Power Plays Between The Centre And The Periphery:
Problems And Prospects Of Devolution Under Constitution Of
Kenya 2010

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Abstract: The drafters of the constitution of Kenya 2010 cleverly introduced devolved governments (county governments) in order to decentralize power from the executive, then perceived as imperial. The devolved system of government was therefore meant to fill the power vacuum arising from reduced executive powers of the President. This was also meant to address the perennial problem of resource distribution inequalities which was largely influenced by the sitting president. This paper seeks to find out the prospects of devolved governments in Kenya while pointing out the problems likely to be experienced in pursuit of a decentralized system of government. It draws it lessons from Kenya’s independence constitution that was regional (devolved) and which was later restructured into a unitary government by the political elite paving way to an all powerful president with unchecked powers. It relies heavily on secondary sources to draw conclusions derived from history of Kenya and her current affairs. While acknowledging the opportunities county governments provides, including that of enhancing local innovations, it concludes that this could only be realized with the necessary political will aimed at empowering the counties and making them sustainable. The political gimmicks aimed at wielding power to the central government hence usurping the responsibilities of regional governments, as witnessed shortly after independence, should therefore be discouraged and condemned if Kenyans are to enjoy the fruits of devolution as envisaged in Kenya’s constitution 2010.

Keywords: Devolution, Constitution, County governments, National government, Decentralization
1. Historical Background:

The Kenya independence constitution of 1963 provided for a devolved system of government. Chapter VI of this constitution provided for the creation of regions namely Nairobi Area and the following seven regions (Independence Constitution of Kenya, 1963):

i. the Coastal Region;
ii. the Eastern Region;
iii. the Central Region;
iv. the Rift Valley Region;
v. the Nyanza Region;
vi. the Western Region; and
vii. the North-Eastern Region

Each of these regions had a Regional Assembly consisting of Elected Members and Specially Elected Members. This was an equivalent of today’s County Assemblies, a major difference being the size i.e. Regions in Independence Constitution were larger (8) in size compared to today’s Counties (47) which are smaller in size.

While the Regional governments were provided for in the independence constitution, its impact was not felt since it was short lived. The first government of the independent Kenya, under the leadership of Jomo Kenyatta, amended the Constitution soon after independence in 1964, effectively scrapping the regional governments and replacing them with the central government-controlled Provincial Administration and local government system (Institute of Economic Affairs, 2010).

While the reasons that may have informed Kenyatta’s government to prefer a centralized system may be varied, this seem to have been in line with the general Kenya African National Union (KANU) manifesto that advocated for a unitary system against Kenya African Democratic Union (KADU) which propagated for a federal system. KADU’s preference of a federal system was a bid to avoid being dominated by KANU which was mainly Kikuyu-Luo, then considered Kenya’s largest communities. KANU was thus labeled a party of big bad tribes, namely the Kikuyu because of Mau Mau and the Luo because Oginga Odinga had defied colonial designs to sideline Kenyatta (Munene, 2002). Federalism was therefore meant to protect the interests of the minorities at the regional level while enjoying the protection of the larger national government. The elevation of Majimboism (regionalism)
before independence has however been criticized by some like Gibson Kamau Kuria who saw it as a means by European settlers of sowing distrust in KANU, and possibly to split the country (Kuria, 1998)

While some may blame Jomo Kenyatta’s government for suffocating devolution, it is important to bear in mind the challenges that faced Kenya then as a newly born nation. One among the many challenges was the need to unite Kenyan communities who had been intentionally divided along ethnic lines by the colonial government on the principle of divide and rule. The highly centralized unitary system under the state-controlled provincial administration was therefore seen as a better option to unite Kenyans. This is informed by the fact that federal systems of government are complex than unitary systems hence work well with developed democracies.

2. Prospects Of Devolved Governments:

From the above historical development on how regional governments were abolished shortly after independence, one is tempted to be pessimistic about the chances of success of the new devolved system under the new constitution. Despite this, there are several aspects of the new devolved governments under Counties that enhance their chances of success notwithstanding the general actual and presumed benefits of a devolved system characterized by decentralization.

Firstly, Chapter 1 of the new constitution, which provides for county governments, emphasizes on the sovereignty of the people and the supremacy of the constitution. It states that the sovereign power of the people may be exercised directly or through democratically elected representatives. While other arms of government, parliament included, have their mandate as envisaged in the law, this mandate does not extend to that which does not capture the aspirations of the Kenyan people. This therefore binds the various institutions of government to working towards the realization of the Kenyan dream of alleviating poverty, creating employment opportunities, quality and affordable healthcare and education among others.

Secondly, the new constitution captures the aspirations of many Kenyans who ratified it through a referendum unlike the Independence Constitution which was mainly a creation of the colonial government along the British West Minister model. While a good number of
Kenyans might have opposed the New Constitution, the document is generally embraced by all Kenyans given the fact that they participated in the Constitutional making process by giving their views and finally ratifying it through referendum. This has made the new constitution “people-owned” has having high chances of success because of immense goodwill from the citizens.

Third, most advocates of devolution are the marginalized, commonly termed as ‘have nots’ who are the majority and who hold the view that their poor living conditions and standards are as a result of the highly centralized system that only benefit a few political elites. This in turn makes them the custodians of devolution as provided for in the constitution. While the elites in the central government are likely to remain influential even at the county level, they remain under close watch of the people who are much closer to their leaders in a decentralized system than they were in a centralized government.

Finally, it is evident that the current Kenyan population is keener in the political processes in the country unlike the citizenry at independence that were mainly passive. This may be informed by the fact that most Kenyans are now educated and fill part and parcel of the political process especially after being involved in the constitutional making through a referendum. This general “wanjiku consciousness” is a necessary recipe for the success of a devolved system of government. Unpopular decisions or views against the letter and spirit of devolution should be met with public outcry manifested *inter alia* in demonstrations, strikes and social media agitation.

A part from the constitution that safeguards devolution, devolution is presumed to have several benefits. According to a topical publication by the Kenya Association of Manufacturers (2011), devolution promotes democratization, enhance equitable distribution of resources, and facilitate economic and social development among others. This because devolution increases the opportunities for political participation, which enhances democratic culture and empower local communities to demand for accountability while enhancing their sense of ownership. Increased citizens participation in the political processes under a devolved government is the opportunity accorded by the system for citizens to make political and financial decisions affecting them. It is thought that the competition among the various units (counties) is likely to reduce instances of corruption and inefficiency.

In anticipating the controversial debate on revenue allocation to the various counties, the Constitution of Kenya 2010 established the Commission on Revenue Allocation (CRA) with
the mandate of ensuring equitable distribution of revenue to various counties. The commission has so far established criteria on revenue allocation considering the population, poverty index and other indicators. While the Commission might have come under sharp criticism on their proposed formula of sharing revenue, this was expected bearing in mind the sensitivity of sharing resources. Regardless of the criteria used, of paramount importance is how this revenue allocated is utilized. Because of the diversity in economic potential of each county, devolution provides an opportunity for innovation and creativity. This is enhanced by the fact that talents are easily identified under decentralized system compared to a centralized one.

3. Problems Of Devolved Governments:

While there are a lot of prospects in the success of devolution, there is equal measure of threats to this success. There are therefore things that can go wrong if devolution is not properly undertaken (Griffin, 1981). He argues that devolution can lead to more concentration of power among a small elite and a corresponding increased oppression of the poor. Carino also warns that devolution may translate into increased human rights violations, corruption and other abuses of public office. With this in mind, there are several challenges facing devolution in Kenya today hence threatening the benefits likely to accrue from the same including that of promoting innovation and creativity.

First of all, there is need for all Kenyans and especially the politicians to come to the realization of the tenets of the new constitution that is totally different from the imperial presidency Kenya ones had. For instance, the move by Members of Parliament (MPs) to threaten to disband the Salaries and Remuneration Commission (SRC) is a clear indication that most MPs have not read the constitution or are in a deliberate move to violate it. This is because the current constitution does not allow any person or institution to determine their own remuneration and hence the creation of SRC which has the constitutional mandate to recommend remuneration for all state officers. The major challenge facing devolution is thus the need for a shift of mindset from the old to the new constitution. The more Kenyans are conversant with the provisions of the new constitution, the higher the chances of success in implementation.
Secondly, there is a challenge of restructuring the various government departments to reflect the letter and spirit of the new constitution. For instance, the restructuring of the Provincial Administration (PA) in line with the new constitution has been a subject of debate hence raising questions on the legality of County Commissioners whose appointments were declared unconstitutional by the court. There is also need to restructure the police service in particular and the security system in general so as to avoid what is currently seen as lack of clear chain of command (Opalo, 2013:15). For restructuring to be successful, there is need for an all inclusive consultation and the political and public good will.

Thirdly, there is need to align the existing legislation with the provisions of the new constitution. The inconsistencies of existing legislations with the provisions of the new constitution are posing a challenge to the success of inter alia devolution in the new constitution. While this might be challenging especially to the law makers, who might be tempted to resist change through contrary legislation, it is achievable with an active public and civil society activists and an independent judiciary to aid in interpretation of the constitution and other laws in case of dispute among different organs. Legislation should manifest the aspirations of the Kenyan people in line with the new constitution and not otherwise.

Fourth, is the power struggles between the central government and the devolved governments. The central government is keen on keeping an eye on the affairs of the counties, which is not a bad move. On the other hand, counties are suspicious of the central government’s intention and view it as an attempt to derail devolution (Beja, 2013:5). This assumption is understood and may have been derived from Kenya’s history at independence where the central government abolished the regional governments and replaced them with the provincial administration under the control of the office of the president. This assumption should be replaced with an objective view by the two levels of government to ensure a symbiotic relationship. While the devolved government might want a freehand in running the affairs of the counties, the role of the central government cannot be overlooked as the “upper” level of government. This is partly because a weak, fragile, and illegitimate state can reinvent itself at the devolved level and continue exploiting the masses (Bayart, 1993). In fact devolution can end up being a mechanism through which local elites gain power, to manipulate the masses because of less central government oversight.
4. Assumptions Of Devolution:

While there are benefits attributed to devolution when made workable, there are a number of assumptions people have about devolution which are not true and we must guard against. *Special Focus: Kenya’s Momentous Devolution* identified these myths that are worth noting:

**4.1. With Devolution, Central Coordination Is No Longer Needed:**

This is not true because the national government cannot and should not withdraw from the affairs of all the 47 counties. Counties are not independent states with a separate sovereignty but a level (unit) of one government. Devolved units are therefore not an equivalent of federal states as erroneously perceived by many Kenyans.

**4.2. Devolution Will Result In Additional Resources And Services At The Local Level:**

This is not true as devolution gives room for allocation of resources as determined by counties but will not in itself expand services without creating wealth for such endeavours. Devolution is more of resource distribution but not wealth creation in itself.

**4.3. Devolution Will Immediately Address Entrenched Inequity Across And Within Counties:**

While revenue allocation from national government is determined by various indicators, the difference in revenue allocation cannot in itself address the inequalities across and within counties. The entrenched inequalities will therefore take several years to address and may not be achieved conclusively even in the long run. Individual citizens must put personal effort in order to be at par with other comparatively wealthy counties.

**4.4. Devolution Will Automatically Result In Increased Accountability:**

Countries around the world implementing decentralization reforms have repeatedly found themselves struggling with increased corruption, deterioration in service delivery among other limitations. Devolution therefore does not automatically lead to increased accountability but may lead to what can be termed as “decentralized corruption” among other manifestations of poor governance and leadership. The recent lavish budget by the various counties could be an indication that misappropriation of funds and inverted priorities could soon be a problem decentralized to the counties from the central government.
5. Conclusion:

It is true that Kenyans stand to benefit from successful implementation of devolved system of government. This however does not come without challenges both historical and contemporary. The need for a united people and leaders is paramount in ensuring that the fruits of devolution are realized. Innovation and creativity for the advancement of humanity lies in a successful decentralized system that identifies and nurtures such talents. The pull and push often witnessed by the two levels of government should stop and efforts instead channeled to development oriented issues.
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