



DEVOLUTION & PUBLIC FINANCE

PRESENTATION TO UON GOVERNORS
AT UON RRI WORKSHOP ON 2010 CONSTITUTION
IMPLEMENTATION
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Context and Rationale for Devolution



- * Adoption of CoK 2010 sought to reform governance and enhance equitable development
- * Devolution as key pillar of introduced changes, holds promise for majority of citizens.
- * Premised on dealing with past challenges of centralisation
 - I. Bad Governance & politics of exclusion, Inequitable distribution of resources
 - II. Inequitable development, distribution of resources, poor service delivery and lack of citizen participation



Conceptualizing Kenya's Devolution



- * Focus on subsidiarity, bringing governance closer to the people & enhances checks and balances & protects minorities
- * Continuum from centralization to Federalism(See also delegation, deconcentration)
- * Devolution: Transfer of Political, admin. & fiscal Mgt. powers & authority from national to lower admin. Units.
- * Involves creation of two or more levels, that are coordinate but not subordinate to each other



Kenya's Devolution(ctd)



- * Based on 2 levels of Government, national and County (47 counties)
- * Has both self-governance at local and shared governance at the national level
- * Based on distinctness and interdependence hence cooperative Government
- * Guided by 3 overarching principles:
 - * Distinctness
 - * Interdependence
 - * Consultation and cooperation



Principles of Devolved Governance



- * Devolution to be guided by principles of:
 - * Democracy and separation of power
 - * Affirmative action
 - * Reliable revenue for effective service delivery
 - * Consultation and Cooperation
- * Aim of Devolution is to realise Objects set out in Art. 174 of Constitution
- * Focus must be on redressing challenges of centralised system and delivering services to the people



Article 174: Objects of Devolution



- I. Promote democratic and accountable exercise of power; foster unity in diversity
- II. Self-governance and enhanced public participation in governance
- III. Protect and promote minority rights
- IV. Ensure equity in sharing of national and local resources
- V. Facilitate decentralisation of state organs and services; easy availability of services and promote social & econ Dev.
- VI. Enhance checks and balances



Structure & Governance of Devolved Units



- * Two levels of Government
- * Article 176(2) " each county shall decentralize its functions and provisions of its services to the extent that is efficient and practicable to do so."
- * County Government Act envisages decentralization as follows:
 - * Urban areas and cities as per Urban Areas and Cities Act
 - * sub-county levels to constituencies
 - * Wards
 - * Village units
 - * Others as determined by County Gvt



Structure and Governance of Devolved Units



- *Executive(Governor, Deputy, Committee members)
- *County Public Service as hired by County PSB--- appeals to PSC, uniform norms & Stds for Public service
- *County Assembly(Speaker, Elected & Nominated Members)
- *Judiciary national institution.....
- *All national Institutions to decentralize services



Role of County Executive



- * Governor and Deputy elected by residents and required to have University Degree; part of a team(Implications);
- * Governor to nominate county executive (consider community & cultural diversity; not more than 2/3 gender; minorities & marginalised) and county assembly to approve.

Role of County Executive include:

- * Implementing County legislation
- * Implement within the County, national legislation to the extent that legislation so requires;



Role of County Executive



- * Manage and coordinate functions of the County administration and its departments;
- * Supervise administration and delivery of services in County within decentralised units
- * Prepare proposed legislation for County Assembly consideration;
- * Provide County Assembly with full regular reports on matters relating to the County



Functions of County Gvt



- * Exclusive, concurrent or residual functions
- * 4th Schedule. Have functions of service provision in 14 areas incl,:
 - I. Agriculture; County health services; Control of air pollution; cultural activities; County transport;
 - II. Animal control and welfare; Trade development; County planning & Dvt; Pre-primary education;
 - III. County public works; Fire fighting & disaster Mgt
 - IV. Control of drugs & pornography
 - V. Implementing national Gvt policies on environmental conservation
 - VI. Coordinating community participation in governance



Fiscal federalism



- * Allocation policy : decentralised
- * Stabilisation policy: centralised
- * Redistribution policy : centralised



Financial Management



- * Only the national government may **impose**—(a) income tax; (b) value-added tax; (c) customs duties and other duties on import and export goods; and (d) excise tax.
- * A county may impose—(a) property rates; (b) entertainment taxes; and (c) any other tax that it is authorised to **impose** by an Act of Parliament.



Devolution & Financial Management



- * Principles of Public Finance Management set out in Art 201 and also PFM Act
 - Openness and accountability
 - Promotion of equitable society (fair sharing of tax burden, fair sharing of national revenue and expenditure to promote of equitable development)
- * Revenues raised nationally to be shared equitable amongst counties on clear criteria.
- * Counties can raise additional revenue thru' property rates, entertainment rates, service charge, borrowing



Devolution and PFM



- * Equalisation fund for basic services in marg areas
- * Budget Process at national and county level
- * Role of Commission on Revenue Allocation
- * Controller of Budget to oversee implementation of budgets and authorize withdrawals of public funds
- * Auditor General to audit public funds spending
- * Senate(Art 96) determine allocations amongst counties and oversight



Intergovernmental Relations



- * Governed by Constitution and Inter-governmental relations Act
- * Intergovernmental relations to be respectful, collaborative, consultative and supportive.
- * Dispute resolution based on ADR and resort only to judicial proceedings as a last resort
- * Structures to support inter-governmental relations include:
 - * National and county government coordinating summit
 - * Inter-governmental relations technical committee
 - * Council of County Governors



Citizen' s Participation



- A rights based approach to participation
- Citizens have superior rights over county government officials – demand answers & impose sanctions
- * Including citizens in decision making processes in all stages of development
- County Integrated Development Plans;
- County Sectoral Plans;
- County Spatial Plans; &
- Cities and Urban Areas Plans
- * Counties to establish and facilitate county citizen fora at all levels of gvt within county



Modalities & Platforms for CP



- (a) Information communication technology based platforms;
 - (b) Town hall meetings;
 - (c) Budget validation fora;
 - d) Notice boards: announcing jobs, appointments, procurement, awards and other important infor.
 - (e) Development project sites; or
 - (f) Establishment of citizen' s Service Centers at all levels
- Centre for County and National government to provide public services to county citizens (S. 119 CGA)



Realising Citizen participation



- * Devolution requires active citizens with capacity and democratic will to build a viable county and nation
- * Handling the existing many actors & embedding their priorities in county plans requires coordination synergy & visionary leadership
- * The pillar of engagement and public participation must remain the various county plans
- * Need to collaboratively establish mechanisms for participation through statutory measures
 - Likely to be costly & embroiled in politics
 - Presence of gate keepers



Representation of Marginalised Groups



- * Recognition by Constitution of past marginalisation of many traditional excluded groups in decision making esp. political leadership.
 - Youth, women, minorities, people with disabilities, etc
- * Constitution creates avenues to guarantee inclusivity and diversity in county representation.
 - Special seats for women, youth ,PWDs and marginalised groups in county assembly
 - County executive to reflect community and cultural diversity and adhere to affirmative action
 - Appointments to county public service adhere to meet const principle of equality special opportunities for minorities and marginalised groups



Importance for Part. of Minorities and Marginalised Groups



- * Ensure that their views, perspectives and experiences influence decisions in all matters that affect their groups as well as the global county matters.
- * Recognition that Kenya is made of diverse communities and groups and thus part of governance
- * Enhancement of unity and diversity in decision making and expanding space for policy influence by these groups
- * Providing training ground for these groups(youth, women, PWDs) for national level politics

Legislation on Marginalised Groups at Counties



- * Article 197 (1) also requires that not more than two thirds of the members of any county assembly or county executive committee shall be of the same gender
- * Parliament required to enact to ensure that the community and cultural diversity of a county is reflected in its county assembly and county executive committee
- * Parliament to enact legislation to ensure mechanisms are in place to protect minorities



Transition



- * Three phases of transition envisaged
 - Period prior to inauguration of County Governments
 - Three years after March 4th, 2013 (Sixth Schedule of Constitution)
 - Post 2016 to continue until all County Governments are fully in control of their affairs
- * Establishment of Transition Authority (TA)
- * Issues of audit of assets, personnel, liabilities, infrastructure
- * Reclassification of urban areas and cities



Transition



Phase 1

- * Civic education on devolved Governments
- * Review of on-going policy reforms, programmes & projects
- * Assignment of function by ministries, departments & other public entities
- * Review legislations & policies (about 700)
- * Producing County profiles – cost of producing services



Transition



Phase 2

- * Institutional capacity building & assumption of power
 - National Government & other actors to support Counties in putting structures & systems in place
 - Secondment of personnel to Counties & absorption by National Government
 - Phased transfer of functions
 - Civic education on principles of public participation
 - Monitoring and Evaluation

Phase 3

- * All to have assumed all powers & functions



Emerging Issues & Key Challenges



- * Unbundling of functions
- * Intergovernmental relations
- * Financial management
- * Capacity of County Governments
- * Citizen Participation
- * Service Delivery
- * Electoral system
- * Transition



Unbundling Functions



- * Phased transfer of functions
 - Negated through negotiation
- * Requirement for transfer of functions
 - A framework for service delivery
 - Necessary Laws
 - Human resource capacity
 - County capacity assessment
 - Infrastructure, and
 - Approved plan
- * Muddling through & undermining phased transfer of functions



Inter-governmental Relations



- * Establishment and consolidation of organs
 - Hardly three months old
 - Too early for objective assessment
 - Takes long to build relations
 - Wobbled beginning
- * Tension
 - Resource allocation
 - Relations between Senate and National Assembly
 - Relations between Counties and other state organs
 - Centralist tendencies of National government
- * Alternative Dispute Resolution (ADR)



Financial Management



- * Power of Counties and other state organs
 - Politics of budget items
 - Budget for rolling out Counties (% of capital development Vs personnel & services)
- * Suspicion of misappropriation/allocation without evidence
- * Role and performance of Transition Authority (TA) and Transition officials at County level
- * 15% Vs 40% revenue allocation debate & issues
- * Effective Summit, Council & ADR required to nurture County & National Government relations



Capacity of County Governments



- * From Local Authorities to County Governments
- * Identification of capacity building needs
- * Preparation of capacity building plan
 - Capacity assessment for devolved functions
 - New assignments linked to unbundling of functions
 - Sharing personnel between National & County Govts.



Citizen Participation



- * Embedded in Constitution & all legal documents
- * Established organs (citizens' fora) & ability to participate
 - Running behind schedule
- * Information flow problematic
 - Media ahead of official information flow
 - Civic education still to penetrate counties & citizens



Service Delivery



- * Ultimate goal of devolution
 - Struggling due to failure to effectively unbundle functions
 - Lack of clarity on body/government responsible for devolved functions
- * Service delivery likely to suffer if functional issues are not resolved sooner than later
 - Example of transport (KURA/KNHA)
 - Example of Health (Referral hospitals/District hospitals)



Impact of Electoral System



- * Majoritarian electoral system at the county level
 - Dominant groups are widely spread; they are minorities in some counties (tables 2)
 - * Dominant groups are numerically large only in their regions; they are minorities elsewhere
- * There over 10 counties with multi-ethnic population (dominant group is not more than 50%) – Isiolo, Marsabit, Lamu, Tana River, Mandera, Wajir
 - * These also are marginalised
- * Struggle for political posts is violent
- * Single Party Counties



Transition



- * Long process which require patience & objectivity
- * Debates on transition degenerating to political threats & gains
 - Example of revenue allocation
 - Example of Provincial Administration
 - Example of immediate transfer of all functions
- * Call for amendments to the Constitution
 - Article 260 on State Offices
 - Call for Referendum on revenue allocation (Art. 203)
 - Call for referendum on Presidential/Parliamentary Sys
- * Objective phased transfer of functions path to smooth transition



Role of University



- * Objective voice informed by research & knowledge
 - Emerging issues require effective M&E & research
- * UoN contribution
 - Generation of training materials
 - Training in response to county needs(curriculum content)
 - Development of appropriate management systems
 - Provision of advisory services through Advisory Notes; Face to Face Meetings; & Consultancy Services
 - Decentralization of university services
- * Need to assess the contribution UoN has been/is making in Constitution making & implementation



Conclusions



- * Devolution largely seen as correcting errors of the past
 - * But political culture has not changed
 - * Laws are in place but politics remain the same: exclusion, patronage-based
- * Ethnicity remains central
 - * But there are measures to prevent discrimination
- * Marginalised groups are given juridical, political and economic attention
 - * But who are the champions? How long will consociational democracy work?



Conclusions



- * Shifting to a new form of governance is a complex matter
- Requires objective non partisan approach which UoN should provide;
- * A developmental approach with ability to objectively assess each step of implementation before contributing is required;
- Balancing academic and action research
- Identifying critical points of entry for effective policy input & influence
- * Remaining true to UoN overall vision and mission