

# **EFFECTS OF THE CONSTITUTION OF KENYA 2010 ON THE NATIONAL GOVERNMENT ADMINISTRATION GOVERNANCE IN KITUI COUNTY, KENYA**

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## **Abstract**

*The introduction of County Government, National Police Service Commission in security management and a clause restructuring National Government Administration in the constitution of Kenya, 2010 has made it difficult for National Government Administration to perform its functions effectively. The general objective of the study was to investigate the constitution of Kenya, 2010 on National Government Administration governance in Kitui County, Kenya. The specific objectives were to determine the establishment of County Government, creation of Independent Commissions and a clause to restructure the Provincial Administration on National Government Administration governance. Study targeted National Government Administration officers in Kitui County and residents of Mithini Location in Kitui West Sub county in Kitui County. Structured questionnaires were used to collect primary data while desk research was used to collect secondary data. Quantitative data was analyzed descriptively using SPSS 20 while qualitative data was by content analysis of documents. The study found out that establishment of County Government, creation of National Police Service Commission and the varied interpretation of restructuring of Provincial Administration has greatly hampered National Government Administration ability to coordinate National Government functions and ensure effective service delivery. The study will assist National Government make policy that will promote good governance in National Government Administration.*

**Keywords:** Governance, Independent Commissions, County Government, Devolution, Kenya

## INTRODUCTION

When Kenya gained her independence on 12<sup>th</sup> December, 1963, the new government required an institution that could hold the country together by promoting nationhood and statehood and to provide a mechanism for close administration with direct chain of command from the top to bottom. Provincial administration which had served the same role during the colonial period was therefore, retained and strengthened to provide the necessary linkages between the central Government and the grassroots (Principal Secretary, Interior, 2015). The PA has undergone various reforms that has seen it become the NGA

After several years of clamor for constitutional change, a new constitution was promulgated on 27<sup>th</sup> August 2010 (Principal Secretary, Interior, 2015). The constitution recommended drastic reorganization of the system of governance in the country and introduced two levels of government at the National and County level. The constitution clearly states that the two levels of government are distinct but interdependent. It also provides that a nation state organ should ensure reasonable access to its services to all parts of the Country (Republic of Kenya, 2010).

Previously under the repealed constitution, coordination of central government policies and development programmes at the local level was done by the Provincial Administration (PA) (Bagaka, 2011). As a department within the Office of the President, the PA not only supervised other central government ministries at the province and district levels but also coordinated their programmes and policies. As personal representatives of the president at the local levels, the provincial administrators exercised upward accountability as they “served at the pleasure of the President” (Akech, 2010 as quoted in Bagaka, 2011).

The PA served the central government until when the current constitution of Kenya was promulgated in August, 2010. The constitution required that the PA be restructured within five years to accord with and respect the devolved system of government (Republic of Kenya, 2010). The National Government Co-ordination Act, 2013 was therefore enacted in 2013 to create an administrative and institutional framework for co-ordination of national government functions at the national and county levels of governance (Republic of Kenya, 2013). Despite reforms that have seen PA renamed NGA there is difficulty in coordination of national government functions and delivery of services to the public.

Before the promulgation of the current constitution, appointment, command and control of the AP was under the PA (Kenya Law Reports, 2010). The force worked directly under the PA assisting other public officers in execution of their duties. The current constitution now places the AP under NPSC and the NPS. This effectively removes the appointment and administration of the AP from the NGA (Republic of Kenya, 2010).

Alcoholic Drinks Control Act (2010), established District Alcoholic Drinks Regulation Committee, charged with the responsibility of issuing liquor licenses (National Council of Law Reporting, 2012). The District Committee was chaired by the DC, currently known as the DCC, making it easier to enforce the act. The current constitution however places the licensing of alcoholic drinks squarely under county governments making the enforcement Alcoholic Drinks Control (Amendment) Act, 2014 (The Senate, Republic of Kenya, 2014) a big challenge for the NGA. County governments are more interested in raising revenue through liquor licensing rather than enforcement the provisions of the act. This is a great challenge to the national governments campaign against drug and substance abuse.

The Land Control Act, Chapter 302, of the Laws of Kenya, part III, section 5 established Land Control Boards chaired by the District Commissioner, currently referred to as the Deputy County Commissioner (Republic of Kenya, 2012). This made it easier PA to handle land disputes at the district level currently known as the sub county. The National Land Commission Act (Republic of Kenya, 2012) establishes the NLC and CLMB. The act does not however define how NGA can be involved in land management thus making resolution of land disputes by the NGAO a challenge.

### **Statement of the Problem**

The promulgation of the constitution of Kenya 2010 led to creation of two levels of Government i.e. National and County Governments that have greatly redefined the original bureaucratic systems established by the Provincial Administration where the systems of authority were distinct, interlinked and highly hierarchal in decision making.

It has been observed that due to the establishment of County Governments, clients do not understand the changes and possible attempts to address the problem. At the County Government, the leadership has simply duplicated the system and structures of National Government Administration. This has led to duplication, confusion and lack of completeness in decision making. This has greatly affected service delivery both in National and County Government.

The problem seems to be created when clients gamble with the choice to which level to report first causing a lot of time loss and poor diagnosis of problems to wrong prescription of solutions. There is time loss, resources and leakage of useful data in the transfer of problems from one level to another.

Due to the confusion created by lack of clarity of roles between the National and County Government administrators. This has led to a lot of mistrust and tension that has created a lot of disputes and wastage of public resources. The overlapping roles, tension and mistrust among

various security actors especially the County Government, National Government administration officers and the police has also in some instances created security gaps.

The study therefore intends to investigate the effects of the constitution of Kenya, 2010 on National Government administration governance in Kitui County, Kenya.

### **General Research Objective**

The general objective of the study was to investigate the effect of the Constitution of Kenya 2010 on NGA governance.

### **Specific Research Objectives**

- i. To determine the effect of the constitutionally established CGs on the NGA governance.
- ii. To establish the effect of the constitutionally created independent NPSC and NLC on NGA governance.
- iii. To examine the effect of various interpretation of the constitutional provision on restructuring of the PA on the NGA governance.

### **Research Questions**

- i. What is the effect of the constitutionally established CGs on the NGA governance?
- ii. What is the effect of the constitutionally created independent NPSC and NLC on NGA governance?
- iii. What is the effect of various interpretation of the constitutional provision on restructuring of the PA on the NGA governance?

### **Significance of the Study**

Significance of the study highlights the reasons for conducting a study as well as the importance of carrying it out (Mugenda & Mugenda, 2003). The significance of this study was looked at in terms of its importance to NG and the general public.

### ***To National Government***

The study will assist the NG in the on-going restructuring of the PA – currently the NGA- as provided for in section 17 of the sixth schedule of the Constitution of Kenya. The study examined how constitutionally established CGs, constitutionally created NPSC and NLC and various interpretations of the constitutional provision on restructuring of the PA have affected NGA governance. The study has also given recommendation on what should be done better NGA governance in the current constitutional dispensation.

### ***To General Public***

The study will assist in sensitizing the general public on the place of the NGA in current constitutional dispensation. The study also provides recommendation how to sensitize the public on role of the NGA in a devolved system of government.

## **THEORETICAL REVIEW**

This will entail review of theories related to the effect of the Constitution of Kenya, 2010 on the NGA governance. This comprises classical and modern approaches to public administration.

### **Classical Approaches to public Administration**

This classical model was thought to be the best way for organizing the public sector work and undoubtedly worked well for a long time. The traditional model of public administration has been regarded as the most successful theory of public sector management, although it does not have a single, coherent intellectual foundation. Its theoretical basis is derived from W. Wilson and Fr. Taylor in the United States, the Northcote -Trevelyan Report in the United Kingdom and M. Weber in Germany. In general, it is characterized as "an administration under the formal control of the political leadership, based on a strictly hierarchical model of bureaucracy, staffed by permanent, neutral and anonymous officials, motivated only by the public interest, serving and governing party equally, and not contributing to policy but merely administering those policies decided by the politicians"(Hughes, 2003).

This model and its definition has been widely accepted and used in the Western countries and mainly in Continental Europe during the 19th century and the first half of the 20th century. The key feature of this model is that "in the modern governmental system professional bureaucrats execute the tasks of public administration while separated from the political mechanisms as well were based on personal relationships. The most important characteristic shared by the earlier systems of administration is that they were "personal", based on the loyalty to a particular individual such as a king, a leader, a minister or a party, instead of being "impersonal", based on legality and the loyalty to the organization and the state(Katsamunsk, 2012).

Katsamunsk (2012) further argues that the end of patronage or nepotism in Europe and the spoil system in the United States came at the end of 19th century, which set the beginning of forming a governmental administration based on merit and political neutrality instead of political dependence and clientelism. The European and the American public administration have passed through different historical developments, but the Weberian approach became common for them and both stressed the necessity of impersonal, formally regulated and

hierarchical mechanisms (Hughes, 2003). It is well known that the principal focus of Weber's analysis was not administration, but his main distinctive contribution to the field of public administration is related to the analysis of the social and historical context of administration, and more particularly, bureaucracy. Weber did not invent the term "bureaucracy", but identified bureaucracy as the dominant form in a legal-rational society and specified the features of the most rational form of bureaucracy, which was called the "ideal type" bureaucracy (Katsamunska, 2012).

Max Weber not only gave the characteristics and criteria for modern bureaucracy, but also outlined the terms of employment in the bureaucratic organization (Fry, 1989). He argued that in modern bureaucracy, officials are personally free and are appointed on the basis of a contract- appointed, not elected. Weber argues that election modifies the strictness of hierarchical subordination. Besides, officials are appointed on the basis of professional qualifications and have a fixed money salary and pension rights. The official's post is his sole or major occupation. A career structure exists with promotion based on merit (though pressure to recognize seniority may also exists). The official is subject to a unified control and disciplinary system in which the means of compulsion and its exercise are clearly defined.

An important dimension to this classical model of the public administration was added by Woodrow Wilson, who introduced the politics-administration dichotomy (Katsamunska, 2012). In Wilson's words, public administration is "the detailed and systematic execution of public law" and he believes there should be a strict separation of politics from administration because administration lies outside the proper sphere of politics and administrative questions are not political questions. Woodrow Wilson firmly believed that the dichotomy between politics and administration could not only eliminate the arbitrariness and corruption in the administration, but also may have wider effects. From a theoretical point of view, the realization of the dichotomy seems to be very simple, but in reality there has not been complete and clear separation between politics and administration (Katsamunska, 2012).

The most important theory, which was first transferred from the private organizations, was Scientific Management. In 1911 Frederick W. Taylor published his fundamental work "Principles and Methods of Scientific Management" (Katsamunska, 2012). Frederick Taylor is credited with formulating scientific management and his belief was that there was "one best way of working". According to Hughes (2003), "there are two main points to Taylor's theory: standardizing work, which meant finding the 'one best way of working' and controlling so extensively and intensively as to provide for the maintenance of standards"(Hughes, 2003). In short, as Fry (1989) says "these three components – time and motion studies, wage incentive systems, and functional organization – constitute the core of Taylor's scientific management".

Taylor's "idea of one best way", the standardization of work, the systematic control and the hierarchical organization fit public administration and explains why scientific management was the most influential theory in the public sector until the 1940 s.' (Fry, 1989 as quoted in Katsamunska, 2012).

The New Public Administration movement of the late 1960s and early 1970s criticized the "old" public administration for its lack of an explicit ideological framework (Katsamunska, 2012). The basic principles of the New Public Administration were participation, decentralization and representative bureaucracy. Both types of participation as a political process and participation as an organizational process were supported, because political participation was to be a means of dispersing power and increasing citizens' involvement in government, while organizational participation was believed to be a means for promoting change and dispersing power within the organization. Decentralization was intended to increase citizens' involvement in governmental and organizational processes. Representative bureaucracy was meant to produce client-centered administration and the representation of clientele interests by administrators.

A new managerial approach in the public sector emerged in the 1980s and early 1990s and it was named New Public Management. This new approach lays the emphasis on the economy, efficiency and effectiveness of government organizations, instruments and programs, and higher quality service delivery. This new model of public sector management emerged in the most advanced countries, as well as in many developing ones, and is regarded by many authors "not a reform of the traditional public administration, but a transformation of the public sector and its relationship with government and society"(Hoos, Jenei, & Vass, 2003).

### **Modern Approaches to Public Administration**

The traditional administrative system persisted for a long time and was undoubtedly very successful, because in Guy Peters 'words "it fought several wars, produced and administered a massive expansion of social programs, instituted large-scale economic management for the public sector, and did a host of other remarkable things"(Peter, 2001). During the 1980's and 1990's, there was a large-scale rethinking of governance, which was followed by attempts to move administration far away from its roots and only few governments have remained untouched by the wave of reforms. The Anglo-American countries are the most seriously affected ones by these changes.

Before the term "new public management" was coined, the new model of public sector management had several names. Different names such as managerialism, new public management, market-based public administration, post-bureaucratic paradigm, entrepreneurial government were used to describe the same phenomenon (Katsamunska, 2012). The new



approach to public management is oriented to results, focusing on clients, outputs and outcomes. It focuses on management by objectives and performance management, the use of market and market-type mechanisms in the place of centralized command and control style of regulation, competition and choice, and devolution with a better matching of authority, responsibility and accountability.

Not only industrialized democracies, but also international organizations such as the Organization for Economic Cooperation and Development (OECD), the World Bank and others showed an interest in the ways of improving public management. What is more, the OECD Report of 1998 argues that improving efficiency and effectiveness of the public sector itself "involves a major cultural shift as the old management paradigm, which was largely process and rules driven, is replaced by a new paradigm which attempts to combine modern management practices with the logic of economics, while still retaining the core public service values"(OECD, 1998). In 2005, the OECD published a review of modernization initiatives launched in most of the organization's member states, which was entitled *Modernizing Government* and highlighted the widely shared objective to make public sector more responsive, transparent and efficient, although there was a variety of different policy paths to achieve it (OECD, 2005).

All states in this group see a large role for the private sector forms and techniques in the process of the restructuring the public sector. A specific feature of this group is that they are countries with an individualistic culture and pro-business attitude, which is reflected in the prevailing ideology of the public interest view of Weberian State. In this modernizing group there are significant differences in terms of the speed and precise mixture of change, but they all continue, albeit in a modern form, the established traditions of a strong statehood and the high status of the top civil servants. Compared to the group of "core new public management" states, the European 'modernizers' still "continue to place a greater emphasis on the state as the irreplaceable integrative force in society, with a legal personality and operative value system that cannot be reduced to the private sector discourse of efficiency, competitiveness and consumer satisfaction"(Pollitt, Thiel, & Homburg, 2007).

There is more than one route of modern reforms in central government. The label Neo-Weberian State, associated with the European group of 'modernizers', suggests that this new specific model implies a modernization of the Weberian tradition, not its rejection in terms of the market model. In effect this means that new elements are added to the Weberian elements and are precisely described by G. Bouckert and Chr. Pollitt in their book "*Public Management Reform: Comparative Analysis*"(Boukert & Pollitt, 2004). First, there is a shift from an internal orientation towards bureaucratic rules to an external orientation towards meeting citizens' needs and wishes. The primary route to achieving this effect is not the employment of market



mechanisms (although they may occasionally come in handy) but the creation of a professional culture of quality and service.

Secondly, supplementation (not replacement) of the role of representative democracy by a range of devices for consultations with, and the direct representation of citizens' views and lastly in the management of resources with government, a modernization of the relevant laws to encourage a greater orientation on the achievement of results rather than merely the correct following of procedure. A professionalization of the public service, so that the 'bureaucrat' becomes not simply an expert in the law relevant to his or her sphere of activity, but also a professional manager, oriented to meeting the needs of his or her citizens/users (Boukert & Pollitt, 2004).

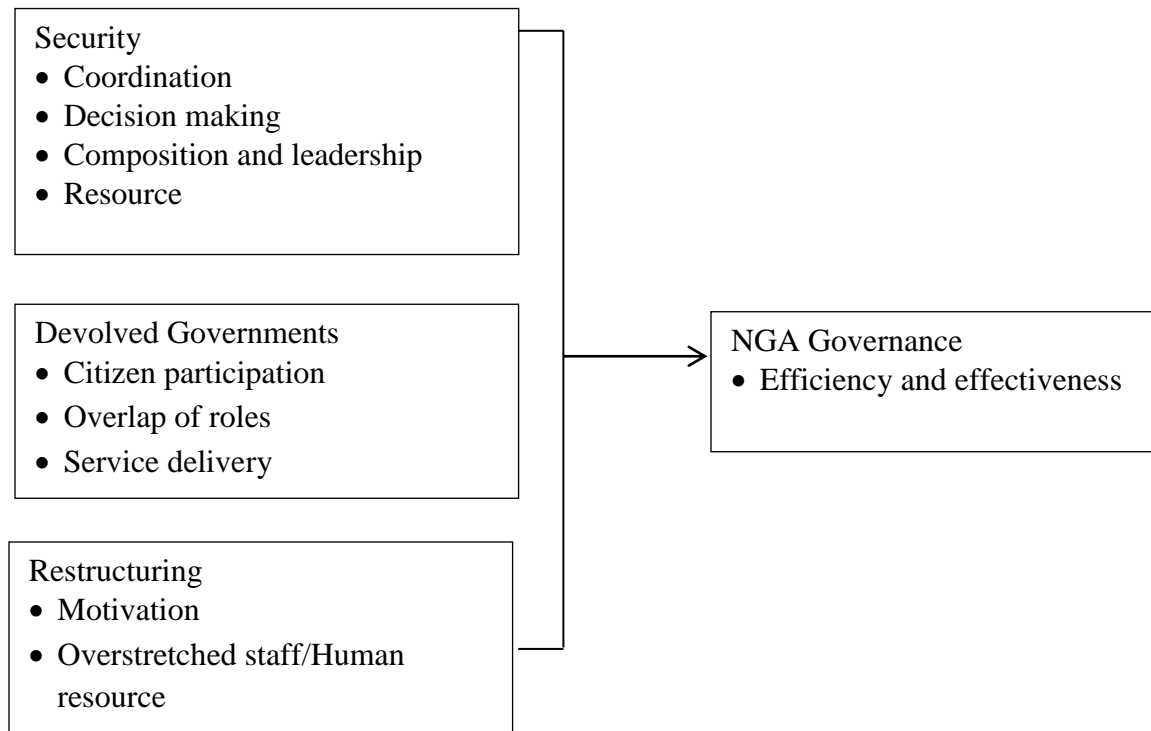
The classical approach to public administration, in terms of both theory and practice, was an outstanding success and widely emulated by governments all over the world. The traditional public administration developed at a particular point of the industrial development, but the later large-scale reconsideration of governance was followed by attempts to move administration far away from its roots. The traditional model of public administration is an ideal type of model. In an ideal bureaucracy, public and private interests are completely separated and a clear distinction between politics and administration is made.

The central assumption of the classical approach to public administration is that hierarchy involves direct control, with the civil servant being accountable only to their superior. The growing criticism of the traditional organization of the bureaucracy prompted a new wave of reforms sweeping across many Western democracies during the 1980s and 1990s. From a model based on Weberian principles of hierarchy, neutrality and career civil servants, the reforms in the public sector introduced different models of governing which based on market principles and the transfer of the private sector principles of management to the public sector.

### **Conceptual Framework**

This refers to when the researcher conceptualizes the relationship between variables in the study and shows the relationship graphically or diagrammatically (Mugenda & Mugenda, 2003). The purpose of the conceptual model is to help the reader to quickly see the proposed relationship. In this study the researcher conceptualized the relationship between three independent variables – constitutionally established CGs, constitutionally created independent NPSC and NLC and interpretation of the constitutional provision on restructuring of PA- and the independent variable – NGA governance. The conceptual model is as shown in figure 1 below.

Figure 1: Conceptual Framework



### ***Constitutionally established CGs***

The constitution of Kenya provides for two levels of government –national and county- with clear assignment of functions to each. There are clear provisions for both levels of government to devolve their services to the grassroots (Public Service Commission of Kenya, 2014). A section of Kenyans who favor devolution however distorted the definition of devolution to mean transfer of all the functions of the National Government Administration popularly elected CGs (Guleid, 2014). This has created confusion among the members of the public making them unable to distinguish between the role of NG and CGs. This has affected the performance of NGA.

There are certain functions that are shared between the NG and CG. These functions include alcoholic drinks control and licensing and land management. The CGs are in charge of licensing of bars and restaurants and NG is in charge of enforcing alcoholic drinks laws. The Land laws places the management matters in the hands of both the NG and CGs. To ensure effective execution of these functions the NG and CG must work closely with each other. These functions cannot be effectively executed if any of the two levels of government are not cooperative. From the study, it was clear that CGs are not cooperative making it difficult for the NGA to deliver in these shared functions.

### ***Constitutionally created independent NPSC and NLC***

The Administration Police Act, Chapter 85 of the Laws of Kenya, placed the recruitment, command and control of AP directly under the PA – currently known as the NGA (Republic of Kenya, 2012). With the promulgation of the Constitution of Kenya 2010, the recruitment, command and control of AP has been placed under the NPSC (Republic of Kenya, 2012). This in effect means that NGA no longer commands and controls the AP.

Yet as the name of this outfit suggests, the AP was fashioned out to assist the administrative officers and other public officers in carrying out their duties. Removing of the AP from the command and control of NGAO was a fatal error. From the findings of this research it is clear that removal of the AP from command and control of NGA has made NGAOs unable to secure persons and property and maintain law and order.

The Land Control Act, Chapter 302, of the Laws of Kenya, part III, section 5 established Land Control Boards chaired by the District Commissioner, currently referred to as the Deputy County Commissioner. This made it possible for the PA to effectively handle land matters at the District level currently known as the Sub County. The National Land Commission which came into place in line with section 67 of the Constitution of Kenya, establishes County Land Management Boards and does not provide for the membership of the CC nor the DCC. The DCC not being a member of the County Land Management Boards cannot therefore effectively handle land disputes.

### ***Interpretation of constitutional provision on restructuring of the PA***

According to the Constitution of Kenya 2010, PA was to be restructured within five years to respect the rules and intendment or spirit of “devolution.” Section 17 of the Sixth Schedule on the Transitional and Consequential Provisions of the 2010 Constitution provides a framework to be adopted in dealing with the PA. Some Kenyans have interpreted this to mean scrapping of the PA. This is because there was the feeling that the PA has been an impediment to Kenya achieving an effective decentralization design. A second category of Kenyans wanted the provincial administration retained as it was, and an agent of the NG at the grassroots level (Sihanya, 2012).

The meaning and scope of restructuring of PA envisaged by Section 17 of the Sixth Schedule to the Constitution has been a subject of a lot of public debate because of the different interpretations given to it by various interested parties (Sihanya, 2011). To some people restructuring is interpreted to mean ‘scrapping’, ‘abolition’ or ‘disbanding’ Provincial Administration. Others hold the view that restructuring entails re-organizing’ Provincial Administration to place it under the County Government to coordinate its functions (Principal

Secretary, Interior, 2015). Those who hold this view, argue that Provincial Administrators should report directly to the Governor to avoid a situation of parallel systems of administration at the county level.

Finally, there are those who hold the view that restructuring entails 'reorganization' of Provincial Administration in terms of its functions, administrative procedures, institutional, policy and legislative frameworks. This group supports the retention of PA but calls for the reforms of the institution. The fact that the constitution does not define the parameters of restructuring PA, explain why there are many interpretations (Principal Secretary, Interior, 2015).

These debates have blurred the public understanding of restructuring as envisaged by the constitution. A substantial number of NGAOs are equally confused as to what is the true interpretation of restructuring as provided for in the constitution. Most NGAOs are demoralized as a result of this debate thus affected their ability to effectively perform NG functions.

### **NGA Governance**

The National Government Coordination Act, 2013 establishes an administrative and institutional framework for coordination of national government functions at the national and county levels of governance to give effect to Articles 131(1) (b) and 132(b) of the constitution and for connected purposes. The Act provides that the national government should ensure reasonable access to its services in all parts of Kenya, so far as it is appropriate to do so. For effective coordination of national government functions the act provides for appointment of NGAO in counties, sub counties, wards, locations and sub locations.

However coordination of national functions has been hampered by 'lack' of a clear distinction of functions of constitutionally established CGs and NGs and shared functions, constitutionally created independent NPSC and NLC, and interpretation of the provision on restructuring of the PA. This situation has left the public confused as to what the place of NGA in the current constitutional dispensation. Most NGAOs are not sure of their role in the current constitution hence affecting NGA governance.

### **EMPIRICAL REVIEW**

According to Kettl (2012), for public administration, the challenge is reconciling the management and accountability challenges that hierarchical authority has long provided. How can government ensure accountability in extended service networks where administrative responsibility is widely shared and where no one is truly in charge? How can government, structured and staffed for an era when vertical relationships dominated, build the capacity to manage horizontal partnerships effectively?(Kettl, 2012).

Kettl (2012) further argues that in general, the lower the level of government in the US, the more the government is engaged in direct service delivery. At every level, however, partnerships, with both governmental and non-governmental partnerships, have proliferated at an accelerating rate. That has made government both *horizontal*—in search of service coordination and integration with non-governmental partners in service provision—and *vertical*—through both traditional hierarchical bureaucracies and multi-layered federalism. It is not so much that the horizontal relationships have supplanted the vertical ones. Rather, the horizontal links have been layered on top of the vertical ones. That, in fact, was one of the implicit precepts of the “reinventing government” movement of the 1990s.

Kwame (2010) argues that Ghana has undeniably accepted democracy as the way toward viable political and economic development. Ghana has a centralized bureaucratic structure with the executive appointing leaders in the regions and districts. The district and regional leaders’ appointments by a president have constitutional backing (Kwame, 2010).

Obosi (2013) argues that the first year of Kenya as a de-facto one party state under the Republican constitution was spent largely on the re-organization of PA, which left it as strong as, if not stronger than during the colonial period. Politicians did not take the overarching strength of PA kindly, hence frequent clashes especially over representation of the people, something that was rather obscure during regionalism. In the debate (National Assembly) 1965, the MPs expressed their alleged maltreatment at the hands of PA, and the feeling that they were not being accorded the respect or attention due to them as true representatives of the people, PA officials themselves having been colonial employees.

In response to politicians’ attack on PA, the Head of the Civil Service issued a major policy statement in June 1965 outlining the task of the civil servant. “The functions of a civil servant....is to implement policies and programmes decided upon by the politicians, they are the agents of the Executive to implement, not to make policies. Nor was the civil service isolated from the rest of the civil society, living in “colonial isolation”. While PA officers therefore remained outside party politics, they were nonetheless committed to government policy and this was KANU policy as stated in the Manifesto and the Government Sessional Paper 10, on African Socialism, 1965 (Obosi, 2013).

Akech (2010), opines that previously under the old constitution, coordination of central government policies and development programmes at the local level was done by the provincial administration (PA). As a department within the Office of the President, the PA not only supervised other central government ministries at the province and district levels but also coordinated their programmes and policies. As personal representatives of the president at the

local levels, the provincial administrators exercised upward accountability as they “served at the pleasure of the President” (Akech, 2010)

According to the Constitution of Kenya, 2010, PA is to be restructured within five years to respect the rules and intendment or spirit of “devolution.” Section 17 of the Sixth Schedule on the Transitional and Consequential Provisions of the 2010 Constitution provides a framework to be adopted in dealing with the PA. Some Kenyans have expressed the opinion that the PA ought to be scrapped. This is because there was the feeling that the PA has been an impediment to Kenya achieving an effective decentralization design. A second category of Kenyans wanted the provincial administration retained as it is, and an agent of the national Government in the grassroots. That group supported former President Kibaki’s appointment of County Commissioners (Sihanya, 2012).

Sihanya (2012) observes that the Constitution of Kenya 2010 does not devolve all public functions to the countries, so how the central government operates at the local level to meet its ongoing obligations is important. There is no gainsaying of the fact that under the Constitution of Kenya 2010, the former PA, taking the name and capacity as County Commissioners, will play complex and indispensable administrative roles than ever before.

Public Service Commission of Kenya( 2014) argues that although County Commissioners are ideally the President’s representatives at the County level, seldom are they perceived as such by other departments or officials and the leadership of the county governments (Public Service Commission of Kenya, 2014). In fact, just like other heads of departments of Government ministries based at the County level, County Commissioners (CC) are perceived as heads of the department of the Ministry of Interior and Co-ordination of National Government. This perception has greatly whittled the hitherto powers of the National Government administrative officers and undermined their legitimacy as agents of the Presidency responsible for effective co-ordination of the National Government business in their areas of responsibility. Under this *modus operandi*, the unified execution of the National Government functions is hampered and rendered ineffective at the County level.

It shall coordinate inter-ministerial duties, manage the relationship between the national and county governments, and monitor the implementation of national policies and utilization of funds. This is what breeds the fear, as to how the County Commissioners will discharge their duties without causing many hiccups as to the order and structures of devolution established in the county which shall be run by the a governor elected by the people. It is proper that there should not be conflicting or overlapping mandate; rather, the public officers should handle their obligations complimenting each other’s capacity for the common good.

Bigambo (2011) argues that at present, there exists conflicting debate as to whether the governors and county commissioners shall have conflicting roles. Of course the Constitution provides that the county shall be headed by the governor, which therefore means, that in the effort to restructure the former PA, the county commissioners should not be seen to assume the overall leadership of the county to serve the interests of the central government. The strength of the Kenyan devolution system is that the counties are autonomous.(Bigambo, 2011). According to Guleid (2014) the administrative structure of both the NG and CGs looks exactly the same. The equivalent of a governor is the CC. Guleid argues that both functions have deputies. At the village level there is the chief for the NG and Village Administrator for the CG.

Nyamwamu (2013) opines that the enactment of the new constitution pushed the country into the era of a devolved system of governments. One of the main challenges of governance in Kenya in post constitutional promulgation has been the inability to appreciate the fundamental shift that has taken place since the promulgation. There are five developments that need to be underlined. First, is that the country no longer has a central government but has a national government which has clear mandate. There are also 47 county governments. Third, the transitional processes and mechanisms were put in place through the Transition to devolved Government Act (2012) to facilitate a smooth transition from the centralized to the devolved system. Similarly, the Intergovernmental Relations Act (2012) has outlined the mechanisms and modalities of managing the relations between the national and county governments.

Nyamwamu (2013) further argues that the National Government Coordination Act (2012) which re-sets the PA has already restructured the PA but essentially retained a highly administrative and non-participatory governance system which deprives the nation the opportunity to reform the Kenyan State in a fundamental sense from an anti-people to a responsive government. As we have outlined above, the main motivation that drove the people of Kenya to demand for a devolved system of government was to facilitate the realization of development which was not feasible without the effective devolution of the said aspects. Devolution is a platform for three main goals namely to facilitate (Nyamwamu, 2013).

According to Mungania (2013), the role of Provincial Administration (P.A) in the colonial era according to Moi (1986) was to maintain law and order. He defined P.A as a system by which the central government ensures that its authority and attendant service reach the people and are accepted and utilized by them especially in the rural scenario. He gave the role of P.A as a nation building, security provision and modernization department. This therefore shows a shift of P.A from maintenance of law and order to development administration. The department's functions have evolved and its operations restructured over time so that currently, it provides a framework for quick interpretation, dissemination and implementation of government policies.



The department oversees the administration, development and security of all provinces, districts, divisions, locations and sub-locations.

Sihhanya (2011) observes that in order to meet the needs of the people at the local level, the government must be personalized as one individual who is accessible, sympathetic, understanding and authoritative. It is this concept of the role of the government which the P.A is designed to satisfy (Shihanya, 2011). PA provides a representative of the government authority from the village level leading up through a simple and well understood hierarchy of Assistant Chiefs, Chiefs, Divisional Officers, District Commissioners (DCs) and Provincial Commissioners (PCs) to the president himself (Cherry, 1996 as quoted in Mungania, 2013).

### **Critique of the Existing Literature Relevant to the Study**

There are limited works on the effect of the Constitution of Kenya, 2010 on the NGA. This can be attributed to lack of objectivity in analyzing the effect of the current constitution on various government institutions in Kenya. Most works have tended to lean towards supporting CG rather than giving a balanced analysis. Those works on NGA have concentrated on criticizing the PA rather than giving an objective view of the institution.

Shania (2012) argues that the PA has been seen as an impediment to Kenya achieving an efficient decentralization design. Nyamwamu (2013) and other like-minded people argue that with the inception of CG, PA should have been scrapped altogether. These scholars claim that the functions performed by PA have been taken over by CG and therefore PA has no place in the present dispensation. This argument is biased since the current constitution provides for NG and CG which are distinct but interdependent. All the two levels of government need to have their own administrative structures to disseminate their policies and coordinate their respective functions at various levels.

The creation of the NLC and the NPSC has greatly affected the work of the NGA. Several works have tend to emphasize the independence of these commissions who have taken up some functions were performed by the NGA formerly PA at the lower levels. Scholars should have endeavored to look at how well these independent commissions and the NGA relate with each other at the county level to effectively serve the public.

The Constitution of Kenya 2010 provides for restructuring of the PA to accord with and respect the devolved system of government. However there has been different interpretation of the meaning of restructuring with some of them interpreting it to mean scrapping of the PA. Scholars therefore need to research and come up with the clear interpretation of restructuring the PA.

## Research Gaps

With the inception of the current constitution, there has been a misunderstanding of the existence and role of the PA in the current constitutional dispensation. Some argue that most roles of the PA have been taken over by the CG and therefore NGA should be scrapped. However there are others who feel that the NG is distinct from CGs and should have its own officers disseminating and implementing its programmes. There is need therefore to carry out research on effect of the constitution of Kenya 2010 on the NGA governance.

## Summary

From the literature review we realize that there is very limited literature on the effect of the Constitution of Kenya 2010 on the NGA governance. This may be attributed to scholars' over enthusiasm with the CG. They have tended to look at CG as the panacea to Kenya's governance problems. It is clear that they have ignored the fact that the current constitution provides for the NG and CG. It may also be because the new constitution has not been in place for more than five. Therefore most may be more interested with the new institutions brought about by the current constitution rather than old ones.

With various interpretation of the relationship between the NG and CG, there has been no proper understanding of the existence and role of NGA in the new constitutional dispensation. The past history of PA seems to have taken centre stage in the study of the NGA rather than the reforms that have taken place. Reforms in the PA began even before the promulgation of the constitution of Kenya 2010. Most works have seemed to concentrate on the devolved governments rather than the national government. It is important therefore that scholars take national government matters seriously just as they do devolved matters

## METHODOLOGY

### Research Design

The research design was a survey of Kitui County in the Eastern region of Kenya. A survey is an attempt to collect data from members of a population in order to determine the current status of the population with respect to one or more variables. Magenta & Mutendea (2003) contend that "Survey research is a self-report study which requires the collection of quantifiable information from the sample." Survey design was appropriate for this research since the study sought to explore the effects the constitutionally established CGs, constitutional created independent NPSC and NLC and interpretation of the constitutional provision on restructuring of the PA on NGA governance. Survey design is the best method of collecting original data for the

purposes of describing a population which is too large to observe directly (Mugenda&Mugenda, 2003).

### Target Population

Population refers to the entire group of individuals, events or objects having a common observable character (Mugenda&Mugenda, 2003). The study targeted NGAO (Deputy County Commissioners, Assistant County Commissioners and Chiefs) in Kitui County and residents of Mithini location of Kitui West sub County of Kitui County, as shown in Table 1.

Table 1: Target Population

STRATUM TARGET	POPULATION
NGAO	648
Residents of Mithini Location	2155
<b>Total</b>	<b>2803</b>

Source: Kitui County Returns on NGAO, 2015. Survey Data, 2015.

### Sampling Frame and Sample Size

Sampling Frame is the source list; it is a group of items or respondents from which the sample is drawn. It constitutes of all the components of the target population (Dempsey 2003). In this study the sampling frame was NGAOs and residents of Mithini location, Kitui West Sub County in Kitui County. Gay (1983) as quoted in Mugenda&Mugenda (2003) ‘...for descriptive studies a sample size of 10% – 30% of the accessible population is good representation of the target population. ‘The sample size was determined as shown in the formula below:

$$n = n_h + n_h + \dots + n_h$$

Where;

$n$  – is the total sample size

$h$  – is the stratum

$n_h$  – is sample size in stratum  $h$

$n_h$  – will determined by  $10 \times N_h$

$N$  – the total target population.

$N_h$  – is the total target population size for stratum  $h$

The sample will therefore be as shown in the table below:

Table 2: Sample Size

STRATUM(h) TARGET (N)	SAMPLING POPULATION (N)	SAMPLE (%XN <sub>h</sub> )	SIZE (n <sub>h</sub> )
NGAO	648	10	65
Residents of Mithini locations	2155	10	216
<b>Total</b>	<b>585</b>		<b>281</b>

Source: Kitui County NGAO Returns, 2015. Survey Data, 2015

### Sampling Techniques

Stratified random sampling technique was used to select respondents in the study. In stratified random sampling, subjects are selected in such a way that the existing subgroups in the population are more or less reproduced in the sample (Mugenda & Mugenda, 2003). The population was divided into two strata: NGAO and residents of Mithini location. Simple random sampling was then used to sample respondents from each stratum.

### Data Collection Instruments

The study adopted semi-structured questionnaires to collect Primary data from the respondents. According to Kothari (2011) structured questionnaire is the best suited for a descriptive research. Questionnaires were easy to administer, faster and return rate was higher. Secondary data was obtained from published and unpublished books, government publications, academic research papers and conference reports; it was gathered through desktop research.

### Data Collection Procedure

Primary data was collected using a semi-structured questionnaire with closed and open ended questions. The questionnaire was both self-administered and interviewer assisted and later collected for analysis. This was because not all participants were literate. Secondary data was collected from documents and materials containing key information that was useful to this study. Collection of secondary data was done through desk research; this was mainly through documents and works related effects of the Constitution of Kenya 2010 on NGA governance.

### Pilot Testing

There was a reconnaissance study in order to pre-test the data collection instruments. This stage revealed the suitability of the methods and instruments that were employed in the study.

This led to early detection of errors and distortions in the questionnaire which were corrected in the process. This helped the researcher to familiarize himself with the research environment and also offer the opportunity to practice research in real situation before the main study began.

### **Reliability**

Reliability is a measure of the degree to which a research instrument yields consistent results or data after repeated trials (Mugenda and Mugenda 2003). Split half technique was used to test the reliability of data provided by the research instrument. In this approach an instrument was designed in such a way that there were two parts. Subject scores from one part were correlated with scores from the second part. The major advantage of this approach is that it eliminates chance error due to testing conditions as in the test-retest or the equivalent form technique.

### **Validity**

It is the degree to which results obtained from the analysis of the data actually represent the variables of the study. The research instruments will be validated in terms of content and face validity. In this study-the questionnaire and documentary analysis were given to two groups of experts. One group was requested to assess the effects of the constitution of Kenya 2010 on NGA performance that the instrument was measuring while the other group was asked to determine if the set of item or check list accurately represents the effect of the constitution of Kenya 2010 on the NGA performance. The feedback from the experts was used to modify the instrument. The researcher also conducted a pilot study in Kitui county involving a few respondents and using their feedback corrected the questions that were not measuring up and included more questions to cover all the research questions.

### **Data Analysis & Presentation**

Data analysis refers to examining the collected data and making discussions, inferences and conclusions (Kothari, 2004). The study generated both quantitative and qualitative data. Descriptive statistics was used to analyze numerical data gathered using closed ended questions. Data collected was compiled, sorted, edited, coded and analyzed using statistical package for social sciences computer programme version 20 to facilitate addressing the research objectives. Qualitative data was analyzed by content analysis of documents

Quantitative data was presented in various forms such as in tabular form. For better visual impact, data was presented in the form of diagrammatic representation such as pie charts, line charts and bar graphs.

Qualitative data was derived from open ended questions in the questionnaire. The responses was assessed thoroughly and organized in to various categories, distinct from each other and the relationship among the identified categories established. Codes were used to generated themes and categories. Once the themes, categories and patterns are identified, the study was evaluated and analyzed to determine the adequacy of the information and the credibility, usefulness, study consistency and validity in answering the study question. From this information, the study developed narratives and interpretive report in order to explain the situation within the society.

## ANALYSIS AND RESEARCH FINDINGS

### Response Rate

Two hundred and eighty one questionnaires were administered to a similar number of national government officers and residents of mithini location of Kitui West sub county, Kitui County. A total of 230 (81.85%) of the questionnaires administered were returned. Two hundred and fifteen questionnaires, being 76.5% of the questionnaires administered were analyzed since they met the required inclusion criteria.

### Respondent's Profile

#### Gender

From table 3, 60.5% of the respondents were men and 39.5% women.

Table 3: Respondents Gender

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Male	130	60.5	60.5	60.5
	Female	85	39.5	39.5	100.0
	Total	215	100.0	100.0	

#### Category of Respondents

Of the respondents 23.3% were NGAO and 76.7% were residents of Mithini location.

Table 4: Category of Respondents

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	NGAO	50	23.3	23.3	23.3
	Resident of Mithini location	165	76.7	76.7	100.0
	Total	215	100.0	100.0	

### Descriptive Analysis of Independent Variables

The independent variables are constitutionally established CGs, constitutionally created independent NPSC and NLC and interpretation of the constitutional provision on restructuring of PA as provided for in the constitution of Kenya 2010. Various aspects of these variables were measured by asking respondents their feelings about the variables as they relate to NGA performance. The responses were recorded on a five-point Likert scale ranging from 1-Disagree Strongly to 5-Agree Strongly.

#### *Effect of constitutionally established CGs on NGA governance*

This variable was measured by asking the respondents their feelings about the effect of constitutionally established CGs in relation to distinction between the functions of NG and CG, composition of the liquor licensing committee and composition of the CLMB. The responses were recorded on a five-point Likert scale ranging from 1-Disagree Strongly to 5-Agree Strongly. Figure 2, shows that 58% of the respondents agreed that the constitutionally established CGs have made it difficult for members of the public to distinguish between functions of the NGA and the County Governments; 18% were neutral; and the remaining 24% disagreed.

Figure 2: Distinction between NG and CG functions

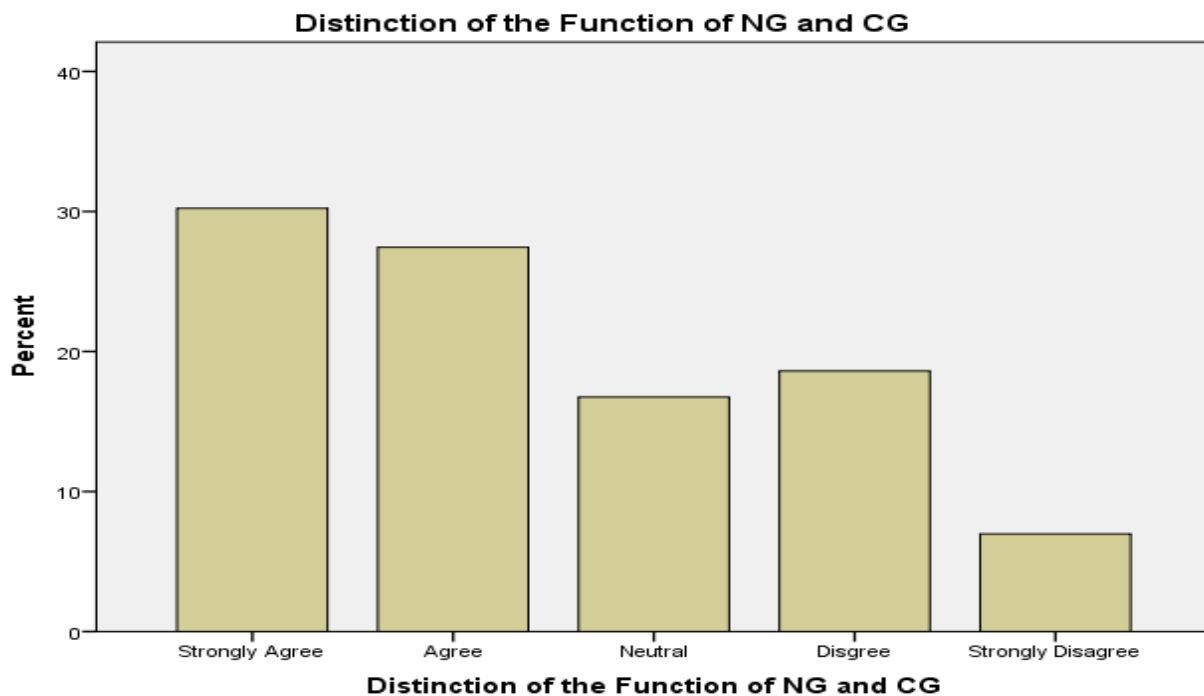
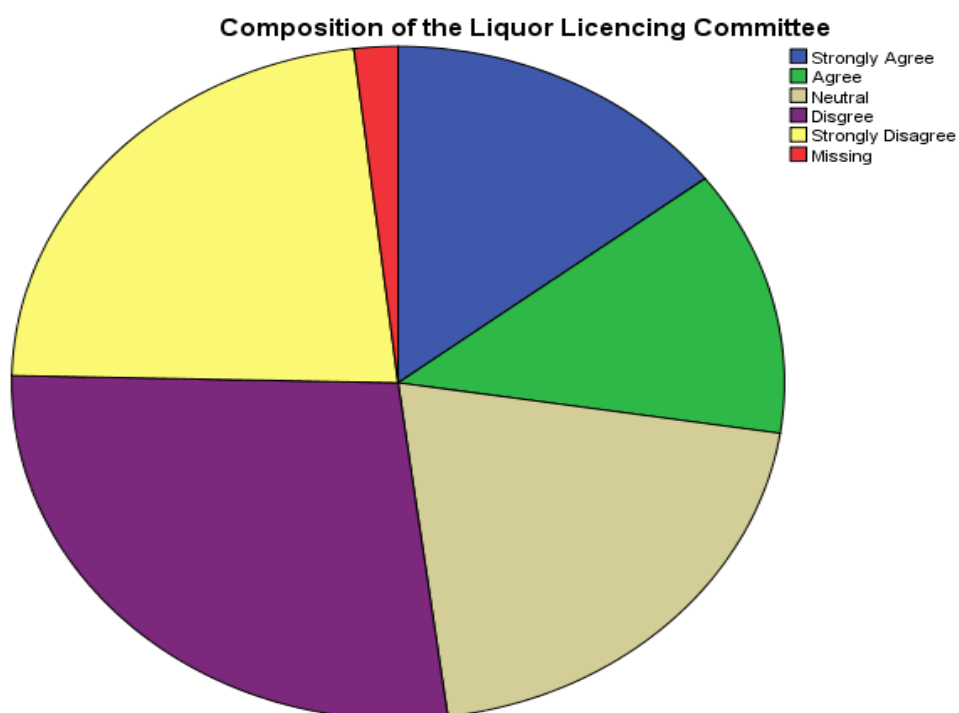




Figure 3: Pie Chart on feeling about Composition of the Liquor Licensing Committee



It is clear from figure 3 that over a half of the respondents disagreed that there is a liquor licensing committee composed of county and national government officials in Kitui county; about a third were neutral; the remaining agreed.

Table 5: Composition of the land Management Committee

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Strongly Agree	30	14.0	14.0	14.0
	Agree	26	12.1	12.1	26.0
	Neutral	56	26.0	26.0	52.1
	Disagree	56	26.0	26.0	78.1
	Strongly Disagree	47	21.9	21.9	100.0
	Total	215	100.0	100.0	

Table 5 shows that a cumulative 47.9% disagreed that there is a CLMB in Kitui County made up of national and county members; 26% were neutral; and the remaining agreed.

Table 6: CGs and NGA Performance

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Yes	108	50.2	50.2	50.2
	No	78	36.3	36.3	86.5
	Don't know	29	13.5	13.5	100.0
	Total	215	100.0	100.0	

From the responses given in relation to the effect of constitutionally established CGs on NGA performance, 50.2% say 'yes' the NGA governance has been affected. This was attributed to the fact that NGAOs, CG officials and the public in general have no clear understanding of the distinction between NG functions and CG functions and the shared functions. The respondents suggested that the government deliberately carries out civic education to clearly outline the functions of NGA and CGs – both shared and distinct.

#### ***Effect of constitutionally Independent NPSC and NLC on NGA Performance***

This variable was measured by asking the respondents their feelings about the effect of removal of AP from direct control of NGA and placing them under NPSC and establishment of NLC that does not include NGAOs on NGA performance. The responses were recorded on a five-point Likert scale ranging from 1-Disagree Strongly to 5-Agree Strongly.

#### ***The Removal of AP from command and control of NGA to NPSC***

Table 7: Command of AP and ensuring security of persons and property

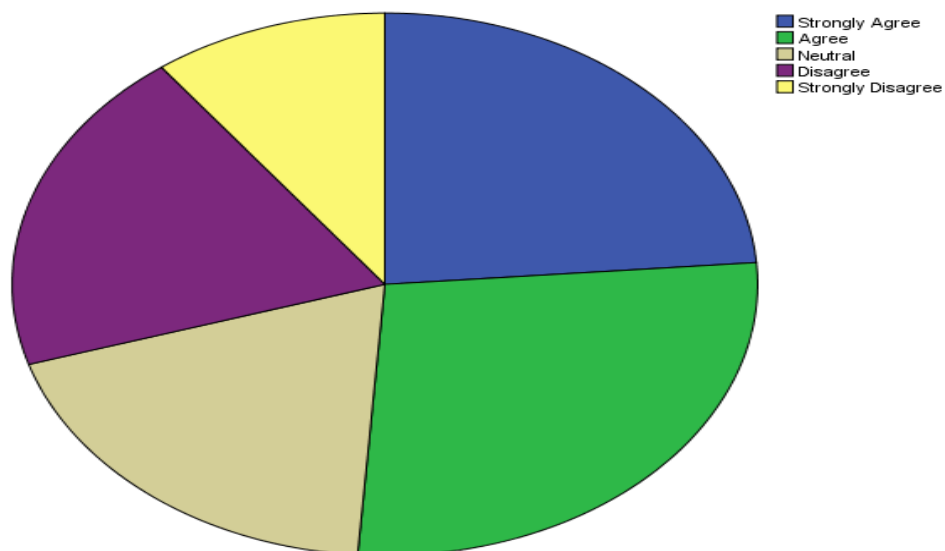
		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Strongly Agree	50	23.3	23.3	23.3
	Agree	60	27.9	27.9	51.2
	Neutral	40	18.6	18.6	69.8
	Disagree	42	19.5	19.5	89.3
	Strongly Disagree	23	10.7	10.7	100.0
	Total	215	100.0	100.0	

Fifty one percent of the respondents agree that removal of AP officers from command and control of NGA and placing them under NPSC has made it difficult for NGAO to ensure security of persons and property in Kitui County; 18.6% were neutral; and 30.2% disagreed.

### ***Command of AP and NGA Enforcement of Law and Order***

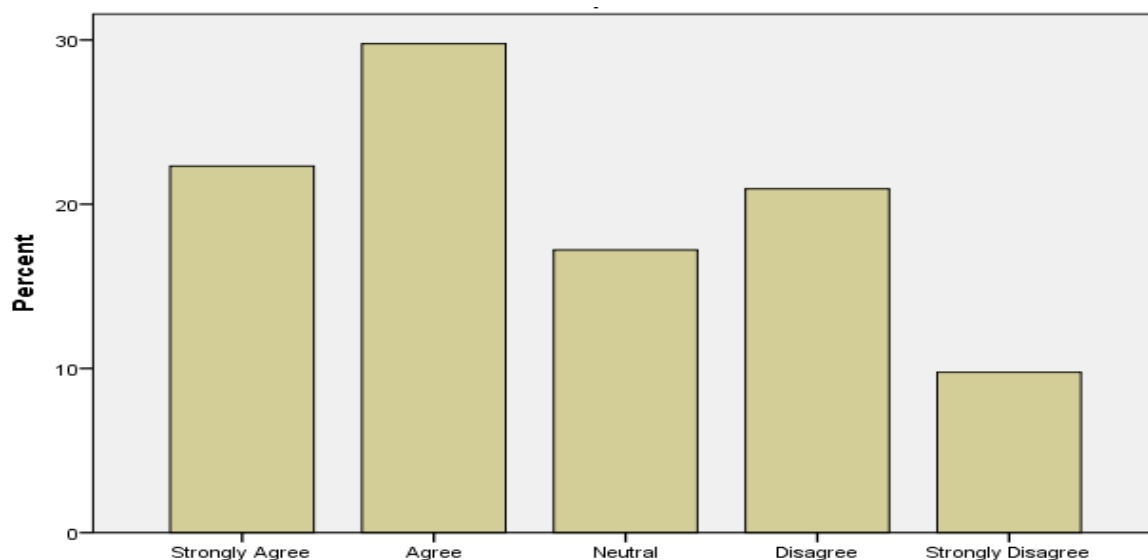
As shown in figure 4, more than half of the respondents agreed that the removal of AP officers from direct control of NGA and placing them under the NPSC has made it difficult for NGAO to effectively maintain law and order in Kitui County; about a third were neutral; and the rest disagreed.

Figure 4: The Effect AP Officers Change of Command on NGA Enforcement of Law and Order



### ***Effect of NLC on the NGA Resolution of land disputes***

Figure 5: Effect of establishment of NLC on NGA's ability to resolve Land Disputes



From figure 5, about 52% of the respondents agreed that establishment of NLC as a constitutional commission with no clear role for the National Government Administration Officers has made it difficult for them to resolve land disputes; 18% were neutral; and 30% disagreed.

### ***General effect of Change of Control of AP and suggestions on how to remedy the same***

Table 8: General effect of change of Control of AP from NGA to NPSC on NGA Performance

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Yes	117	54.4	54.4	54.4
	No	71	33.0	33.0	87.4
	Don't Know	27	12.6	12.6	100.0
	Total	215	100.0	100.0	

Over 54% of the respondents said 'yes' the removal of AP from the direct control of NGAO and placing them under the NPSC has made it difficult to ensure security of persons and property and maintenance of law and order; 33% said No; and 12.6% did not know. The respondents suggested that the government takes legislative and administrative measures that will ensure that AP works closely with the NGA to ensure security of persons and property and maintenance law and order.

### ***General Effects of an Independent NLC on NGA and Suggestion on remedies***

Table 9: General effect of an Independent NLC on NGA governance

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Yes	115	53.5	53.5	53.5
	No	71	33.0	33.0	86.5
	Do not Know	29	13.5	13.5	100.0
	Total	215	100.0	100.0	

Table 9, shows that 53.5% of the respondents said 'yes' establishment of NLC with no defined role for NGA has affected NGA performance; 33% said 'No'; the remaining 13.5% did not know. This was attributed to the fact that the National Land Act does not out rightly provide for membership of NGA officers on the CLMB. The respondents suggested that the National Land

Act, 2012 be amended to provide for membership of the NGAO on CLMBs to enable them effectively execute their role in resolving land disputes within their areas of jurisdiction.

### ***Interpretation of constitutional provision on restructuring of the PA***

This variable was measured by asking the respondents their feelings about the effect of various interpretations of restructuring of PA as provided for in the constitution of Kenya on NGA performance. The responses were recorded on a five-point Likert scale ranging from 1-Disagree Strongly to 5-Agree Strongly.

Figure 6: Bar Graph of the effect of interpretation of Restructuring of PA on NGA governance

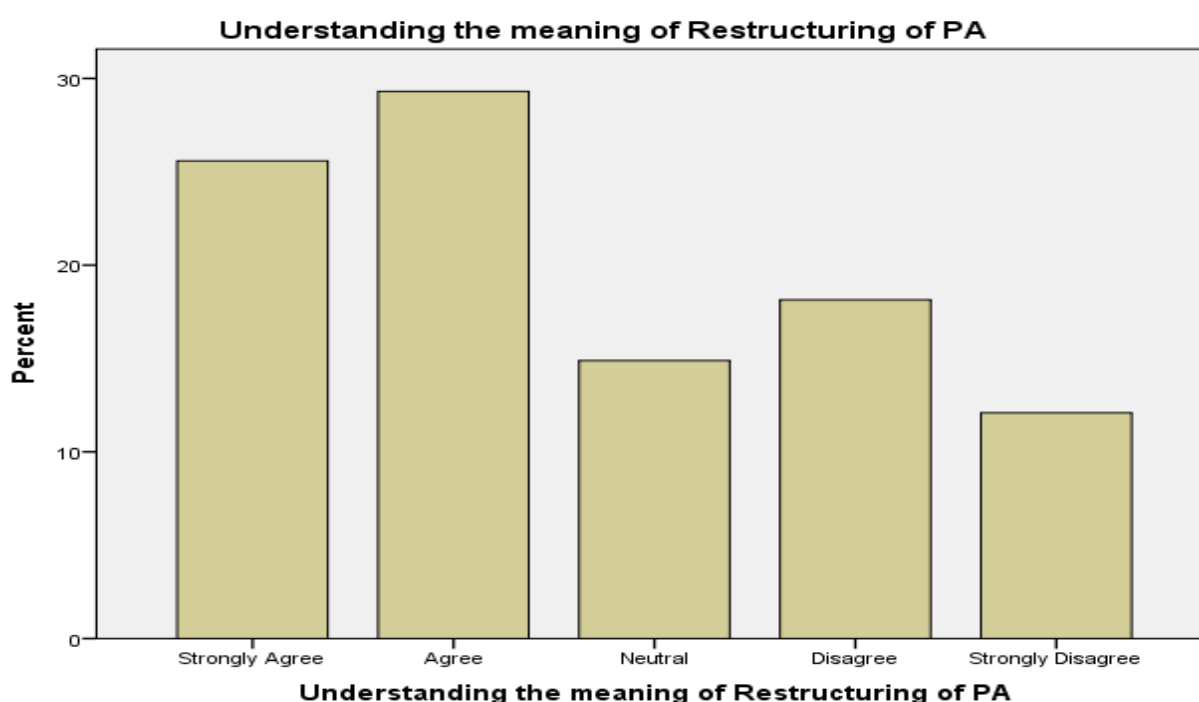


Figure 6 shows that over 55% agreed that varied interpretation of restructuring of PA as provided for in the constitution of Kenya has affected NGA performance; about 15% were neutral and the remaining disagreed.

**General Effect of Varied Interpretation of Restructuring of PA on NGA Performance**

Table 10: Effect of Interpretation of Restructuring of PA on NGA Performance

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Yes	110	51.2	51.2	51.2
	No	81	37.7	37.7	88.8
	Do not Know	24	11.2	11.2	100.0
	Total	215	100.0	100.0	

From table 10, 51.2% said 'yes' varied interpretation of restructuring of PA has affected NGA Performance; 37.7% said 'No'; and 11.2% did not know. Those who said 'yes' attributed this to the fact that varied interpretation of restructuring of PA has left the public confused as to its meaning. Substantial section of the public does not know whether the PA is to be scrapped or retained. Most NGAOs are also not so sure about their continued being in place and therefore their morale is down. The respondents suggested that the government needs to launch a civic education campaign to educate the public on the meaning of restructuring. Besides, it was also suggested that the government takes NGAOs through reorientation courses so that they can know their roles in the current constitutional dispensation and reassure them on their existence.

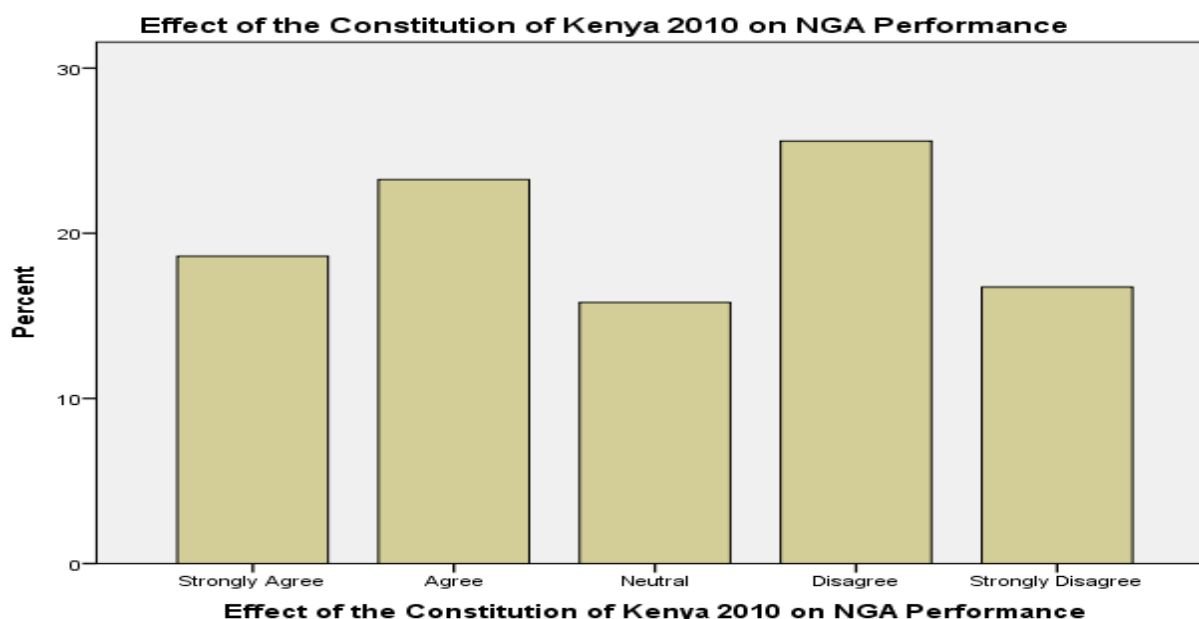
**Analysis of Dependent Variable**

The independent variable is NGA performance. This variable was measured by asking the respondents their feelings about the effect of constitution of Kenya 2010 on NGA performance. The responses were recorded on a five-point Likert scale ranging from 1-Disagree Strongly to 5-Agree Strongly.

**Effect of Constitution of Kenya 2010 on NGA Performance**

From figure 7, about 43% of the respondents agreed that the constitution of Kenya 2010 has greatly improved NGA performance; about 15% were neutral; 42% disagreed.

Figure 4.7: Effect of Constitution of Kenya 2010 on NGA Performance



### **General Effect of Constitution of Kenya 2010 on NGA Performance**

Table 11: General effect of constitution of Kenya 2010 on NGA Performance

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Yes	93	43.3	43.3	43.3
	No	92	42.8	42.8	86.0
	Do not Know	30	14.0	14.0	100.0
	Total	215	100.0	100.0	

From table 11, 43.3% of the respondents said 'yes' the constitution of Kenya has improved the performance of NGA; 42.8% said 'No'; and 14% did not know. For those who said 'No' felt that the constitution of Kenya 2010 has not improved NGA Performance since most Kenyans do not know how it relates to NGA. This is because there have been many changes in the constitution of Kenya that have affected the structure and working of the NG. The constitutionally established CGs, constitutionally created independent NPSC and NLC and constitutional provision on restructuring of PA are among the changes in the constitution of Kenya affecting NGA governance. The interpretation of the provision on restructuring of the PA has not helped matters. To remedy this situation the respondents suggested that the parliament passes legislations that will ensure that NGA is able to work with CGs, independent NPSC and NLC to



deliver quality services to the public. In addition, the respondents suggested that the government embarks on civic education to educate the public on the role of NGA in the current constitutional dispensation and provide clear definition of restructuring.

## **SUMMARY**

The study set out to assess effects of the constitution of Kenya 2010 on NGA performance in Kitui County, Kenya. The research design was a survey of Kitui County in Eastern Kenya. The research targeted NGAOs in Kitui County and residents of Mithini location of Kitui West Sub County of Kitui County. Stratified random sampling technique was used to select samples that were included in the study. Two hundred and eighty one respondents took part in the research. Questionnaires with both closed-ended and open-ended questions were used to collect data. Two hundred and fifteen questionnaires (representing 76.5% of the questionnaires administered) that had been filled well and therefore useful to the research were analyzed using the SPSS 20 software

## **Respondents' profile**

60.5% of the respondents were men and 39.5% women. The research therefore met the constitutional requirement of ensuring that not more than 60% of any gender should dominate public affairs. Of the respondents 23.3% were NGAO and 76.7% were residents of Mithini location. The research was therefore well represented by both NGAOs who are in charge of NG functions at the county level and the residents of Mithini location who are the recipients of NG services.

## **Independent Variables**

Independent variables were the constitutionally established of CGs, constitutionally independent NPSC and NLC and interpretation of the constitutional provision on restructuring of PA.

## ***Effect of the constitutionally established CGs on NGA governance***

From the responses, 58% of the respondents agreed that the constitutionally established CGS have made it difficult for members of the public to distinguish between functions of the NGA and the CGs. Over a half of the respondents disagreed that there is a liquor licensing committee composed of county and national government officials in Kitui county. A cumulative of 47.9% disagreed that there is a CLMB in Kitui County made up of national and county members.

From responses given in relation to the establishment of CG on NGA performance, 50.2% feel that the NGA governance has been affected. This was attributed to the fact that NGAO, CG

officials and the public in general have no clear understanding of the distinction between NG functions and CG functions and the shared functions. It was recommended that the government deliberately carries out civic education and clearly outline the function of the NGA and CG – both shared and distinct.

### ***Constitutionally created independent NPSC and NLC on NGA governance***

Fifty one percent of the respondents agree that removal of AP officers from direct control of the NGA and placing them under the NPSC has made it difficult for NGAO to ensure security of persons and property in Kitui County. More than half of the respondents agreed that the removal of AP officers from direct control of NGA and placing them under the NPSC has made it difficult for NGAO to effectively maintain law and order in Kitui County. About 52% of the respondents said 'yes' the establishment of NPSC taking over the control and command of AP from NGA has made it difficult for the NGA to ensure security of persons and maintain law and order. It was suggested that the law is amended so that the AP is made a department in the NPS but under direct control of the NGA.

More than 53% of the respondents said 'yes' establishment of NLC with no clear role for NGA has affected NGA performance; 33% said 'No' it has not; the remaining 13.5% did not know. This was attributed to the fact that the National Land Act does not out rightly provide for membership of NGA officers on the CLMB. The respondents suggested that the National Land Act, 2012 be amended to provide for membership of the NGAO to enable them effectively execute their role in resolving land disputes within their areas of jurisdiction.

### ***Interpretation of the constitutional provision on restructuring of the PA on NGA governance***

Over 55% agreed that varied interpretation of restructuring of PA as provided for in the constitution of Kenya has affected NGA performance. 51.2% said 'yes' varied interpretation of restructuring of PA has affected NGA Performance; 37.7% said 'No'; and 11.2% did not know. Those who said 'yes' attributed this to the fact that varied interpretation of restructuring of PA has left the public confused.

Substantial section of the public does not know whether the PA is to be scrapped or retained. Most NGAOs are also not so sure about their continued existence and therefore their morale is down. The respondents suggested that the government needs to launch civic education campaign to educate the public on the meaning of restructuring. Besides, it was also suggested that the government takes NGAOs through reorientation courses so that they can know their roles in the current constitutional dispensation.

## Dependent Variable

The dependent variable was NGA performance. About 43% of the respondents agreed that the constitution of Kenya 2010 has greatly improved NGA performance; about 15% were neutral; 42% disagreed. 43.3% of the respondents said 'yes' the constitution of Kenya has improved the performance of NGA; 42.8% said 'No'; and 14% did not know. Those who said 'No' felt that the constitution of Kenya 2010 has not improved NGA Performance since most Kenyans do not know how it relates to NGA. This is because there have been many changes in the constitution of Kenya that have affected the structure and working of the NG. The constitutionally established CGs and constitutionally created NPSC and NLC are among the changes brought by the constitution of Kenya affecting the NGA governance. The interpretation of the provision on restructuring of the PA has not helped matters. To remedy this situation, the respondents suggested that the parliament passes legislations that will enable NGA to perform effectively within the current constitutional framework. In addition, the respondents suggested that the government embarks on civic education to educate the public on the role of NGA in the current constitutional dispensation.

## CONCLUSIONS

From the research findings, it is clear that the constitution of Kenya 2010 introduction of CGs has made it difficult for the members of the public to distinguish between the functions of the NGA and the CGs. The public and some NGAOs cannot be able to distinguish between the functions that fall under NG and CGs as provided for in schedule four of the Constitution of Kenya 2010. This lack of distinction in terms of functions has greatly affected the NGA governance.

It is also clear that the NG and CGs in Kitui County are not working together in the execution of shared functions. These shared functions include implementation of alcoholic laws and land management laws. The constitution of Kenya gives CGs the function of licensing bars and restaurants but the enforcement of laws governing the same is in the hands of the NG. The Alcoholic Drinks Control (Amendment) Act, 2014 provides that membership of the liquor licensing board be drawn from both the CG and NG. However this is not the case in Kitui County making the enforcement of the Act a problem since the CG licenses premises without following the laid down procedure. The county has also not established CLMB, which should be established in consultation with the NG. It is also clear that the constitution does not provide for the inclusion of NGAO in the committee. This makes it difficult for NGA to execute its functions. The findings also show that establishment of independent NPSC which took over the control and command of the AP from the NGA has made it difficult for the NGA to effectively ensure

security of persons and property. It is also difficult to maintain law and order. In addition it is clear that due to the fact that the NLC does not provide for the role of the NGAO in land matters, it is difficult to resolve land disputes that come before NGAOs on a regular basis.

The findings suggest that NPSC Act should be amended so that the AP become a department in the NPS but under the direct control of the NGA. This is because it has become difficult for the NGA to secure people and property and maintain law and order without direct control and command of the AP. It was also suggested that the NLC Act be amended to ensure direct membership of NGAOs in CLMB. NGAOs should also be the chairmen of the land management boards. This will make it possible for the NGA to effectively resolve land disputes.

It can be concluded from the research study that interpretation of restructuring of the PA as provided for in the Constitution of Kenya has affected NGA performance. It is clear that the public does not clearly comprehend the role of NGA in the current constitutional dispensation. Most NGAOs are also demoralized since they do not know their place in the current constitutional dispensation arising from misinterpretation of restructuring. To remedy this situation, the findings suggest that the government should deliberately embark on civic education to sensitize the public on the role of NGA in the current constitutional dispensation. NGAOs should also be taken for re-orientation courses to familiarize themselves with their role in the current constitution dispensation.

The findings also suggest that the number of those people who agreed that the constitution of Kenya 2010 had affected NGA governance is the same as that which disagreed. Therefore, it is not clear whether the constitution has improved NGA performance or not. It was therefore suggested that the NG takes bills in the parliament that clearly define the role of NGA in the current constitutional dispensation. Besides, the NG should carry out civic education to sensitize the public on the role of NGA in the current constitutional dispensation.

## RECOMMENDATIONS

NGA is the vehicle through which the NG coordinates the delivery of its services. If the role of the NGA is not understood, then the institution cannot be effective in service delivery. From the research findings, there is need to carry out civic education on the functions of CGs and NG and their resultant bureaucracy. This way, members of the public will know which service to seek from the NGA or from CGs. This will ensure that the public gets the best services from both the NG and CGs and closely monitor delivery of these services.

Deliberate efforts should also be made by both NG and CGs to put in place infrastructure that will ensure that shared functions are effectively carried out by both the NG and CGs. A mechanism should be put in place to ensure that shared functions are carried out

as provided for in law. For instance, licensing of bars and restaurants should only be done by Liquor Licensing Committees constituted as per the Alcoholic Drinks Control (Amendment) Act 2014. Amendments should be made on the NLC Act to give the NGA a greater role in the CLMBs. This way they will be able to effectively handle land disputes.

The government should also ensure that it puts the scope and definition of restructuring of the PA in the context of the constitution of Kenya in the proper perspective. The government should sensitize the public on the proper meaning of restructuring of the PA to enable the public understand the true meaning of restructuring. The government should also re-orient the NGAOs so that they have a clear understanding of their role in current constitutional dispensation. The government should also sensitize the public of the importance of the current constitution in improving NGA performance.

## **SUGGESTIONS FOR FURTHER RESEARCH**

There is need for research on the relationship between NGA and CGs to ensure that both the NGA and CG can improve their performance in terms of service delivery at the county level. There should also be further research on how the NGA and independent constitutional commissions can work together to improve service delivery. Last but not least there should be research on the proper meaning and scope of restructuring of the PA.

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