

**ADDRESSING SOCIO-ECONOMIC MARGINALIZATION IN TURKANA
COUNTY THROUGH EFFECTIVE DEVOLUTION: A COMPARATIVE
LEGAL APPROACH**

By

Medline Murumba

Department of Legal Studies

Central European University

In partial fulfilment of the requirements for the degree of Masters in Law -

Human Rights

Supervisor

Professor Markus Boeckenfoerde

Budapest, Hungary

2014

DECLARATION OF AUTHORSHIP

This dissertation is original work not previously presented for award of degree in any University.

.....

Signature

Medline Murumba

.....

Date

RECOMMENDATION BY SUPERVISOR

This research dissertation has been submitted for the review with my approval as supervisor.

.....

Signature

Professor Markus Boeckenfoerde

Department of Legal Studies

.....

Date

ABSTRACT

Problem of socio-economic marginalization has persisted across successive governments in Kenya since the colonial days. Attempts to address this has been hampered by lack of clear legal and governance framework over the years. The promulgation of the Constitution of Kenya, 2010 created framework for addressing the problem through devolution, among other measures. Though the Constitution, 2010 and devolution laws attempt to address the problem, it still exists. This research aims to study how devolution under new legal framework attempted to address socio-economic marginalization in Turkana County. The research used survey approach with stratified sample of respondents drawn from the county. Descriptive statistics was used to analyze quantitative aspect of survey responses and qualitative analysis was carried out on non-numerical data. Results were that political exclusion, ethnic discrimination, insufficient development budget allocation and inadequate participation in governance were found to be the main causes of socio-economic marginalization in Turkana County. It was also found out that laws of devolution and practice in devolved government did not effectively address the problem. This research concludes that there is need to develop effective legal, policy and practice framework at county, sub-county and ward levels in order to effectively address socio-economic marginalization. Findings of this research give insights concerning the need for Constitutional redefinition of marginalization to include intra-ethnic and intraregional marginalization. Since this study was limited to the case of Turkana County, it is recommended that future research should study other counties and should include other forms of marginalization.

Keywords: Devolution, marginalization, Turkana County

ACKNOWLEDGEMENT

I take this opportunity to appreciate each person who has contributed towards the success of this research proposal. I do thank Professor Markus Boeckenfoerde, my research supervisor, for his advice, encouragement and major contribution to the success of this work.

Secondly, I thank the management of Central European University for offering me a chance to learn in the institution and to boost my skill capacity with regard to legal studies. In addition, I thank my parents and all my sponsors – Open Society Foundation - for supporting my education, an invaluable gift in life.

Finally, much thanks to the Almighty, who gave me strength and good health in this earthly life.

TABLE OF CONTENTS

DECLARATION OF AUTHORSHIP	ii
ABSTRACT	iii
ACKNOWLEDGEMENT	iv
TABLE OF CONTENTS.....	v
LIST OF TABLES	vii
LIST OF FIGURES	viii
LIST OF ABBREVIATIONS	ix
CHAPTER 1 – INTRODUCTION.....	1
1.1. Background of the Study	1
1.2. Statement of the Problem.....	4
1.3. Objectives of the Study.....	5
1.4. Research Questions.....	6
1.5. Significance of the Study.....	6
1.6. Scope of the Study	7
1.7. Limitations of the Study	7
CHAPTER 2 – LITERATURE REVIEW	8
2.0. Introduction.....	8
2.1. Review of Related Literature	8
2.1.1. Historical Context of Marginalization in Kenya	10
2.1.2. Comparative Historical Cases of Socio-Economic Marginalization	12
2.1.3. Devolution and Decentralization	17
2.1.3 Comparative Devolution Efforts in Addressing Socio-economic Marginalization	20
2.2. Theoretical Framework.....	31
2.2.1. Utilitarianism Theory	31
2.2.2. Justice as Fairness Theory	32
2.2.3. Entitlement Theory.....	33
CHAPTER 3 – RESEARCH METHODOLOGY	34
3.0. Introduction.....	34
3.1. Research Design.....	34
3.2. Variables/Categories of Analysis.....	34

3.3. Location of the Study.....	34
3.4. Study Population	35
3.5. Sampling Technique and Sample Size.....	35
3.6. Research Instruments	36
3.7. Validity and Reliability	36
3.8. Data Collection	37
3.9. Data Analysis.....	37
3.10. Data Management and Ethical Considerations	37
CHAPTER 4 – RESULTS AND ANALYSIS	39
4.0. Introduction.....	39
4.1. Survey Response Rate.....	39
4.2. Factors that Contributed to Marginalization in Turkana County.....	42
4.3. How Devolution has Addressed Socio-economic Marginalization	45
4.4. Constitutional Contribution towards Addressing Socio-economic Marginalization	47
4.5. Contribution of Laws of Devolution in Addressing Marginalization	50
CHAPTER 5 – DISCUSSION OF FINDINGS	52
5.0. Introduction.....	52
5.1. Discussion of Research Findings	52
5.1.1. Causes of Socio-economic Marginalization	52
5.1.2. Contribution of Devolution to Addressing Socio-economic Marginalization	54
5.1.3. Contribution of the Constitution of Kenya, 2010 regarding devolution in addressing socio-economic marginalization.....	55
5.1.4. Contribution of Laws of Devolution in Addressing Marginalization.....	56
5.2. Recommendations.....	57
CHAPTER 6 – CONCLUSIONS	58
APPENDICES	59
APPENDIX I – RESEARCH QUESTIONNAIRE	59
GLOSSARY	64
BIBLIOGRAPHY	65
Text Books	65
Articles, Unpublished Papers and Reports.....	65
Websites	69

LIST OF TABLES

Table 1: Sample of respondents.....	35
Table 2: Respondent participation	39
Table 3: Respondent rating of causes of socio-economic marginalization in Turkana County	44
Table 4: Respondent rating of contribution of aspects of devolution to addressing marginalization	46
Table 5: Respondent rating of Constitutional contribution to efforts in addressing socio-economic marginalization.....	48
Table 6: Respondent rating of contribution of various devolution laws to addressing socio-economic marginalization.....	51

LIST OF FIGURES

Figure 1: Gender aspect of survey participants	40
Figure 2: Level of education of participants	41
Figure 3: Age representation of participants.....	42

LIST OF ABBREVIATIONS

ADF	:	Allied Democratic Front
ANC	:	African National Congress
CDF	:	Constituencies Development Fund
CODESA	:	Convention for a Democratic South Africa
KADU	:	Kenya African Democratic Union
KANU	:	Kenya African National Union
LRA	:	Lord's Resistance Army
MCA	:	Member of County Assembly
MP	:	Member of Parliament
NRM	:	National Resistance Movement
RDC	:	Resident District Commissioner
RMLF	:	Roads Maintenance Levy Fund
TDGA	:	Transition to Devolved Government Act
UNHCR	:	United Nations High Commission for Refugees
UPC	:	Uganda People's Congress Party
WDF	:	Women Development Fund
YEDF	:	Youth Enterprise Development Fund

CHAPTER 1. – INTRODUCTION

1.1. Background of the Study

Unbalanced regional development problem has been a big concern in African countries including Kenya¹. The government of Kenya attempted to address the effects of policies and interventions that created imbalances and marginalization between regions². In spite of government economic, political and social efforts over years, socioeconomic marginalization still persists in Kenya especially in regions termed hardship areas.

Research and policy efforts which attempted to address the issues of marginalization were based on the assumption that there is common interest on regional and ethnic bases. Previous literature dwelt on cross-ethnic and cross-regional marginalization and gave no attention to intra-ethnic and intra-regional marginalization³. There is also an assumption that a political appointee from a region or a tribal group represents benefit to the entire region. In an instance where a region is considered endowed with development, the advantage is to a few individuals, group of people or the elite of that place which leaves out a big percentage of the region marginalized.

In Kenya, post-independence governments made little efforts to foster equitable development. Resource allocation and favoring of marginalized regions has not been priority to the governments since independence. Little has been done to

¹ Stiffung, F. E. (2012). Regional disparities and marginalization in Kenya. Elite Press, Nairobi, Kenya.

² Ibid, on addressing effects of marginalization

³ Society of International Development (2006). Readings on inequality in Kenya: Sectoral dynamics and perspectives. Regal Press, Nairobi, Kenya.

address income disparities⁴ by increasing production and income generation for farmers, pastoralists and informal sector employees. Moreover, development budget allocation based on population alone without other normalizing factors marginalized some areas⁵.

The Constitution, 2010 is regarded as an important tool in fighting marginalization in Kenya. It is the foundation for strengthening of the institutions that give laws that controls budgeting process and helps to streamline conduct which ensures that oversight mechanisms are enforced hence affect the economy⁶. The Kenyan Constitution has provisions for strong legal and institutional framework for protecting minority rights and marginalized communities and lays the foundation for addressing socioeconomic marginalization⁷.

In article 204, The Constitution of Kenya 2010, establishes equalization fund which ensures 0.5% of annual revenue is allocated to marginalized regions for twenty years to provide quality services and to improve regional development⁸. It encourages the concept of equitable society as a principle of public finance and has special provision for the marginalized⁹ in addition to outlining criteria for allocation of national revenue¹⁰.

⁴ Sessional Paper No. 1 of 1986 on Economic Management for Renewed Economic Growth.

⁵ Stiftung, F. E. (2012), *op. cit.* on budget allocation

⁶ Kanyinga, K. (2006). Governance institutions and inequality in Kenya. In SID (ed) (2006) Readings on inequality in Kenya: Sectoral Dynamics and Perspectives, Nairobi, Kenya.

⁷ Constitution of Kenya, 2010

⁸ Ibid, Article 204(2)

⁹ Ibid, Article 201(b)(iii)

¹⁰ Ibid, Articles 202, 203(1), 260

Funds distribution to grass-roots such as the CDF, RMLF, YEDF, WDF among others have fostered the improvement of marginalized areas¹¹. However, corruption, lack of clear legal structures for controlling investment and inadequate resources are barriers to effective address of marginalization.

The Constitution of Kenya, 2010 established a good framework for devolution among other reforms¹². Since the promulgation of this Constitution, decentralization of government functions has been regarded as the panacea for addressing all the challenges facing Kenya such as those related to development, leadership and governance, distribution of resources, and marginalization, among others. Thus, Kenyans have great enthusiasm and energy in achieving devolution. It was anticipated that devolution would help in restructuring governance structure of Kenya, and that it would foster greater equity in budget allocation and service provision that would result in equity of development which include marginalized areas and people¹³. The current Kenyan constitution outlines how functions are shared and how financial resources should be distributed between the two tiers of government as detailed in Chapter Eleven.

The establishment of devolved units and the practice of county governance in Kenya have not necessarily reduced marginalization¹⁴. There are cases where some of the devolved units are perceived to undermine the State, therefore complicating the process of solving problems of marginalization. Devolution has been blamed to create new minorities at the level of devolved units, where some group are perceived

¹¹ Stiftung, F. E. (2012), *op. cit.*, p. 25

¹² Mwenda, Albert K. (ed), *Devolution in Kenya: Prospects, Challenges and the Future* (Institute of Economic Affairs 2010) 1.

¹³ Kenya Fiscal Decentralization Knowledge Programme, *Devolution without Disruption: Pathways to a Successful New Kenya* (World Bank). xii

¹⁴ Stiftung, F. E. (2012), *op. cit.*, pp. 25

to dominate others, therefore requiring proper institutional and legal design so as to effectively address marginalization¹⁵.

There is need for legal framework of addressing marginalization by ensuring that services are closer to the public through further devolution within counties. This framework should focus on issues of minorities and marginalized, among other issues including criteria of sharing resources with quota for the marginalized and minorities well spelt within the framework. The problem of ethnic-based devolution and the existence of minority ethnic communities in counties is a problem that requires legal address at county level so that county minorities and marginalized are not disadvantaged at sub-county and ward levels.

This research is concerned with addressing the gaps in legal framework of devolution in solving socio-economic marginalization in Turkana County.

1.2. Statement of the Problem

Marginalization has existed in Kenya for long time ranging from colonial period to post independence days of self-governance¹⁶. Successive governments have failed to effectively address this problem leading to disparities in development. The Kenyan Constitution provides foundation to address the problem of marginalization but does not give mechanisms of solving it.

One bold approach to address marginalization is through constitutionally enshrined devolution. However, this has also, in many cases, been practiced in a way that undermines the marginalized due to lack of legal framework of addressing marginalization at county level. For example, there is the problem of lack of criteria to

¹⁵ Keating, Michael (2006). Federation and the Balance of Power in European States. SIGMA/OECD, pp. 37

¹⁶ Stiffung, F. E. (2012), *op. cit.*, pp. 25

share resources within the devolved units, leading to some areas being disadvantaged¹⁷. There is also problem of ethnic domination by major tribes within devolved units creating necessity for legal framework to ensure that the problem of marginalization is effectively addressed.

1.3. Objectives of the Study

The main aim of this research was to address socio-economic marginalization in Turkana County through effective devolution.

The following is a list of specific objectives of the research:

- i. To identify causes of socio-economic marginalization in Turkana County;
- ii. To examine how devolution has attempted to address socio-economic marginalization in Turkana County;
- iii. To determine the extent to which existing laws and regulations regarding devolution have influenced efforts to address socio-economic marginalization in Turkana County; and
- iv. To propose legal framework for addressing socio-economic marginalization in Turkana County.

¹⁷ Stiftung, F. E. (2012), *op. cit.* pg. 25

1.4. Research Questions

The research sought to answer the questions below:

- i. What are the causes of socio-economic marginalization in Turkana County?
- ii. How has devolution attempted to address socio-economic marginalization in Turkana County?
- iii. To what extent have existing laws and regulations regarding devolution influenced efforts to address socio-economic marginalization in Turkana County? and
- iv. What is the appropriate legal framework for addressing socio-economic marginalization in Turkana County?

1.5. Significance of the Study

The research findings will give insights into defining new policy framework in effectively addressing socio-economic marginalization and its associated problems in Turkana County, specifically, and in Kenya, in general. It will shed light into the subject of devolution in regard to socio-economic marginalization that will help both national and county governments to develop more proactive legal and policy solutions to the problem of marginalization. The research calls for necessary constitutional and legal amendments, which includes the definition of marginalization, to allow for effective solution to socio-economic marginalization. It builds to body of literature by broadening the understanding of both devolution and marginalization.

1.6. Scope of the Study

This work is concerned with examining legal approaches to addressing socio-economic marginalization in Turkana County, Kenya. It was conducted in Turkana and involved a review of socio-economic marginalization for the period between pre-independence and post-independence days. A major focus was laid on legal aspect of addressing marginalization during the period of study. The research focused on achievements and failures of the legal framework, and cases where actual practice of addressing socio-economic marginalization has ignored laws and regulation. This research did not study other forms of marginalization.

1.7. Limitations of the Study

This research focused on legal aspect of addressing socio-economic marginalization which may create a bias since in real life society, various aspects of marginalization interact and a solution of one may not necessarily mean a solution to the entire problem. Future research should study the interactions of legal and other aspects in relation to socio-economic marginalization. Case study design focusing on Turkana County was adopted, which might mean that results found in this research may be more relevant to areas with similarities to Turkana. Whether the findings may be applicable in addressing marginalization in counties like Kiambu, Kakamega, Kwale, Kisumu etc is matter that requires further investigations.

CHAPTER 2. – LITERATURE REVIEW

2.0. Introduction

This chapter details review of related previous research including comparative aspect of devolution approaches in solving problems of socio-economic marginalization with other countries whose historical and political background are comparative to Kenya. The chapter also presents theoretical framework upon which this research is based.

2.1. Review of Related Literature

Marginalization is defined as a social phenomenon of excluding a minority, sub-group, or those considered undesirable by ignoring their needs, aspirations, and expectations¹⁸. It is also known as social exclusion which is a process in which groups, regions or whole communities are systematically denied some fundamental rights, opportunities and resources normally given to other groups, areas and communities¹⁹. Socio-economic Marginalisation refers to both overt or subvert actions within the society whereby those regarded as lacking function or desirable traits are excluded from mainstream systems, hence restricting means for their survival²⁰. It is the process of being marginal or being placed in the periphery, not only in terms of geographical position, but regarding economic, social and political performance. Therefore, when it is said that a particular group is marginalized, the implication is that the group faces inequalities in terms of receiving or having access

¹⁸ Black's Law Dictionary: What is Marginalization? Definition of Marginalization. [Online] <http://thelawdictionary.org/marginalization/> (Accessed: November 21, 2014)

¹⁹ Alder School of Professional Psychology (2011). Institute of Social Exclusion

²⁰ Chacha (2011). What is Socio-economic marginalization?[Online] <http://www.chacha.com/> (Accessed: November 21, 2014)

to social goods and services like education, health care, food, infrastructure and housing.

Whereas economists approach marginalization from a financial market perspective where they suggest that it occurs 'naturally' because of external financial factors, sociologists and many other scholars approach it from a political and legal point of view and argue that the Government and associated agents play an immense role in influencing this social and economic balance. This research addresses marginalization in terms of exclusion, restriction or preference based on origin, national or tribal origin which nullifies the recognition, enjoyment of rights or services²¹.

Economic, social and political forms of marginalization are inseparable as the disadvantage experienced occurs both with resources and power. Society must not disregard social economic marginalization since these are truths that must be dealt with and validated soonest before it becomes uncontrollable. Marginalization of society is in itself is a kind of discrimination which also violates various international provisions.

The Constitution of Kenya, 2010 defines two kinds of marginalization as community and group marginalization²². Marginalized group is defined as a collective group who on or after the effective date, were or are discriminated as spelt in Article 27(4) of the Constitution. The Constitution of Kenya, 2010 in Article 27(4,5) gives direction to the government to put in place programmes in governance, education, employment, access to vital services, infrastructure, etc. so as to ensure that special

²¹ Chacha (2011), *op. cit.* on marginalization and exclusion

²² Constitution of Kenya (2010), Article 27 (4)

needs of the marginalized are met. The Constitution empowers the Parliament to enact laws that ensure that there is diversity in devolved units and equitable representation in National Assembly and the Executive²³.

2.1.1. Historical Context of Marginalization in Kenya

In Kenya, marginalization began during the colonial period²⁴. By the adoption of Western model of governance, Kenyans disregarded their original systems and put in place new structures distorted and arm-twisting way²⁵. After independence, the post-independence governments used colonial laws to centralize political and economic power. Kenyan liberators and the elite became neo-colonialists “and oppressors of their own people”²⁶. Corruption, lack of democracy, oppression and inadequate structures fuelled the problem of socioeconomic marginalization in Kenya.

The British colonialists created boundaries in line with ethnic disposition of Kenyans by 1957 dividing Kenya into seven main political regions each headed by an ethnic/tribal personality. The abolishment of the colonial regional restriction gave rise two political parties; one with major tribes and the other with minority tribe membership. Kenya African National Union (KANU) with membership of major tribes and Kenya African Democratic Union (KADU) with its membership drawn from majority of minor tribes were the two main political parties. Fear for domination of minor tribes by larger ones hindered efforts to unify party members. KADU was supported by Europeans and Asians and advocated for stronger regional system of government which favoured *majimbo system* while KANU advocated for centralized

²³ Constitution of Kenya (2010), Article 260 on interpretation of the Constitution

²⁴ Stiftung, F. E. (2012), op. cit. pp. 30

²⁵ Ibid, pp. 31.

²⁶ Ibid, pp. 31 on post-colonial government

governance in the name of national unity and development²⁷. KADU won in regard of the Constitution which provided for strong regional governments²⁸.

Later, KADU which favored the then form of devolution was dissolved in 1964 following KANU win in 1963 elections. The main political party was KANU and it aggressively advanced its policy of centralization²⁹.

After independence, the central government of KANU began to deny regional/local governments the necessary development funds and staff, leading to frustration in regional government operations. Constitutional amendments which centralized powers to the president both as the head of state and government made him immensely powerful in controlling all sectors of the government³⁰, thus undermining the then form of devolution.

Historical origins, cultural practices and the kind of interactions of communities with British colonial administrators were used to judge communities and hence determine the degree of inclusion in government development structure³¹. Every part of Kenya is related to a particular ethnic group. When one mentions Central Kenya, the tribe referred to is the Kikuyu, Western the Luhya, Coast the Mijikenda, Nyanza the Luo, Upper Rift Valley the Turkana and Pokot etc. Though Kenya has about 42 ethnic communities, only about five numerically big ethnic groups seem to dominate political and socioeconomic aspect of Kenya, resulting into high degree of competition and the use of tribal numbers and alliances referred to as “tyranny of

²⁷ Ibid, pp. 31 on pre-independence political system

²⁸ Duchscher, Boychuk E. Judy and Cowln Leane. *The experience of marginalization in new nursing graduates. November/December nursing outlook.*

²⁹ Ibid, on KANU and KADU merger

³⁰ Ibid, on post-colonial governance

³¹ Kanyinga (2006) *op. cit.* on post-colonial administration

numbers” to counterbalance each other. Communities excluded from governance dominated by allying tribes regard themselves marginalized. This makes each group highly interested in political power leading to big competition and conflicts like the violence of 1992, 1997 and 2007-08 post-election violence.

2.1.2. Comparative Historical Cases of Socio-Economic Marginalization

This subsection gives a brief review of socio-economic marginalization in selected African countries for comparative purposes. The situations presented are those experienced in South Africa and Uganda.

2.1.2.1. Socio-economic Marginalization in South Africa

In South Africa marginalization is seen in terms of great resource concentration in the hands of few elite³². Indeed, there is connection between socioeconomic rights disparities, and the civil clashes common in most African countries. Whether the connection is based on fact or not the dangers of socioeconomic marginalization are evident.

South African history regarding the change from Apartheid to democracy and the post-election clashes in Kenya require analysis of the underlying issues in both cases. In both scenarios, economic injustice and socioeconomic redistribution contributed to violence and any consequent government adopted, must address the issues by creating institutional safeguards that ensure accountability and equality³³. It is noteworthy that political stability in Kenya and South Africa, is not proof that socioeconomic marginalization non-existent. Turkana County is one example of

³² Christopher Renock, Michael Bernhard and David Sobek, Regressive Socioeconomic Distribution and Democratic Survival, *International Studies Quarterly* (2007) 51, 677–699

³³ French philosopher Jean-Jaques Rousseau

marginalized areas. There is need for *de facto* equality and not just equality as merely entrenched in laws without enforcement.

2.1.2.2. Socio-economic Marginalization in Uganda

In Uganda civil wars and various forms of political instability were caused by marginalization of specific groups at particular times like the Acholi, the Baganda, Bakonzo and Karamojong cluster. When Uganda got her independence, Sir Edward Mutesa was the first President and Milton Obote became the first Prime Minister. Ten years after independence enormous social and political changes which created tensions occurred. Milton Obote took control of the government overthrowing President Mutesa in the year losing hundreds of lives of Baganda³⁴.

After independence, the communities in power embraced a total takeover attitude. This resulted into Col. Idi Amin deposition of President Obote of Langi tribe in a military coup which occurred on 25th January, 1971. The regime of Amin fuelled bad ethnicity and xenophobia³⁵. In 1972 Amin forced more than sixty thousand Asians out of Uganda through ninety days' notice³⁶. There followed a series of interim administrations after Amin which ended in 1979 when Obote with his UPC party rode to victory in the elections of 1980 that his competitors claimed was marred with vote stealing. Second government of Obote did not solve the problems of security, violence and ethnicity³⁷.

Second regime of Obote was toppled by Gen Tito Okello Lutwa of Acholi origin in 1985. Tito Okello's regime was ended in 1986 in a military coup by Yoweri Museveni of Ankole tribe. The government has not stopped the problems of conflicts

³⁴ Wairama, B. (2001). Uganda the Marginalization of Minorities. Minority Rights Group International, UK.

³⁵ Ibid, pp. 6

³⁶ Ibid, pp. 6

³⁷ Ibid, pp. 6

and internal displacement in places with minority communities. Peace and prosperity has been enjoyed in Museveni's National Resistance Movement (NRM) rule especially in southern Uganda, but the northern parts have rebels and armed conflicts between LRA and government security forces³⁸.

Just like in Northern Kenya, the socioeconomic prosperity in southern Uganda is in sharp contrast with the insecurity in Gulu and Kitgum due to activities of the ADF. According to United Nations³⁹, many crises in Uganda originate from deliberate actions and insurgency that result into bad economy.

Uganda has at least fifty-six distinct tribes and is a country in which many groups regard themselves as 'minorities'⁴⁰. Though minorities represent less than seventeen percent of the Ugandan population and none has a majority power to influence national, political, social and economic events.

2.1.2.3. Socio-Economic Marginalization in Turkana

Turkana County is one of the 47 counties formed under the Constitution of Kenya 2010. It is situated in the North West part of the country. It is the largest county measuring some sixty-nine thousand square kilometres. Although Turkana is an arid area, it is blessed with many natural resources including Lake Turkana (the largest permanent desert lake in the world), gold, wildlife and recently discovered oil and underground water. Despite this, reports⁴¹ show Turkana as Kenya's driest⁴² and

³⁸ Wairama, B. (2001) *op. cit.* pp. 6

³⁹ United Nations Humanitarian Coordination Unit (UNHCU), *Humanitarian Update Uganda*, vol. 2, issue 9, 27 November 2000.

⁴⁰ The term minority was not defined as per Article 26 of the International Covenant on Civil and Political Rights

⁴¹ By the Society for International Development and National Bureau of Statistics

⁴² There were 13 drought periods in a period of 50 years.

poorest county where 88% of people are living on less than a dollar per day and 80% of the people are poor.

Marginalization of Turkana has been attributed to the colonial legacy whose only objective was to exploit the rich and fertile lands and thus had no plans for arid areas like Turkana. After independence, the *Sessional Paper No. 10 of 1965 on African Socialism and its Application to Planning in Kenya* (found at the Kenya National Archives) was drafted to effect to the policy of addressing marginalization. The sessional paper emphasized on the need for investment by the government in the White Highlands since they were areas which would yield highest returns. The policy effectively ensured that though marginalized areas like Turkana needed massive resources to be at par with other regions, they now were at bottom of government priorities.

Dr. Ekuru Aukot⁴³ notes that the people of Turkana are an ethnic minority with are under-representation in government, and with scarce economic resources. They are affected by disease as well as being displacement caused by frequent conflict over pasture, water and livestock with their neighbours the Pokot, Karamoja and Merile. It is ironical that the government created the largest refugee camps hosting a total of eighty-three thousand refugees against the local population of ten thousand. Government presence in the area is minimal apart from a police post built by UNHCR for protecting refugees from hostility of the local people; and presence of a district officer whose greatest percentage of time is spent in signing temporary permits for refugees to leaving the camp. Moreover, while the people of Turkana are starving, the refugees are given food, health services, shelter and clothing; hence the he

⁴³ Aukot, Ekuru (2000). 'It is Better To Be a Refugee than a Turkana In Kakuma: Revisiting the Relationship Between Hosts and Refugees in Kenya, (nd).

remarks that being a refugee is better than being a Turkana in Kakuma⁴⁴. This shows that marginalization is a key challenge in Turkana County.

The suffering of Turkana people is beyond mentioning. Apart from the challenge of seemingly endless food insecurity, they are often attacked by cattle rustlers from neighbouring communities, and threat of death by Ethiopian raiders, which aggravates the circumstances of food insecurity. Turkana residents have experienced “the worst of famines and survived the grimmest of droughts.”⁴⁵

Over the last half a century, post-independence governments have done little to improve the circumstances of the people of Turkana. Hardly any development has been realized towards the implementation of sustainable development initiatives. Transport and communication infrastructure is dilapidated. Moreover, Turkana region is among those with the lowest school enrolment rates, and most schools lack basic facilities, like classrooms. Health facilities are few and scattered, implying that local people have to walk for several kilometres to the nearest health facilities, which are poorly managed and have a shortage of essential medication.^{46,47}

Billow Kerrow, in a recent article⁴⁸ published in one of Kenya’s dailies, explores how it has become normal for government to ignore the Turkana. In the article, he points out that when the massive underground water reserves were accidentally discovered while drilling for oil, the water principal Secretary announced

⁴⁴ Aukot, Ekuru (2000). *Op. cit.* to be a Turkana

⁴⁵ The Standard (2013). “Why Turkana people must benefit first from oil, water (1 Oct 2013) by Otieno, Dennis Omondi

⁴⁶ The Standard Online (2013) Turkana Discoveries are Evidence of Marginalization, (24 Sept 2013): Billow Kerrow, https://www.standardmedia.co.ke/?articleID=20000094186&story_title=turkana-discoveries-are-evidence-of-marginalization

⁴⁷ The Standard (2013). *Op. cit.* on benefit from oil and water

⁴⁸ The Standard Online (2013). *Op. cit.* on discoveries are evidence of marginalization

that the country was engaged in negotiations with neighbouring countries with the view to getting an agreement to supply them with water. Evidently, the people of Turkana whose sole need and aspirations revolve around water were not in the picture.

While it is kind of flattering that deposits of oil and aquifers have been discovered in Turkana County, there is a possibility that the discoveries may not improve prospects of the local. Hukka Wario provides a good summary of the marginalization of the Turkana as the most marginalized county in Kenya with endless drought cycles, starvation, lack of facilities and neglect⁴⁹.

The problems of socio-economic marginalization in Turkana call for review of efforts to address the situation by examining comparative efforts in other countries' devolved systems. It is therefore important to understand what devolution in contrast to decentralization means.

2.1.3. Devolution and Decentralization

It is important to distinguish devolution from decentralization, so that the two should not be confused.

2.1.3.1. Devolution

Devolution is a concept which several scholars have attempted to define. Within all the disparities in definitions, a common characteristic that stands out is the very essence of devolution – bringing governance and decision making functions, powers,

⁴⁹ Hukka Wario, Turkana Oil Discovery, <http://www.naccsc.go.ke/Opinion-Articles/turkana-oil-discovery.html>

or services to the people and enabling them to fully or better participate in the governance process.⁵⁰

A basic hypothesis about the benefits of devolution is that it brings government closer to people and makes it possible for people to hold government accountable and express demand for public services. Pro-devolution arguments include the view that it enhances governance and improves service delivery by increasing allocative efficiency as well as productive efficiency.⁵¹ As a result, devolved units are better placed to address the different needs of the local people, and since it reduces variation in preferences among the local people since it reduces diversity. Furthermore, the competitive spirit among devolved units increases the chances that the needs of the people will be addressed adequately.⁵²

Devolution as widely understood, is therefore a combination of these aspects: political, fiscal and administrative, and involves the distribution of the three dimensions from the central to the territorial (county) governments.⁵³ The concept of devolution is linked to decentralization, in the context of administration and resource distribution.

2.1.3.2. Decentralization

Decentralization refers to a shift of civic responsibility, authority, accountability and resources including personnel from national to sub-national jurisdictions, as well as

⁵⁰ Okidi, John A. and Guloba, M. (2006). Decentralisation and Development: Emerging Issues from Uganda's Experience

⁵¹ World Bank (2001) PREM Notes, Decentralisation and governance: does decentralisation improve public service delivery? (World Bank, June 2001)

⁵² Mwenda (2010) *op. cit.* pp. 1

⁵³ De Visser, Jaap (2005). Development of Local Government: A Case Study of South Africa

the hiring of personnel from the locality.⁵⁴ It involves transferring decision making, planning and administrative power from central to county government. The concept of decentralization has been broken down into three key areas for better understanding: political, fiscal, and administrative dimensions of decentralization.^{55,56}

Political aspect of decentralization is distribution of key political functions like policy-making and assembly representation to local level. It involves horizontal and vertical application of power where power is devolved to a local government institution. The European Commission suggests that the political dimension involves redistribution of powers with an objective of enhancing democratic legitimacy.⁵⁷

The second one, fiscal decentralization, entails the economic bit of decentralization and covers disbursement of finance to the county government. Thus, this aspect includes reallocation of funds to county and county authorities and facilitating them to create their own income relative to the devolved functions.⁵⁸

Finally, administrative decentralization involves the daily management of the county, i.e. the internal management of the newly formed body. In the administrative dimension the activity involved is the reorganization and clear transfer of functions and tasks between territorial levels for increased transparency and improved efficacy and efficiency in the administrative tasks involved in the running of the country. The relationship between political and administrative decentralization is that the former

⁵⁴ Mwenda (2010) *op. cit.* pp.1

⁵⁵ Schnieder, Aaron (2003). Decentralisation: Conceptualisation and Measurement

⁵⁶ Boschman, N. (2009) Fiscal Decentralisation and Options for Donor Harmonization (Delog, 2009)

⁵⁷ European Commission, Programming Guide for Strategy Papers (2009)

⁵⁸ Boschmann (2009), *op. cit.* on decentralization

dimension decides the latter. Practically, administrative dimension is the operational arm of political dimension in running affairs of decentralized units.

Whereas political decentralization is managed by central/national government at local level, political devolution is managed by local governments in a semi-autonomous or autonomous way. With regard to Political devolution, this concept further entails two aspects: power transfer from central to county government, and transfer of power to make socio-political-economic decision, in a similar manner.

Four primary objectives of decentralization have been outlined by Golola thus: (1) to shift power to the sub-nation level, lessening workload at the central point; (2) to devolve political and administration power to service delivery points; (3) to enhance accountability in financial management and (4) to improve sub-national unit capacity to prepare, finance and direct the delivery of services to the grass-roots.⁵⁹

2.1.3 Comparative Devolution Efforts in Addressing Socio-economic Marginalization

Various comparative efforts to solve problems of socio-economic marginalization have been made by governments of South Africa and Uganda. This research reviewed the efforts for comparative purposes with the Kenyan situation in Turkana County.

2.1.3.1 South African Framework of Devolution

The creation of a new democratic constitution was a key element in negotiations aiming at ending Apartheid. However, the ruling party ANC wanted the constitution to be drafted by a constituent assembly which is democratically elected while the

⁵⁹ Golola, L. M. (2003). Decentralization, Local Bureaucracies and Service Delivery in Uganda, pp. 259

National Party wanted a negotiated process through a referendum. This was probably due to fear of that minority rights might not be protected.

Formal negotiations started in the month of December in 1991 at the CODESA. Parties agreed on a process for coming up with a transitional constitution which was to create a constitutional assembly which would draw up a permanent constitution. The talks, however, collapsed only after the second session and resumed in 1993 under the Multi-Party Negotiating process. The team agreed to develop principles upon which final constitution to tally with to ensure protection of basic rights of minority. In 1993, the ideas were adopted in interim constitution which was promulgated on 27th April 1994.

The colonial government in South Africa used the crude form of devolution to achieve “Divide and Rule” method of segregation. The Apartheid government restricted people's movement and residence and segregated natives to their homelands. Just like in Kenya, the colonial government created boundaries based on ethnic grouping with the highly resistive Zulus in Natal Province. Devolution in South Africa was therefore one of the means to end the inequalities that had been brought about by Apartheid which guaranteed minorities rights especially the whites by creating a platform that can enable every citizen take part in the governance of the country.

Chapter six of the South African constitution provides for Devolution as well as defining the power and structure of sub-national governments. Chapter seven forms the framework for local governments. Nine provinces are empowered by the constitution to be accountable governments at the provincial levels. Each province can adopt its own provincial constitution along the lines of the chapter six provisions

but so far only the Western Cape Province has done so. It gives provisions for unicameral parliament, a prime minister elected by the parliament who in turn appoints the executive council headed by him/her.

Under the fifth schedule, the provincial government has exclusive power concurrent to the national over some matters as provided for in schedule four. The legislature elections for the provinces are held once every five years.

Chapter seven provides local government framework which requires creation of municipalities in the whole republic. These municipalities fall under three categories; Category A, B and C which contains several category B municipalities.

The Public Finance and Management Act of 1999 provides for fiscal decentralization in the country. The act was passed to regulate the management of finances at the provincial and national governments. Its objectives are to ensure that transparency, accountability and sound financial management in public institutions is secured.

Devolution in South Africa has however had its share of challenges. It is noteworthy that devolution in South Africa was a compromise arrangement since the African National Congress favoured a highly centralized government to enable it to undo the serious effects of Apartheid while the white dominated National Party preferred federal system due to its fear of a strong centralised system that was dominated by the African National Congress. The negotiations resulted in a system of weak provinces. To further weaken the provinces, the ANC entrenched a strong system of local government with mandate to deliver government services. Since African National Congress was reluctant to embrace the provinces, their existence

was dubious and their performance was affected.⁶⁰ The other challenge is that South Africa emphasized greatly on drawing provincial boundaries along economic zones rather than tribal zone which failed due to the nature of community clustering. In fact seven of the nine provinces have an ethnic majority and a better approach was to embrace positive ethnicity than trying to run away from it.⁶¹

The economic approach of drawing the boundaries meant that big rural communities were grouped together while those with sizable urban centres were put together. This resulted into a situation whereby the rural communities without an economic base virtually relied on government transfers to function and thus lagged behind municipal communities. For the new constitution to take place, big changes in administration occurred. Ten administrative regions of Bantustan, four provincial administrations for the white and three administrative regions for coloureds and Indians were formed into nine provinces. As part of the compromise agreements, none of the civil servants were to lose their jobs, meaning that corrupt and inefficient civil servants were incorporated into the new devolved systems and simply moved with their old habits.⁶²

This shows that new systems seldom bring new slate but are embedded into old structures in which the old wage constant battle on the new ideas. Lastly the same framework of law was imposed on the municipalities and provinces in spite of the fact that they have large resource differences, human skills and economic development has meant that local communities find difficulty in coping with the legal requirements while the urban communities feel constrained by the requirements. In

⁶⁰ Steytler, Nico (2013). Implementing devolution: Lessons from South Africa, *The Star*, 29 June 2013.

⁶¹ Nico Steytler (2013) *op. cit.* on implementing devolution

⁶² Ibid

order to address this problem, there are debates on whether to introduce a system that differentiate between the municipalities within the law.⁶³

2.1.3.3. Ugandan Framework of Devolution

Uganda is a unitary government, and nature of decentralisation adopted denotes the transfer of power districts and the low-level local government authorities, inclusive of sub-counties, municipalities, divisions and parishes. Decentralization of governance in Uganda is touted one of the greatest reforms in Uganda, and is considered as among the major reforms in local governance in the Developing World.⁶⁴ According to decentralization indicators, Uganda is ranked second to South Africa, which takes the top position in Africa.⁶⁵

Decentralization in Uganda was adopted in 1986 during the leadership of Yoweri Museveni, and is emerged following Uganda's recurrent political turmoil and civil wars during the reigns of Amin from 1971 to 1979 and Milton Obote's second rule from 1981 to 1986. The objective of decentralized governance was to empower her citizens for participation in development with a view to improving their livelihood. The intention essentially sought to reduce poverty and enhance inclusiveness in Uganda.⁶⁶

The legal framework of decentralized government is anchored in the *Local Government Statute* of 1993, that fostered administration and financial decentralization, and in a subsequent act that facilitated the decentralization of

⁶³ Nico Steytler (2013) *op. cit.* on implementing devolution

⁶⁴ Kritsina, S., Sohini, P. and Pooja R. G., (2010) *Decentralization in Uganda*,

⁶⁵ Ibid

⁶⁶ Bitarabejo, J. (2008). The experiences of Uganda Local Government role as partner in the decentralization process to strengthen local development. *Conference on Accessing Development Funds for Local Governments in Africa*. Johannesburg.

human resource. Enactment of *Local Government Act*, in 1997 paved way for greater decentralization in Uganda, while the amendment in 2001 to the Act comprehensively empowered local governments.

Uganda's decentralization is founded on district as the basic decentralization unit. Local governments operate within basic unit. The district council, made up of elected officials, is the topmost political organ with executive and law-making authority, and councils in low-level local government also topmost political authorities in their jurisdictions.⁶⁷

The structure taken by the Ugandan local government depends on the administrative area - whether urban or rural. In the rural category, the local government system takes on a five-tier design with the lowest level being the village council (Local Council 1), parish council (Local Council 2) follows, then subcounty council (Local Council 3), county-council (Local Council 4), and at the top at the district, the district council (Local Council 5).⁶⁸ In urban districts structure begins with the village councils (Local Council 1), ward or parish council (Local Council 2) follows, municipal or town division (Local Council 3), municipality (Local Council 4) and district council (Local Council 5 or mayor).⁶⁹ Kampala City has a special administration structure, and is governed by the *Kampala Capital City Authority Act of 2010 (KCCA)*⁷⁰. The executive arm of the City Council, the topmost authority under the Act, is managed by the Chief Executive Officer, central government appointee, legislative arm is under Lord Mayor, who is elected, in the same way as his counterparts in the Local Council 5 level. Unlike the county, the

⁶⁷ Article 3 *Local Government Act* of 1997 (LGA).

⁶⁸ Article 3 *Local Government Act* of 1997 (LGA), on the structure of local government

⁶⁹ Ojambo, H. (2012) Decentralisation Africa: A critical review of Uganda's experience. PERT. 17

⁷⁰ Ibid, on Kampala governance

parish/ward, and the village councils, district council and the low-level units have corporate status, coupled with an independent legal status, this means that they can be sued in court in their official name.

In the Ugandan decentralization framework, the central government retains is responsible for implementing policies on foreign relations, law and order, security/defence, natural resources (minerals, mines, water), banks, citizenship, national elections, national parks and national plans. The central government is also mandated to oversee the performance of each local government through the office of the Resident District Commissioner.⁷¹

On the other hand, the local government councils have the mandate, within their jurisdiction, to execute a number of state functions, including appointing statutory boards, commissions, and committees (for land, procurement, personnel, and accountability), generating revenue, making development plans that focus on priorities of the locals, and budgeting. The Ugandan local governments are also mandated to provide certain services, including health (with the exception of referral hospitals), education (with the exception of tertiary education), ambulance services, and roads (except roads placed under the central government).

Financially, local governments are constitutionally given power to impose levies and charges and to collect locally generated revenue in the form of taxes and fees. In addition, they also get donations from the central government to add to their

⁷¹ Section 71, *Local Government Act* of 1997 (LGA).

paltry revenue collections for both local programmes and for the implementation of government plans at local levels.⁷²

2.1.3.4. Kenyan Framework of Devolution

Devolution in Kenya is anchored in the constitution which devotes a chapter to describing the objectives and major principles of devolved governance, the structure of the county governments, the powers and functions of county governments, the county government boundaries and the relationship between the two tiers of government. Fourth Schedule outlines the functions of the two tiers of government, clearly setting out the roles that each level of government is expected to perform.

The constitution outlines the objects of devolution in Article 174.

As such, the decentralization of functions, organs and management of resources to the counties, was expected to enhance socio-economic development, as well as address the challenge of marginalization of certain communities in Kenya as shown in Article 174 (d) (e) and (f).

The roles of the county governments are outlined in the 4th Schedule (Article 185) of the Constitution of Kenya include *inter alia*:

- i. Agriculture;
- ii. Health services;
- iii. Controlling pollution, public nuisance and advertisements;
- iv. Cultural roles, public amenities and entertainment ;
- v. Transport within county, includes (a) county-roads; (b) street lighting; (c) traffic and parking;

⁷² Mugambi, E. (2004) Uganda's Decentralization Policies, Legal Framework, Local Government Structure and Service Delivery

- vi. Control of animals and welfare, including;
- vii. regulation of commerce and development;
- viii. Planning, strategizing and development; and
- ix. Pre-primary education, home-craft centres, village polytechnics and child-care facilities.

The Transition to Devolved Government Act (TDGA)⁷³ also contributes to the devolution framework. This Act seeks to give effect to Article 15 and the 6th Schedule of the Constitution. It also enables good transition into a devolved government. It also established the Transitional Authority, a constitutionally mandated authority under TDGA, tasked with monitoring resource requirements of each county as well as developing proper frameworks for proper transfer of functions to the Counties.

Another legal basis for devolution in Kenya is found in the County Government Act of 2012, which repealed the Local Government Act CAP 265 in order to give effect to Chapter eleven of the Constitution as well as give power to the 47 counties to deliver services to the people.

One of the biggest fears for devolution was the devolving of corruption from the national level to the grassroots. One of the most worrying trends is the legalizing of corrupt practices that has begun at the top and filtered to the county governments. For example, the salaries and remuneration commission has allowed county representatives to draw a sitting allowance of Ksh 3000 for every committee sitting and county representatives are allowed to sit in a maximum of twelve committees in a week. One does not need to be rocket scientist to figure out that it is impossible to

⁷³ Government of Kenya, *Transition to Devolved Government Act*, 2012

sit in twelve committees in five days and still make meaningful contributions while at the same time fulfil other legislative tasks effectively. Yet a cursory look at the allowances claimed shows that county assembly members are drawing allowances for the twelve sittings every week without fail.

Other malpractices like the issuance of tenders at inflated prices and flawed tendering processes also need to be checked if cartels are to be locked out and value for money is realized. This point would thus go well with the one mentioned earlier of making every coin go an extra mile. As shown by the South African case, the failure by the African National Congress to fully embrace the provincial system led to doubts being cast on the provincial system and this situation affected the performance of these provinces. It is thus clear that all the major players in the country especially the national government embraces devolution in Kenya without any reserve if the counties are to function properly. The national government needs to avoid a situation where it continues to rely heavily on the provincial administration structure as the African National Congress did with the municipalities if the transition to devolution is to progress smoothly.

The two systems which are the county government and the provincial administration also have to develop a system of mutual respect and coordination if service delivery is to be executed smoothly at the county levels. Turf wars between the two systems will not lead to any benefit among the county residents. The county governments have also found themselves inheriting staff from the national government some of whom are not keen in service delivery or are plain corrupt. The county governments thus need to come up with a clear system of performance evaluation so that with time they can be able to weed out such individuals from their

staff and at the same time prevent their negative work ethics from sifting into the whole county administration

2.1.3.5 Key Lessons from Comparative Devolution Systems

The following lessons are clear from the comparative review of the devolved system of devolution:

- i. Substantial resistance to effective devolution is highly evident from economic elite who gained from the old constitutional and administrative system and institutions which control public governance apparatus;
- ii. Sectors, groups and communities that feel marginalized would champion for effective devolution and more funding to the devolved units;
- iii. There is possibility of politicians taking selfish advantage of the efforts to address socio-economic marginalization through devolution process and thus violating the spirit of effective devolution;
- iv. The central government in place may strengthen parallel governance systems e.g. through provincial administration that undermine development and legitimacy of the effective fight against marginalization through devolution;
- v. Devolution may create further marginalization within devolved units if proper legal and policy measures are not put in place;

- vi. Participation of previously neglected or marginalized groups in governance helps to ensure that devolution is effectively representative of and responsive to the societies represented by devolved units.
- vii. To achieve effective devolution, there is need to strengthen and equip devolved units and sub-units to boost the ability to foster equitable development at grass-root levels;
- viii. There should be a clear framework of ensuring accountability and oversight of devolved units.

2.2. Theoretical Framework

This research is based on three theories of distributive justice⁷⁴: Mill's Utilitarianism, Rawlsian Justice as Fairness and Nozick entitlement theory^{75,76}.

2.2.1. Utilitarianism Theory

John Stuart Mill developed utilitarianism in 1863 and defined the theory based on the principle that actions are judged to be right or wrong depending on whether they promote happiness or not. He defined happiness in terms of pleasure and as having no pain; and notes that pleasure may be different in its quantity and quality. He argues that utilitarianism arises from natural sentiments originating from human nature. Mill argues that happiness is the main foundation of morality and that all aspects of human aspirations are means to happiness.

⁷⁴ Hammowy, Ronald, ed. (2008). "Nozick, Robert (1938–2002)". *The Encyclopaedia of Libertarianism*. Thousand Oaks, CA: SAGE Publications, Cato Institute. p. 360–362.

⁷⁵ Frakel P., Ellen, F. D., Miller, Jr. and Jeffrey P. (eds.), (2004) *Natural Right Liberalism from Locke to Nozick*, Cambridge University Press.

⁷⁶ Mack, E. (2014) Robert Nozick's Political Philosophy, Stanford Encyclopaedia of Philosophy

Mill explains that justice is anchored on utility and that rights only exist as to achieve human happiness. The theory favours a format of distribution that addresses past injustices by re-distribution involving allocating more resources to the marginalized groups, regions and communities.

The concept of *diminishing marginal utility of money* would allow for more marginalized groups, regions and communities to receive some of the money previously allocated to endowed groups to bring them at par with other groups, regions and communities.

2.2.2. Justice as Fairness Theory

Rawls, John proposed the fairness view of justice that endorses redistribution of wealth to address past socio-economic injustices. Rawls used a hypothetical scenerio he called “veil of ignorance”⁷⁷.

Rawls postulated that those behind the veil of ignorance will agree on these two issues:

- a. Everyone will be equally free;
- b. All inequalities within society must:
 - i. benefit everyone in the society, and
 - ii. result from opportunities that were available to everyone

He concluded that the two principles are correct principles of justice. He defines injustice as “inequalities that are not to the benefit of all”. The “Maximin” strategy under this theory will lead to a decision of bettering the conditions of the worst possible outcome for those behind the veil. This theory implies that the just scenario

⁷⁷ Mack, Eric (2014) *op. cit.* on Justice as Fairness Theory

is one where the marginalized groups, regions and communities are made as well-off as possibly in relation to the rest of the people and/or regions.

2.2.3. Entitlement Theory

Nozick's Entitlement Theory⁷⁸ is based on the principle of liberty. Nozick views that it is not just to disturb freedom of others. He argues that, as long as one does not hurt anyone, the society is obliged to leave live him/her alone, to be as he/she pleases. That everyone is "entitled" to everything that his/hers no one has a right to take these entitlements away from him/her, dictate what one can and cannot do with them.

Nozick believes that wealth distribution among individuals remains just as long as the following principles are observed:

- i. *Justice of Acquisition*: that one is entitled to previously un-owned property that he/she originally acquired through just means;
- ii. *Justice of Transfer*: that one is entitled to property that he/she justly acquired from its previous just owner; and
- iii. *Rectification of Injustice*: If someone unjustly "owns" something then the situation ought to be rectified.

The socio-economic marginalization situation of Turkana County calls for rectification of injustice, that Nozick postulates, by developing both legal, policy and administrative mechanism necessary to bring the region at par with others.

⁷⁸ Mack, Eric (2014) *op. cit.* on Entitlement theory

CHAPTER 3. - RESEARCH METHODOLOGY

3.0. Introduction

The chapter presents research methods which were applied in conducting the research. The researcher used quantitative and qualitative research methods⁷⁹, hence resulting into a mixed method. The chapter details research design, variables, study location, sampling techniques used, research instruments, reliability and validity, data collection and analysis methods and data management⁸⁰.

3.1. Research Design

The study will adopt a descriptive research approach⁸¹. It will examine the devolution approach to addressing socio-economic marginalization in Turkana County, Kenya.

3.2. Variables/Categories of Analysis

Research variables in this study are categorized into two: independent and dependent variables. Independent variables were characteristics of socio-economic marginalization in Turkana County, while dependent variables were legal aspects of devolution that address socio-economic marginalization in the County.

3.3. Location of the Study

The location of this study was in Turkana County, in Kenya.

⁷⁹ McConville, M. and Wing, H. C. (Eds) (2007) Research Methods for Law, Edinburgh University Press: Edinburgh

⁸⁰ Ibid, on data collection

⁸¹ Ibid, on research design

3.4. Study Population

The targeted population for the study is the entire population of Turkana County. Population of Turkana County is estimated at 855,399 with 52% male⁸².

3.5. Sampling Technique and Sample Size

The researcher applied survey research type⁸³ which drew sample from target population to be interviewed in the study. The study adopted multi-stage stratified sampling approach to select study elements. Initially, the study population was divided into three: government, civil society and community respondents. Community respondents were disaggregated according to aspects of marginalization in the Turkana County. It took into account gender, respondent position in the society, economic activity, level of education, age and religious factors.

Table 1: Sample of respondents

Respondent Category	Target Population	Sample Size	Percentage Sample
Elected and grass-root leaders e.g. MPs, MCAs, elders etc.	600	180	30.00
County and sub-county government officers	200	60	30.00
Civil society activists	50	20	40.00
Religious leaders	60	20	33.33
Members of Turkana Community	854,000	400	0.05
TOTAL	854,910	680	0.80

⁸² Kenya Bureau of Statistics (2009). Kenyan Population and Housing Census.

⁸³ McConville, M. and Wing, H. C. (Eds) (2007) *op. cit.* on sampling

3.6. Research Instruments

The researcher collected data by administering questionnaires and in some cases, especially with local leaders, civil society representatives and county governance face-to-face interviews were done. The questionnaires had both open ended and closed ended questions. Other data sources included group discussions, submission by government officials, civil society and religious groups.

3.7. Validity and Reliability

Reliability in qualitative research calls for consistency, accuracy and predictability of the research; while validity is the quality of the research. Validity measures the extent to which measuring technique or process is free from error or if the research measured what it was designed to measure⁸⁴.

Respondent inclinations could possibly introduce a bias by showing that all is going well with the with devolution efforts to address socio-economic marginalization even if the picture other than what the interviewee would say could evident. Also, some officials could possibly think that the survey could be linked to some fault finding investigation or research into the devolution and thus be resistive. As a way of increasing research quality, substantial review of literature in this was be conducted to give greater substance and understanding of the subject matter so that the same guide the entire research.

⁸⁴ Golafshan, N., "Understanding Reliability and Validity in Qualitative Research," The Qualitative Report, Vol.8, No.4, 2003, p. 579 – 607.

3.8. Data Collection

This study focused on addressing socio-economic marginalization in Turkana County through effective devolution, thus primary data was important. However, secondary data collection was done to supplement empirical data. Before collecting data the researcher sent introductory letters to the sampled respondents and respondent organizations to seek permission to conduct research. Each respondent was required to familiarize himself/herself with the research questionnaire⁸⁵ and was required to consent and commit himself/herself to the requirements of the questionnaire.

3.9. Data Analysis

Sorting of data and information was done during data analysis. The researcher processed the data by coding and using various statistical methods such as descriptive statistics for data analysis.

3.10. Data Management and Ethical Considerations

The researcher applied ethical guidelines of Social Research Association⁸⁶ to ensure ethical issues in this research were considered. It was ensured that information and data collected were used only for purpose of achieving research objectives. Sensitive information like confidential and restricted documents and information were treated as their classification requires. Vulnerable groups like conflict victims, women, children, physically challenged and the elderly were treated in due regard of their situation and peculiarities. Special arrangements were made by use of proxies to obtain their consent and to conduct data collection as per their needs. The

⁸⁵ See Appendix I for research questionnaire

⁸⁶ Social Research Association (2003). Ethical guidelines. [Online] Available at: www.the-sra.org.uk

researcher ensured minimal paper use as an attempt to be conscious to the environmental conservation.

CHAPTER 4. – RESULTS AND ANALYSIS

4.0. Introduction

The chapter presents research findings. Survey data and secondary data are presented in this section. The section further details the analysis carried out in the research.

4.1. Survey Response Rate

As shown in Table 2, out of a total of 680 questionnaires distributed to respondents, 507 were completed and returned. This represents 74.56% of the sample size. A total of 152 elected and grass-root leaders participated representing 84.4% of the sample size for this category of respondents. Participation rate for county and sub-county officers, civil society activists and religious was 80%, 85% and 70% respectively. Other members of the Turkana community who participated were 69% of the sample size for that category.

Table 2: Respondent participation

Respondent Category	Sample Size	Participants	% Response
Elected and grass-root leaders e.g. MPs, MCAs, elders etc.	180	152	84.44
County and sub-county government officers	60	48	80.00
Civil society activists	20	17	85.00
Religious leaders	20	14	70.00
Members of Turkana Community	400	276	69.00
TOTAL	680	507	74.56

A total of 507 respondents participated of which 310 were male, representing 61% of the participants. Figure 1 presents this scenario.

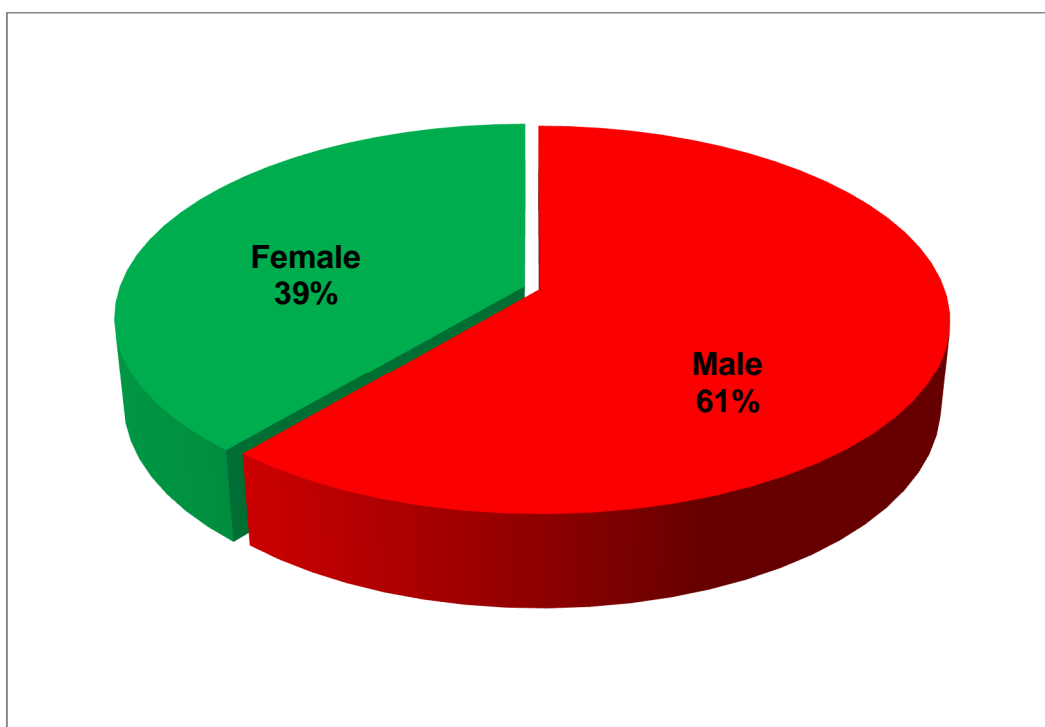


Figure 1: Gender aspect of survey participants

Figure 2 shows percentage out of total participants for both gender and their level of education. It shows that more male participants were educated at each level represented than female participants. A total of 17.75% and 11.44% of the participants were male and female, respectively, with post-secondary education. About 1.18% of the participants were male postgraduates compared to 0.79% for female participants.

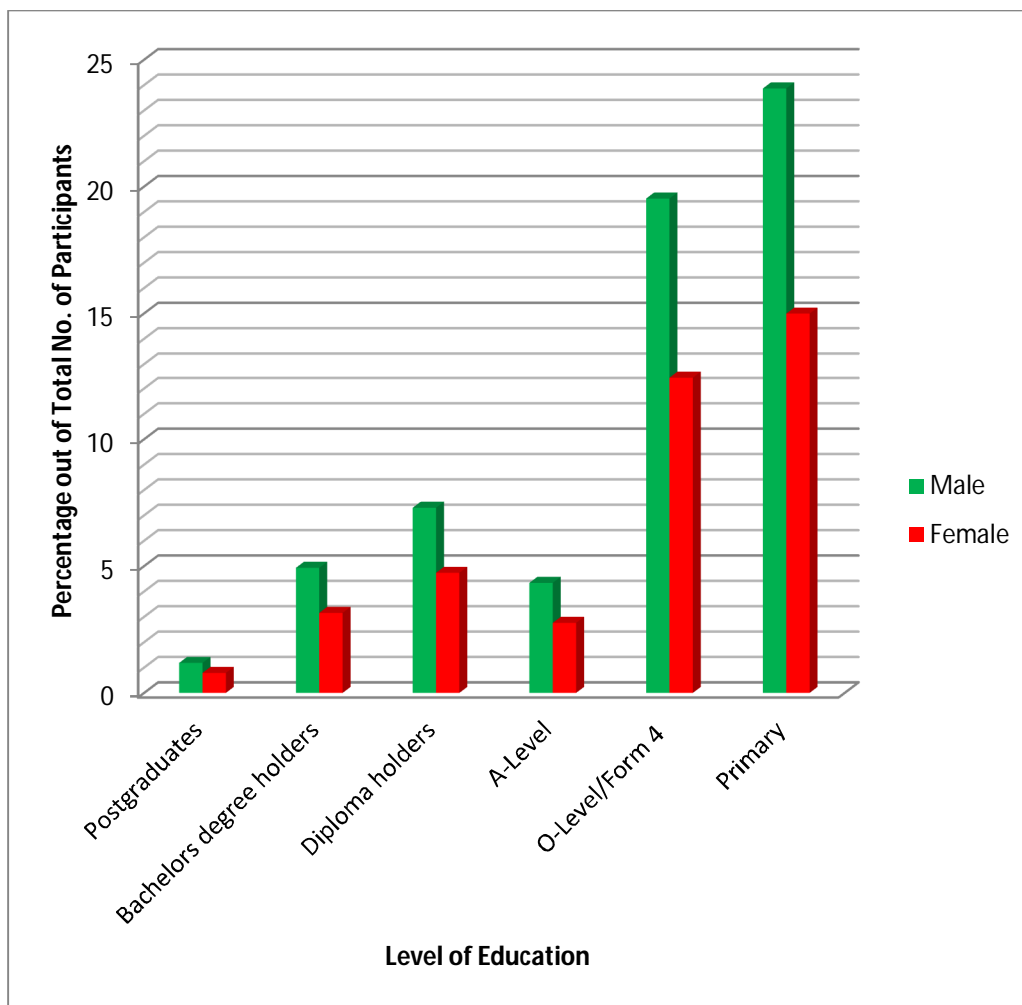


Figure 2: Level of education of participants

Figure 3 presents the age factor of the participants. The highest percentage of participants was between age 31-40 years and 41-50 years. This represented a total of 61.53% of all participants where 34.71% were male and 26.82% were female.

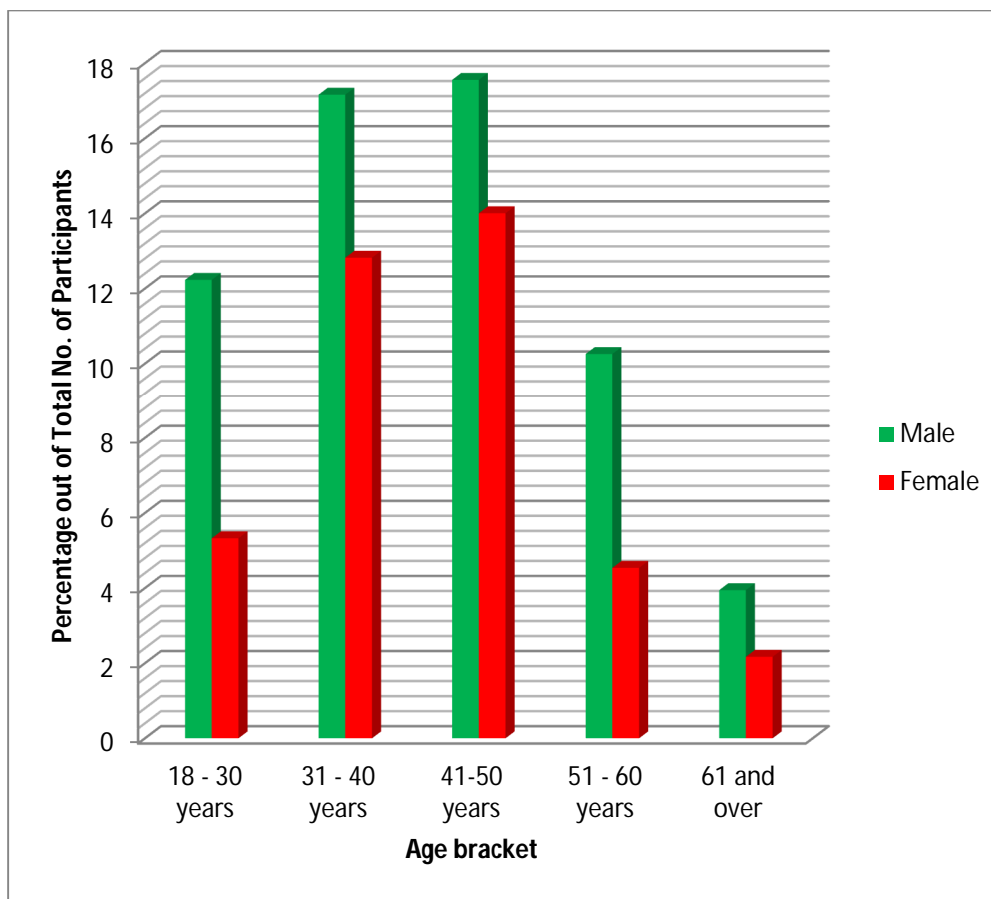


Figure 3: Age representation of participants

4.2. Factors that Contributed to Marginalization in Turkana County

Table 3 shows respondents rating of causes of socio-economic marginalization. Of all the causal factors rated, political exclusion, ethnic discrimination, insufficient development budget allocation and inadequate participation in governance were ranked highest with average rating 4.61, 4.49, 4.33 and 4.30, respectively. This means that the respondents strongly agreed that the factors caused socio-economic marginalization.

The next category of factors were rated with average rating ranging between 3.01 and 3.93, showing that the respondents agreed that the factors contributed to socio-economic marginalization in Turkana County. The factors are adverse climatic conditions, discrimination within present county structure, lack of clear guidelines for

grass-root development, uneven penetration of capitalism, level of illiteracy, assumption that political appointment of individual benefits the whole community, Pokot – Turkana conflicts and colonial segregation as shown in Table 3. The respondents, however, disagreed that cross-border conflict and discrimination against women contributed to socio-economic marginalization.

Standard deviation values range from 0.7469 in responses regarding political exclusion to 1.0398 in respondent rating of insufficient development budget allocation. Standard deviation shows the level of variability of responses with higher values showing greater variation in respondent rating compared to lower values.

Table 3: Respondent rating of causes of socio-economic marginalization in Turkana County

	Cause of socio-economic marginalization	% of Respondents who rated					Average	Standard Deviation
		1	2	3	4	5		
1.	Political exclusion	1	2	4	21	72	4.61	0.7469
2.	Ethnic discrimination	1	3	9	20	67	4.49	0.8543
3.	Insufficient development budget allocation	4	3	10	22	61	4.33	1.0398
4.	Inadequate participation in governance	4	5	3	33	55	4.30	1.0247
5.	Adverse climatic conditions	2	2	24	45	27	3.93	0.8747
6.	Discrimination within the present county structure	1	6	17	57	19	3.87	0.8204
7.	Lack of clear legal guidelines for grass-root development	3	8	13	66	10	3.72	0.8612
8.	Uneven penetration of capitalism	3	3	39	44	11	3.57	0.8397
9.	Level of illiteracy	3	4	49	39	5	3.39	0.7732
10.	Assumption that political appointment of an individual benefits the whole community	5	10	55	23	7	3.17	0.8838
11.	Pokot – Turkana conflicts	1	27	40	29	3	3.06	0.8464
12.	Colonial segregation	9	7	62	18	4	3.01	0.8774
13.	Cross-border conflicts	10	38	37	13	2	2.59	0.9066
14.	Discrimination against women	15	42	35	5	3	2.39	0.9044
15.	Cultural practices like nomadism etc	10	71	11	6	2	2.19	0.7706

4.3. How Devolution has Addressed Socio-economic

Marginalization

Respondents strongly agreed that closeness of governance to grass-roots addresses marginalization (see Table 4). Respondent average rating for transfer of financial resources to counties, setting of county development priorities, local infrastructural development and delivery of essential services to local residents were 3.79, 3.51, 3.40 and 3.28, respectively. This indicates that the respondents were agreed that the aspects of devolution address socio-economic marginalization in the county.

The respondents disagreed that the following aspects address socio-economic marginalization in the county: county assembly representation, grass-root policy-making regarding development, nature of management of county financial resources, transfer of functions and tasks to grass-root levels, protection of minority rights, distribution of county governance slots across regions in the county, capacity of counties to prepare, finance and direct delivery of services and framework of issuance of tenders within the county rated between 2.27 and 2.93.

Standard deviation of responses ranged between 0.6538 in rating for protection of minority rights by the county and local governance and 1.3628. in rating for Framework of issuance of tenders within county.

Table 4: Respondent rating of contribution of aspects of devolution to addressing marginalization

	Aspect of devolution	% of Respondents who rated					Average	Standard Deviation
		1	2	3	4	5		
1.	Governance closer to the local people	4	5	3	33	55	4.30	1.0247
2.	Transfer of financial resources from the national to the county government	2	4	24	53	17	3.79	0.8402
3.	Setting of county development priorities	4	6	44	27	19	3.51	0.9949
4.	Local infrastructural development	1	19	22	55	3	3.40	0.8602
5.	Delivery of essential services to local residents	3	5	58	29	5	3.28	0.7626
6.	County assembly representation	8	7	71	12	2	2.93	0.7649
7.	Grass-root policy-making regarding development	7	18	58	16	1	2.86	0.8002
8.	Nature of management of county financial resources	2	34	51	12	1	2.76	0.7228
9.	Transfer of functions and tasks from county level further to grass-root levels	3	44	40	11	2	2.65	0.7921
10.	Aspect of devolution	10	38	37	13	2	2.59	0.9066
11.	Protection of minority rights by the county and local governance	1	71	21	6	1	2.35	0.6538
12.	Distribution of county governance slots across regions within the county	13	53	25	7	2	2.32	0.8588
13.	Capacity of sub-national units to prepare, finance and direct the delivery of services	15	55	21	6	3	2.27	0.8928
14.	Framework of issuance of tenders within county	40	26	11	13	10	2.27	1.3628

4.4. Constitutional Contribution towards Addressing Socio-economic Marginalization

Respondents agreed that Constitutional provisions concerning agricultural development (Article 185), promotion of socio-economic development and provision of proximate, accessible service (Article 174f), facilitation of decentralization of state organs (Article 174 h) and development of county transport (Article 185) contribute in reducing marginalization in Turkana County (respondent ratings were 3.75, 3.43, 3.24 and 3.12, respectively). They however disagreed that the rest of the Constitutional provisions in Table 5 address socio-economic marginalization. The average rating for the factors ranged between 1.57 and 2.96.

Table 5: Respondent rating of Constitutional contribution to efforts in addressing socio-economic marginalization

Article	Details	% of Respondents who rated					Average	Standard Deviation
		1	2	3	4	5		
Article 185	Agricultural development	1	6	21	61	11	3.75	0.7665
Article 174 (f)	Promoting socioeconomic development and providing proximate, easily accessible services throughout Kenya	7	12	17	59	5	3.43	1.0025
Article 174 (h)	Facilitating decentralisation of government departments, their services and functions, from Nairobi	11	14	23	44	8	3.24	1.1324
Article 185	Transport in county which includes (a) roads; (b) streetlighting; (c) parking and traffic	4	10	65	12	9	3.12	0.8518
Article 185	Animal control and welfare, including	2	39	30	19	10	2.96	1.0288
Article 174 (d)	Recognition of community rights in the management of their own affairs and to foster development	11	15	51	16	7	2.93	1.0125
Article 185	County planning and development	11	29	33	26	1	2.77	0.9885
Article 185	Preprimary education, village polytechnics, homecraft centres and child-care facilities	13	26	41	17	3	2.71	0.9929
Article 174 (c)	Devolving powers of self-governance to grassroots for better participation	13	37	43	5	2	2.46	0.8535
Article 174 (e)	Protecting and promoting the interests and	11	52	22	10	5	2.46	0.9841

	minority rights of the marginalized							
Article 201(b)(iii)	Distribution of public finance	6	65	26	0	3	2.29	0.7113
Article 174 (g)	Ensuring equitable sharing resources in Kenya	10	61	22	7	0	2.26	0.7297
Article 174 (b)	Fostering national unity through recognition of diversity	20	47	24	9	0	2.22	0.8669
Article 174 (i)	Separation of powers and enhancement of balances and checks	16	55	21	7	1	2.22	0.8316
Article 27 (4)	Participating in the integrated <i>socioeconomic</i> life of Kenya	9	75	13	3	0	2.10	0.5745
Articles 202, 203(1), 260	Criteria of sharing national revenue	9	75	13	3	0	2.10	0.5745
Article 174 (a)	Promoting democratic and accountable exercise of power	21	62	11	5	1	2.03	0.7804
Article 185	Trade development and regulation	43	39	14	4	0	1.79	0.8282
Article 204	Quality services and improvement of development in marginalized areas	57	32	8	3	0	1.57	0.7649

4.5. Contribution of Laws of Devolution in Addressing

Marginalization

Respondents were of the opinion that only two out of eleven (11) devolution Acts address socio-economic marginalization (refer to Table 6). The two acts rated highest were Constituency Development Fund Act No. 30 of 2013 and County Government Act No. 17 of 2012, with average rating of 3.58 and 3.07 respectively. The respondents have divided opinion relating to Division of Revenue Act No. 31 of 2013 and Public Finance Management Act No. 18 of 2012, with average rating of 2.89 and 2.50, respectively. The respondent ratings for the two Acts were more skewed towards agreement (scale of 3) than towards disagreement (scale of 2).

Variability of respondent ratings were low given that 0.9476 was the highest value of standard deviation as shown in Table 6.

Table 6: Respondent rating of contribution of various devolution laws to addressing socio-economic marginalization

	Law of Devolution	% of Respondents who rated					Average	Standard Deviation
		1	2	3	4	5		
1.	Constituency Development Fund Act No. 30 of 2013	1	5	40	43	11	3.58	0.7897
2.	County Government Act No. 17 of 2012	8	11	52	24	5	3.07	0.9301
3.	Division of Revenue Act No. 31 of 2013	6	31	33	28	2	2.89	0.9476
4.	Public Finance Management Act No. 18 of 2012	13	40	33	12	2	2.5	0.9327
5.	Transition County Appropriation Act No. 7 of 2013	12	36	45	5	2	2.49	0.8426
6.	Basic Education Act No 14 of 2013	13	45	34	4	4	2.41	0.9066
7.	Urban Areas and Cities Act No. 13 of 2011	11	43	43	2	1	2.39	0.7469
8.	Transition to Devolved Government Act No. 1 of 2012	20	38	31	10	1	2.34	0.9404
9.	Transition County Allocation of Revenue Act No. 6 of 2013	27	38	23	11	1	2.21	0.9929
10.	Intergovernmental Relations Act No. 2 of 2012	19	60	13	8	0	2.1	0.7937
11.	National Government Coordination Act No. 1 of 2013	27	49	14	9	1	2.08	0.9239

CHAPTER 5. – DISCUSSION OF FINDINGS

5.0. *Introduction*

This chapter discusses the findings in this research. Specifically, it relates research findings to literature, theory and practice. It also summarizes principal implications of the findings of this research, discusses limitations and makes recommendations for further research.

5.1. *Discussion of Research Findings*

Research findings are discussed in terms of causes of socio-economic marginalization, how devolution has contributed to efforts of addressing socio-economic marginalization and legal efforts to address socio-economic marginalization.

5.1.1. **Causes of Socio-economic Marginalization**

This research found out that there are four main causes of socio-economic marginalization in Turkana County. The cases are political exclusion, ethnic discrimination, insufficient development budget allocation and inadequate participation in governance as shown in Table 3. This is in agreement with previous research findings⁸⁷ that indicate exclusion and discrimination as major cause of marginalization. Insufficient budget allocation due to skewed budgeting was also found as an aspect of marginalization where Dr Jane Kiriangi, Policy Analyst at the Kenya Institute for Public Policy Research and Analysis, notes: “manipulation of

⁸⁷ Stiffung, F. E. (2012), *op. cit.* pg. 7 on state discriminatory and exclusionary policies

budget institutions and processes provide another channel in which budget outcomes can lead to unequal outcomes”⁸⁸.

The following factors were also identified in this research, and in previous work, as sources of socio-economic marginalization: adverse climatic conditions as an aspect of geographical disparity⁸⁹; discrimination within present county structure such as the award of tender⁹⁰; lack of clear guidelines for grass-root development⁹¹; uneven penetration of capitalism⁹²; level of illiteracy⁹³; assumption that political appointment of individual benefits the whole community⁹⁴; Pokot – Turkana conflicts⁹⁵ and colonial segregation⁹⁶.

Efforts to address socio-economic marginalization in Turkana should be informed by these findings. Legal solutions should provide mechanisms of addressing the factors with a focus on rights of the marginalized in respect of political participation, adequate budget allocation and eradication of discrimination along ethnic lines as the key or priority factors. This implies that county and national laws should be tailored towards equitable development and participation; and that past injustices should be addressed in respect of the theories governing this research.

⁸⁸ Kiriangi, J. (2006). Public Spending in Kenya: An inequality perspective in Society of International Development (2006). Readings on inequality in Kenya: Sectoral dynamics and perspectives. Regal Press, Nairobi, Kenya.

⁸⁹ Stiftung, F. E. (2012), *op. cit.* on geographical disparities

⁹⁰ Kiriangi, J. (2006), *op. cit.* on public spending

⁹¹ Stiftung, F. E. (2012), *op. cit.* on development

⁹² Ibid

⁹³ Wainaina, G. (2006). An Inequality Perspective of Education Structure and Performance in Kenya in Society of International Development (2006). Readings on inequality in Kenya: Sectoral dynamics and perspectives. Regal Press, Nairobi, Kenya.

⁹⁴ Stiftung, F. E. (2012), *op. cit.* on development

⁹⁵ Huho, J.M. and Ngaira, J. K. W. (2012). Pastoralism and the changing climate in the arid northern Kenya. In Javed M. T. (ed) Livestock: rearing, farming practices and diseases. Nova Science Publishers, Inc. USA.

⁹⁶ Stiftung, F. E. (2012), *op. cit.* on colonial effects

5.1.2. Contribution of Devolution to Addressing Socio-economic Marginalization

This research found out that transfer of financial resources to the counties, setting of county development priorities, local infrastructural development and delivery of essential services to local residents have contributed to efforts of addressing marginalization in Turkana County. It is evident from practice that such amount of financial resources has never been allocated to the region before devolution. Out of a total of KShs 190 billion shared to the 47 counties, Turkana County received KShs 5.997 billion in the 2013/14 Financial Year⁹⁷.

On setting of development priorities, the findings of this research concur with previous literature which describes devolution as providing “efficacious development priorities”⁹⁸. The research findings imply through devolution, people participate in development which includes improvement of infrastructure and delivery of essential services to areas that were previously marginalized⁹⁹.

Results show that the present practice of county assembly representation, grass-root policy-making regarding development, nature of management of county financial resources, protection of minority rights and distribution of county governance slots across regions as well as criteria of issuance of tenders within the county do not effectively address the problems of marginalization. This problem has, in the opinion of respondents, created new lines of marginalization and sometimes repeated past injustices committed by previous national governments.

⁹⁷ Mwenda, A. (2013). Revenue sharing: The case of Kenya. 5th ITG Global Conference on Tax and Intergovernmental Relations. 3rd -5th December, 2013, Marrakech, Morocco.

⁹⁸ Othieno, N. Devolution in Kenya’s new Constitution. SID Constitutional Working Paper No. 4, p. 8

⁹⁹ IEA (2010) *Devolution in Kenya: Prospects, challenges and the future*, IEA Research Paper Series No. 24, Institute of Economic Affairs, Nairobi.

Previous research supports the findings of this research in regard to representation¹⁰⁰, financial management are core of the new forms of marginalization under devolution framework is blamed on inadequate of mechanisms to direct development to grass-root levels¹⁰¹. It is aggravated by the problem of devolution of corruption where people take chance to have selfish benefits through skewed tendering, inflated budget and dishing out of governance slots to political “loyals” of the new system¹⁰².

These results imply that care should be taken in management of devolution to eradicate corruption and foster effective representation of the marginalized. Laws and guidelines should be put in place to determine the formula of ensuring equity at grass-root levels.

5.1.3. Contribution of the Constitution of Kenya, 2010 regarding devolution in addressing socio-economic marginalization

Results show that Constitutional provisions concerning agriculture in Article 185, promotion of development, provision of proximate, accessible service in Article 174(f), facilitation of decentralization of state organs in Article 174 (h) and county transport development in Article 185 contribute to reduction of marginalization in Turkana County. The findings are in tandem with previous research findings by Institute for Social Accountability (TISA).^{103, 104} Previous research¹⁰⁵ shows that

¹⁰⁰ Stifftung, F. E. (2012), *op. cit.* pp. pp. 7, 11 on appointment

¹⁰¹ Ibid, on appointments

¹⁰² Ibid, on corruption in budgeting

¹⁰³ Oongo, M. & Ndanyl, M. (2010). The Old order and the New: Devolution to counties is not a panacea for Kenya's ills in Institute of Social Accountability (2010) (2nd ed). Local Development Monitor. Issue 2, pp. 1 – 20.

¹⁰⁴ Ochanda, G. (2010). Transition from centralized to devolved order. How the county government will transform Kenyan politics in paradigm shift that makes Counties key players in growing the economy.

¹⁰⁵ Mwenda, Albert K. (2010). Economic and Administrative Implications of the Devolution Framework Established by the Constitution of Kenya. Institute of Economic Affairs. Nairobi: Kenya.

decentralized state organs provide services closer to the public, even in areas that were excluded before¹⁰⁶.

5.1.4. Contribution of Laws of Devolution in Addressing Marginalization

Only two acts: Constituency Development Fund Act No. 30 of 2013 and County Government Act No. 17 of 2012 were found to be seen by respondents as contributing to efforts to address socio-economic marginalization Turkana County. This was possibly due obvious achievements¹⁰⁷ made by Members of Parliament (MPs) in developing their constituencies. People have seen schools and hospitals built using CDF funds¹⁰⁸. Local security has been boosted through building of police camps in parts of Turkana County where cattle rustling and banditry has caused insecurity like in Loima, Kapedo and Lodwar using CDF and County government funding.

Concerning Division of Revenue Act No. 31 of 2013 and Public Finance Management Act No. 18 of 2012, the findings were that they do not contribute to efforts of addressing socio-economic marginalization. Respondents rated other Acts of devolution low possibly because they could not clearly correlate their contribution to addressing socio-economic marginalization. The aspect of devolved corruption could have influenced respondents' low rating of Division of Revenue Act No. 31 of 2013 and Public Finance Management Act No. 18 of 2012.

¹⁰⁶ Ghai, Yash (2007). Devolution: Restructuring the Kenyan State. Lecture for the African Research and Resource Forum. Nairobi, 23 November 2007. www.arrforum.org

¹⁰⁷ Ongoya, Z. E. (2005). Critical appraisal of Constituency Development Fund Act.

¹⁰⁸ Nura, M. (2010). Service delivery through stakeholder engagement and a citizen centric approach: the case of Gatanga constituency development fund (Gatanga CDF). CAPAM Library of Public Administration Case Studies. Commonwealth Association for Public Administration and Management, 2012

5.2. Recommendations

The following recommendations can be drawn from the findings of this research:

- a. Laws of devolution, especially County Government, Division of Revenue and Public Finance Management Acts should be amended to provide better mechanisms of ensuring socio-economic marginalization is eradicated;
- b. The Constitution of Kenya, 2010 should be amended to properly define marginalization to include all forms of marginalization in Kenya to provide a framework for other laws to effectively address it; and
- c. Devolution should be practiced in a way that includes the marginalized in governance and development. Appropriate policies and regulations should be put in place to ensure further devolution cognizant of the minority rights of the marginalized.

CHAPTER 6. – CONCLUSIONS

It is concluded from this research that there is need to develop effective legal, policy and practice framework at county, sub-county and ward levels in order to effectively address socio-economic marginalization. Constitutional definition of marginalization should be comprehensive and should not lump people through ethnic or regional lines which ignores intra-ethnic and intraregional marginalization. Problems of corruption should be effectively addressed at county level and that corruption should not be devolved but should be eradicated. Devolution laws should be amended in line with balanced/equitable development both in the country and within each county.

CHAPTER 7. APPENDICES

APPENDIX I – RESEARCH QUESTIONNAIRE

I. Bio-data

Age Gender (Tick ✓ one) Male ☐ Female ☐

Highest level of education (Tick ✓ one)

☐ Postgraduate ☐ Bachelors ☐ Diploma ☐ A-Level ☐ O-Level/Form 4 ☐ Primary

Occupation Religion

Sub-county of residenceWard

I. Research Questions

1. To what extent do you agree that the following factors caused of socio-economic marginalization occur in your area of residence? (Give your answer using the scale: 1=Strongly disagree; 2=Disagree; 3=Agree; 4=Strongly agree; 5=Very strongly agree)

	Cause of socio-economic marginalization	Your rating
1.	Colonial segregation	
2.	Cultural practices like nomadism etc.	
3.	Lack of clear legal guidelines for grass-root development	
4.	Discrimination against women	
5.	Ethnic discrimination	
6.	Inadequate participation in governance	
7.	Cross-border conflicts	
8.	Pokot – Turkana conflicts	
9.	Level of illiteracy	
10.	Political exclusion	
11.	Insufficient development budget allocation	
12.	Adverse climatic conditions	
13.	Uneven penetration of capitalism	

14.	Assumption that political appointment of an individual benefits the whole community	
15.	Discrimination within the present county structure	

2. Please add other factors, if any, which in your opinion contributed to socio-economic marginalization in your area of residence.

.....

3. To what extent do you agree that the following aspects of devolution have addressed socio-economic marginalization in your area of residence? (Give your answer using the scale: 1=Strongly disagree; 2=Disagree; 3=Agree; 4=Strongly agree; 5=Very strongly agree)

	Aspect of devolution	Your rating
1.	Capacity of sub-national units to prepare, finance and direct the delivery of services	
2.	County assembly representation	
3.	Delivery of essential services to local residents	
4.	Distribution of county governance slots across regions within the county	
5.	Framework of issuance of tenders within county	
6.	Governance framework closer to the local people	
7.	Grass-root policy-making regarding development	
8.	Local infrastructural development	
9.	Nature of management of county financial resources	
10.	Protection of minority rights by the county and local governance	
11.	Setting of county development priorities	
12.	Transfer of financial resources to the counties	
13.	Transfer of functions and tasks from county level further to grass-root levels	

4. Please add other aspects, if any, of county governance that in your opinion have addressed socio-economic marginalization in your area of residence.

.....

.....

.....

.....

5. Do you think devolution has resulted in “devolution of corruption” in your county of residence? (Tick ✓ appropriately)

Yes ☐ No ☐

Give reasons for your response above

.....

.....

.....

6. In your opinion, to what extent do you agree that the following the Constitution of Kenya, 2010 in regard of marginalization and devolution have influenced efforts to address socio-economic marginalization in Turkana County? (Give your answer using the scale: 1=Strongly disagree; 2=Disagree; 3=Agree; 4=Strongly agree; 5=Very strongly agree)

	Article	Details	Your Rating
1.	Article 174 (a)	Promoting accountable and democratic exercising of power	
2.	Article 174 (b)	Fostering unity in the nation through recognition of diversity	
3.	Article 174 (c)	Devolving powers of self-governance to grassroots for better participation	
4.	Article 174 (d)	Recognition of community rights in the management of their own affairs and to foster development	
5.	Article 174 (e)	Promotion and protection of the interests and rights of minority and marginalized	
6.	Article 174 (f)	Promoting socioeconomic development and providing accessible proximate services in Kenya	
7.	Article 174 (g)	Ensuring equitability in sharing resources in Kenya	
8.	Article 174 (h)	Facilitating decentralisation of government departments, their services and functions, from	

		Nairobi	
9.	Article 174 (i)	Enhancing separation of powers, checks and balances	
10.	Article 185	Agricultural development	
11.	Article 185	Transport in county which includes (a) roads; (b) streetlighting; (c) parking and traffic	
12.	Article 185	Animal control and welfare, including	
13.	Article 185	County planning and development	
14.	Article 185	Preprimary education, village polytechnics, homecraft centres and child-care facilities	
15.	Article 185	Trade development and regulation	
16.	Article 201(b)(iii)	Distribution of public finance	
17.	Article 204	Quality services and improvement of development in marginalized areas	
18.	Article 27 (4)	Participating in the integrated <i>socioeconomic</i> life of Kenya	
19.	Articles 202, 203(1), 260	Criteria of sharing national revenue	

7. Please add other Articles of the Constitution of Kenya, 2010 that in your opinion address socio-economic marginalization with brief explanation of their contribution

	Article	Brief explanation of contribution
1.		
2.		
3.		

1. To what extent do you agree that the following laws of devolution address socio-economic marginalization in Turkana County? (Give your answer using the scale: 1=Strongly disagree; 2=Disagree; 3=Agree; 4=Strongly agree; 5=Very strongly agree)

	Law of Devolution	Your Rating
1.	Basic Education Act No 14 of 2013	

2.	Constituency Development Fund Act No. 30 of 2013	
3.	County Government Act No. 17 of 2012	
4.	Division of Revenue Act No. 31 of 2013	
5.	Intergovernmental Relations Act No. 2 of 2012	
6.	National Government Coordination Act No. 1 of 2013	
7.	Public Finance Management Act No. 18 of 2012	
8.	Transition County Allocation of Revenue Act No. 6 of 2013	
9.	Transition to Devolved Government Act No. 1 of 2012	
10.	Transition County Appropriation Act No. 7 of 2013	
11.	Urban Areas and Cities Act No. 13 of 2011	

2. List various challenges experienced by Turkana County Government in addressing socio-economic marginalization with the country. Kindly suggest how these challenges can be legally addressed.

	Challenge	Legal ways of addressing
1.		
2.		
3.		
4.		

THANK YOU

CHAPTER 8.GLOSSARY

Decentralization: is the method of redistribution or dispersion of capacities, powers, individuals or things away from a focal area or power.

Devolution: the exchange or designation of power and resources to a lower level, particularly by national government to nearby or territorial organization.

Discrimination: is activity that denies social support or human rights to classifications of individuals taking into account partiality.

Distributive justice: concerns the way of a socially just assignment of resources in a general public.

Ethnicity: actuality or state of fitting in with a social unit that has a typical national or social convention.

Marginalization: being regarded or treated as insignificant or feeble in general public or community; prohibition from treatment enjoyed by others.

CHAPTER 9. BIBLIOGRAPHY

Text Books

Frankel P., Ellen, F.D. Miller, Jr. and Jeffrey P. (eds.), (2004) *Natural Rights Liberalism from Locke to Nozick*, Cambridge University Press.

Hammowy, R., ed. (2008). "Nozick, Robert (1938–2002)". *The Encyclopaedia of Libertarianism*. Thousand Oaks, CA: SAGE Publications, Cato Institute.
p. 360–362.

Mack, E. (2014) Robert Nozick's Political Philosophy, Stanford Encyclopaedia of Philosophy

McConvile, M. and Wing, H. C. (Eds) (2007) *Research Methods for Law*, Edinburgh University Press: Edinburgh

Society of International Development (2006). *Readings on inequality in Kenya: Sectoral dynamics and perspectives*. Regal Press, Nairobi, Kenya.

Stiftung, F. E. (2012). *Regional disparities and marginalization in Kenya*. Elite Press, Nairobi, Kenya.

Articles, Unpublished Papers and Reports

Aukot, Ekuru (2000). 'It is Better To Be a Refugee than a Turkana In Kakuma: Revisiting the Relationships Between Hosts and Refugees in Kenya, (nd).

Bitarabeyo, J. (2008). "The experience e of Uganda- Local governments role as a partner in the decentralization process to strengthen local development". *Conference on Accessing Development Funds for Local Governments in Africa*. Johannesburg.

Boschmann, Nina (2009) Fiscal Decentralization and Options for Donor Harmonisation (Delog, 2009)

Constitution of Kenya, 2010 Articles 27, 174, 201, 203, 204 and 260

De Visser, Jaap (2005). Development in Local Government: A Case Study of South Africa

Duchscher, Boychuk E. Judy and CowIn Leane. (2009) *The experience of marginalization in new nursing graduates. November/December nursing outlook.*

European Commission, Programming Guide for Strategy Papers

Ghai, Yash (2007). Devolution: Restructuring the Kenyan State. Lecture for the African Research and Resource Forum. Nairobi, 23 November 2007. www.arrforum.org

Golafshani, N., "Understanding Reliability and Validity in Qualitative Research," The Qualitative Report, Vol.8, No.4, 2003, p. 579 – 607

Golola, L. M. (2003). Decentralisation, Local Bureaucracies and Service Delivery in Uganda, pp. 259

Government of Kenya, County Government Act, 2012

Government of Kenya, *Transition to Devolved Government Act*, 2012

IEA (2010) *Devolution in Kenya: Prospects, challenges and the future*, IEA Research Paper Series No. 24, Institute of Economic Affairs, Nairobi.

International Covenant on Civil and Political Rights, Article 26

Kanyinga, K. (2006). Governance institutions and inequality in Kenya. In SID (ed) (2006) Readings on inequality in Kenya: Sectoral Dynamics and Perspectives, Nairobi, Kenya.

Keating, Michael (2006). Federation and the Balance of Power in European States. SIGMA/OECD, pp. 37

Kenya Bureau of Statistics (2009). Kenyan Population and Housing Census.

Kenya Fiscal Decentralization Knowledge Programme, Devolution without Disruption: Pathways to a Successful New Kenya (World Bank). Xii

Kritika S., Sohini P. and Pooja R. G., *Decentralization in Uganda*, 2010

Mugabi E 2004 Uganda's Decentralisation Policy, Legal Framework, Local Government Structure and Service Delivery

Mwenda, A. (2013). Revenue sharing: The case of Kenya. 5th ITG Global Conference on Tax and Intergovernmental Relations. 3rd -5th December, 2013, Marrakech, Morocco.

Mwenda, Albert K. (2010). Economic and Administrative Implications of the Devolution Framework Established by the Constitution of Kenya. Institute of Economic Affairs. Nairobi: Kenya.

Mwenda, Albert K. (ed), *Devolution in Kenya: Prospects, Challenges and the Future* (Institute of Economic Affairs 2010) 1.

Nura, M. (2010). Service delivery through stakeholder engagement and a citizen centric approach: the case of Gatanga constituency development fund (Gatanga CDF). CAPAM Library of Public Administration Case Studies. Commonwealth Association for Public Administration and Management, 2012

Ochanda, G. (2010). Transition from centralized to devolved order. How the county government will transform Kenyan politics in paradigm shift that makes Counties key players in growing the economy.

- Ojambo, H. (2012) Decentralization in Africa: A critical review of Uganda's experience.
- Okidi, J. A. and Guloba, M. (2006) Decentralization and Development: Emerging Issues from Uganda's Experience
- Ongoya, Z. E. (2005). Critical appraisal of Constituency Development Fund Act.
- Oongo, M. & Ndanyl, M. (2010). The Old order and the New: Devolution to counties is not a panacea for Kenya's ills in Institute of Social Accountability (2010) (2nd ed). Local Development Monitor. Issue 2, pp. 1 – 20.
- Othieno, N. Devolution in Kenya's new Constitution. SID Constitutional Working Paper No. 4, p. 8
- Puleng Lenka Bula (2005). Justice and Reconciliation in Post- Apartheid South Africa: A South African Woman's Perspective, *International Review of Mission* No. 94 pp. 372
- Renock, C., Bernhard M. and Sobek, D. (2007) Regressive Socio-economic Distribution and Democratic Survival, *International Studies Quarterly* No. 51, pp. 677–699
- Schneider, Aaron (2003). Decentralization: Conceptualization and Measurement Sessional Paper No. 1 of 1986 on Economic Management for Renewed Economic Growth.
- Social Research Association (2003). Ethical guidelines. [Online] Available at: www.the-sra.org.uk
- Steytler, Nico (2013). Implementing devolution: Lessons from South Africa, *The Star*, 29 June 2013.

The Standard (2013). "Why Turkana people must benefit first from oil, water (1 Oct 2013) by Otieno, Dennis Omondi

The Standard Online (2013) Turkana Discoveries are Evidence of Marginalization, (24 Sept 2013): Billow Kerrow,

Uganda Government *Local Government Act* of 1997 (LGA).

United Nations Humanitarian Coordination Unit (UNHCU), *Humanitarian Update Uganda*, vol. 2, issue 9, 27 November 2000.

Wairama, B. (2001). Uganda the Marginalization of Minorities. Minority Rights Group International, UK.

World Bank (2001). PREM Notes, Decentralization and governance: does decentralization improve public service delivery? (World Bank, June 2001)

Websites

<http://thelawdictionary.org/marginalization>

<http://www.chacha.com>

<http://www.naccsc.go.ke/Opinion-Articles/turkana-oil-discovery.html>

https://www.standardmedia.co.ke/?articleID=2000094186&story_title=turkana-discoveries-are-evidence-of-marginalisation

www.the-sra.org.uk