Smaller Stage, Bigger Role: Devolution’s Impact on Women

By Jill Cottrell Ghai

We all know that something big happened in Kenya in 2013: instead of all government power being concentrated in Nairobi, 47 new governments came into existence. They all have certain powers guaranteed by the Constitution, and certain resources from the national government, as well as money they raise themselves.

But what does this mean for women?

Article 174 of the Constitution gives important clues to why this system, called devolution, or county governments, was created. Key words and phrases include diversity, people making decisions affecting them, public participation, social and economic development, service delivery, equitable sharing, interests and rights of minorities and marginalised communities, and accountability.

Some people would argue that feminism and devolution share a concern for diversity: feminism insists not only that the equality of women is respected but that the special nature, needs and contribution of women must be recognised. Devolution is a system of government that in theory allows for greater diversity because different governments within the country can have policies and laws that suit themselves but which may not suit others.

For women, there are two sides to the devolution coin. First, we must ask if devolution makes it
easier for women to be involved in government and in the decisions that affect their lives. Second, we must ask if the system delivers better results for women. Logically, if the answer to the first question is Yes, then this should automatically lead to better outcomes for women. But is this always so?

Can women be more involved?

It is well-known that being an MP is hard for women. Even in societies with much less resistance to public roles for women than we see in Kenya, it is hard. Crude and hostile language has been experienced by women legislators in many countries, including Australia and Sweden. Women often bear the greater burden of raising children, which makes it harder for them to be in a distant capital city. And though Kenya is passing a law about women being able to breastfeed or use express milk at work, it is doubtful whether this will apply to the Kenyan parliament.

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Being a member of a county assembly presents less difficulty for women as the assembly is likely to be closer to where the member lives. Children will be closer and family members may be less resistant.

And, of course, the Constitution does provide that women must comprise one-third of every county assembly. In county assemblies women face several challenges. Most of them are not elected to represent wards but come into the assembly through party lists to make up the gender numbers. Only 82 women were elected for wards in 2013, while nearly 700 were taken from party lists. There is thus a tendency to not view them as “real” members; many have even been insulted and referred to as “Bonga points”. Their role is often unclear—perhaps even to them.

However, having so many women will make some difference. In India, there is a system of quotas (one-third) for women in local government. A million women serve as elected members of local authorities. The assessment of the impact of the quota system is mixed. Some women seem to be the mouthpieces of their husbands. Others face tremendous hostility and harassment. But many are growing in their understanding of public affairs, and are making a positive impact. It is perhaps easier for them because they do represent geographical areas (like our wards), so are not easily dismissed as a different or inferior type of member.

One of the possible risks of devolution is apparent in Nigeria. There, women have faced problems because of the concept of indigenousness. This results from a distorted application of the constitutional concept of “the federal character of Nigeria”. People who do not come from a particular state (even if they were born there, they may not be of a community “indigenous” to the state) can be at a disadvantage there. They may be excluded from education. They may also be unacceptable as elected representatives – something that is more likely to affect women because women are likely to live where their husbands belong, which may not necessarily be where they themselves are “indigenes”. This scenario, however, is less likely to arise in Kenya, as a woman is likely to be identified with her own ethnic group rather than that of her husband. However, there have been cases where women are seen as not “belonging” to their home area if they are married to someone from outside that area – and they do not belong to their husbands’ area either. Devolution may not make this worse – or better!

What decisions are women involved in as members of county assemblies or as members of a county
executive—where women must also make up at least one-third of the membership? This depends on the powers of the counties. However, it is important to note that counties have few powers, especially in relation to legislation. Counties can’t make laws about crime (except for creating offences in connection with their powers to regulate many local activities). They have no power to affect the law on rape, for example, or domestic violence. They have no power to make laws about marriage or divorce, adoption of children or care of neglected children or children in trouble with the law. Counties have no power over the law about labour relations, including maternity leave. They cannot pass laws about land rights. And they cannot run most types of school or make laws about education, except early childhood education and village polytechnics.

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Compared to many countries that have more than one level of government, Kenya’s counties have limited powers. This is partly because they are much smaller than lower level governments in most countries. Besides, it can be both confusing and undesirable if each county has its own criminal law, or divorce law, or banking law, for example.

So what impact can women have at the county level?

**Can counties produce better outcomes for women?**

Counties can, in fact, do a good number of important things, many of which are potentially very important to women. The first in the list of powers (you will find the list in the Fourth Schedule (or annex) of the Constitution, Part 2 of the list of powers) is agriculture. The World Bank has estimated that 80% of Kenya’s farmers are women (a fact that Machakos County may have been thinking of when it created an Agricultural Development Fund Board that included a female farmer (Machakos County Agricultural Development Fund Act, 2014). Similarly, Nairobi County has passed an Urban Agriculture Promotion and Regulation Act (2015) that may benefit female farmers.

The national government can make overall policy, but counties can do a good deal to support farmers, though laws and regulations, financial support, education and so on. A women-sensitive approach could make a great difference—and women members of county assemblies could, and should, influence the development of such an approach.

The next big area is health: county clinics and hospitals, ambulance services, promotion of primary health care, licensing and control of businesses selling food to the public (many of which are run by women), and rubbish collection and disposal, are some of the areas that women members can influence. Again, the national government makes policy, but the day-to-day running of a public health service is the responsibility of county governments. An international and national priority is achieving major reductions in mother and child deaths and illnesses. The national government’s commitment to free maternity care and the First Lady’s Beyond Zero campaign attract attention but the real work has to be done at the county level. And improvements are being achieved.

While counties’ powers over education are limited, early childhood education—now recognised as being very important for the development of the child—must be of great concern to women. And the very fact of it being a county responsibility seems to have generated great interest in the subject.

Other county powers of particular interest and importance to women are housing, water and sanitation services, control of drugs, pollution, markets and fair trade practices (preventing
cheating by market dealers would be an example). Many of these were functions of the now defunct local authorities, and were often ineffectively performed. But improved financing for counties and the powers of county assemblies should make it possible for these services to be delivered much better. In 2015, the United Nations Special Rapporteur on the human right to safe drinking water and sanitation said that on a visit to Kenya, she had observed that “in three counties county-level government officials are closer to local communities and are better aware of the actual challenges and barriers to access to sanitation and water for all”. Devolution can marry this sort of awareness with the ability to do something, ensuring that county services are more effective.

**Urban planning**—also a county function—has important gender dimensions that are often overlooked. What would a woman-friendly town look like? Possible elements include good public transport: few women own cars so safe cycle lanes might increase women’s options and safe public transport might include women-only sections in buses. Other possibilities are good street lighting—widely believed to make women feel safer and to widen their options, including being able to work or socialise in the evening or at night. Urban planning could include not driving people’s homes out of the city, but making it possible for work and home to be closer, thereby making it easier for women to work, and for working men to spend more time with their families. Family-friendly public spaces and footpaths are also issues that the counties have legal power to create or influence.

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Counties can benefit women.in the way they exercise their various powers— even if those powers do not have obvious special relevance to women. The Constitution requires affirmative action programmes and policies to benefit previously disadvantaged groups. So it is constitutional to make special efforts to assist women where they have been disadvantaged. Some counties have passed laws providing that women, as well as youth and people with disabilities, receive special treatment when it comes to securing county government contracts (e.g. Elgeyo Marakwet County Equitable Development Act –2015).

**County executives**

Every county is supposed to have no more than two-thirds of either gender in its executive committee. What responsibilities do governors give their women executive members? Of course, every county executive committee member has a basket of responsibilities, but some may have more power than others to affect the lives of women. It is interesting to see that in Nandi, the executive member for agriculture was a woman; in Migori the same was true of the executive member for lands and housing. The county assembly must approve county executive committee appointments, and women members of the assembly should watch out to ensure that women are given enough responsibility.

**Strengthening customs**

The Constitution stresses culture and tradition; giving more power to a local area may strengthen its sense of traditional values. This might sometimes not be favourable to women, and could increase the risk of women being discriminated against in a devolved system of government. However, in Kenya the laws that most affect women (like divorce and land laws) are passed by the national parliament, not by the counties, so women are less likely to face legal obstacles emanating from
specific local traditions. This partly depends on how effective women—and their male supporters—are at the national government level.

Take, for example, issues like the Marriage Act 2014. Some women regretted that this Act recognised polygamy in customary and Islamic marriages. More regret that it does not require the consent of the first wife before a man can marry a second wife. A provision that would have required consent was deleted from the Bill, with the support of many male MPs. Women MPs were reported to be furious, but could not prevail against the larger male numbers. Women might ask themselves whether a marriage law passed in their own county would have been different (better or worse).

Human rights are guaranteed in the Constitution, and custom is clearly subject to human rights, because the human right commissions are national bodies; and because courts are national, women’s rights should be protected.

But vigilance is needed. Customary attitudes, if not the law, may affect a county’s employment practices and bureaucratic decisions on matters affecting women. Women need to understand the remedies, such as the Ombudsman (Commission on Administrative Justice), as well as the National Gender and Equality Commission and the National Commission on Human Rights (which should extend their networks of local offices).

They should also realise that it is the national government that engages with the international community. It may be that the national government is more easily influenced by international human rights bodies or conventions. For example, the national government must report regularly to monitoring bodies for both United Nations and the African Union human rights treaties—such as on the rights of the child, or of women or of persons with disabilities—and must report on what is happening at both the national and county levels. These bodies make comments relevant to both national and county governments.

Other county powers of particular interest and importance to women are housing, water and sanitation services, control of drugs, pollution, markets and fair trade practices (preventing cheating by market dealers would be an example). Many of these were functions of the now defunct local authorities, and were often ineffectively performed.

For example, the UN Committee on the Rights of the Child said in its 2016 observations on Kenya’s report, “Pregnant girls face discrimination in accessing maternity health care due to its cost as well as to the negative attitude of health-care workers against them, and the lack of quality health-care services tailored to them.” It will require public pressure for such comments to have an impact on government. And women’s groups need to be conscious of the opportunity to participate in preparing unofficial reports to these monitoring bodies.

The national government may also be able to affect the behaviour of county governments. For example, the national government can give counties financial grants that have strings attached—and those strings might be to implement the rights of women or other policies that are beneficial to women. The equalisation grant—from national revenue, but intended to benefit marginalised areas—may be spent by the national government itself, or through the counties. One of the factors considered by the Commission on Revenue Authority in developing criteria for identifying marginalised areas was gender disparity - the differences in the situations of men and women.

**Competing counties**

There are various reasons for having more than one level of government. One is that counties can
compete to attract business and to provide good services, and so on. Voters can compare the performance of neighbouring county governments and decide whether their own is doing a good job. This should be an incentive to county governments to do well. Health services, efficient agriculture support services and well-run markets might be areas in which they compete. If women in a county are active and vocal they may be able to persuade county governments to improve services for women, and for families.

However, there are possible downsides to competition. There is the risk of what is sometimes called the “race to the bottom”. For instance, counties may compete to attract business by lowering taxes, yet low taxes are likely to mean poorer and fewer services. This might be bad for women.

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One underlying reason is that while the people can “vote with their feet” (move from an area that is offering poor services and opportunities to one that offers better services and opportunities), for women, that may be harder than for men, since the tradition of women accompanying their spouses—rather than the reverse—still tends to apply.

**Smaller stages for women?**

However, some women have complained that stressing supposed “women’s issues” somehow diminishes women’s sense of national citizenship, and assumes that women are narrowly, and locally, focused. Women are assumed to be primarily concerned about things at the local level, like health, and community matters—“women’s subjects”. “Men’s subjects” – like war and peace and foreign affairs and aviation and perhaps big business – are the affair of the national government.

This need not be the case. Experience in public life at the county level may help equip women for office at the national level, for example.

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