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

5
6 **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 activities². 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 public³. 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 body⁴. It interferes
43 with sleep, concentration, communication and recreation⁵. Noise, even at levels that
44 are not harmful to hearing are perceived subconsciously as a danger signal even
45 during sleep⁶. 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*⁷, (hereinafter referred to as the ' Regulations'); *The Factories and other Places*
57 *of Work (Noise Prevention and Control) Rules, 2005*⁸; the Convention Concerning the
58 Protection of Workers against Occupational Hazards in the Working Environment
59 due to Air Pollution, Noise and Vibration, 1977⁹, and the provisions of Sections 55
60 and 58 of the Traffic Act¹⁰. 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 governments¹¹.

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 participation¹².

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. Kenya's devolution, adopted following the
77 March 2013 general elections, is expansive in scope and implementation timelines.
78 This ambitious devolution shifts some key decision-making from central to county
79 governments, creating a window of opportunity for more 'bottom-up' engagement,
80 backed by a Constitution and legal framework that include provisions for
81 government to share information, consult the public and regularly gather citizen
82 feedback (weblink: <http://www.worldbank.org>).

83 The research proposed herein shall seek to study the practical application of the
84 national values and principles of devolution and public participation as one of the
85 ways of enhancing community participation in, thereby enhancing the efficacy of
86 the, noise pollution control mechanisms in Kenya. It shall assess the extent of
87 devolution of noise pollution control in Kenya; and the adequacy of the legal
88 frameworks to encourage community participation through devolution.

89 **Theoretical Framework**

90 The model on the Legal Realism theory of Karl Llewellyn which is an approach to
91 thinking about and studying the results of the application of law, and subsequent
92 social engineering through systematic and purposeful change of the law and the
93 practical application of the law and the results¹³. Its main theme throughout all of
94 these related philosophies is a belief in the potential for improvement of human
95 society (and therefore the human condition) through purposeful change imposed via
96 politics and law¹⁴. According to Karl Llewellyn, law, including regulations, is
97 determined by actual practices and attitude of judicial officers, lawyers, and police
98 officers, and other enforcement agencies, rather than as the rules and doctrines set
99 forth in statutes¹⁵. Justice Oliver Wendell Holmes, another realist, adds that law is
100 made by human beings and, thus, is subject to human foibles, frailties and
101 imperfections¹⁶. Applying the above theory in noise pollution control, then I do
102 believe that efficacious noise pollution control laws and policies, can best be
103 improved when all the stakeholders, including the members of the communities,
104 police, judiciary, lawyers etc are involved right from the formulation to the
105 implementation stages. Such laws and policies if enforced, interpreted and/or
106 implemented well, shall contribute positively to behavioural and attitudinal change
107 towards noise pollution control, and shall have a purposeful change to the
108 community as regards the prevention and control of noise pollution in our counties.

109 Based on the notion that communities will have little interest in noise pollution
110 control if they are not allowed to fully participate in it and participation is best
111 achieved if noise pollution control is fully devolved to the community level. This
112 study is therefore based on the concept that devolution and public participation lead
113 to the greatest levels of transfer of power to local levels¹⁷. Another concept upon

114 which this study is based is the new governance concept. This concept advocates for
115 decentralization and challenges the traditional focus on formal regulation mainly in
116 the form of command and control as the dominant locus of change¹⁸. New
117 governance is facilitated by such factors as devolution; increased public-private
118 partnerships and the emergence of new managerial technologies¹⁹. Many policy
119 initiatives in different fields are now employing new regulatory approaches in legal
120 practice that reflect this concept. One such field is Environmental law which has
121 been at the forefront of new governance through the concept of civic
122 environmentalism, which confronts the failures of traditional regulatory schemes
123 and promotes participatory and decentralized arrangements to better conserve the
124 environment and natural resources. The new governance approach of civic
125 environmentalism aims to be participatory, collaborative and decentralized and
126 focuses on problem solving. As such, policies must be integrated to allow those
127 closest to the problem to contemplate their effectiveness and reasonableness.
128 Government restricts its role to assisting in and providing incentives for self-
129 implementation programs and encourages public participation.

130 **Nature and Sources of Noise Pollution**

131 According to other studies, the source of most outdoor noise worldwide are
132 transportation systems, including road, air and rail traffic; generators, car alarms,
133 emergency service sirens, office equipment, factory machinery, grounds keeping
134 equipment, barking dogs, appliances, power tools, lighting hum, audio
135 entertainment systems, loudspeakers, neighbourhood noise and public address
136 system used by religious and social organisations. It was concluded that poor urban
137 planning may give rise to noise pollution since side-by-side industrial and
138 residential buildings can result in noise pollution in the residential area. He further
139 concluded that road noise, especially at some distance from the road can be
140 described as a steady state noise that does not fluctuate much, but rail and air craft
141 noise are acoustically characterised by high noise levels of relative short duration.
142 Further that the speed and exhaust systems determine the noise released by road
143 traffic. Noise from industrial installations, construction sites and fixed recreation
144 facilities, on the other hand, radiate from a point source and shape of exposure area
145 is generally circular²⁰.

146 Indiscriminate use of horn by the vehicles and widespread use of loud speakers in
147 social and religious ceremonies cause several health hazards such as deafness,
148 nervous breakdown, mental disorder, heart troubles and high blood pressure, head-
149 aches, dizziness, inefficiency and insomnia²¹. The adverse effects of noise have not
150 even spared the birds and other bio species like robins, sparrows, wrens and

151 blackbird as those living near roads may not be able to hear each other and thus
152 unable to contact for propagation²².

153 **The Concept of Public Participation in Environmental Decision Making in Kenya**

154 Public participation, often called P2 by practitioners, according to Omondi and
155 Wanjiku, is the process by which an organisation consults with interested or affected
156 individuals, organisations, and government entities before making a decision. It is
157 sometimes used interchangeably with the concept or practice of stakeholder
158 engagement and/or popular participation. The 'public' are the people with an
159 interest in or are likely to be affected, by a decision made, either positively or
160 negatively. According to Omondi and Wanjiku, civil society organisations, who on
161 their own, should not be confused with the 'public' as defined herein, have for long
162 played a significant role in enhancing a culture of participation across the world²³.
163 According to Okidi, management of the environment should involve prominent
164 community participation and that the legal empowerment of individuals and public
165 participation is an essential condition of a good environmental law and practice²⁴.

166 There are many different public participation mechanisms, although these often
167 share common features. These include stakeholder engagement, large-scale
168 consultations, focus group research, online discussion forums, or deliberative
169 citizens' meetings. Civil society movements and organisations have embodied
170 various avenues to include: public hearings, forming lobby groups, citizen report
171 cards, social audits and citizen action groups²⁵. They often initiate the formation of
172 watchdog committees and citizen advisory groups and facilitate their activities.
173 Other avenues provided for by the law are the citizen's fora which are provided for
174 in section 22 of the Urban Area and Cities Act, No. 13 of 2011.

175 For public participation to be effective, Omondi and Wanjiku proposed that public
176 consultations should be open to all citizens, without discrimination, safeguards
177 should be established to prevent consultative forums from being dominated by any
178 one political group, organised interest, or politicians, public participation must have
179 clear and specific purposes and the timeline and venues for public consultations be
180 made known at least two weeks in advance of the consultation²⁶. Time dedicated for
181 public response, in form of feedback and questions must also be set aside²⁷.

182 There have emerged a number of arguments in favour of a more participatory
183 approach, which stress that public participation is a crucial element in
184 environmental governance that contributes to better decision making. It is
185 recognised that environmental problems cannot be solved by government alone²⁸.
186 By involving the public, who are at the root of both causes and solutions of

187 environmental problems, in environmental discussions, transparency and
188 accountability are more likely to be achieved, thus secures the democratic legitimacy
189 of decision-making that good environmental governance depends on. Arguably, a
190 strong public participation in environmental governance could increase the
191 commitment among stakeholders, which strengthens the compliance and
192 enforcement of environmental laws²⁹. In addition, some argue that the right to
193 participate in environmental decision-making is a procedural right that "can be seen
194 as part of the fundamental right to environmental protection". From this ethical
195 perspective, environmental governance is expected to operate within a framework
196 coinciding the "constitutional principle of fairness (inclusive of equality)", which
197 inevitably requires the fulfilment of "environmental rights" and ultimately calls for
198 the engagement of public³⁰. Further, in the context of considerable scientific
199 uncertainties surrounding environmental issues, public participation helps to
200 counter such uncertainties and bridges the gap between scientifically-defined
201 environmental problems and the experiences and values of stakeholders³¹.

202 **The Legal Regime of Public Participation in Kenya**

203 The Constitution of Kenya now recognises public participation, a political principle,
204 as a right. Article 10(2)(a) of the Constitution of Kenya provides that the national
205 values and principles of governance include participation of the people. Others co-
206 related values and principles provided for therein include patriotism, national unity,
207 sharing and devolution³². Further, Part 1 of Chapter 13 of the Constitution of Kenya
208 sets out the values and principles for public participation in the public service, which
209 includes noise pollution control function as devolved to the counties. Specifically,
210 Article 232(1) provides that the national values and principles of public service
211 include, "...*(d) Involvement of the people in the process of policy making...and (f)*
212 *transparency and provision to the public of timely, accurate information.*" Article 232(2)(a)
213 provides that the values and principles of public service apply to public service in all
214 State organs in both levels of government.

215 Another secondary, but related concept to direct public participation is the issue of
216 transparency. In this regard, Article 35 of the Constitution provides for the right to
217 access to information. Access to information safeguards the right for every person to
218 obtain information on environment in custody of a public authority without need for
219 justification or proof of citizenship. Importantly, what counts as "environmental
220 information" is widely defined to afford the right of access to information the widest
221 construction. According to Omondi and Wanjiku, this right to know is an important
222 guarantee of accountability in institutional activities³³.

223 Article 69 of the Constitution provides for the obligations of the state in respect to
224 the environment and encourages public participation in the management, protection

225 and conservation of the environment. It establishes systems of EIA, environmental
226 audit and monitoring of the environment. Other aspects of public participation may
227 be found in Articles 48 and 50 of the Constitution which provide for the right to
228 access to Justice and to a fair hearing. The Environment Management and Co-
229 ordination Act, 1999 (EMCA) has created a unique institutional framework for
230 environmental management and coordination that has the public play an important
231 role. EMCA provides for public participation in environmental matters. EMCA
232 establishes various institutions, such as National Environment Council (NEC),
233 NEMA, NET, Public Complaints Committee, Provincial and District environment
234 committees, National Environmental Action Plan Committee (NEAPC), all of which
235 allow the public participation and/or stakeholder consultation and engagement in
236 environmental decision-making.

237 The practice of Environmental Impact Assessment (EIA) as provided for in the Act
238 enhances environmental democracy. It engages the public in vetting projects that
239 impact on the environment. The requirement for publication of EIA study
240 reports/advertisement allows the public for participation in reviewing an envisaged
241 public project³⁴. Section 123 of EMCA provides that any person may have access to
242 any record transmitted to NEMA. The Environmental Impact Assessment/ Audit
243 Regulations, 2013, are anchored under Section 147 of the Environmental
244 Management and Co-ordination Act (EMCA). The EIA Regulations are said to apply
245 to all policies, plans, programmes, projects and activities specified in Part IV, Part V
246 and the Second Schedule of EMCA. The EIA regulations require the authority
247 (NEMA) to invite the public to make oral or written comments on the report.

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

256 One crucial aspect of public participation is decentralisation, de-concentration and
257 devolution of decision-making and implementation powers³⁵. This could be the
258 reason why section 87 of the County Government Act 2012 provide that citizen
259 participation in County governments, where noise pollution control functions has
260 been devolved, shall be based upon the principles of timely access to information,
261 data, documents, and other information relevant or related to policy formulation
262 and implementation; reasonable access to the process of formulating and
263 implementing policies, laws, and regulations, including the approval of

264 development proposals, projects and budgets, the granting of permits and the
265 establishment of specific performance standards; protection and promotion of the
266 interest and rights of minorities, marginalised groups and communities and their
267 access to relevant information; legal standing to interested or affected persons,
268 organisations, and where pertinent, communities, to appeal from or, review
269 decisions, or redress grievances, with particular emphasis on persons and
270 traditionally marginalised communities, including women, the youth, and
271 disadvantaged communities; reasonable balance in the roles and obligations of
272 county governments and non-state actors in decision-making processes to promote
273 shared responsibility and partnership, and to provide complementary authority and
274 oversight; and promotion of public-private partnerships, such as joint committees,
275 technical teams, and citizen commissions, to encourage direct dialogue and
276 concerted action on sustainable development; and the recognition and promotion of
277 the reciprocal roles of non-state actors' participation and governmental facilitation
278 and oversight.

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

292 Thus Public participation in the County planning process is mandatory as indicated
293 in section 113 of the County Government Act, 2012. It even goes on further to list the
294 various avenues that the county should make available for the people to participate.
295 These include Information communication technology based platforms; town hall
296 meetings; budget preparation and validation fora; notice boards: announcing jobs,
297 appointments, procurement, awards and other important announcements of public
298 interest; development project sites; avenues for the participation of peoples'
299 representatives including but not limited to members of the National Assembly and
300 Senate; and, establishment of citizen fora at County and decentralised units. Section
301 115(2) of the act provides that each county assembly shall develop laws and
302 regulations giving effect to the requirement for effective citizen participation. These

303 laws and regulations include those on noise pollution control which is a devolved
304 function.

305 The Urban Areas and Cities Act, 2011 also has provisions that allow for citizen
306 participation. The act at schedule 1, and pursuant to section 5, provides that such
307 urban areas and cities should be able to manage air noise pollution control services.
308 Section 22 of the act provides for the citizen fora where residents of a city or urban
309 area have the right to: contribute to the decision-making processes of the city or
310 urban area by submitting written or oral presentations or complaints to a board or
311 town committee through the city or municipal manager or town administrator;
312 prompt responses to their written or oral communications; be informed of decisions
313 of a board, affecting their rights, property and reasonable expectations; regular
314 disclosure of the state of affairs of the city or urban area, including its finances;
315 demand that the proceedings of a board or committee and its committees or sub
316 committees be: conducted impartially and without prejudice and untainted by
317 personal self-interest; the use and enjoyment of public facilities; and, have access to
318 services which the city or municipality provides. These rights have been elaborately
319 provided for in the second schedule to the Act. Section 24 of the Act provides for the
320 publication of important information, and for access of the information by a resident
321 upon request. These information may include those relating to the policies and
322 programmes, relating to the control, and or management of air noise pollution.

323 **The International Law Regime for Public Participation in Environmental** 324 **Decision-Making in Kenya**

325 As early as 1948, the Universal declaration on Human Rights (UDHR) provided the
326 framework for generalized access to information. The International Covenant on
327 Civil and Political Rights promulgated in 1966 sought to guarantee the right of
328 access and dissemination of information by securing the freedom of citizens of the
329 member countries to seek, receive and impart information and ideas of all kinds
330 including information on environmental issues. Closer home, the African Charter on
331 Human and Peoples' Rights in 1981 guaranteed that citizens have the rights of access
332 to information, participation and justice. These rights, under the charter, were
333 granted in addition to the right of the citizens to a general satisfactory environment
334 favourable to their development. By virtue of Articles 2(5) and (6) of the Kenyan
335 Constitution, these conventions have become part of our laws⁴.

336 Principle 19 of the Stockholm Declaration advocates for education in environmental
337 matters for the younger generation as well as adults giving due consideration to the
338 underprivileged in order to broaden the basis for an enlightened opinion and
339 responsible conduct by individuals enterprises and communities in protecting and
340 improving the environment in its full human dimension. The call for an enlightened

341 opinion presupposes participation in decision-making. The enlightened opinion is to
342 be taken on board in decisions affecting the environment. The 1992 Rio Declaration
343 makes provisions for public participation in Principles 10, 20, 21 and 22.

344 The 1988 United Nations Economic Commission for Europe Convention on Access
345 to Information, Public Participation in Decision-Making and Access to Justice in
346 Environmental matters (or the "Aarhus Convention") is an international agreement
347 that lays down an elaborate set of basic rules to promote public involvement in
348 environmental matters and improve enforcement of environmental law. It grants
349 the public access to environmental information, provides for participation in
350 environmental decision-making, and allows the public to seek judicial redress when
351 environmental laws are infringed. As such, it represents a milestone in strengthening
352 democracy in environmental policy-making and environmental protection, and
353 improves the effectiveness of environmental policies and laws. The AARHUS
354 convention is founded on the pillars of access to information, public participation in
355 decision-making and access to justice. Articles 14(1)(a) of Convention on Biological
356 Diversity encourages public participation in environmental impact assessment of
357 proposed projects that are likely to have significant adverse effects on biological
358 diversity. It implores the promotion of exchange of publicly available information.

359 **Conceptualizing Devolution as a Form of Governance**

360 Devolution is a complex and wide subject with different connotations and meaning
361 across time and space. It is often conceptualized as a sub-category or level of
362 decentralization. Rondinelli, Nellis and Cheema define decentralization as having
363 three levels; de-concentration, delegation and devolution. They define de-
364 concentration as the handing over of administrative responsibility to lower levels
365 within central government, delegation as being the transfer of managerial
366 responsibility for specifically defined functions to organisations that are only
367 indirectly controlled by central government and devolution as the strengthening of
368 sub-national units of government which are outside the direct control of central
369 government³⁶.

370 According to Odero, devolution is a form of decentralization in which the authority
371 for decision making in respect to finance and management is transferred to quasi-
372 autonomous units of local government. For him, devolution is a political concept
373 that denotes the transfer of political, administrative and legal authority, power and
374 responsibility from the centre to lower levels³⁷. Cirelli takes a similar position on
375 transfer of powers to local levels of government, albeit focusing on the
376 environmental sector. He observes that there has been a growing tendency towards
377 the devolution of powers of central government in the environmental sector to local
378 authorities. It is his argument that increased devolution of power to the local level

379 may facilitate adequate consultation of communities³⁸. These three works are
380 important to the extent that, they discuss the meaning and importance of devolution
381 in the decentralization of governments. The key rationales for decentralisation are
382 well articulated by Musgrave³⁹ and Oates⁴⁰. They argue that decentralisation may
383 improve governance in public service provision by improving the efficiency of
384 resource allocation. They thus argue for decentralisation from an economic point of
385 view. They, however, further observe that sub-national governments are closer to
386 the people than the national government and as a result, have better knowledge
387 about local preferences. Thus local governments are therefore better placed to
388 respond to the diverse needs of the local people. In addition, devolution narrows
389 down the social diversity and subsequently the variation in local preferences. This
390 reduces the opportunities for conflicts among different communities. Tiebout notes
391 that devolution promotes competition among the county governments and thus
392 enhances the chances that governments will respond to local needs. As a result,
393 counties are able to attain higher levels of efficiency in public service and in
394 allocation of public resources. Musgrave⁴¹ further states that devolution can enhance
395 production efficiency by promoting accountability, reducing corruption, and
396 improving cost recovery.

397 Arguments favouring devolution of resources to local levels of governance
398 emphasise that the enhanced decision-making power, authority and control over
399 resources play a pivotal role in economic and social development. They contend that
400 devolution will result in increased citizens' participation in local governance where
401 'local governments are perceived to have the capacity to make political and financial
402 decisions affecting their economic and social welfare'⁴². The improved allocation of
403 resources is the most common theoretical argument for devolution⁴³. By bringing
404 government closer to local people, it is asserted that the government will be better
405 informed to local needs and preferences, resulting in increased accountability and
406 enhanced responsiveness of officials and government at the empowered local or
407 regional level⁴⁴.

408 There are however few studies on legislation at the county levels. There is no
409 consensus on the perceived benefits of legally recognised self-government. There are
410 also conflicting perspectives in the academic realm regarding the desirability and
411 potential consequences of devolution and political decentralisation. Arguments
412 against decentralisation fall into two categories, focusing either on national effects or
413 local effects⁴⁵. At the national level, scholars have argued that the establishment of
414 sub-national (or sub-provincial/ territorial) governments can lead to fiscal deficits,
415 as local government debts are reluctantly absorbed by the national government⁴⁶. At
416 the local level, rather than increasing democratic accountability, it has been argued
417 that local elites can benefit disproportionately from devolution; effectively creating

418 'authoritarian enclaves' in local settings⁴⁷. Ochieng argues that there is always a
419 possibility of tension between the central and local government in attaining a
420 reasonable balance of power in managing the environment and natural resources. If
421 such tensions result in adversarial relationships that undermine the application of
422 the subsidiary principle, the ultimate outcome is the ineffectiveness of both the
423 decentralisation and the environment or natural resource policy. Similar outcome
424 may result from lack of effective co-ordination and synergy among various
425 institutions responsible for environmental management. Ochieng further argues that
426 coming from the background of command-and-control regime; the citizenry still
427 consider environmental management as the preserve of the governmental
428 institution. Thus there is need to create greater awareness about the emerging
429 environmental issues such as noise pollution control¹².

430 Other scholars look more specifically at devolution. For example, Dilys Roe et al.
431 (eds) posit that there is increasing focus on devolution and on creating local level
432 conservation responsibility. Devolution for them is the way forward for natural
433 resource management in many countries⁴⁸. The gap does not provide for the
434 mechanisms of the said devolution through legal frameworks.

435 **Practices in Noise Pollution Control with Respect to Devolution**

436 Giving power of self-governance to the people and enhancing the participation of
437 the people in the exercise of the powers of the state and in making decisions
438 affecting them is one of the objectives of devolution provided for under Article
439 174(c) of the Constitution. One of the aims of devolution is to create more intense
440 community involvement in order to adjust service delivery models to the
441 communities' specific needs⁴⁹. Most of the studies and literature on noise pollution
442 control practices are not local. Generally however, action to reduce environmental
443 noise has a lower priority than other environmental problems such as air and water
444 pollution. Recognising this as a prime issue, the European Commission adopted the
445 European Noise Directive requiring major cities to establish a noise management
446 policy with the first step being to assess the current noise climate in the city by
447 gathering real world data and building noise maps in order to better understand the
448 problem and support the creation of local action plans⁵⁰.

449 According to the United Kingdom's Department of Environment, Food and Rural
450 Affairs (DEFRA) and the Chartered Institute for Environmental Health (CIEH), local
451 authorities have a range of roles involving responsibility for noise control. These
452 include investigation and abatement of statutory nuisance; land use planning;
453 entertainment licensing; building control; and residential landlord⁵¹. Other local
454 authority departments with responsibility for noise services include the Local
455 Authority Building Control and approved private building inspection services -

456 ensure compliance with Part E of the Building Regulations 2000⁵² relating to sound
457 insulation between, and reverberation in the common parts of new and converted
458 residential buildings and acoustic conditions of schools. The proactive
459 implementation of national and local noise policy to a considerable extent is
460 achieved through the planning processes with external agencies who play a role in
461 controlling noise pollution⁵³.

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

487 The development of effective noise services requires written policies and procedures
488 which set out in clear, unambiguous terms how the service is to be scoped, organised
489 and delivered⁷⁸. The local authority may delegate the formulation and adoption of
490 noise management policy to officer level without need for ratification by members.
491 That delegation must be by formal resolution otherwise it will be *ultra vires*. In
492 addition an authority will routinely delegate the operation of that policy at case level
493 to those same officers. In such circumstances the officer is entrusted with both
494 formulation and implementation of policy. As a guide, DEFRI and CIEH suggested

495 that the following elements should be addressed in strategy, policy and technical
496 procedure documents for noise services: the title and commencement date of the
497 document together with reference to any amendments; the title of the officer
498 responsible for maintaining quality; details of the legal context in which the service
499 operates; a description of the organisational structure, including specific posts or
500 named officers as appropriate; details of how the service assures the competence of
501 its authorised officers, including professional and technical qualifications, experience
502 and developmental training, etc.; a detailed description of the scope of the service,
503 including provision for responding to service requests out of hours; a digest of
504 service standards, including relevant performance indicators and targets, where
505 these have been developed; a practical definition of what constitutes “resolution” of
506 a complaint; an enforcement policy reflecting the national enforcement concordat; a
507 review of stakeholder issues, including equal opportunities, ethnic monitoring and
508 customer feedback; service level agreements and procedures for liaison with
509 different local authority departments, police, the Environment Agency and other
510 external agencies as relevant; a set of detailed, procedural guidance notes outlining
511 how the service intends to achieve consistency in dealing with particular matters,
512 such as: investigating a complaint, prioritisation of complaints, record sheets, the use
513 of notebooks etc. - written evidence, the taking of witness statements, the use of
514 alternative dispute resolution, checklist for assessing correct service of a noise notice,
515 service of abatement notices, appeals against abatement notices, defences in
516 proceedings for breach of abatement notices, etc. The procedures described above
517 may form part of the noise service’s quality management system. It is recommended
518 that key elements of the strategy, i.e. policy and strategy/enforcement procedures,
519 are subject to scrutiny and approval by elected members and that the strategy is
520 formally adopted by the local authority, thereby ensuring corporate status and
521 commitment.

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

534

535 **Conclusion & recommendations**

536 It is concluded that noise pollution has a serious implication to health, medical and
537 economic problems to the human being including flora and fauna. Therefore, there is
538 a need to adverse effects of airborne pollution, including those produced by noise
539 with emphasis on the best strategies, beyond the simple command and control
540 instruments currently in place at the national level that will include change in
541 behaviours in ways that shall be beneficial to the whole society. There is a need to
542 balance incentives to elicit compliance with, and, command and control mechanisms
543 in the interest of environmental sustainability that requires the framing of the
544 enforcement mechanisms that yield optimal compliance. On issues of inclusive
545 participation, a strong public participation is needed in environmental governance
546 that increases the commitment among stakeholders, strengthens the compliance and
547 enforcement of environmental laws. As for the community support groups and
548 government agencies need to increase awareness of environmental rights and the
549 benefits of sustainable environment regulation to safeguard a healthy environment
550 for all Kenyans.

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