DEVOLUTION & PUBLIC FINANCE

PRESENTATION TO UON GOVERNORS
AT UON RRI WORKSHOP ON 2010 CONSTITUTION IMPLEMENTATION
CENTRAL CATERING UNIT, 3rd September, 2013,
TEAM MEMBERS

- Collins Odote
- Winnie Mitullah
- Wanjiku Kabira
- Karuti Kanyinga
- Attiya Warris
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
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
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
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
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
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
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 marginal 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
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 information.
(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)
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.
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
* 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
Three phases of transition envisaged
- Period prior to inauguration of County Governments
- Three years after March 4\textsuperscript{th}, 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
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
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
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)
* 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