technical competence⁹. Thus, a critical analysis of the

¹ Njuguna Ndung'u (ed), *Kenya: Policies for Prosperity* (Oxford University Press 2010).

²Office of the Prime Minister, *National Handbook for Policy Making in Kenya* (2012).

³ Emanuel Bassett, 'Urban Governance in a Devolved Kenya' in *Governing Urban Africa* (Palgrave Macmillan 2016) 73-98.

⁴ *Constitution of Kenya 2010*, art 94(3).

⁵ *Constitution of Kenya 2010*, art. 109, 113.

⁶ Mugambi Laibuta, 'Implementing Devolution in Kenya: Challenges and opportunities' (2018).

⁷ *Constitution of Kenya 2010*, art.207, 220

⁸ *Constitution of Kenya 2010*, art 185(1), on the vesting of legislative authority on county assemblies.

⁹Jason Lakin, 'It's here! The challenge of devolution' (2011).

efficacy of the members of the county assemblies as the representative and protector of the interests of the counties and their governments through the parameters of legislation, representative and oversight is required. This study set out to answer the question, how competent are the MCAs to perform their mandated roles in the devolved governance?

1.1 Problem Statement

Devolved governance was expected to turn the tide in the county by accelerating development through effective representative, legislation and oversight, the roles that were constitutionally delegated to the members of the county assemblies. The county governments came into existence to help take services closer to the people and involve the citizens in their own governance and development. However, the anticipated changes seem to be progressing slowly. Instead, the county governments continue to battle serious developmental challenges, some attributable to misrepresentation and underrepresentation. Instead, the county assemblies have come under sharp criticism arising from claims of failure to effectively represent and protect the interests of the county governments as provided for in 2010 constitution¹⁰. Further, here have been constant conflicts between the county assemblies and the county executive with regard to performing their mandate. At the same time, the uproar on the potential conflict of interest in the discharge of their duties is a live concern owing to the complicity with the county executive thus blurring their oversight mandate. The resultant effect is that these incessant conflicts and the acrimonious relationship point to an apparent lack of clarity on the functional division of the mandate of the executive and the constitutional and legal framework concerning the legislative functions of the MCAs. This poses the question as to whether the MCAs are competent to effectively perform their legislative functions in order to protect the devolution. An appraisal of the legislative competencies of the MCAs in discharging their core functions as part of the protectors of devolution is therefore critical at this point. Therefore, the aim of the study was to undertake a critical analysis of the competencies and legislative performance of the MCAs under the devolved system of governance in Kenya.

1.2 Specific Objectives

- i. To examine constitutional mandates of the members of county assemblies in Kenya.
- ii. To analyze the competence level of the members of county assemblies and the challenges they face in the execution of their constitutional mandate
- iii. A undertake a critical comparative study of Kenya and South Africa on devolution
- iv. To document the recommendations on how to enhance the legislative competence of the members of the county assemblies

1.3 Research Questions

- i. What is the constitutional mandate of the members of the county assemblies in Kenya?
- ii. What is the competence level of the members of county assemblies and what challenges do they face in the execution of their constitutional mandate?
- iii. What lessons can Kenya borrow from South Africa on competencies of the members of legislative arm of a sub-national government?
- iv. What are the recommendations for enhancing the legislative competence of the members of the county assemblies?

¹⁰World Bank, 'World bank cautions on devolution challenges,' 24th October 2012

2.1 Theoretical Framework

The study adopted the structural functionalism theory and the critical legal theory. Structural functionalism is important in explaining the social structure and functions of various organs in society. The study adopted the critical legal theory as a counter-argument.

2.1.1 Critical Legal Theory

The critical legal theory (CLT) was postulated by James Boyle¹¹ as articulated in his book *The Politics of Reason: Critical Legal Theory and Local Social Thought* in 1985. This is a school of thought that challenges the traditional legal theories especially on the neutrality of the law and mediates for other ways of understanding the law and the law-making regimes. CLT further rejects the notion that general legal principles are embodied in judicial opinions and that by legal analysis the correct principle can be reached and then dispassionately applied. The theory maintains that law is an instrument of power and questions the fundamental legitimacy of the traditional legal norms. It is critical of the political constructions that work to the detriment of the people and maintains that law is an instrument of power that grows out of power relations in the society. According to Ariwomoi law exists to support the interests of the party or class that forms it¹².

CLT also focuses on how law contributed to illegitimate social hierarchies by presenting the historical and socio-economic analysis to identify how particular groups or institutions benefit from legal decisions despite the indeterminacy of the legal doctrine. On this, it is argued that the judges and the legislature produce predictable results, using historical, socio-economic and psychosocial analyses hence CLT scholars try to unearth these predictable patterns and relate them to larger patterns of power and privilege. Thus, the basic idea is that law is politics and is not neutral or value free. It questions how law could be so tilted to favor the powerful, given the prevailing explanations of law as either democratically chosen or as a result of impartial judicial reasoning from neutral principles. This is important in Kenya especially when the legal system is put into perspective. For example, the CoK provides for the roles of the county assemblies to protect the interests of the counties and their people. Despite the legal provisions, the efficacy of the roles played by the county assemblies as the protector of the people has been in question¹³.

The acrimonious power relations between the county assemblies, national assembly and the county governments have made it difficult for the current legal system to produce just outcomes for the benefit of the people. The argument that the law and politics is intertwined is important when considering the political set-up of the county assemblies and other organs in the devolved system of governance¹⁴. It is apparent that the legal structures in place are for the benefit of the political class rather than the interests they purport to represent.

2.1.2 Structural Functionalism Theory

The Structural Functionalism Theory (SFT) was postulated by Donald Harper (2015). This theory is founded on the larger sociological school of thought by emphasizing the importance

¹¹ James Boyle, *The Politics of Reason: Critical Legal Theory and Local Social Thought*, University of Pennsylvania Law Review (April 1985).

¹² James Ariwomoi, *Challenges of Implementing Change at Selected County Assemblies in Kenya* (Unpublished Doctoral dissertation, University of Nairobi, Kenya 2013).

¹³ Talcott Parsons, 'The Present Status of "Structural-Functional" Theory in Sociology' in *Social Systems and the Evolution of Action Theory* (New York: The Free Press, 1975).

¹⁴ University of Pennsylvania Law Review 685

of placing law in a social context¹⁵. Structural functionalism theory looks at the society as a complex system whose parts work together to give rise to stability and solidarity. This theory explains why certain structures or institutions exist in the society by trying to ascertain their purpose and critical role¹⁶. The society is made up of groups and institutions that are cohesive, share common norms and have a definitive culture. Thus, how the society is organized is the most natural and efficient way for it to be organized¹⁷.

Therefore, this study places the county assemblies within a structural functionalism theory in an attempt to appraise the key legislative and oversight roles played by it especially as the representative and protector of the counties and their governments' interests. Moreover, failure by either of these organs of the state in performance of its duties or the inefficiency of either level of government has a negative impact on the whole success of devolution. Structural functionalism theory thus brings an understanding of the structural, institutional and legal relationship of the various organs of the devolved system of governance.¹⁸ Although the structural functional theory focuses looking at the law from a social context, this forms the basis of understanding the competence of MCAs in Kenya, the Critical Legal theory is the main theory relied on in this study. This is because, first, it advocates for social change and reform by addressing the root causes of legal and political issues. This approach is valuable for understanding and addressing the incompetence of MCAs because it focuses on transforming the underlying causes of ineffective governance.

CLT encourages the development of innovative solutions and reforms that address systemic issues, rather than simply adapting or reinforcing existing structures, as SFT might tend to do. Secondly, oriented towards questioning and critiquing established norms, laws, and practices. This perspective is useful for assessing why MCAs may be incompetent by challenging the assumptions and practices that are taken for granted in the functioning of county assemblies. It encourages a critical examination of how legal frameworks and institutional practices might perpetuate incompetence, rather than merely accepting them as given. Finally, emphasizes the role of power dynamics and social inequalities in shaping legal and political structures.

2.2 Literature Review

This study examines the competencies and the legislative performance of the MCAs in the devolved system of governance in Kenya. This section presents a synthetic review of related literature on the legislative and oversight roles of the MCAs in the devolved systems of governance in Kenya and around the world. The reviewed works revolve around the competencies and the legislative performance of the county governments. While concentrating on the constitutional mandate of the MCAs, the review explores the gaps in the scholarly works.

Legislatures are important to contemporary political systems. They are constitutionally designated institutions for giving assent to binding legal measures of public policy. In general terms the assent is given on behalf of a political community that extends beyond the government elite responsible for formulating those measures¹⁹. However, there are inadequate scholarly studies on the efficacy of the legislative functions of governance. The mainstream assessment of the legislative performance is based principally on institutional rules and the

¹⁵Donald Harper, 'Structural Functionalism: Grand Theory or Methodology' (accessed 15 June 2015).

¹⁶George Ritzer, *Sociological Theory* (McGraw-Hill Education 2012).

¹⁷Anthony Giddens, 'The Constitution of Society' in *The Giddens Reader* (Philip Cassell MacMillan Press) 88.

¹⁸ Robert Merton, *Social Theory and Social Structure*, revised and enlarged (The Free Press of Glencoe, 1957).

¹⁹Ibid.

contexts within which the legislatures operate, rather than on their outputs. The emphasis has been on the extent of parliamentary power or influence, an emphasis deriving from the classical view of separation of powers among the legislature, the executive and the judiciary.

The WBI focuses on the legislative oversight and budgeting, and proposes tools like committee hearings and questions and frequency of usage, for improving the effectiveness and capacity of the legislatures²⁰. The African Leadership Institute designed a scorecard to evaluate the performance of individual parliamentarians, without linking that to the performance of the institution. Recognizing the concern about parliamentary output when he identified five various approaches for measuring legislative performance, Barkan considered the efficacy of the formal powers cum autonomy approach, functional delivery approach, the component approach, the number and content of bills approach and the reputational approach²¹. While the formal powers approach stresses the latitude of power constitutionally ascribed to the legislature and the extent of institutional autonomy it enjoys in its relations with the executive, the functional delivery approach focuses on the extent to which the legislature delivers in the performance of its core functions of legislation, representation and oversight²².

From a comparative perspective, Alemika's work remains invaluable for this study because, in his view, the separation of powers calls upon the central governments in Africa to desist from interfering with the operations of the devolved governments. This argument is supported by Garland who highlighted the need to be practical in the approach adopted to entrench devolution. Crawshaw's work is particularly relevance in this investigation given his argument that South Africa has made great strides in entrenching devolution. This argument is supported by Gjelsvik who examined the jarring route from policy implementation to practice in South Africa and contextualized the factors that have undermined the performance of devolved units in African countries namely conflicting political interests, institutional dynamics, mismatch between theory and practice and the fuzzy constitutional mandate of the county assemblies.

In Kenya, Murkomen retraced the history of the Kenyan legislature by focusing on the various transformations spanning a century of its existence²³. In this analysis it was evident that the transformations were characterized largely by two competing forces: one epitomized by a strong executive seizing power from other arms of government, and the other by pro-reform forces pushing for an expanded democracy, better governance and accountability and the promotion of rule of law. It also cites three key functions of the bicameral parliament which are to enhance the quality of representation, create an appellate hierarchy in the enactment of laws and improve the stability of the constitutional structure and political systems by providing a system based on checks and balance. In these three functions, the county assembly has a strong devolved system of governance created by the COK²⁴. The establishment of the legislative mechanism has made it possible for the MCAs to become accountable to the counties in the performance of their duties.²⁵ The study does not however explain whether the

²⁰Ibid.

²¹ Joel Barkan, 'Legislatures on the Rise?' in L. Diamond and Marc F. Plattner (eds), *Democratization in Africa: Progress and Retreat*, Second edition (Baltimore: The John Hopkins University Press, 2010), pp. 33-46.

²²KAShepsle and BR Weingast, 'Positive theories of congressional institutions' (1994) *Legislative Studies Quarterly*.

²³ Kipchumba Murkomen, 'Devolution and the health systems in Kenya' (USAID, Health Policy Project) 26-50.

²⁴ East African Centre of Law & Justice, 'Supremacy Battle between the Senate and National Assembly' (2013) <<http://eaclj.org/constitution/2>> accessed 17 November 2015.

²⁵ Calvin Ondigi, 'Challenges facing Devolution in Kenya: A Comparative Study' (2016).

COK 2010 creates an appellate hierarchy in the legislative roles between the county assemblies and the national assembly to provide the parameters for measuring the competencies of the county assemblies and their performance in their primary role of protecting and representing county interests. Significantly important is that the study did not envisage the structural and functional challenges that the current county assemblies could face and hence it does not provide recommendations to address the challenges the county assemblies is facing in discharging its mandate that this study intends to do. The study appraised the legislative and oversight roles of the county assemblies before the current regime.

2.2 Contextual background of the Devolved System of Governance

The devolved systems of governance in the context of many countries including Kenya essentially means devolution. Devolution is a form of decentralization which involves the transfer of both political and economic powers from the national to lower levels of governance²⁶. The devolution is the process of transferring decision-making and powers, functions, responsibilities and resources to the elected local governance structures. It is established by the supreme law which implies that it is a binding legal framework²⁷. Further, the fact that devolution is buttressed by the sovereign power of the people confirm that whatever governance aspirations and commitments are done at both national and county levels of governance must be done on behalf of and for the people.

The World Bank report on sub-national economics and decentralization avers that the devolve functions of the governments contain the transfers of several function ranging from authority of decision making, finance planning and the management of the county affairs. The devolution normally transfers all responsibilities and services to the local governments that elect their own representatives, raise their own revenue through revenue collection and make their independent decisions regarding the counties. In devolved system of government, various counties or local governments have demarcated geographical boundaries upon which the local governments or county governments undertake their operation and collect revenues.

Just as any other countries which have the devolved system of government, the devolved system of government in Kenya borrows much of its system from the USA system of government. The Kenya case combined the former three systems of central government into one, that is, the provincial administration, local authority and national function. The devolution in Kenya is perceived in the context of the historical clamor for equitable distribution of national resources. For a time, it was perceived that the central government had skewed arrangement where certain regions did benefit more from state resources and developmental programmes²⁸. Further, devolution clamor was informed by the ethnic and climatic diversities existing in Kenya²⁹.

²⁶ Omari Kaburi and Sewe Tom, *Change Dilemma: A Case of Structural Adjustment Through Devolution in Kenya* (Thesis, Jomo Kenyatta University of Agriculture and Technology, 2016).

²⁷ D W Brinkerhoff, J M Brinkerhoff and S McNulty, *'Decentralization and participatory local governance: a decision space analysis and application to Peru'* in G S Cheema and D A. Rondinelli (eds), *Decentralizing governance: emerging concepts and practices* (Brookings Institute Press 2017).

²⁸ World Bank, *The World Bank Annual Report 2012*: Volume 1.

²⁹ Duncan M Wagana, Mike A Iravo and Joyce D Nzulwa, *Analysis of the Relationship between Devolved Governance, Political Decentralization, and Service Delivery: A Critical Review of Literature* (2015) 11(31) European Scientific Journal 457.

2.3 Legal Framework on Devolved Systems of Governance in Kenya

After independence in 1963, Kenya adopted the devolved system of government until it was abandoned in favour of the central government. The senate, regional governments and regional assemblies were dissolved marking the end of devolution and decentralization and the beginning of the consolidation or centralization of state power under the presidency. The 2010 constitution revived the devolved system of governance, with the main purpose of moving the services closer to the people. It also aimed at limiting the centralized power of government and ensuring accountability by state officers. The county governments are based on the democratic principles and the separation of powers. They are also legally required to have reliable sources of revenue to enable them govern and deliver services effectively.

Article 174 of the 2010 constitution emphasizes the promotion of the democratic and accountable exercise of power to foster national unity by recognizing diversity while giving powers of self-governance to the people. It also enhances the participation of the people in the exercise of the powers of the state and in making decisions affecting them, to recognize the right of communities to manage their own affairs and to further their development. The constitution also sought to protect and promote the interests and the rights of minorities and the marginalized communities while promoting the social and economic development and the provision of proximate, easily accessible services. This ensures equitable sharing of the national and local resources while also facilitating the decentralization of state organs, their functions and services, from the central government to the counties to enhance checks and balances and the separation of powers. Therefore, the objectives of the devolution in Kenya were to put the people at the centre of power and to make the national and county governments accountable to the people.

Article one of the constitutions clearly stipulates that all state organs exercise their powers as delegated by the Kenyan people. Kenyans have a choice to exercise these powers either directly or indirectly through state organs at both levels of government. It is also important to note that devolution in Kenya is also based on a public participation constitutional principle. That is to say that although state organs at both levels of government exercise delegated powers from the people, the same people do retain some residual powers and constitutional rights to be engaged on all major decisions made on their behalf by those elected or appointed into state offices³⁰. The objectives of devolution were to promote the democratic and accountable exercise of power and to foster national unity by recognizing diversity. It also aimed at giving power of self-governance to the people by enhancing their participation in the exercise of the powers of the state and in making decisions affecting them³¹.

The CoK introduces fundamental changes to the country's governance structure. At the core of the current constitutional system is the devolved system of government comprising of the national government and 47 county governments across the country. The overall objective behind the devolved system of government is to dismantle the hitherto centralized system by dispersing powers and resources. The objectives of devolving power and resources are clearly articulated under article 174 of constitution. Although the number of national laws concerning the county governments was already in place long before March 2013 general elections, the

³⁰ Charles Nyachae, *Implementing Kenya's Constitution: Status, Achievements and Challenges* (Speech, Friend Roundtable, Berlin, Germany, 12 May 2012).

³¹Ibid.

actual implementation entered an important phase after the 2013 general elections³². Separate existence of the two levels is guaranteed through constitutional apportionment of powers and resources between the two levels. The operating constitutional principle, however, requires governments between and within the two levels of government to operate harmoniously. Indeed, the existence of a common constitutional purpose that binds all governmental institutions, devolved or not, lays the basis for harmony between national and county governments³³.

2.4 Mandate of the Members of County Assemblies in Kenya

The COK stipulates the legislation, representation and oversight roles of the MCAs. The legislative authority of the county assembly is vested in and exercised by the county assembly. While respecting the principle of separation of powers, the county assembly may exercise oversight over the county executive committee members and any other executive organs of the county government as stipulated in Article 185, 207, 220 (2), 201, 203 and 212 of the constitution. As depicted in the constitution, the role of the MCAs in Kenya is diverse yet majority of the people consider the role of the MCAs as being legislative, representative and oversight. In addition, the MCAs are required to maintain close contact with the electorate, consulting them on issues before or under discussion in the county assembly. This means that the MCAs should be available when the people need them and they should be approachable. Several public surveys usually indicate that Kenyans interact with their MCAs most compared to other elected representatives. This means that the public trust and have confidence in the MCAs.

The MCA are also required to attend sessions of the county assembly and its committees. This role is very crucial given that the MCAs cannot present people's views, opinions and proposals if they do not attend county assembly sessions. However, their ability to engage in legislative procedures requires prior knowledge of parliamentary procedures. The most important business of the county assembly takes place in the committees where the MCAs make most of the deliberations. Both plenary and committee sessions are the avenues where the MCAs can project their voice. They can give their views on issues that affect their electorate through plenary sessions and vote on the issues. In the committee sessions, they have a direct role in making recommendations on these issues and considering amendments where possible. If an MCA fails to attend eight consecutive sittings of the county assembly, they risk losing their seat. Others only attend committee meetings to secure the lucrative seating allowances but not to represent the people. Attending the sessions should not be a routine but the MCAs should do it to serve the people.

The MCAs are also required to extend professional knowledge, experience or specialized knowledge to any issue for discussion in the county assembly. The role of the Members of the County Assembly (MCAs) has been under scrutiny since the 2013 general elections. They face constant criticism for lacking professional knowledge, experience and specialized knowledge to run county assembly affairs. At the beginning, many of them were unable to participate in assembly debates or make laws that were above scrutiny. There are a good number of them whose level of education is only a primary or a secondary certificate. Several others are school dropouts. Despite that, the MCAs should utilize their professional qualifications and

³² Brian Kennedy and Lauren Bieniek, *Moving forward with constitutional reform in Kenya, A Report of the Centre for Strategic and International Studies (CSIS)*, Africa Program, Washington, D.C. (2014).

³³ *Commission for the Implementation of the Constitution (CIC)*, Quarterly Report January-March 2011.

specialized knowledge to run the county Assembly business. This knowledge is essential especially in the committees. There are proposals by IEBC to ensure the MCAs have college diplomas by 2017 and university degrees by 2022 general elections. The proposals are in the Election Laws (Amendment) number 3, Bill of 2015. The National Assembly has already passed the bill and will forward it to the Senate for consideration.

The county governments under the COK 2010 have been elevated to the level of semi-autonomous governments with inter-dependence with the national government. Articles 183 and 185 spell out the executive and legislative powers of the county governments respectively. Accordingly, the county assembly has the power to make laws that are necessary for or incidental to, the effective performance of the function and exercise of the powers of the county assemblies. The county executive has the responsibility of implementing, first, county legislation and, secondly, national legislation, with the county. These two broad powers represent the main channels through which the county governments can claim their constitutional space. However, inadequate literature exists appraising the role of the county assemblies as the protector of the interests of the counties through legislation and oversight. Moreover, there is inadequate discussion on how to address the challenges facing the MCAs in discharging their functions as the constitutional protectors of the counties.³⁴ Empirical studies contend that the MCAs have not performed their oversight and legislative functions adequately. For instance, Kempe associated this failure to inadequate resources needed to effectively conduct house business³⁵.

3.0 Research Methodology

An exploratory research design was used in this report. The exploratory research involves provision of a better understanding of a situation. The study used both qualitative and quantitative methods. According to Creswell descriptive research is a design used to answer the what, how and why³⁶. Descriptive design was appropriate because it enabled the researcher to collect and analyze data using measurement of central tendency, variation and correlation. Descriptive studies also helped to the researcher to explain the association between the study variables. The target population for this study was the county chief officers, county assembly clerks, CEO's and the secretaries to the county public service boards in all the 47 county assemblies constituting a target population of 517. The study adopted the sampling formulae by Yamane to obtain a suitable sample size³⁷. The desired sample size was given by:

$$n = \frac{N}{1 + N(e)^2}$$

Where: -

n= expected sample size,

N= size of the target population,

³⁴ Constitution of Kenya Review Commission, 'The final report of the Constitution of Kenya Review Commission' (February 2005).

³⁵ Ronald Hope Kempe, *Devolved Government and Local Governance in Kenya* (2014).

³⁶ Creswell James, *Research Design: Qualitative, Quantitative and Mixed Methods Approaches* (4th ed, Sage Publications 2014).

³⁷ Yamane Taro, *Statistics: An introductory analysis* (Harper and Row 1973).

“e” precision level

Thus

$$n = \frac{516}{1 + 516(0.1)^2} = 99.9$$

The sample size thus comprise 100 respondents.

The research relied on secondary and primary data sources. Secondary data was obtained mainly from the 2010 constitution of Kenya. Primary data refers to data collected from the field through questionnaires and interview schedules. The questionnaires consisted of two types of questions thus closed-ended questions and open-ended questions. The close-ended questions provided alternative answers to the respondents while the open-ended questions were used to solicit more information from the respondents. Before processing the responses, the completed questionnaires were edited for completeness and consistency. The researcher used both qualitative and quantitative techniques in analyzing the data. A Statistical Package for Social Sciences (SPSS) was used to enhance the analysis of data and presented in charts and graphs for meaningful interpretation. Qualitative data analysis was done according to the critical content analysis process. After collecting data from respondents, the researcher compiled a summary of the results of each including the describing the participant in detail, and noting other practical details pertaining the interviews.

4.0 Findings and Discussion

4.1 Requirements for Election of MCAs

The requirements for election of the MCAs depict the need for enhanced competencies for undertaking the legislative functions. The CoK, the County Government Act and the Electoral Act stipulate the conditions that must be met by individuals seeking election for the position of the MCA. The statutes state that a candidate must have been a Kenyan citizen for at least 10 years before the election, a registered voter and owe no allegiance to a foreign state. The candidate can also be nominated by a political party or be an independent candidate meeting all the statutory, moral and ethical requirements under the Leadership and Integrity Act and Chapter Six of the Constitution. Also, the individual must not be an undischarged bankrupt, be of sound mind and must not be subject to a sentence of imprisonment of at least six months from the date of registration of candidates or date of elections. The candidate is also required to submit a copy of a National Identity Card/valid Passport, a Passport size photograph with white background submitted in electronic and printed copy, a Nomination Certificate from a fully registered political party nominating the candidate, duly signed by an authorized official of the party, a duly signed and dated Code of Conduct (Second Schedule of the Elections Act, 2011), a duly filled Commission Nomination Form, including an original Statutory Declaration Form for purposes of nomination (Regulation 18(3) Elections (General) Regulations, 2012) and an original Self-Declaration Form (Regulation 46 of Elections (General) Regulations, 2012).

For an independent candidate, a clearance certificate from the Registrar of Political Parties certifying that the person was not a member of any political party for the last 3 months before the elections, an electronic and printed copy of a list of at least 500 supporters in the prescribed form, submitted to the Commission, a duly filled Form of Intention to Contest submitted to the Commission in the prescribed form, a symbol the candidate intends to use during the election, which has been approved by the Commission, establish and maintain a functioning office in the respective electoral area where the candidate is contesting, which must be available for

inspection by the commission at least 45 days before the elections. The address, including the physical address of the office must be communicated to the Commission. These stringent measures are meant to ensure that the candidate seeking office will serve his mandate prescribed by the constitution.

While it was expected that the MCAs meet certain educational requirements, the Independent Electoral and Boundaries Commission (IEBC) abandoned its previous proposal that required aspirants to have university degrees to vie for the Ward Representative seats. The laws whose implementation date had been postponed several times, was set to take effect in 2022 general elections. This would have locked several aspirants who wanted to contest. The National Assembly successfully pushed for the suspension of the implementation of an act requiring MCAs to have degrees. Critics allege that the poor bills in the county assemblies are attributed to low educational qualification for the MCAs. Further to this, the High in the case of *County Assembly Forum & 6 others v Attorney General & 2 others; Senate of the Republic of Kenya (Interested Party) (Constitutional Petition E229, E225, E226, E249 & 14 of 2021 (Consolidated)) [2021] KEHC 304 (KLR) (Constitutional and Human Rights) (15 October 2021) (Judgment)* found that section 22(1)(b) (ii) of the Elections Act was unconstitutional in so far as it purported to impose a requirement for MCAs to have degrees as a prerequisite to run for the elections for first lack of public participation in its enactment, for undue restriction of the political rights against article 38, 56 and 24 of the Constitution. At the same the High Court in *Buoga v Attorney General & another (Constitutional Petition E290 of 2022) [2022] KEHC 13214 (KLR) (Constitutional and Human Rights) (30 September 2022) (Judgment)* found the section unconstitutional to the extent that it imposes a further degree requirement on MCAs to run for office and yet Article 180(2) as read with 193 of the Constitution makes the eligibility criteria of a Governor to mirror that of the MCAs. The Governor's criteria does not have a degree requirement hence the provision was found null and void.

4.2 Response Rate

The study targeted 100 respondents drawn from various county governments. Out of these, 82 respondents were reached and completed the questionnaires; hence, the response rate was 82%. The largest chunk of these participants was found within the range of 40-50 years (57.6%), followed by 30.2% of those aged within the 29-39 age bracket. It is also evident that 12.1% of the emanated from the study participants who were aged above 50 years. It is evident that the employees in the county governments in Kenya were evenly distributed across all the covered age groups. Given that majority of the respondents were aged between 40-50 supports the present reality of workforce diversity in the county governments in which employees in management positions are relatively advanced in age.

The largest percentage represented by 40.8% of the respondents had obtained bachelor's level of education in comparison to 30.1% who had obtained diploma level of education. Furthermore, 19.4% had secured a master's level of education while only less than 10% had acquired other qualifications such as O'level of education, PhD among others. From the analysis, it can be conceived that nearly all the targeted participants had actually received some sufficient education which equipped them with the cognitive capacity to interpret the research instruments and respond well by providing dependable data.

A significant number of the respondents (45.2%) had served in the public service for a period between 0-3 years. The respondents who had served for a period between 4-7 years were 21.4% while those who had served for a period between 8-11 years were 14.3%. The respondents who had been in the public service for more than 12 years were 19.0%. This demonstrates that a number of respondents possessed the requisite experience in public service to make meaningful

contributions to this study. It can also be empirically construed that 94% of the study participants had served for over 5 years, thrusting them in a significantly mundane position to ascertain whether the MCAs possessed the requisite competencies to perform their oversight roles and functions.

4.3 The Competence Level of the MCAs

The study examined the competence level of the MCAs. The participants were requested to rate their agreement with statements on the competency level of the MCAs using the scale; 1=Not at all 2=little extent 3=moderate extent 4=great extent 5=Very great. Table 1 presents a summary of the responses from the study participants.

Table 1: The Competence Level of the Members of County Assemblies

Statements	Mean	Std. Deviation
MCAs are fully aware of the current philosophies and practices of governance that guide County Assemblies in Kenya	2.46	0.914
MCAs are competent on matters of oversight and overall issues in governance, the operation of all organs of the County Executive	2.1	1.022
MCAs are competent in performing legislative oversight such as budgeting, and hold frequent committee hearings for improving the effectiveness of legislatures	2.82	0.898
MCAs have passed legislations that are considered relevant to the needs of the community, timely and impactful	2.79	0.79
Bills are frequently are proposed, discussed enacted and or rejected on justifiable grounds	2.53	0.969

The findings indicate that to a little extent the MCAs were aware of the current philosophies and practices of governance that guided the operations of the county assemblies as indicated by the mean of 2.46 and a standard deviation of 0.914. Moreover, to a little extent the MCAs were competent on matters of oversight and overall issues of governance, especially the operation of the county executive committee and all the organs of the county executive as indicated by the mean of 2.1 and a standard deviation of 1.022. However, this is in contrast with WBI who noted that the legislative oversight and budgeting were fundamental responsibilities of the MCAs.

The results also show that to a moderate extent the MCAs were competent in performing the legislative oversight such as budgeting and holding frequent committee hearings for improving the effectiveness of the legislatures as indicated by the mean of 2.82 and a standard deviation of 0.898. This is further supported by Barkan who emphasized the number of bills passed as the measure of performance but warns that number of bills passed over a period of time must be considered against the background of the number of opportunities for legislating at a given period of time³⁸.

To a moderate extent MCAs had passed the legislations considered timely, impactful and relevant to the needs of the community as indicated by the mean of 2.79 and a standard deviation of 0.79. This has been expounded by Murkomen who cited three key functions of the

³⁸ Joel Barkan, 'Legislatures on the Rise?' in L. Diamond and Marc F. Plattner (eds), *Democratization in Africa: Progress and Retreat*, Second edition (Baltimore: The John Hopkins University Press, 2010), pp. 33-46.

bicameral parliament which are to enhance the quality of representation, create an appellate hierarchy in the enactment of laws and improve the stability of the constitutional structure and political systems by providing a system based on checks and balance³⁹. To a moderate extent the bills were frequently proposed, discussed enacted and or rejected on justifiable grounds as indicated by the mean of 2.53 and a standard deviation of 0.969. Nyanjom concurs that the effectiveness of the legislative and oversight roles of the county assemblies should be supported in the devolved system of governance⁴⁰ while Ghai and Cottrell highlighted the role of citizen participation in the legislative work of the MCAs⁴¹. These findings are further consistent with Burnes who established that the MCAs were moderately competent in undertaking their legislative functions⁴². Moreover, Sande argued that the county assemblies in Kenya had fairly succeeded in implementing their constitutional mandate⁴³. This is also consistent with the recommendations of Kimutai and Amisi who indicated that legislative competencies, team building, communication skills and negotiation skills are required to enable the MCAs to undertake the assigned functions⁴⁴. However, the performance of the MCAs is replete with incompetency and their performance has fallen short of expectations owing to corruption and conspiracy with the governors. This has been made worse by the fact that the political class has failed to strengthen the vital link between the MCA position and national development.

4.4 The Achievements and Challenges Faced by MCAs in Execution of their Constitutional Mandate

The participants were asked to rate their agreement with statements on identified challenges. The responses were collated and the results captured in Table 2.

³⁹ Ibid.

⁴⁰ Nyanjom Otieno, 'Devolution in Kenya's new Constitution' (Society for International Development, SID Constitution Working Paper No 8, 2011).

⁴¹ Ibid.

⁴² Burnes Mccollum, *System Governance Following Devolution: Comparing Experiences of Decentralisation in Kenya and Rwanda* (2018).

⁴³ Sande Lwanga, *The state of Devolution in Kenya: Statehood and Citizenship in Transition* (2016), pp. 3-18.

⁴⁴ Kimutai George and Amisi Partick, *Good Governance and Service Delivery: A Study of Citizen Participation in Kisumu County* (2018) *Universal Journal of Management* 59-69.

Table 2: Challenges Faced by MCAs in Executing their Legislative Mandate

Challenges	Mean	Std. Deviation
There is limited capacity in knowledge and skills in law making among members of county assemblies.	4.12	0.731
I utilise evidence for policy ineffectively	4.69	0.825
I have weak capacity in conducting legislative research	4.69	0.825
I have weak capacity in law making	4.5	0.914
My level of competence in legislative drafting is weak	4.74	0.754
I am familiar with the county's budget-making process	4.57	0.969
My understanding of the Kenyan Constitution, especially the sections related to devolved governance, is weak	4.55	0.833
My level of competence in understanding legal frameworks is weak	4.47	0.734
I have inadequate support and resources to execute my duties	4.7	0.356
I have not received formal training or capacity building in the areas mentioned above	4.75	0.82

The findings provided in Table 2 illustrate various challenges faced by members of County Assemblies (MCAs) in Kenya, with a particular focus on their capacities in various legislative functions. The findings indicated that to a great extent there was limited capacity in knowledge and skills in law making among the MCAs as indicated by the mean of 4.12 and a standard deviation of 0.731. This aligns with Controller of Budget⁴⁵ report as well as findings of Ochieng⁴⁶, which indicated that members of County Assemblies (MCAs) in Kenya face inadequate resources. Further, Fiegenger who argued that the county assemblies had inadequate resources for policy formulation and law making⁴⁷. The findings on the ineffective utilisation of evidence for policy indicate mean of 4.69 and Std. deviation of 0.825. The high mean score of 4.69 suggests a strong consensus that MCAs struggle to effectively utilise evidence when developing policies. The standard deviation of 0.825 show some variability in responses but still imply a prevalent issue.

There is evidence consistent with this suggestion that MCAs in Kenya struggle to effectively utilise evidence when formulating policies. Githinji C and Mutie PW⁴⁸ found that limited research skills and access to data significantly hamper MCAs' ability to utilise evidence in

⁴⁵ Controller of Budget, *Annual County Governments Budget Implementation Review Report* (2019/2020). <https://cob.go.ke/reports/annual-county-governments-budget-implementation-review-report-2019-2020/> [accessed 13 July 2024].

⁴⁶ Ochieng' R, 'Challenges Facing County Assemblies in Kenya in the Performance of Their Oversight Role' (2018) 12 *International Journal of Current Research* 347 <https://www.journalijcr.com/issues/challenges-facing-county-assemblies-kenya-performance-their-oversight-role> [accessed 13 July 2024].

⁴⁷ Fiegenger Hauss, *Devolution: Policy Formulation and the Law-Making Process*, from <https://www.britannica.com/topic/devolution-government-and-politics> [accessed on the August 5 2024].

⁴⁸ Githinji C and Mutie PW, 'Factors Influencing Utilization of Research Evidence in Policy Formulation among Members of County Assemblies in Kenya' (2020) 8 *Journal of Public Administration and Governance* 182 <https://doi.org/10.5296/jpag.v8i4.1417> [accessed 13 July 2024]

policy formulation while Institute of Public Finance Kenya⁴⁹ identified that challenges in data accessibility and capacity building limit the effectiveness of evidence-based policymaking at the county level. This challenge is ascribed to a number of variables such as limited access to data, insufficient research skills and inadequate support infrastructure.

Regarding weak capacity in conducting legislative research, the results show a mean of 4.69 and standard deviation 0.825. Like the previous point, the high mean of 4.69 represents a significant level of agreement that MCAs have a weak capacity in conducting legislative research. Although the standard deviation suggests there are slight differences in the degree of this perception, most respondents agree that there is weak capacity in legislative research among the MCAs. On the question asking the respondents if they have weak capacity in law making, the results show mean of 4.5 and standard deviation of 0.914. The mean score of 4.5 reveals that, on average, respondents agree that there is a significant weakness in law-making capacity. This suggests that a majority of respondents perceive this weakness. On the other hand, a higher standard deviation is a wider range of opinions among respondents. The deviation of 0.914 in this case suggests some diversity in how respondents view this weakness, likely affected by different experiences or perspectives. As such, while the mean score emphasizes the general recognition of weak capacity in law-making, the standard deviation points out the varying viewpoints among respondents. However, still majority of respondents feel there is weak capacity in law making among the MCAs. On the question of weak competence in legislative drafting, the results show a mean of 4.74 and a standard deviation of 0.754. The mean score of 4.74 shows a strong agreement that competence in legislative drafting is weak. Although the standard deviation of 0.754 suggests moderate consistency among respondents' views, most of the MCAs agree that there is weak competence in legislative drafting.

The findings are consistent with those of Centre for Parliamentary Studies and Training⁵⁰ who concluded that a significant majority of MCAs (between 56% and 83%) indicated a need for capacity development in identifying areas for new laws, evaluating law impacts against county plans, examining draft laws, with 83% needing assistance in assessing bills, showing this as the most challenging aspect of their legislative duties. Further, many MCAs lacked a comprehensive understanding of their roles, with only 28% able to identify all three main functions of county legislatures, despite 75% referencing at least one role, predominantly 'representation'.

4.5 Devolution in South Africa

The democratic South Africa established a system of devolution that was confirmed in the 1996 Constitution. This came as a reaction to a system of highly centralized government that had seen the abuse of power, spatial inequality and underdevelopment. The devolution process in South Africa is enshrined in Chapter 37 of the Constitution of the Republic of South Africa⁵¹. The devolution process at the local government tier was driven through the Soweto Accord

⁴⁹ Institute of Public Finance Kenya, *Enhancing Evidence-Based Policymaking at the County Level: Challenges and Opportunities* (2021) <https://ipfkenya.or.ke/research/enhancing-evidence-based-policymaking-at-the-county-level-challenges-and-opportunities/> [accessed 13 July 2024]

⁵⁰ Centre for Parliamentary Studies and Training (CPST), *Learning Needs Assessment for County Assemblies in Kenya: Final Report of Findings*. 2017. <http://www.parliament.go.ke/cpst/assets/pdf/The%20CPST%20LNA%20Report.pdf> [accessed 13 July 2024]

⁵¹ Constitution of South Africa 1996 (Act 108 of 1996), s 151(2).

which led to the establishment of the Local Government negotiating fora in 1993. The objective of the fora was to dissolve the apartheid local government structures and create new interim structures⁵². The fora were formalized by the Local Government Transition Act 209 of 1993. The Act mapped three phases for the transition of local government. This created three spheres of government each of which has its own original constitutional authority over certain matters. These are the national government, the provincial administration and the municipal authorities.

The local government is entrenched as an autonomous sphere of government, whereby the municipal councils are elected locally and are granted executive and legislative authority.⁵³ Each has the autonomy to govern, on its own initiative, the local government affairs of its community, subject to the approval of the national and provincial governments.⁵⁴ Local authorities are responsible for their own revenue and accountable to their local constituencies through popular local elections. Although, the local government is officially recognized as a fully-fledged part of South Africa's decentralized system of democratic governance, the provinces exercise the monitoring roles to ensure that competent individuals are elected to undertake legislative roles. Perhaps is a central point of consideration for Kenya. Whenever legislative shortfalls are identified, the provinces take measures that support the municipalities in question. Intervention can be as minimal as demanding access to municipal documents or more extensive with the municipal functions being taken over by the province⁵⁵.

4.6 Comparative Analysis

Although Kenya's devolution process is one of the most rapid and ambitious in the world, its implementations process has faced challenges such as political, fiscal and administrative issues in delivering services⁵⁶. Corruption and uneven development have also been major hurdles⁵⁷. In South Africa, there has been increasing agitation for the secession of the Western Cape Province⁵⁸. The country's constitution allows for substantive political devolution⁵⁹, which is seen as a peaceful alternative to secession. However, this process has also faced challenges. The African National Congress (ANC), which controls the central government and eight of the nine provinces of South Africa, does not allow the various governments it controls to pursue policies incompatible with the party's political programme, hence contributing to calls for secession, particularly of the Western Cape Province. There are a number of similarities between the devolution processes in Kenya and South Africa. Both countries have decentralized power to lower levels of government in order to improve governance and service

⁵² Constitution of South Africa 1996 (Act 108 of 1996), s 152(1-2).

⁵³ Constitution of South Africa 1996 (Act 108 of 1996), s 139

⁵⁴Hall Ruth, 'Decentralization in South Africa's Land Redistribution' in *Decentralization of Land Reform in Southern Africa* (Kopanong Conference Centre, Kempton Park, Johannesburg: Program for land and agrarian studies, 2008).

⁵⁵ The White Paper on Local Government. (1998).

⁵⁶ <https://www.worldbank.org/en/country/kenya/brief/kenyas-devolution> [accessed on the 3rd of August 2024]

⁵⁷ <https://eliudassociates.com/devolution-in-kenya-the-gains-challenges-opportunities-and-emerging-issues/> [accessed on the 4th of August 2024]

⁵⁸ <https://www.cato.org/cato-journal/fall-2021/potential-constitutional-devolution-south-africa> [accessed on the 4th of August 2024].

⁵⁹ Ibid.

delivery. Both countries have also faced challenges, such as corruption and uneven development.

However, there are also some key differences between the two countries' devolution processes. Kenya has a two-tier system of government, while South Africa has a three-tier system. Kenya's county governments are responsible for a wider range of functions than South Africa's provincial governments. Kenya's devolution process is more recent compared to South Africa's. This temporal difference is a significant factor in the challenges each country faces. Due to its relative novelty, Kenya is still encountering challenges that South Africa has already addressed. These include intergovernmental conflicts and inadequate institutional capacity. However, the shared challenges between the two countries underscore the potential for Kenya to learn from South Africa's experiences. This is especially significant as Kenya continues its journey towards effective governance and constitutional implementation.

4.7 Useful lessons for Kenya from South Africa

The experience of South Africa illustrates that devolution is engineered from the top through consultations and pilot programs, the process of agreeing on the exercise of shared power and authority, something Kenya can learn from. It is evident that devolution in South devolution is not a onetime action but an on-going process that constantly engages the relevant stakeholders and actors in order to produce the desired results. If it has to be successful, the MCAs need to conceive it as the transfer of power and authority to the people and not only to local governments or elected leaders at the ward level. Therefore, Kenyan MCAs can learn to appreciate the nexus between good governance and democracy. Kenya and South Africa have taken different paths in adopting and implementing their respective constitutions. On the part of South Africa, it has made commendable progress in upholding its constitution despite encountering challenges. As such, Kenya can draw valuable lessons from South Africa's experiences on a number of areas.

Kenya has the potential to adopt South Africa's approach in enhancing the capacities of its government officials such as MCAs. This entails making certain that both its officials and civil society organizations receive sufficient training and resources to fulfill their constitutional responsibilities. While training sessions are available for MCAs in Kenya, they often take place in distant and costly locations, causing Kenyans to question the intentions behind such trainings⁶⁰. Kenya can build the capacity of its government officials and civil society organizations by providing training and resources, as South Africa has done. Collaborations between the government and civil society organizations, as observed in South Africa, can also enhance constitutional implementation.

5.0 Conclusion

The examined the constitutional mandates and the competencies of the MCAs and the challenges they face in executing their constitutional mandate. The study also sought to critically compare the legislative competence of the MCAs in Kenya with that of South Africa. Based on the analysis of the findings the study concluded that the MCAs had limited knowledge of the current philosophies and practices of governance of the devolved system which hindered their capacity for effectively performing their legislative and oversight roles. Weak capacity in law making, limited capacity in knowledge and skills in conducting legislative research and utilization of evidence for policy and conflict of interest were the main challenges facing the

⁶⁰ Kevin Omollo, 'Kisumu MCAs defend benchmarking trip to Arusha' (Standard Media, 23 October 2021) <https://www.standardmedia.co.ke/nyanza/article/2001419947/kisumu-mcas-defend-benchmarking-trip-to-arusha> [accessed 25 September 2023]

MCAs in executing their constitutional mandate. Conflict of interests MCAs resulted in poor coordination and standard processes and procedures for policy implementation. The study also documented the best practices in South Africa for purposes of enhancing the applicability of the recommendations in the Kenyan situation. It was evident that the experience of South Africa highlighted the need to become innovative in the ways of structuring and institutionalizing the interface between the people and their local governments.

6.0 Recommendations for Policy

- i. Owing to the conclusion drawn from the study, it is recommended that the county assemblies should be given more political powers to undertake their legislative roles. Inadequate capacity and incompetency of the MCAs can be enhanced through capacity building in terms of skills and knowledge development in the area of legal research and procedure and policy formulation this can be done through increased budgetary allocation for legal researchers, in-house counsel and consultants for the county assemblies.
- ii. The MCAs further are in greater need of trainings that are versatile on leadership, representation, oversight, independence and autonomy in understanding their mandates—these trainings need to be undertaken by the Centre for Parliamentary Studies and Training, the Senate and further by constitutional bodies such as the Ethics and Anticorruption Commission, Kenya School of Government, Controller of Budget and other important watchdogs to enhance Accountability in the mandates of the MCAs.
- iii. The national assembly should also enact legislations regulating the skills competencies required for election and nomination of MCAs. In this regard, the IEBC should ensure that the laws relating to the election and nomination of MCAs are strictly adhered to during national election. Without clear policies touching on academic qualifications competent individuals to serve as MCAs in the county assemblies will not be elected.
- iv. Moreover, separate pieces of legislation should be enacted to entrench the separation of powers so that the MCAs should have a free hand to undertake their legislative, oversight and legislative roles without undue interference from the county executive or political parties they represent in the county assemblies.
- v. Members of the public should also hold the MCAs to account in terms of their constitutionally enshrined functions of legislations and oversights. The public should utilize the mechanisms provided in the law to recall the MCAs whose performance falls short of the constitutional expectations. The relationship between the county executive the county assemblies should be clarified through legislation and regulations so that the county executive does not collude with the governors in restricting the oversight functions of the MCAs.

BIBLIOGRAPHY

Books

1. Anthony Giddens, *The Constitution of Society in The Giddens Reader* (Philip Cassell MacMillan Press) 88.
2. Anthony Giddens, *The Constitution of Society: Outline of the Theory of Structuration* (University of California Press 1984).
3. Creswell James, *Research Design: Qualitative, Quantitative and Mixed Methods Approaches* (4th ed, Sage Publications 2014).
4. D W Brinkerhoff, J M Brinkerhoff and S McNulty, 'Decentralization and participatory local governance: a decision space analysis and application to Peru' in G S Cheema and D A Rondinelli (eds), *Decentralizing governance: emerging concepts and practices* (Brookings Institute Press 2017).
5. Emanuel Bassett, 'Urban governance in a devolved Kenya' in *Governing Urban Africa* (Palgrave Macmillan 2016) 73-98
6. George Ritzer, *Sociological Theory* (McGraw-Hill Education 2012)
7. Ghai Yash Pal and Cottrell Simpson, 'The constitutional provisions underlying the citizens' role under the new constitutional dispensation in Kenya' (2011).
8. Joel Barkan, 'Legislatures on the Rise?' in L. Diamond and Marc F. Plattner (eds), *Democratization in Africa: Progress and Retreat*, Second edition (Baltimore: The John Hopkins University Press, 2010), pp. 33-46
9. John Urry, *Metaphors: Sociology Beyond Societies-Mobilities for the Twenty-First Century* (Routledge, 2000).
10. M Cutrone and N McCarty, 'Does Bicameralism Matter?' (Oxford University Press, 2006).
11. Njuguna Ndung'u (ed), *Kenya: Policies for Prosperity* (Oxford University Press 2010)
12. Robert F. DeVellis, *Inter-Rater Reliability* in *Encyclopaedia of Social Measurement* (2005) 317-322.
13. Robert King Merton, *Social Theory and Social Structure* (Free Press, 1968) 75-76.
14. Robert Merton, *Social Theory and Social Structure*, revised and enlarged (The Free Press of Glencoe, 1957).
15. Sande Lwanga, *The state of Devolution in Kenya: Statehood and Citizenship in Transition* (2016), pp. 3-18.
16. Talcott Parsons, 'The Present Status of "Structural-Functional" Theory in Sociology' in *Social Systems and the Evolution of Action Theory* (New York: The Free Press, 1975).
17. Yamane Taro, *Statistics: An introductory analysis* (Harper and Row 1973).

Journal Articles

1. Burnes Mccollum, *System Governance Following Devolution: Comparing Experiences of Decentralisation in Kenya and Rwanda* (2018)
2. Calvin Ondigi, *Challenges facing Devolution in Kenya: A Comparative Study* (2016).

3. D Epstein and S O'Halloran, '*Delegating powers: A transaction cost politics approach to policy making under separate powers*' (1999).
4. Donald Harper, '*Structural Functionalism: Grand Theory or Methodology*' (accessed 15 June 2015).
5. Duncan M Wagana, Mike A Iravo and Joyce D Nzulwa, '*Analysis of the Relationship between Devolved Governance, Political Decentralization, and Service Delivery: A Critical Review of Literature*' (2015) 11(31) *European Scientific Journal* 457.
6. Fiegenger Hauss, '*Devolution: Policy Formulation and the Law-Making Process*', Retrieved November 12, 2020, from <https://www.britannica.com/topic/devolution-government-and-politics>
7. J Hope, KR 'Devolved Government and Local Governance in Kenya' (2014) 13 *African and Asian Studies* 338-358. DOI:10.1163/15692108-12341302
8. James Boyle, '*The Politics of Reason: Critical Legal Theory and Local Social Thought*', *University of Pennsylvania Law Review* (April 1985)
9. Jeffrey Steeves, 'Devolution in Kenya: Derailed or on track?' (2015) 53 *Commonwealth & Comparative Politics* 457-474.
10. KAShepsle and BR Weingast, '*Positive Theories of Congressional Institutions*' (1994) *Legislative Studies Quarterly*.
11. Kimutai George and Amisi Partick, '*Good Governance and Service Delivery: A Study of Citizen Participation in Kisumu County*' (2018) *Universal Journal of Management* 59-69.
12. O.W. Igwe and Grace O.Akolokwu, '*The Challenges of Parliaments in Safeguarding the National Development Interest in an Atmosphere Where the Executive Plays a Dominant Role*' (2010).
13. Ochieng' R, 'Challenges Facing County Assemblies in Kenya in the Performance of Their Oversight Role' (2018) 12 *International Journal of Current Research* 347 <https://www.journalijcr.com/issues/challenges-facing-county-assemblies-kenya-performance-their-oversight-role> accessed 13 July 2024.
14. Right Hidayat, '*Political Devolution: Lessons from a Decentralized Mode of Government in South Africa*' (2017) *SAGE* 1-11.
15. Ronald Hope Kempe, '*Devolved Government and Local Governance in Kenya*' (2014) 13 *African and Asian Studies* 338-358. DOI: 10.1163/15692108-12341302

Working Papers

1. Ben Sihanya, '*The Presidency and Public Authority in Kenya's New Constitutional Order*', Working Paper series No. 2 (2011).
2. Libendi Omogeni '*Grounding the State: Devolution and Development in Kenya*' (2019)
3. Nyanjom Otieno, '*Devolution in Kenya's new Constitution*' (Society for International Development, SID Constitution Working Paper No 8, 2011).
4. Kipchumba Murkomen, '*Devolution and the health systems in Kenya*' USAID, Health Policy Project 26-50.

Reports

1. Brian Kennedy and Lauren Bieniek, *Moving forward with constitutional reform in Kenya*, A Report of the Centre for Strategic and International Studies (CSIS), Africa Program, Washington, D.C. (2014).
2. Centre for Parliamentary Studies and Training (CPST), *Learning Needs Assessment for County Assemblies in Kenya: Final Report of Findings*. 2017. [accessed 13 July 2024] <http://www.parliament.go.ke/cpst/assets/pdf/The%20CPST%20LNA%20Report.pdf>
3. Charles Nyachae, *Implementing Kenya's Constitution: Status, Achievements and Challenges* (Speech, Frient Roundtable, Berlin, Germany, 12 May 2012)
4. Commission for the Implementation of the Constitution (CIC), Quarterly Report January-4. March 2011.
5. Constitution of Kenya Review Commission, '*The final report of the Constitution of Kenya Review Commission*' (February 2005).
6. Controller of Budget, *Annual County Governments Budget Implementation Review Report* (2019/2020) <https://cob.go.ke/reports/annual-county-governments-budget-implementation-review-report-2019-2020/> accessed 13 July 2024.
7. East African Centre of Law & Justice, *Supremacy Battle between the Senate and National Assembly* (2013) <http://eaclj.org/constitution/2> accessed 17 November 2015.
8. Fiegenger Hauss, *Devolution: Policy Formulation and the Law-Making Process*, Retrieved November 12, 2020, from <https://www.britannica.com/topic/devolution-government-and-politics>
9. Institute of Economic Affairs, *Challenges Facing County Assemblies in the Implementation of Devolved Government in Kenya* (IEA 2015).
10. Kenya Law Reform Commission, *Assessment of Legislative Capacity in County Assemblies* (2019) <https://klrc.go.ke/reports/assessment-of-legislative-capacity-in-county-assemblies-2019/> accessed 13 July 2024
11. Office of the Prime Minister, *National Handbook for Policy Making in Kenya* (2012)
12. Philip Crowley, *Implementation of Kenya's New Constitution*, US Department of State Diplomacy in Action (2011).
13. Republic of South Africa: Department of Provincial and Local Government, *The white paper on Local Government* (1998).
14. World Bank, *The World Bank Annual Report 2012: Volume 1*
15. World Bank, *World Bank Cautions on Devolution Challenges*, 24th October 2012

Constitutions

1. **Constitution of Kenya 2010, art 185(1).**
2. Constitution of Kenya 2010, arts 109, 113.
3. Constitution of Kenya 2010, arts 207, 220
4. Constitution of South Africa 1996 (Act 108 of 1996) s 139.
5. Constitution of South Africa 1996 (Act 108 of 1996) s 151(2).

<https://doi.org/10.53819/81018102t4382>

6. Constitution of South Africa 1996 (Act 108 of 1996) s 152(1-2).
7. Constitution of South Africa 1996 (Act 108 of 1996) s 155(6).

Theses

1. James Ariwomoi, *Challenges of Implementing Change at Selected County Assemblies in Kenya* (Unpublished Doctoral dissertation, University of Nairobi, Kenya 2013).
2. Omari Kaburi and Sewe Tom, *Change Dilemma: A Case of Structural Adjustment Through Devolution in Kenya* (Thesis, Jomo Kenyatta University of Agriculture and Technology, 2016).