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PATHWAYS TO MAKING DEVOLUTION WORK FOR KENYAN’S



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In almost two years of implementing devolution, the process has been subjected to harsh criticisms as well as defended with equal measure from centralist romantics and devolution evangelists respectively. The centralist have judged counties as having failed abysmally in delivering their mandate to the county residents while, the devolution evangelists feel that County governments are still new and they spent a big part of their first year in setting up and judging their performance should start in the second year. The catalogue of issues going wrong about devolution at the counties has continued to pile from: inability to spend development/ capital expenditures; poor quality legislations emanating from counties, and power struggles.

Inability to spend development/ capital expenditures

The Commission on Revenue Allocation has recently reviewed the revenue sharing formula that is hope will fix some of the teething problems in implementing devolution as far as allocating the right amount of resources to counties taking into account diversity and uniqueness of each government. According *Business beat*, several counties have not been able to utilize all their development budgets. Ministry of Devolution and Planning last year named Kakamega County as the country's poorest county in its Socio-Economic Atlas of Kenya Report, which used data from the 2009 Kenya Population and Housing Census. The report indicates that 1 in 2 of Kakamega's 1.6 million residents live below the poverty line and the county contributes 4.8 per cent to the national poverty.

In 2013/2014 financial year, Kakamega County was the largest recipient of funds (6.8 billion) released to from the National Government. The County administration budgeted for 9.6 billion for this last financial year, expecting to raise 30 per cent (2.8 billion) from local revenue. However, the county on managed to collect 325 million which means the county budget was almost entirely funded by transfers from the national government. The County had planned to spend 5 billion in development, but was only able to spend 1 billion representing the lowest absorption figure from all the 47 counties.

Audit report from the Controller of Budgets indicates that the new administrations have done little to implement development at the grassroots. The Annual County Budget Implementation Review Report from the office of controller of budgets indicates that for every Kshs 5 allocated for county development in the 2013/2014 financial year, Kshs. 4 was not spent.

Kilifi County had an expenditure of Kshs 4 billion which was 78 per cent of the funds released. The county spends 3.8 billion on recurrent expenditure and just (11 percent) 426 million on

development. Further analysis indicates that for every kshs 1 spent on development, kshs 4 was spent on salaries.

According to the office of the auditor general and the controller of budgets indicates that the performance of the counties governments so far indicates patterns of inappropriate allocation, undue focus on personnel emolument and little focus on development.

According to World Bank Report shows that only 10 counties¹ spent at least 30 percent of their budgets on development projects last year. This means that 37 counties failed to meet this threshold². Those counties that performed poorly were Mombasa 1%, Kisumu 1%, Tana River 1.2%, Embu 5%, Uasin Gishu 8%, Nakuru, 8%, Nairobi 10%, Kilifi 10%, Narok 10% and Laikipia 12%³. The rest of the monies by worst performing counties were spent on salaries, fuel and other office costs.

The report titled ***Decision Time:Spend more or spend smart?*** Generally paint a picture of wastage, lethargy in implementing projects, wrong priorities in some sectors and weak revenue mobilization. Counties own revenue collection is low, reaching 0.5% of GDP compared to 1.2% of GDP annual target in their initial year of operations which translates to 43% fiscal effort by counties in revenue collection, it says. On average the counties spent 46% on wages and salaries, 30% on administrative recurrent expenses and 21 % on development projects.

Poor quality legislations emanating from counties

According to Law Society of Kenya, 80% of the Bills that are coming from the counties will be declared null and void because they do not meet the constitutional threshold. The Attorney general's office observes that there are few legislative drafters in the country and hence the deficit of this skill in the counties. For example Nyamira County Governor rejected 3 out of 7 bills due to unconstitutionality, typographical and grammatical errors.

This failure to draft legislations that meet the constitutional threshold is attributed to questionable academic qualifications of MCAs. This has led LSK to establish a 25 member legislative and Devolution Committee to support the counties. LSK has further established sub-committees in the 47 counties with a membership of 15 lawyers to offer pro bono to MCAs. The LSK chair said that those who seek elected position at the counties meet a certain level of academic qualification. The last parliament amended several section of the Political Parties Act

¹ Counties that spent at least 30% of their budgets on development are Wajir 58%, Turkana 57%, Bomet 48%, Machakos 45%, Muranga 35%, Homabay 33%, West Pokot 33%, Trans Nzoia 32%, Kisii 32% and Nyamira 30%.

² Mwaniki Wahome(2015), Counties with Best and worst spending plans

³ Worst performing counties were Mombasa 1%, Kisumu 1%, Tana River 1.2%, Embu 5%, Uasin Gishu 8%, Nakuru, 8%, Nairobi 10%, Kilifi 10%, Narok 10% and Laikipia 12%

and other electoral laws a head of the march 2013 General Elections, watering down the higher academic qualification requirements. CIC report in June 2014 cited incompetence of MCAs as a major impediment to county legislation.

To alleviate the problem, the AG said his office is engaging with the ministry of devolution, the Kenya Law Reform Commission, and the Council of Governors for training programmes on legislative drafting. KLRC is also drafting model laws to act as guide to county governments.

Power struggles

The levels of intolerance within counties has taken a violent dimension when issues of transparency and accountability are raised. The case of Makueni County where civilians and security members were injured in a gun drama is still fresh in our memories. The county has taken steps to have the county government of Makueni dissolved. The Residents of Makueni invoked article 192 of the Constitution that allows the president to suspend a county government in an emergency arising from internal conflict. The matter is now with the president to appoint a tribunal to hear the residents' plea.

Machakos County has also had episodes of violence where there are two camps, the one supporting the governor and the other the deputy governor. The violence is also around issues to do with transparency and accountability. This is a folding narrative that devolution pundits are watching closely on how the stalemate will be resolved or if it will go the Makueni way.

The County of Narok has also been rocked by violent protestations that led to death of one person and scores injured. The unfolding narrative is that there are allegations of massive theft and plunder of resources and undue regard to procurement laws. Digging deep, there are also claims of clanism. This has pitted the Governor against the senator with the faction aligned to the senator refusing dialogue.

Other counties with simmering discontent that have a potential of eruption are Kisumu, Migori, Nandi, Busia, Vihiga, Wajir where citizens have alleged malpractices such as clanism, misappropriation and irregular awards of tenders and favourism.

There have also been border issues that have also created tension and violent protest between Nyamira and Narok, Isiolo and Meru and Turkana and Pokot.

These factors do not portend well for devolution to be rooted in our counties and attract inter and intra county investment and scares away potential for bi-lateral and multi-lateral development initiatives.

To address these factors that have a potential of derailing devolution, the following practical measures need to be in place :

- ✚ To deal with the emerging threat to delivery of social rights at the counties, there is need to review the tendering laws to make the procedures less bureaucratic without compromising accountability and transparency in the processes. The proposed amendment Bill on Public procurement and Disposal Act, 2015 Must address this bottleneck. Counties also need to develop realistic and achievable annual plans with clear implementation matrix and monitoring and evaluation frameworks to track implementation. There is need for county staff to sign a performance contract to ensure accountability and transparency and ensure merit.
- ✚ To address the poor quality legislations emanating from the county legislative assemblies, the senate through the Busia County Senator, Honourable Amos Wako has come up with a draft law- County Attorney Bill. This Bill proposes the establishment of the office of AG in each county. This will also address the ballooning cost of litigations that the counties are incurring at the moment. LSK has further established sub-committees in the 47 counties with a membership of 15 lawyers to offer pro bono to MCAs. The LSK has also planned a series of trainings on legislative drafting for counties. There is also dire need to amend the watered down Political Parties Act and other electoral laws. The greatest drawback in county legislations is that the majority of MCAs have questionable academic qualifications, there is need to increase the education requirements and introduce vetting of all candidates seeking elective positions as stipulated in Chapter 6 of the constitution on Leadership and Integrity.
- ✚ To deal with the increasing conflict between the governors and senate, there is need to establish an impartial arbitration body with clear mandate to provide alternative dispute resolution through dialogue to avoid going to the courts on matters that can be resolved through mutual agreements. On inter-county border disputes, the national government needs to conduct land surveys to establish the real boundaries from perceived ones. There is also need to strengthen county community policing initiative to provide early warning to prevent crime.

Conclusion

The expenditure trends from 2007 to 2012 show raising share of development in total spending. However, the rising pressure on recurrent spending is now reversing these gains. Further, the government's appetite for mega-projects reflects the country's commitment to improve the competitiveness to provide growth stimulus, however the decline in efficiency and the opacity in the tendering is curtailing their potential dividend. National and County governments need to rethink if not reconstitute the accountability mechanisms and dismantle cartelism, cronyism and clanism in the management of public affairs and resources. Finally, fixing the insecurity question should be top on the government's priority list and counties must

play a key role in gathering and sharing intelligence since development, human rights and Security are the necessary ingredients for holistic and sustainable development.

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