DEVOLUTION IN KENYA AS A MECHANISM OF INCLUSIVE DEVELOPMENT; PROSPECTS AND SHORTCOMINGS

ABSTRACT

Kenya's Constitution of 2010 brought about radical changes,creating a decentralized governance systemthat became operational in 2013.This paper seeks to establish to what extent has this system of governance worked out in line with its intendedobjectives. The author equally tries to establish some of the outcomes, shortcomings,and prospects of this decentralization process and propose the way forward. The analysis clearly shows that devolutionhas gained ground and achieved a lot,regardless of some of the shortcomingsobserved.The paper highlights some strategic interventions that need to be implementedto improve the outcome of devolution in Kenya.Overall, the paper establishes that though devolution has become the main political landscape in Kenya, devolved institutions lack institutional protection from the central government hence the need for renewed strategic interventions to protect devolutions,particularly by parliament, theSenate, and the Council of Governors.

Keywords. Devolution/Decentralization, Constitution,

INTRODUCTION.

Development disparities have been cited as the primary cause of Kenya's perceived regional marginalization. Coupled with issues significantly attached to political interests particularly the winner takes it all, the concerns contributed to notable conflict for decades after the country's independence. Efforts seeking to reduce the development disparities resulted in devolution established through the enactment of the 2010 Kenya Constitution. With the new Constitution in Kenya, there was the decentralization of not only power but also resources to the 47 devolved units referred to as county Governments. The new constitution responded to long-standing grievances related to different issues, includingover-centralization of state power and public sector resources, regional disparities, and top-down service delivery. The reasoning behind such radical reforms had three cardinal objectives; decentralizing political power, public sector functions, and public finances, ensuring a more equitable distribution of resources between regions, and promoting a more accountable and transparent participatory and responsive two-tier system of government.

History.

Devolution undertaking in Kenya can be traced back to 1963 when the country realized political independence though it was not enshrined in its constitution by then. In 2010, the Constitution of Kenya, under Article 6 of the constitution, created a decentralized system of Government, where the legislative and the executive were devolved to the 47 political units referred to as counties. The Fourth Schedule of the Constitution assigns functions to each level of government. The National Government has the key roles of policy formulation, legislation, and setting of norms and standards, while the county governments` roles are policy implementation and provision of services. The ambitious devolution reforms indicated that significant political functions, fiscal resources, and administrative responsibilities were to be devolved to the 47 counties. This, in essence, was to empower local communities, bring service delivery closer to the people, and rebalance the relationship between the center and county units, alongside reducing ethnic tension and conflictover development laxities in some areas. This initiative was equally meant toestablish a more inclusive political system and share resources more equitably, which was the driving force behind devolution and enhance national unity.Amboso(2017) is optimistic that the peaceful co-existence of Kenyans can be easily achieved through devolution. According to Cornell and D`Arcy (2016) ,the explicit goals of devolution reforms is to inculcate a sense of Kenyan identity and strengthening national unity by recognizing diversity, ensuring equity in resource distribution and providing justice to the marginalized groups and areas. Indeed, county governments are now well established and have become an entrenched feature of the country's political landscape. However, there seem to be uncoordinated policy formulation aspects that need to be resolved.

The Anticipated Role

Devolution in Kenya, guided by the country's constitution, was intended to redistribute political and administrative powers from the center to the local units. Equally,it's critical to note that the 2010 constitution dismantled a highly centralized state and, more importantly, mitigated the outcomes of a "winner takes it all" political system. This definitely has created avenues of providing citizens in all the respective 47 counties the desired goods and services fairly without discrimination.Besides fiscal decentralization, the institutional reforms captured in the new constitution were intended to address several long-standing grievances stretching over decades related mainly to the centralized distribution of political power and persistent regional imbalances in development (Boone 2012, D'Arcy and Nistotskaya, 2019). Devolution was also meant to provide more opportunities for citizens at the grassroots levels to have their say on how resources are allocated at lower levels through public participation. Aboveall, this was also to encourage a more active approach of ethnic minorities and women in policy processes. Devolution, since its inception, has not only broken up the decentralization of the state power but also strengthened national unity, enhanced local democracy, and improved development in a more inclusive way.

Decentralization is often thought to bring governments closer to people.Devolution is critical, therefore, in increasing the accountability of government officials and discouraging most forms of corruption. The advocates of decentralization argue that devolution often improves service delivery and, more critically, improves the allocation of resources, enhances cost recovery and accountability, and reduces corruption in service delivery. The locative efficiency analysis holds that local governments will likely be better able to match public goods to localwants. One pillar of this argument is the assertion that Sub-national governments are closer to the people than the central government; hence they have better information about local preferences of the local population(Hope 2014).As a result, county governments are expected to be better at responding to the variations in the demand for goods and services within respective county units.

Generally, by devolving resources to county units, devolution has the potential of strengthening service delivery further in two ways; First, by reducing the gap between citizens and the state, which brings decisions on service delivery to the public to hold officials to account, and secondly by providing county governments with the flexibility to deploy human and financial resources in ways that respond to local demands for service delivery. Hope(2014)adds that through public participation in decision-making can also result into a more flexible and effective administration n since it tailors their services to the needs of the various groups in the county. This in effect gives a better understanding of county needs. Indeed devolution is key to unlocking Kenya's economic potential through distribution and responsibilities.Devolution equally sought to promote and secure the interests of minorities and marginalized communities and provide an environment for social and economic development.

The Fourth Schedule of the Kenyan constitution of 2010 assigns functions to each level of government. The National Government has the key roles of policy formulation, legislation and setting of norms and standards while the county governments roles are policy implementation and provision of services. The functions of county governments are in Appendix 1.

Progress: Challenges and Prospects

Currently, the critical challenge in devolution in Kenya is how to strike a balance between providing adequate resources in a timely manner to sustain service delivery and compensating for economic disparities, given the economic diversity of counties and the overarching constraint of limited transfers of revenues collected nationally. Though this process has taken off since 2013, service delivery has received mixed reactions with some positive and negative results. For example, significantservice delivery disparities remain persistent, although health, early childhood development, agriculture, and education are picking up progressively. Nevertheless, the process of transition to the devolved system is a process that will take time, as revealed by UNDP (2015).The report in question identifies policy gaps at the national and county levels.This definitely calls for a review of the policy framework on devolution in Kenya with a viewto ensuring the smooth functioning of devolution.

By establishing elected county governments, devolution has constitutionally mandated them the mandate of service delivery responsibilities and provided them with financialresourceshence the potential of reducing disparities and inequalities. This has the potential to accelerate growth and development.Thepromising sign is that since its inception, devolution has created new local governments, which are becoming increasingly critical in delivering the dividends of devolution, particularly in the health sector, infrastructure and agriculture,and education.

A notable achievement in Kenya is putting in place the fiscal framework for sharing national revenues between the national government and county governments.Previously, most resources were concentrated in major urban area and cities, discriminatingruralareas. But with the 2010 Constitution there is equitable share governed by a set of criteria according to Hope(2014),which includes; economic disparities and the need to remedy them. Currently the resources are allocated to counties based on a weighted formular; population,45percent;poverty rate,20 percent, land area,8 percent; fiscal responsibility,2percentand a basic equal share of 25 percent(Kimenyi 2013). The duty of sharing public resources, i.e., financial resources in Kenya, rests on the Commission of Revenue Allocation (CRA), whose principal function isto make recommendations concerning the basis for the equitable sharing of revenue raised by the national government; between the National and County Governments; as spelled out in Article 216 of the Constitution of Kenya 2010. Under this constitutional provision, the government, through the national treasury, allocates financial resources annually to counties in Kenya. This formula aims to empower counties by providing an allocation for health, education, and other initiatives. The formulas were generated to facilitate equitable resource sharing and to ensure inclusivity in attaining the development plan. The formulas transitioned from the first to the third generation, with the changes seeking to incorporate socio-economic variables deemed vital in bolstering economic growth and improving human welfare in our country. The CRA formulas were generated and have evolved to facilitate equitable resource sharing and to ensure inclusivity in attaining economic growth and development. The formulas have transitioned from the first to the third generation, which shall be the basis of sharing revenue during the years 2019/2020, 2021/2022, and 2023/2024.

Table 1: Commission for Revenue Allocation formulas since Devolution

Index	1st Generation	2nd Generation	3rd Generation	Deviation from 2nd Generation	Deviation from 3rd Generation
Population	0.45	0.45	0.18	-0.27	-0.27
Equal Share	0.25	0.26	0.19	-0.06	-0.07
Poverty Gap	0.2	0.18	0.14	-0.06	-0.04
Land Area	0.08	0.08	0.08	0	0
Fiscal Responsibility	0.02	0.02		-0.02	-0.02
Development Factor		0.01			-0.01
Health			0.17		
Agriculture			0.1		
Public Administration			0.01		
Urban Services			0.05		
Rural Access			0.08		
AGGREGATE	1	1	1	-0.41	-0.41

Data Source: Commission for revenue allocation.

Over time, the population proportion has been a significant factor in all the generational formulas despite its 60 percent decline in the weight attached to the third formula. The population index has been inferred from the county's population relative to the countries (see figure 1 below). This definition biases these allocations towards counties with larger populations.

Figure 1: Population Index

$$Population\ Index\ i = \frac{Population\ in\ County\ i}{\sum_{i=1}^{47} Population\ in\ county\ i}$$

Data Source: Commission for revenue allocation.

This definition biases these allocations towards counties with larger populations. Although a large population is necessary for reflecting the population needs of a county, it is not a sufficient condition for accurately determining the level of county deprivation. Population characteristics are necessary for detailing counties' population needs. The inclusion of these characteristics into a principal component analysis will alter allocations towards those areas suffering from human development and socio-economic deficits.

Since the full operationalization of devolution in 2013, counties have been grappling with revenue shortfalls occasioned by delayed disbursement from the national treasury and a drastic decline in revenue collection arising from not only leakages but also insufficient collection systems. Indeed, the delay in the disbursement of funds should be seen as the main challenge hampering the delivery of services within the county governments. This definitely calls for timely disbursement of finances and improved revenue collections within counties using a multifaceted approach which should include but not be limited to; curbing revenue leakages through technological innovations, strengtheningthe country's Financial Management System, digitizing all county service delivery systems with a view of increasing transparency and accountability. This should be followed by a review of county procurement proceduresthat are cumbersome andcorruptible.

Another major challenge with respect to devolved units is the lack of transparency and accountability in using devolved resources. The majority of county governments have been in the spotlight for gross misappropriation of devolved funds. According to Ndlila (2016), this is due to inadequate qualified and experienced staff to implement structures in place by the Public Finance Management Act (PFM).This is aggravated further by the lack of proper public participation guidelines permitting officials to take advantage of the gaps and loopholes in the implementation process.

Devolution in Kenya is becoming quiteexpensive due to the simultaneous process of devolving administrative structures and resources atthe county level. Currently, the two-tier system of government has brought about confusion since it has resulted in duplication of duties, a bloated wage bill, and uncontrolled spending within the county governments. Due to this, county public administration and service delivery systems are in conflict with the national government due to overlaps. The two-tier system of government needs to be revisited with a view of introducing clearly defined functions alongside well-worked-out coordinated policy interventions with respect to service delivery.

Another notable challenge regarding devolution in Kenya is insufficient public participation and the gender rule question. It should be noted that public participation is a national value enshrined in the country's constitution of 2010.Article 232(d) guarantees the process of policy-making through public participation, but unfortunately, this has not been the case. Apparently, devolution has not eliminated the potential for conflict, particularlyamong minority groups and women. Indeed, there is a need for the active involvement of minorities and women in the decision-making process; this calls for a comprehensive policy and legal framework to guide the local citizens on the conduct of participation. As such, this calls for awareness ofcitizens' role in engaging in such undertakings. Though the 2010 constitution established the two-third gender rule in Article 81(b), this is yet to be fully affected.

The lack of political awareness is the other noticeable problem that requires some immediate attention.There seems to be poor party capacity that is supposed to guide the development of democratic practices in local elections and the management of county affairs. Party capacity needs to be strengthened in order to fulfill the redevelopmentof democratic practices in local elections and the movement of county affairs.Patronage and rigging of county elections in county governments seem to be a reflection of national politics.

One other challenge the county governments are facing at the moment is misguided investment initiatives.Counties seem not to be more resources in current expenditure as opposed to development. According to the budget Controller's report, during the financial year2020/2021, recurrent expenditures were at 77.4% on personnel emoluments, while 22.6% was spared for operations and maintenance.Equally, the report from the Controller of the budget on the FY 2021/2022 shows that counties' expenditure on development dropped to KS 98.5 billion from KS 116 billion in the FY 2020/2021, while spending on wages and salaries rose to KS 190 billion from KS 176 billion at the same time. This trend needs to change with much focus on development expenditure as opposed to wages and salaries. With a view to creating critical infrastructure for takeoff. The same report of the Controller of the budget in the financial year 2021/2022 points out that 17 counties dropped their absorption rate of expenditure. It is indeed unfortunate that after a decade of devolution, some counties are regressing in terms of development spending but increasing operations and expenditures on wages and salaries.

Prospects

Nevertheless, despite the identified challenges, devolution in Kenya has created strong, powerful county governments that can act as a counterweight to the central government. In terms of ethnic politics, this has, in essence, altered the access to resources for traditionally marginalized communities, thus narrowing the gaps and promoting equitable resource distribution by reducing the central government's power and redistributing it to counties. This has fostered national unity by recognizing national diversity. Amboso (2017).is optimistic that if devolution is well managed, it shall enhance national unity within the country, which is one of the core objectives of devolution. Hope (2014) further argues that there is a persistent belief that local democracy is necessary for national unity, especially in countries of great social diversity and regional disparities, such as Kenya.

Conclusion

The constitution of Kenya of 2010, which began the process of devolution in the country, was the institutional response to long-standing grievances over the centralization of state powers and sector resources as well as regional disparities in service delivery and development outcomes. Devolution was therefore introduced to promote the democratic and accountable exercise of power, foster national unity by recognizing diversity, and give powers to self-governance to the local communities. It was also meant to enhance the participation of the people to exercise the powers of the state and public participation in decisions on issues affecting them.

Even though much progress has been made in development through devolution, efforts by the central government to subvert devolution seem to be evident, thus constitutinga significant threat to its institutionalization. This definitely calls for senators, parliamentarians, and the council of governors to play an active role in defending devolution constitutionally.

To this end,there is a need to strengthen devolution through proper management of county resources and timely disbursement of devolved funds from the central treasury in order to unlock huge opportunities with a view toestablishing industries, opening markets, and creating employment. So far, the contribution of devolution towards service delivery is mixed, but there are promising signs. The national government is still actively involved in the delivery of many devolved services, governance, and coordination hence duplication of human efforts hence an impediment to effective service delivery. This definitely calls for a proper review of functional assignments inorder to offer clarity on service delivery responsibilities of various tiers of government and ensure that funding corresponds with responsibilities. Nevertheless, the good thing is that the new county governments have been evolving and becoming more responsive and accountable for delivering devolution dividends to Kenyans. The success of devolution will therefore require stable, enabled, and effective institutions and systems to deliver more and better services to citizens and reduce disparities further.

Nevertheless, devolution is not a panacea, nor is it inheritably detrimental. The overall impact of devolution on service delivery depends critically on its design and the prevailing institutional arrangements, political will, and commitments. To this end, the notable development here is the government has put in place a fiscal framework for sharing national revenues between the national government and the county government through the Commission for Revenue Sharing through the Division of Revenue Act which stipulates how the national government should share revenue with county governments. Since counties are hit hard by a cash crunch, counties should diversify their own revenue sources. Focus here should be on mining loyalties, private sector partnerships, and the blue economy and widening the tax bracket alongside sealing all leakages.

Literature suggests that devolution may work best where thereis local democracy with social and homogenous communities. This need to be followed by a more strategic approach to involving ethnic minorities in decision and policy processes. Equally, capacity needs to be developed to enhance democratic processes in localleadership and facilitate the prudent management of resources and facilitate appropriate policy formulation and implementation. This definitely should be followed by improvement in intergovernmental coordination. Besides, national and county governments need to cooperate and collaborate to make devolution work with a strategic focus on service delivery.

References.

1. Agnes. Cornell&Michelle D'Arcy (2016). Devolution, Democracy and Development in Kenya. Research Report No.5.

2. Ambose, E.S. (2017), The Impact of Kenya's Devolution on National Diversity.

3. Boone, C. (2012). Land conflict and Distributibutive politics in Kenya. "African studies Review 55(1)75.

4. Cornell, A. & D'Arcy, M (2016). Devolution, Democracy and Development in Kenya.

5. Cheeseman, N.K. Kanyinga, G, Lynch, M Ruteere, andJ. Wills, 2019,' Kenya's 2017 Elections; Winner Takes `All politics as usual?'. *Journal of Eastern Africa Studies 13(2).215-34*

Constitution of Kenya 2010.

6.Crook.R.C. (2003). `Decentralization and Poverty reduction in Africa. The politics of local-central relations' *Public Administration and Development 23(1); pp77-88.*

7. Hope, R. K (2014). Devolved Government and Local Governance in Kenya.

8. Ghai, Y (2008). `Devolution; RESTRUCTURING THE Kenyan State. Journal of Eastern African Studies 2, pp.211-260

9. Kimenyi, S.M. (2013). Devolution and resource sharing in Kenya.

10. Ndalila.M.N (2016).Strengthening the management of Devolved Funds in Kenya. Bridging the gap between law and practice.11. United Nations. (UN).*The Sustainable Development Goals Report. (2019).Development-Goals Report New York*

11. UNDP (2015). Annual Development Report; *The integrated UNDP Support Programme to the Devolution process in Kenya.*

12. United Nations Development Report (2015).Annual Progress Report. The Integrated UNDP Support Programmed to the Devolution in Kenya.

13. UNDP (2017).The integrated Support Program to The Devolution process in KENYA.

13. World Bank92003).World Development Report 2004; Making Services Work for poor people. Washington, DC; World Bank.

14. WorldBank (2011).Special Focus; Kenya'sMomentous Devolution Ed No 5.

15. World Bank. (2012)." Devolution without Disruption; Pathways to a successful New Kenya. Report No.72297.Word Bank, Washington DC.

16 Word Bank (2018).Towards a more Inclusive Development IN Kenya.

Appendix 1: County Government Powers and Functions

The county governments have powers and functions in different sectors, including:

1. County Health Services specifically county pharmacies and health facilities, ambulance services, primary health care promotion, veterinary services excluding profession regulation, control and licensing of food sale to citizens, crematoria and funeral parlous, cemeteries, and solid waste disposal, refuse dumps and refuse removal.
2. Agriculture, including country abattoirs, animal and crop husbandry, disease control for plants and animals, livestock sale yards, and fisheries control.
3. Cultural activities, public amenities, and public entertainment include betting, racing, casinos and other betting forms, liquor licensing, video hiring and shows, cinemas, sports and cultural facilities and activities, libraries, museums, recreational facilities, beaches, and county parks.
4. Noise pollution and air pollution control, and control of outdoor advertising and other public nuisances.
5. Animal welfare and control, including dog licensing, accommodation facilities, and animal care and burial.
6. County transport, including country roads, public transport roads, street lighting, parking and traffic, harbours and ferries, apart from regulating national and international shipping.
7. Country planning and development, including land mapping and survey, statistics, energy regulation, electricity and gas reticulation, fencing and boundaries, and housing.
8. Trade regulation and development, including trade licenses without profession regulation, local tourism, markets, cooperative societies, and fair-trading practices.
9. Village polytechnics, home craft centres, childcare facilities, and pre-primary education.
10. Pornography and drug control.
11. County public services and works, including water and sanitation services and stormwater management systems in areas that are built up.
12. Disaster management, including firefighting services.
13. Environmental conservation and specific natural resources national government policies implementation including forests, water, and soil conservation.
14. Coordinating and ensuring locations and communities participation in governance at local levels and assisting locations and communities develop the administrative capacity to

promote efficient powers and functions exercise and local levels governance participation.