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### 3 PROMOTION OF EFFICACY IN THE REGULATION OF NOISE POLLUTION 4 IN KENYA THROUGH DEVOLUTION AND PUBLIC PARTICIPATION

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#### ABSTRACT

7 This research article examines the promotion of efficacy in the regulation of noise  
8 pollution in Kenya through devolution and public participation. The prevention of  
9 noise pollution has been recognised as a component of a clean and healthy  
10 environment. In many countries, Kenya included, comparatively little attention is  
11 paid to noise pollution, despite its importance in the urban and industrial scene. For  
12 example, although the provisions of sections 115 and 175 of the Public Health Act  
13 and the Penal Code respectively, prohibit and criminalise public nuisance, their  
14 enforcement is outside the competence of the individual. Rarely does one hear of a  
15 court action by public health or other officers yet pollution continue to occur. It  
16 appears that there has been total apathy by the officers concerned with the  
17 enforcement and the community affected by the nuisance. Lack of efficacy in the  
18 implementation and enforcement of the Regulations is a major reason for the  
19 existence of noise pollution in Kenya. Among the challenges faced is the lack of  
20 resources in terms of logistics to create awareness with regards to the problems  
21 associated with noise pollution. The Kenyan public are yet to appreciate and  
22 understand that noise is an unnecessary evil in the society. As the level of noise  
23 pollution rises every day at an alarming rate a serious problem is looming to the  
24 members of the public and the country in terms of the health issues, communication  
25 troubles, general nuisance, and its corresponding effects on wildlife. There is a  
26 limited research field study and gaps in this area regarding noise pollution control  
27 and how to enhance its efficacy in Kenya. New strategies, beyond the simple  
28 command and control instruments currently in place at the national level shall help  
29 in changing behaviours in ways that shall be beneficial to the society as a whole. This  
30 paper tends to look at how the various tiers of national and county governments  
31 have embraced these principles in the promotion of efficacy in the environmental  
32 governance in Kenya especially in noise pollution control.

#### 33 1.1 INTRODUCTION

34 Noise pollution can be defined as unwanted or offensive sounds that unreasonably  
35 intrude into our daily activities<sup>2</sup>. Noise has in recent years emerged as one of the  
36 important pollutant of environment, attracting attention from the local authorities  
37 and the international community around the world. Despite much having been

38 written about the adversity of noise pollution, much of the information has not been  
39 appreciated by the medical community and the general public<sup>3</sup>. This has made noise  
40 pollution to become a fact of life worldwide.

41 The potential health effects of noise pollution are numerous and significant, both  
42 medically and socially. Excessive noise can cause injury to the body<sup>4</sup>. It interferes  
43 with sleep, concentration, communication and recreation<sup>5</sup>. Noise, even at levels that  
44 are not harmful to hearing are perceived subconsciously as a danger signal even  
45 during sleep<sup>6</sup>. The cumulative adverse effects of noise impairs health and degrade  
46 residential, social, working and learning environment with corresponding real  
47 (economic) and intangible (well-being) losses.

48 The aim of enlightened government control should be to protect citizens from the  
49 adverse effects of airborne pollution, including those produced by noise. This is  
50 because people have the right to choose the nature of their acoustical environment; it  
51 should not be imposed on them by others. In Kenya noise pollution is currently  
52 regulated, mainly by the command and control instruments such as laws,  
53 regulations, permits, standards etc. Specifically, Kenya's regulation of noise  
54 pollution is in the form of laws and regulations such as *The Environmental*  
55 *Management and Coordination Act ( Noise & Excessive Vibration pollution) ( Control)*  
56 *Regulations*<sup>7</sup>, (hereinafter referred to as the ' Regulations'); *The Factories and other Places*  
57 *of Work (Noise Prevention and Control) Rules, 2005*<sup>8</sup>; the Convention Concerning the  
58 Protection of Workers against Occupational Hazards in the Working Environment  
59 due to Air Pollution, Noise and Vibration, 1977<sup>9</sup>, and the provisions of Sections 55  
60 and 58 of the Traffic Act<sup>10</sup>. These are national laws. The constitution of Kenya, 2010  
61 at Schedule 4, Part 2 (3) ,made under articles 185 (2), 186(1) and 187(2), however,  
62 allocates the function of control of air pollution, noise pollution, and public  
63 nuisances and outdoor advertising on the devolved county governments<sup>11</sup>.

64 Decentralised management of the environment and natural resources is therefore a  
65 new paradigm in Kenya's environmental management scene because for a long time,  
66 environmental management in Kenya has generally been undertaken by the national  
67 government on behalf of the people of Kenya. The command-and-control approach  
68 philosophy which has predominantly informed the development of Kenya's  
69 environmental regime, according to Ochieng, however, requires a centralised  
70 authority for environmental management in the hands of public institutions, with  
71 little, if any, delegation of responsibilities to other authorities or communities  
72 thereby permitting little room for public participation<sup>12</sup>.

73 The Constitution of Kenya at Article 69(1)(d), however, encourages public  
74 participation in the management of the environment. It also provides for national  
75 values and principles of governance in Kenya which at Article 10(2)(a) includes

76 devolution and public participation. The research proposed herein shall seek to  
77 study the practical application of the national values and principles of devolution  
78 and public participation as one of the ways of enhancing community participation  
79 in, thereby enhancing the efficacy of the, noise pollution control mechanisms in  
80 Kenya. It shall assess the extent of devolution of noise pollution control in Kenya;  
81 and the adequacy of the legal frameworks to encourage community participation  
82 through devolution.

### 83 **Theoretical Framework**

84 The model on the Legal Realism theory of Karl Llewellyn which is an approach to  
85 thinking about and studying the results of the application of law, and subsequent  
86 social engineering through systematic and purposeful change of the law and the  
87 practical application of the law and the results<sup>13</sup>. Its main theme throughout all of  
88 these related philosophies is a belief in the potential for improvement of human  
89 society (and therefore the human condition) through purposeful change imposed via  
90 politics and law<sup>14</sup>. According to Karl Llewellyn, law, including regulations, is  
91 determined by actual practices and attitude of judicial officers, lawyers, and police  
92 officers, and other enforcement agencies, rather than as the rules and doctrines set  
93 forth in statutes<sup>15</sup>. Justice Oliver Wendell Holmes, another realist, adds that law is  
94 made by human beings and, thus, is subject to human foibles, frailties and  
95 imperfections<sup>16</sup>. Applying the above theory in noise pollution control, then I do  
96 believe that efficacious noise pollution control laws and policies, can best be  
97 improved when all the stakeholders, including the members of the communities,  
98 police, judiciary, lawyers etc are involved right from the formulation to the  
99 implementation stages. Such laws and policies if enforced, interpreted and/or  
100 implemented well, shall contribute positively to behavioural and attitudinal change  
101 towards noise pollution control, and shall have a purposeful change to the  
102 community as regards the prevention and control of noise pollution in our counties.

103 Based on the notion that communities will have little interest in noise pollution  
104 control if they are not allowed to fully participate in it and participation is best  
105 achieved if noise pollution control is fully devolved to the community level. This  
106 study is therefore based on the concept that devolution and public participation lead  
107 to the greatest levels of transfer of power to local levels<sup>17</sup>. Another concept upon  
108 which this study is based is the new governance concept. This concept advocates for  
109 decentralization and challenges the traditional focus on formal regulation mainly in  
110 the form of command and control as the dominant locus of change<sup>18</sup>. New  
111 governance is facilitated by such factors as devolution; increased public-private  
112 partnerships and the emergence of new managerial technologies<sup>19</sup>. Many policy  
113 initiatives in different fields are now employing new regulatory approaches in legal  
114 practice that reflect this concept. One such field is Environmental law which has

115 been at the forefront of new governance through the concept of civic  
116 environmentalism, which confronts the failures of traditional regulatory schemes  
117 and promotes participatory and decentralized arrangements to better conserve the  
118 environment and natural resources. The new governance approach of civic  
119 environmentalism aims to be participatory, collaborative and decentralized and  
120 focuses on problem solving. As such, policies must be integrated to allow those  
121 closest to the problem to contemplate their effectiveness and reasonableness.  
122 Government restricts its role to assisting in and providing incentives for self-  
123 implementation programs and encourages public participation.

#### 124 **Nature and Sources of Noise Pollution**

125 According to other studies, the source of most outdoor noise worldwide are  
126 transportation systems, including road, air and rail traffic; generators, car alarms,  
127 emergency service sirens, office equipment, factory machinery, grounds keeping  
128 equipment, barking dogs, appliances, power tools, lighting hum, audio  
129 entertainment systems, loudspeakers, neighbourhood noise and public address  
130 system used by religious and social organisations. It was concluded that poor urban  
131 planning may give rise to noise pollution since side-by-side industrial and  
132 residential buildings can result in noise pollution in the residential area. He further  
133 concluded that road noise, especially at some distance from the road can be  
134 described as a steady state noise that does not fluctuate much, but rail and air craft  
135 noise are acoustically characterised by high noise levels of relative short duration.  
136 Further that the speed and exhaust systems determine the noise released by road  
137 traffic. Noise from industrial installations, construction sites and fixed recreation  
138 facilities, on the other hand, radiate from a point source and shape of exposure area  
139 is generally circular<sup>20</sup>.

140 Indiscriminate use of horn by the vehicles and widespread use of loud speakers in  
141 social and religious ceremonies cause several health hazards such as deafness,  
142 nervous breakdown, mental disorder, heart troubles and high blood pressure, head-  
143 aches, dizziness, inefficiency and insomnia<sup>21</sup>. The adverse effects of noise have not  
144 even spared the birds and other bio species like robins, sparrows, wrens and  
145 blackbird as those living near roads may not be able to hear each other and thus  
146 unable to contact for propagation<sup>22</sup>.

#### 147 **The Concept of Public Participation in Environmental Decision Making in Kenya**

148 Public participation, often called P2 by practitioners, according to Omondi and  
149 Wanjiku, is the process by which an organisation consults with interested or affected  
150 individuals, organisations, and government entities before making a decision. It is  
151 sometimes used interchangeably with the concept or practice of stakeholder

152 engagement and/or popular participation. The 'public' are the people with an  
153 interest in or are likely to be affected, by a decision made, either positively or  
154 negatively. According to Omondi and Wanjiku, civil society organisations, who on  
155 their own, should not be confused with the 'public' as defined herein, have for long  
156 played a significant role in enhancing a culture of participation across the world<sup>23</sup>.  
157 According to Okidi, management of the environment should involve prominent  
158 community participation and that the legal empowerment of individuals and public  
159 participation is an essential condition of a good environmental law and practice<sup>24</sup>.

160 There are many different public participation mechanisms, although these often  
161 share common features. These include stakeholder engagement, large-scale  
162 consultations, focus group research, online discussion forums, or deliberative  
163 citizens' meetings. Civil society movements and organisations have embodied  
164 various avenues to include: public hearings, forming lobby groups, citizen report  
165 cards, social audits and citizen action groups<sup>25</sup>. They often initiate the formation of  
166 watchdog committees and citizen advisory groups and facilitate their activities.  
167 Other avenues provided for by the law are the citizen's fora which are provided for  
168 in section 22 of the Urban Area and Cities Act, No. 13 of 2011.

169 For public participation to be effective, Omondi and Wanjiku proposed that public  
170 consultations should be open to all citizens, without discrimination, safeguards  
171 should be established to prevent consultative forums from being dominated by any  
172 one political group, organised interest, or politicians, public participation must have  
173 clear and specific purposes and the timeline and venues for public consultations be  
174 made known at least two weeks in advance of the consultation<sup>26</sup>. Time dedicated for  
175 public response, in form of feedback and questions must also be set aside<sup>27</sup>.

176 There have emerged a number of arguments in favour of a more participatory  
177 approach, which stress that public participation is a crucial element in  
178 environmental governance that contributes to better decision making. It is  
179 recognised that environmental problems cannot be solved by government alone<sup>28</sup>.  
180 By involving the public, who are at the root of both causes and solutions of  
181 environmental problems, in environmental discussions, transparency and  
182 accountability are more likely to be achieved, thus secures the democratic legitimacy  
183 of decision-making that good environmental governance depends on. Arguably, a  
184 strong public participation in environmental governance could increase the  
185 commitment among stakeholders, which strengthens the compliance and  
186 enforcement of environmental laws<sup>29</sup>. In addition, some argue that the right to  
187 participate in environmental decision-making is a procedural right that "can be seen  
188 as part of the fundamental right to environmental protection". From this ethical  
189 perspective, environmental governance is expected to operate within a framework

190 coinciding the "constitutional principle of fairness (inclusive of equality)", which  
191 inevitably requires the fulfilment of "environmental rights" and ultimately calls for  
192 the engagement of public<sup>30</sup>. Further, in the context of considerable scientific  
193 uncertainties surrounding environmental issues, public participation helps to  
194 counter such uncertainties and bridges the gap between scientifically-defined  
195 environmental problems and the experiences and values of stakeholders<sup>31</sup>.

### 196 **The Legal Regime of Public Participation in Kenya**

197 The Constitution of Kenya now recognises public participation, a political principle,  
198 as a right. Article 10(2)(a) of the Constitution of Kenya provides that the national  
199 values and principles of governance include participation of the people. Others co-  
200 related values and principles provided for therein include patriotism, national unity,  
201 sharing and devolution<sup>32</sup>. Further, Part 1 of Chapter 13 of the Constitution of Kenya  
202 sets out the values and principles for public participation in the public service, which  
203 includes noise pollution control function as devolved to the counties. Specifically,  
204 Article 232(1) provides that the national values and principles of public service  
205 include, "...*(d) Involvement of the people in the process of policy making...and (f)*  
206 *transparency and provision to the public of timely, accurate information.*" Article 232(2)(a)  
207 provides that the values and principles of public service apply to public service in all  
208 State organs in both levels of government.

209 Another secondary, but related concept to direct public participation is the issue of  
210 transparency. In this regard, Article 35 of the Constitution provides for the right to  
211 access to information. Access to information safeguards the right for every person to  
212 obtain information on environment in custody of a public authority without need for  
213 justification or proof of citizenship. Importantly, what counts as "environmental  
214 information" is widely defined to afford the right of access to information the widest  
215 construction. According to Omondi and Wanjiku, this right to know is an important  
216 guarantee of accountability in institutional activities<sup>33</sup>.

217 Article 69 of the Constitution provides for the obligations of the state in respect to  
218 the environment and encourages public participation in the management, protection  
219 and conservation of the environment. It establishes systems of EIA, environmental  
220 audit and monitoring of the environment. Other aspects of public participation may  
221 be found in Articles 48 and 50 of the Constitution which provide for the right to  
222 access to Justice and to a fair hearing. The Environment Management and Co-  
223 ordination Act, 1999 (EMCA) has created a unique institutional framework for  
224 environmental management and coordination that has the public play an important  
225 role. EMCA provides for public participation in environmental matters. EMCA  
226 establishes various institutions, such as National Environment Council (NEC),  
227 NEMA, NET, Public Complaints Committee, Provincial and District environment

228 committees, National Environmental Action Plan Committee (NEAPC), all of which  
229 allow the public participation and/or stakeholder consultation and engagement in  
230 environmental decision-making.

231 The practice of Environmental Impact Assessment (EIA) as provided for in the Act  
232 enhances environmental democracy. It engages the public in vetting projects that  
233 impact on the environment. The requirement for publication of EIA study  
234 reports/advertisement allows the public for participation in reviewing an envisaged  
235 public project<sup>34</sup>. Section 123 of EMCA provides that any person may have access to  
236 any record transmitted to NEMA. The Environmental Impact Assessment/ Audit  
237 Regulations, 2013, are anchored under Section 147 of the Environmental  
238 Management and Co-ordination Act (EMCA). The EIA Regulations are said to apply  
239 to all policies, plans, programmes, projects and activities specified in Part IV, Part V  
240 and the Second Schedule of EMCA. The EIA regulations require the authority  
241 (NEMA) to invite the public to make oral or written comments on the report.

242 EMCA laid to rest the stringent requirement as to standing which had been a prime  
243 constraint to environmental litigation in Kenya. Under section 3(3), everyone whose  
244 environmental rights have been violated can apply to the High Court of Kenya for  
245 redress and remedy without having to establish that the action or omission  
246 complained against caused or is likely to cause a personal injury or loss to him or  
247 her. The judiciary in deciding environmental matters is obliged to be guided by  
248 principles of sustainable development including public participation in development  
249 of policies, plans and process in management of environment.

250 One crucial aspect of public participation is decentralisation, de-concentration and  
251 devolution of decision-making and implementation powers<sup>35</sup>. This could be the  
252 reason why section 87 of the County Government Act 2012 provide that citizen  
253 participation in County governments, where noise pollution control functions has  
254 been devolved, shall be based upon the principles of timely access to information,  
255 data, documents, and other information relevant or related to policy formulation  
256 and implementation; reasonable access to the process of formulating and  
257 implementing policies, laws, and regulations, including the approval of  
258 development proposals, projects and budgets, the granting of permits and the  
259 establishment of specific performance standards; protection and promotion of the  
260 interest and rights of minorities, marginalised groups and communities and their  
261 access to relevant information; legal standing to interested or affected persons,  
262 organisations, and where pertinent, communities, to appeal from or, review  
263 decisions, or redress grievances, with particular emphasis on persons and  
264 traditionally marginalised communities, including women, the youth, and  
265 disadvantaged communities; reasonable balance in the roles and obligations of  
266 county governments and non-state actors in decision-making processes to promote

267 shared responsibility and partnership, and to provide complementary authority and  
268 oversight; and promotion of public-private partnerships, such as joint committees,  
269 technical teams, and citizen commissions, to encourage direct dialogue and  
270 concerted action on sustainable development; and the recognition and promotion of  
271 the reciprocal roles of non-state actors' participation and governmental facilitation  
272 and oversight.

273 There are several other areas of interest of note where citizens have been given an  
274 avenue to participate in their governance at the county level. Section 15 of the  
275 County Government Act, 2012 grants any person power to petition the county  
276 assembly to consider any matter within its authority, including enacting, amending  
277 or repealing any of its legislation. In addition, section 88 of the County Government  
278 Act, 2012, gives the people the right to petition the County government on any  
279 matter under the responsibility of the County government. Section 89 makes it a  
280 duty to County government authorities, agencies and agents to respond  
281 expeditiously to petitions and challenges from citizens. Moreover, section 90 of the  
282 County Government Act, 2012 allows the conduct of referendum on local issues such  
283 as County laws and petitions; or planning and investment decisions affecting the  
284 County for which a petition has been raised and duly signed by at least 25% of the  
285 registered voters where the referendum is to take place.

286 Thus Public participation in the County planning process is mandatory as indicated  
287 in section 113 of the County Government Act, 2012. It even goes on further to list the  
288 various avenues that the county should make available for the people to participate.  
289 These include Information communication technology based platforms; town hall  
290 meetings; budget preparation and validation fora; notice boards: announcing jobs,  
291 appointments, procurement, awards and other important announcements of public  
292 interest; development project sites; avenues for the participation of peoples'  
293 representatives including but not limited to members of the National Assembly and  
294 Senate; and, establishment of citizen fora at County and decentralised units. Section  
295 115(2) of the act provides that each county assembly shall develop laws and  
296 regulations giving effect to the requirement for effective citizen participation. These  
297 laws and regulations include those on noise pollution control which is a devolved  
298 function.

299 The Urban Areas and Cities Act, 2011 also has provisions that allow for citizen  
300 participation. The act at schedule 1, and pursuant to section 5, provides that such  
301 urban areas and cities should be able to manage air noise pollution control services.  
302 Section 22 of the act provides for the citizen fora where residents of a city or urban  
303 area have the right to: contribute to the decision-making processes of the city or  
304 urban area by submitting written or oral presentations or complaints to a board or



305 town committee through the city or municipal manager or town administrator;  
306 prompt responses to their written or oral communications; be informed of decisions  
307 of a board, affecting their rights, property and reasonable expectations; regular  
308 disclosure of the state of affairs of the city or urban area, including its finances;  
309 demand that the proceedings of a board or committee and its committees or sub  
310 committees be: conducted impartially and without prejudice and untainted by  
311 personal self-interest; the use and enjoyment of public facilities; and, have access to  
312 services which the city or municipality provides. These rights have been elaborately  
313 provided for in the second schedule to the Act. Section 24 of the Act provides for the  
314 publication of important information, and for access of the information by a resident  
315 upon request. These information may include those relating to the policies and  
316 programmes, relating to the control, and or management of air noise pollution.

### 317 **The International Law Regime for Public Participation in Environmental** 318 **Decision-Making in Kenya**

319 As early as 1948, the Universal declaration on Human Rights (UDHR) provided the  
320 framework for generalized access to information. The International Covenant on  
321 Civil and Political Rights promulgated in 1966 sought to guarantee the right of  
322 access and dissemination of information by securing the freedom of citizens of the  
323 member countries to seek, receive and impart information and ideas of all kinds  
324 including information on environmental issues. Closer home, the African Charter on  
325 Human and Peoples' Rights in 1981 guaranteed that citizens have the rights of access  
326 to information, participation and justice. These rights, under the charter, were  
327 granted in addition to the right of the citizens to a general satisfactory environment  
328 favourable to their development. By virtue of Articles 2(5) and (6) of the Kenyan  
329 Constitution, these conventions have become part of our laws<sup>4</sup>.

330 Principle 19 of the Stockholm Declaration advocates for education in environmental  
331 matters for the younger generation as well as adults giving due consideration to the  
332 underprivileged in order to broaden the basis for an enlightened opinion and  
333 responsible conduct by individuals enterprises and communities in protecting and  
334 improving the environment in its full human dimension. The call for an enlightened  
335 opinion presupposes participation in decision-making. The enlightened opinion is to  
336 be taken on board in decisions affecting the environment. The 1992 Rio Declaration  
337 makes provisions for public participation in Principles 10, 20, 21 and 22.

338 The 1988 United Nations Economic Commission for Europe Convention on Access  
339 to Information, Public Participation in Decision-Making and Access to Justice in  
340 Environmental matters (or the "Aarhus Convention") is an international agreement  
341 that lays down an elaborate set of basic rules to promote public involvement in  
342 environmental matters and improve enforcement of environmental law. It grants

343 the public access to environmental information, provides for participation in  
344 environmental decision-making, and allows the public to seek judicial redress when  
345 environmental laws are infringed. As such, it represents a milestone in strengthening  
346 democracy in environmental policy-making and environmental protection, and  
347 improves the effectiveness of environmental policies and laws. The AARHUS  
348 convention is founded on the pillars of access to information, public participation in  
349 decision-making and access to justice. Articles 14(1)(a) of Convention on Biological  
350 Diversity encourages public participation in environmental impact assessment of  
351 proposed projects that are likely to have significant adverse effects on biological  
352 diversity. It implores the promotion of exchange of publicly available information.

### 353 **Conceptualizing Devolution as a Form of Governance**

354 Devolution is a complex and wide subject with different connotations and meaning  
355 across time and space. It is often conceptualized as a sub-category or level of  
356 decentralization. Rondinelli, Nellis and Cheema define decentralization as having  
357 three levels; de-concentration, delegation and devolution. They define de-  
358 concentration as the handing over of administrative responsibility to lower levels  
359 within central government, delegation as being the transfer of managerial  
360 responsibility for specifically defined functions to organisations that are only  
361 indirectly controlled by central government and devolution as the strengthening of  
362 sub-national units of government which are outside the direct control of central  
363 government<sup>36</sup>.

364 According to Odero, devolution is a form of decentralization in which the authority  
365 for decision making in respect to finance and management is transferred to quasi-  
366 autonomous units of local government. For him, devolution is a political concept  
367 that denotes the transfer of political, administrative and legal authority, power and  
368 responsibility from the centre to lower levels<sup>37</sup>. Cirelli takes a similar position on  
369 transfer of powers to local levels of government, albeit focusing on the  
370 environmental sector. He observes that there has been a growing tendency towards  
371 the devolution of powers of central government in the environmental sector to local  
372 authorities. It is his argument that increased devolution of power to the local level  
373 may facilitate adequate consultation of communities<sup>38</sup>. These three works are  
374 important to the extent that, they discuss the meaning and importance of devolution  
375 in the decentralization of governments. The key rationales for decentralisation are  
376 well articulated by Musgrave<sup>39</sup> and Oates<sup>40</sup>. They argue that decentralisation may  
377 improve governance in public service provision by improving the efficiency of  
378 resource allocation. They thus argue for decentralisation from an economic point of  
379 view. They, however, further observe that sub-national governments are closer to  
380 the people than the national government and as a result, have better knowledge

381 about local preferences. Thus local governments are therefore better placed to  
382 respond to the diverse needs of the local people. In addition, devolution narrows  
383 down the social diversity and subsequently the variation in local preferences. This  
384 reduces the opportunities for conflicts among different communities. Tiebout notes  
385 that devolution promotes competition among the county governments and thus  
386 enhances the chances that governments will respond to local needs. As a result,  
387 counties are able to attain higher levels of efficiency in public service and in  
388 allocation of public resources. Musgrave<sup>41</sup> further states that devolution can enhance  
389 production efficiency by promoting accountability, reducing corruption, and  
390 improving cost recovery.

391 Arguments favouring devolution of resources to local levels of governance  
392 emphasise that the enhanced decision-making power, authority and control over  
393 resources play a pivotal role in economic and social development. They contend that  
394 devolution will result in increased citizens' participation in local governance where  
395 'local governments are perceived to have the capacity to make political and financial  
396 decisions affecting their economic and social welfare'<sup>42</sup>. The improved allocation of  
397 resources is the most common theoretical argument for devolution<sup>43</sup>. By bringing  
398 government closer to local people, it is asserted that the government will be better  
399 informed to local needs and preferences, resulting in increased accountability and  
400 enhanced responsiveness of officials and government at the empowered local or  
401 regional level<sup>44</sup>.

402 There are however few studies on legislation at the county levels. There is no  
403 consensus on the perceived benefits of legally recognised self-government. There are  
404 also conflicting perspectives in the academic realm regarding the desirability and  
405 potential consequences of devolution and political decentralisation. Arguments  
406 against decentralisation fall into two categories, focusing either on national effects or  
407 local effects<sup>45</sup>. At the national level, scholars have argued that the establishment of  
408 sub-national (or sub-provincial/ territorial) governments can lead to fiscal deficits,  
409 as local government debts are reluctantly absorbed by the national government<sup>46</sup>. At  
410 the local level, rather than increasing democratic accountability, it has been argued  
411 that local elites can benefit disproportionately from devolution; effectively creating  
412 'authoritarian enclaves' in local settings<sup>47</sup>. Ochieng argues that there is always a  
413 possibility of tension between the central and local government in attaining a  
414 reasonable balance of power in managing the environment and natural resources. If  
415 such tensions result in adversarial relationships that undermine the application of  
416 the subsidiary principle, the ultimate outcome is the ineffectiveness of both the  
417 decentralisation and the environment or natural resource policy. Similar outcome  
418 may result from lack of effective co-ordination and synergy among various  
419 institutions responsible for environmental management. Ochieng further argues that

420 coming from the background of command-and-control regime; the citizenry still  
421 consider environmental management as the preserve of the governmental  
422 institution. Thus there is need to create greater awareness about the emerging  
423 environmental issues such as noise pollution control<sup>12</sup>.

424 Other scholars look more specifically at devolution. For example, Dilys Roe et al.  
425 (eds) posit that there is increasing focus on devolution and on creating local level  
426 conservation responsibility. Devolution for them is the way forward for natural  
427 resource management in many countries<sup>48</sup>. The gap does not provide for the  
428 mechanisms of the said devolution through legal frameworks.

### 429 **Practices in Noise Pollution Control with Respect to Devolution**

430 Giving power of self-governance to the people and enhancing the participation of  
431 the people in the exercise of the powers of the state and in making decisions  
432 affecting them is one of the objectives of devolution provided for under Article  
433 174(c) of the Constitution. One of the aims of devolution is to create more intense  
434 community involvement in order to adjust service delivery models to the  
435 communities' specific needs<sup>49</sup>. Most of the studies and literature on noise pollution  
436 control practices are not local. Generally however, action to reduce environmental  
437 noise has a lower priority than other environmental problems such as air and water  
438 pollution. Recognising this as a prime issue, the European Commission adopted the  
439 European Noise Directive requiring major cities to establish a noise management  
440 policy with the first step being to assess the current noise climate in the city by  
441 gathering real world data and building noise maps in order to better understand the  
442 problem and support the creation of local action plans<sup>50</sup>.

443 According to the United Kingdom's Department of Environment, Food and Rural  
444 Affairs (DEFRA) and the Chartered Institute for Environmental Health (CIEH), local  
445 authorities have a range of roles involving responsibility for noise control. These  
446 include investigation and abatement of statutory nuisance; land use planning;  
447 entertainment licensing; building control; and residential landlord<sup>51</sup>. Other local  
448 authority departments with responsibility for noise services include the Local  
449 Authority Building Control and approved private building inspection services -  
450 ensure compliance with Part E of the Building Regulations 2000<sup>52</sup> relating to sound  
451 insulation between, and reverberation in the common parts of new and converted  
452 residential buildings and acoustic conditions of schools. The proactive  
453 implementation of national and local noise policy to a considerable extent is  
454 achieved through the planning processes with external agencies who play a role in  
455 controlling noise pollution<sup>53</sup>.

456 In Northern Ireland, The Department of the Environment (DoE) is responsible for  
457 planning control. The Planning Service, an agency within DoE, administers the  
458 development control and development plan functions. The Planning Service  
459 considers noise issues to be material to the determination of planning applications  
460 and they are taken into account in preparing development plans. District council  
461 Building Control Officers ensure compliance with the requirements of the Building  
462 Regulations relating to sound insulation in new and converted buildings. The  
463 Northern Ireland Housing Executive (NIHE) controls public sector housing and, as  
464 landlord, ensures compliance with tenancy conditions. However, Environmental  
465 Health Officers investigate noise complaints and enforce statutory noise nuisance  
466 provisions relating to NIHE dwellings. The Department for Regional Development's  
467 Roads Service must publish details of proposed trunk roads - and the public has the  
468 right to object on any grounds, including noise. The Roads Service must also  
469 consider the noise impact of road construction and similar works and administer  
470 noise insulation grant schemes. The police have controls to prevent the illegal use of  
471 motor horns. They also enforce the provisions of the Motor Vehicles (Construction  
472 and Use) Regulations (NI) 1989 regarding excessively noisy vehicles and they deal  
473 with noisy activities which may constitute public order offences. Complaints about  
474 noise from civil aircraft can be made to the Department for Regional Development,  
475 Ports and Public Transport Division. Under the Airports (NI) Order 1994 the  
476 Department of the Environment in Northern Ireland also has a role to play in  
477 relation to civil aircraft noise at airports. It has power to instruct an airport operator  
478 to limit noise and vibration and may make a scheme requiring them to pay grants  
479 towards noise insulation. Complaints about military aircraft/helicopters should be  
480 addressed to the Army Headquarters.

481 The development of effective noise services requires written policies and procedures  
482 which set out in clear, unambiguous terms how the service is to be scoped, organised  
483 and delivered<sup>78</sup>. The local authority may delegate the formulation and adoption of  
484 noise management policy to officer level without need for ratification by members.  
485 That delegation must be by formal resolution otherwise it will be *ultra vires*. In  
486 addition an authority will routinely delegate the operation of that policy at case level  
487 to those same officers. In such circumstances the officer is entrusted with both  
488 formulation and implementation of policy. As a guide, DEFRI and CIEH suggested  
489 that the following elements should be addressed in strategy, policy and technical  
490 procedure documents for noise services: the title and commencement date of the  
491 document together with reference to any amendments; the title of the officer  
492 responsible for maintaining quality; details of the legal context in which the service  
493 operates; a description of the organisational structure, including specific posts or  
494 named officers as appropriate; details of how the service assures the competence of  
495 its authorised officers, including professional and technical qualifications, experience

496 and developmental training, etc.; a detailed description of the scope of the service,  
497 including provision for responding to service requests out of hours; a digest of  
498 service standards, including relevant performance indicators and targets, where  
499 these have been developed; a practical definition of what constitutes “resolution” of  
500 a complaint; an enforcement policy reflecting the national enforcement concordat; a  
501 review of stakeholder issues, including equal opportunities, ethnic monitoring and  
502 customer feedback; service level agreements and procedures for liaison with  
503 different local authority departments, police, the Environment Agency and other  
504 external agencies as relevant; a set of detailed, procedural guidance notes outlining  
505 how the service intends to achieve consistency in dealing with particular matters,  
506 such as: investigating a complaint, prioritisation of complaints, record sheets, the use  
507 of notebooks etc. - written evidence, the taking of witness statements, the use of  
508 alternative dispute resolution, checklist for assessing correct service of a noise notice,  
509 service of abatement notices, appeals against abatement notices, defences in  
510 proceedings for breach of abatement notices, etc. The procedures described above  
511 may form part of the noise service’s quality management system. It is recommended  
512 that key elements of the strategy, i.e. policy and strategy/enforcement procedures,  
513 are subject to scrutiny and approval by elected members and that the strategy is  
514 formally adopted by the local authority, thereby ensuring corporate status and  
515 commitment.

516 Examples of imaginative and innovative pro-active local authority initiatives  
517 include: dedicated web sites detailing a range of information including descriptions  
518 of the scope of the service; how to make a complaint; specific topics such as  
519 construction site noise and publicising successful prosecutions, etc.; contributing to  
520 the raising of the awareness of noise issues by participating in Noise Awareness  
521 Week; improved advertisement and promotion of noise services leading to a  
522 significant increase in uptake; and drafting of guidance and advice on noise for  
523 developers and licensees to increase the effectiveness of the Town Planning and  
524 licensing regimes for prevention of noise problems.

525 For a local authority to discharge its statutory duties, a minimum standard of service  
526 needs to be resourced, monitored, achieved and documented. Service standards  
527 relevant to those duties and local policy should be established at least for the  
528 following: response policy including target response times; provision of technically  
529 competent enforcement officers; administrative support at all stages of the  
530 complaint; complaint recording and priority criteria (screening); communications  
531 within the service and with noise sufferers and makers; links with other local  
532 authority service departments; liaison with police and other external agencies; health  
533 and safety of officers; maintenance and calibration of measurement and recording  
534 instruments; individual case and overall service evaluation; and agency

535 arrangements with other authorities. The standards must provide for specific and  
536 measurable outputs.

### 537 **Conclusion**

538 In conclusion, it's clear that noise pollution has serious implication to health, medical  
539 and economic problems to the human being and even flora and fauna. Therefore,  
540 there is need to adverse effects of airborne pollution, including those produced by  
541 noise with emphasis with the best strategies, beyond the simple command and  
542 control instruments currently in place at the national level that will include change  
543 in behaviours in ways that shall be beneficial to the society as a whole.

### 544 **Recommendations**

545 There is need to balance incentives to elicit compliance with, and, command and  
546 control mechanisms in the interest of environmental sustainability that requires the  
547 framing of the enforcement mechanisms that yield optimal compliance. On issue of  
548 inclusive participation, need for strong public participation in environmental  
549 governance should increase the commitment among stakeholders, which  
550 strengthens the compliance and enforcement of environmental laws. As for the  
551 community support groups and government agencies need to increase awareness of  
552 environmental rights and the benefits of sustainable environment regulation to  
553 safeguard a healthy environment for all Kenyans.

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