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Devolution and Public Sector Reforms in Kenya: Challenges and Opportunities

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Abstract:
Public sector reforms in Kenya have had a long history since independence. Although Kenya adopted a federal constitution in the post-independence era, this did not last for long and was quickly abandoned after one year. Various constitutional dispensations have had consequences on the public sector reforms. The current constitution that was promulgated in the year 2010 adopts a devolved system of governance which seeks to enhance efficiency, effectiveness, accountability and transparency amongst others in as far as the public sector is concerned. This paper examines the different public sector reforms that have been adopted in the different constitutional dispensations, challenges, opportunities and key lessons that can be learnt.

Keywords: *Decentralization, devolution, public sector reform, challenges, opportunities*

1. Introduction

Devolution is part and parcel of decentralization. Decentralization is defined as transfer of public authority and resources including the personnel from the national to the sub-national jurisdictions, private organizations and non-governmental private entities.(Rondinelli and Cheema, 1983). Decentralization is important because it allows people to determine their destiny as it increases local participation in the decision making process as well as making government transparent and accountable (Curristine, Lonti and Journard, 2007). It can also reduce disparities between regions as long as the national government is able to come up with a prudent way of sharing the tax revenues available. However, "effective decentralization is dependent mostly on the reform of existing power structures. Elites must be prepared to relinquish power otherwise decentralization will simply reinforce their position at the expense of the people" (UNDP**,** 1998: 80**)**.There are three main types of decentralization namely: de-concentration, delegationand devolution (Rondinelli, Nellis and Cheema, 1984).

De-concentration refers to the transfer of administrative authority from the centre to the lower levels, but the centre maintains policy and operational control. In effect, the central government creates other sub-units and allocates them central government functions. Unfortunately, this form of decentralization does not encourage the development of autonomous local governments. The second form of decentralization is delegation where there is a transfer of responsibilities for certain functions and authorities from the central government to semi-autonomous organizations, not wholly controlled by it but which remain directly answerable to it for functions delegated to them. This may include delegation to the local government, parastatals, the private sector or the NGOs. This delegation is aimed at improving the quality of services and removing patronage that would come from government.

Lastly, devolution is the transfer of power, i.e. political, administrative and fiscal to semi-autonomous territorial or sub-national units. Devolution unlike de-concentration entails the transfer of both political and administrative decision-making powers and authority to the sub-national entities.Its important to note that in many developing countries, there is little evidence of full devolution (UNDP**,** 1998**)**.

The term public sector refers to all the services offered by the government. It is covers a much wider concept than civil service does. This is because it includes the ministries and the departments of the central government, the judiciary and the legislature, parastatals, local governments, security forces and professional regulatory bodies (Economic Commission for Africa, 2010). Public Sector Reforms on the other hand refers to the "processes and practices which are concerned with improving the capacity of institutions to make policy and deliver services in an efficient, effective and accountable manner" (Economic Commission for Africa, 2010: 5). Reform measures include, financial and fiscal reform, civil service reform, legal and judicial reform, decentralization, enhancing accountability and transparency and improving corporate regulatory frameworks (African Development Bank, 2005).

In Kenya, devolution arose out of the need to limit the powers of the executive by devolving some powers to the counties and the other major objective was to ensure that resources are equitably shared and that there is greater efficiency in service delivery. The Kenyan government adopted a new constitution that sailed through a referendum and this constitution was promulgated on August 27th 2010. This meant that Kenya moved from being a unitary state to a two-tier devolved government. This has come with challenges and opportunities. According to the Kenyan constitution, the objectives of the devolved areas discussed below.

2. Main Discussion

2.1. Historical Overview of Constitutional and Public Sector Reforms in Kenya

At independence, Kenya established a devolved government known as majimbo with a bicameral legislature having a Senate and House of Representatives, president and prime minister and different executives at the national level and a civil service (Chitere, and Muia, 2011) At the sub-national level, there were eight provinces that were semi-autonomous, with a regional assembly, an executive and a regional civil service (Economic Commission for Africa, 2010). This constitution provided for multiparty politics. Unfortunately, this constitution underwent an amendment in 1964 that put an end to the regional governments and banned opposition parties thereby making Kenya a single party state. The Senate and the House of Representatives were merged to form the National Assembly while the head of state and prime minister were consolidated to create a strong presidency with unlimited powers. Indeed, the devolved process was short-lived.

As Burugu, (2010) states, there are fears that we could revert back to the old system especially if there are people in government who are keen on maintaining the status quo. For many years, the government worked closely with the local authorities. The Local Government Act, Cap 265 of the Laws of Kenya was established to spell out the relationship between the Ministry of Local Government and the local authorities. The Local government in Kenya has been described as "a weak form of devolution" (Oyugi, 2011). This is because the centre had the power to constitute and dissolve local authorities, approve all senior appointments, approve revenue expenditures and even by-laws amongst others. Therefore, the relationship between the central government and that of local authorities has been one between a superior and subordinates (Ibid). The national government continued to control local authorities due to their financial weakness as a result of mismanagement of resources and lack of a dependable resource base amongst others.

The civil service was indeed affected by the political and constitutional changes that were taking place in the country. In the post independence era, the civil service was highly centralized and compartmentalized (Economic Commission for Africa, 2010). Therefore the institution was weak for purposes of development management. However, the first government after independence sought to change the civil service from mainly maintaining law and order to development administration. Members of different ethnic groups were posted to work in different areas as a way of promoting nationalism. But by the late 1960s, the civil service had transformed to a "bureaucratic oligarchy" (Ibid). The public service was highly politicized as permanent secretaries and directors rewarded those who were loyal to KANU with promotions and this ended up demoralizing the others. Ethical and professional principles were not followed. It was therefore necessary to embark on civil service reforms. Seven commissions or committees came up with reform measures for increasing efficiency and productivity in the civil service. The commissions include: The Pratt Commission, 1963; The Miller-Graig Commission, 1966; The Ndegwa Commission, 1971; The Waruhiu Committee, 1979; The Ramtu Committee, 1985; The Mbithi Committee, 1990; and, The Munene Committee, 1996 (Economic Commission for Africa, 1997).

All these committees culminated to the Civil Service Reform Programme and Action Plan I which was adopted in March 1992. The long term objective was to improve efficiency and productivity in the civil service. The five broad areas being examined under this programme as outlined by Kiragu (1998) include: Civil Service Organisation; Staffing Levels; Pay and Benefits; Personnel Management and Training; and, Financial and Performance Management. Some of the achievements recorded under the Civil Service Reform Program I(CSRP I) include the success of the Voluntary Early Retirement Scheme which also led to the freezing of posts that fell vacant due to the Voluntary Early Retirement Scheme, the development of a training policy, the development of the Integrated Payroll and Personnel Database (IPPD) system and the improvement of the payroll to eliminate ghost workers (Hope, 2012). On the other hand, CSRP I was not able to integrate budgetary reforms that would be able to push the wage bill down. In addition, the quality of public service delivery declined. Moreover, from the lessons learnt and the experience gained, the government reformulated CSRP I and came up with CSRP II which was running between 1999 and 2002. The priority areas were:

- Rationalization of ministerial functions and structures
- Staff rationalization and management of the wage bill
- Pay and benefits reforms
- Performance improvement initiatives
- Training and capacity building

However, due to government's lack of commitment and ownership to the reform process, this led to the dismal performance of the CSRP II. When the National Rainbow Coalition campaigned,they promised to carry out reforms. Shortly after getting to power, they launched the Economic Recovery Strategy for Wealth and Employment Creation 2003-2007 (Hope, 2012). Thereafter, the Results Based Management (RBM) was introduced as a strategy to improve and measure performance. This was to be operationalized with the help of the Rapid Results Initiative (RRI) which succeeded in delivering tangible results that were in line with the reform process.The Public Service (Sector) Transformation Department (PSTD) was later created after the 2007 elections and the PSTD launched a public sector transformation strategy entitled *Public Sector Transformation Strategy: From Reform to Transformation* 2010-2014 (PSTS) (OPM/PSTD, 2010).

All these reforms were taking place against a backdrop of reforms in the constitution. Constitutional reforms in the early 1990s led to the re-introduction of multipartism and the Inter Party Parliamentary Group in 1997 which introduced several administrative, legal and constitutional reforms that were aimed at ensuring fair elections in 1997. After, the elections the Kenya African National Unity government continued pursuing constitutional reforms that were not complete by the time we had the next elections in 2002. After the National Rainbow Coalition took over power in 2002, they jump-started the review process which led to the Constitution of Kenya Review Commission (CKRC) later known as the Bomas Draft constitution which was rejected by the government. Following disagreements between the government and the opposition, the government modified the document and referred to it as the Wako Draft Constitution of 2005. The Wako draft was subjected to a referendum in November 2005 and was rejected. However, several amendments were made and following a successful national referendum in July 2010, the new constitution was adopted and promulgated in August 2010.

Administratively, Kenya has always been divided into provinces, districts, divisions, locations, sub-locations and villages led by provincial commissioners, district commissioners, district officers, chiefs, assistant chiefs and headmen respectively. The structure has been such that at the district level there are central government ministries such as Health, Agriculture, Water and Trade and industry amongst others which were initially being coordinated by the District Commissioner who is an official of the provincial administration. However, the Bomas Draft recommended that the provincial administration be abolished stating that: "On the coming into force of this constitution, the system of administration comprising sub-chiefs, chiefs, district officers, DCs and PCs commonly known as the provincial administration shall stand dissolved. All administrative officers serving under the Provincial Administration shall report to the Public Service Commission for re-deployment" (CKRC, 2004: 75 as in Chitere and Muia, 2011). The new constitution provides for only two levels of government i.e the national and the county governments. The county government consists of the county assembly and the county executive (Article 176(1) of the Kenyan constitution). The county assembly is headed by the speaker whereas the county executive is headed by the governor.

However, the new constitution does not clearly state what is to happen to the other hierarchical ministries and departments and the provincial administration. This was used as a campaign tool with some groups calling for the abolishing of the provincial administration and others stating that they should remain.

2.2. Objects of Devolution

Kenya has been described as a quasi-federal state because only certain powers have been devolved to the county governments and the central government is far more powerful than the county governments (Mbondenyi and Ambani, 2012). The objects of devolution as spelt out in Article 174 of Kenya's constitution are to:

- Promote democratic and accountable exercise of power;
- Foster national unity by recognizing diversity;
- Give powers of self-governance to the people and enhance the participation of the people in the exercise of the powers of the state and in making decisions affecting them;
- Recognize the rights of communities to manage their own affairs and to further their development;
- Protect and promote the interests and rights of minorities and marginalized communities;
- Promote social and economic development and the provision of proximate, easily accessible services throughout Kenya;
- Ensure equitable sharing of national and local resources throughout Kenya;
- Facilitate the decentralization of State organs, their functions and services, from the capital of Kenya; and
- Enhance checks and balances and the separation of powers

The central government retains critical functions such as the conduct of foreign affairs, foreign policy and international trade; the use of international waters and water sources; immigration and citizenship; the relationship between religion and the state; national defence and the use of national defence services; police services, including the setting of standards of recruitment, training of police and use of police services; criminal law; the correctional services; courts; national economic policy and planning; monetary policy, currency, banking (including central banking); universities, tertiary educational institutions and other institutions of research and higher learning and primary schools, special education, secondary schools and special education institutions amongst others (Schedule Four, 2010 Kenyan constitution).

2.3. Devolution and Public Sector Reforms

In August 2010, Kenya promulgated a new constitution that has several articles that have a direct bearing on public sector performance, reform and transformation (Hope, 2012).For example, Article 47 in Part 2 of the Bill of Rights states that "Every person has the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair".

Chapter 6 article 73 (1) of the constitution on leadership and integrity states that:

Authority assigned to a state officer-

a) Is a public trust to be exercised in a manner that-

- Is consistent with the purposes and objects of this constitution
- Demonstrates respect for the people
- Brings honour to the nation and dignity to the office; and

- Promotes public confidence in the integrity of the office

b) Vests in the state officer the responsibility to serve the people, rather than the power to rule them.

Chapter thirteen of Kenya's constitution clearly spells out the functions of the public service, the Public Service Commission and the Teachers Service Commission. The values and principles of public service as spelt out in Article 232 include:

- High standards of professional ethics;
- Efficient, effective and economic use of resources;
- Responsive, prompt, effective, impartial and equitable provision of services;
- Involvement of people in the process of policy making;
- Accountability for administrative acts;
- Transparency and provision to the public of timely, accurate information;
- Subject to paragraphs (h) and (i), fair competition and merit as the basis of appointments and promotions;
- Representation of Kenya's diverse communities; and
- Affording adequate and equal opportunities for appointment, training and advancement at all levels of the public service, of-
  - Men and women;
  - The members of all ethnic groups; and
  - Persons with disabilities

These values and principles of public service apply to public service in all state organs in both levels of government and all state corporations (Article 232 (2)(a) of Kenya's constitution). This means that both the national and county governments will be guided by the above stated principles. Article 235 states that a county government is responsible within a framework of uniform norms and standards prescribed by an act of parliament for-

- Establishing and abolishing offices in its public service;
- Appointing persons to hold or act in those offices, and confirming appointments; and
- Exercising disciplinary control over and removing persons holding or acting in those offices.

All these articles in the current constitution are consistent with ideals embraced in the Public Sector Transformation Strategy. Devolution tends to shift focus from the national government to the county governments. This comes with challenges of accountability and performance management. This is because employees are brought to work for the county governments and in some cases it is not clear who one should be accountable to. This could lead to cases of multiple accountability. In addition to the constitution, there is the County Government Act 2012 that has sections on county public service and delivery of county public services.

2.4. Challenges of Devolution and Public Sector Reforms

Devolution in Kenya has had a myriad of problems. Firstly, there have been wrangles between the governors and the central government on what percentage of revenues should be devolved. Although the constitution provides for not more than 15 per cent (Article 203 of Kenya's constitution), the governors have been insisting on more revenues from the government. Recently, the Division of Revenue Bill allocated the counties 226.6 billion which was met with protests from the governors who claimed that this did not amount to 43 per cent of the country's revenue as earlier promised (Wachira, 2014).

There have also been squabbles between the senators and governors especially with the signing of the County Governments (Amendment) Act which makes senators the chairmen of the County Development Committees that are charged with the responsibility of determining the development projects to be implemented at the counties whereas the governors are the secretaries to these committees (Ibid). Secondly, there have been cases of patronage appointments whereby those who supported the incumbents are being rewarded by being given posts both in the national and county governments. This implies that it is relationships rather than competence that determine their tenure. Therefore, suitable candidates are locked out. This begs the question whether we are having new wine in old wineskins or old wine in new wine skins. Thirdly, counties have had to hire large numbers of staff and this has a direct implication on the wage bill as more money will be spent on salaries rather than investing on development projects. This means that earlier gains of downsizing in the public sector have been reversed.

Each county has the freedom to come up with the appropriate legislation on how best more revenue can be generated at the county level. This is however restricted to entertainment tax and property rates. Unfortunately, counties lack creative and innovative ideas as can be witnessed in the following examples; taxing the dead, hens and dogs amongst others. Moreover, some have raised the rates for service provision by 400 percent. The new tax laws that have led to an increase in the charges for basic facilities have faced a lot of resistance especially from the traders. In the recent past, riots have been witnessed in several counties all over the country e.g in Mombasa, Kiambu and Machakos Counties amongst others with the representatives of traders going to court to challenge the implementation of the new laws. (The Counties, issue no 153, February 3rd 2014)

County governors have also been accused of spending their money on entertainment and acquisitions of expensive cars which is contrary to the spirit of devolution. Some budgets are also not well prepared in the sense that the most critical aspects of development seem to have been left out.This begs the question of whether the whole process was participatory as required by the law asthis needed to be done through the County Budget and Economic Forums. Corruption is also rampart in some counties especially in the tendering process. Some governors have been accused of flouting the tendering procedures.

Going by the experience of the Constituency Development Funds, it is then expected that at the end of the five year term there will be several white elephant projects. It has been argued that the system of devolution where wrongly structured may lead to mobilization on the basis of religion and tribe and this could lead to political oppression, intolerance and at the extreme secessionist movements

(Hatchard, , Ndulo, andSlinn, 2004 as in Mbondenyi and Ambani,2012). There have been several threats of impeachment for several governors with the impeachment of theEmbu governor who was later reinstated, depicting thewranglesbetween the governors and the members of county assembly.This will hinder the development process of these counties as a lot of time and resources is wasted on resolving disputes.

Counties in North Eastern such as Marsabit continue to grapple with incidences of armed tribal clashes thereby making it difficult for the county government to function. The Jubilee Government recently stated that the county could be suspended by invoking Article 192 (1) (a) which cites internal conflict as reasonable ground for the suspension of a county government. (The Counties, Issue no 153, February 3rd 2014)There are also conflicts between different counties in as far as boundaries are concerned. Some counties are more endowed with resources than other counties. Even though the equalization fund is there for counties that are disadvantaged, these counties have an edge over the others. For instance, wildlife in Narokcounty, Coal in Kitui and titanium in Kwale amongst others. Although the revenues will be shared between the national and county governments, this could lead to a situation whereby some counties are more developed than others if those resources are utilized for the benefit of the county. It may take time before these resources are exploited for the benefit of the residents of these counties, e.g, water and oil in Turkana.

There are challenges of ghost workers in the county government just as has been the challenge in the national government. Another related challenge is that of attracting and retaining skilled staff since employment to the county governments is on contract therefore there are people who may opt not to apply because they are not assured that they will retain their jobs after the next election. The other challenge maybe the duplication of roles between the national and the county government whereby both levels do the same thing or fail to do thinking that the other is doing it. This means that there are no clear levels of accountability and one level may keep shifting blame to the other. This is a challenge that has been widely experienced in S. Africa (Steyler, 2013).

The other challenge is the fact that in most cases reforms in the public sector are donor driven and therefore more often than not they lack the necessary commitment from the government as is witnessed during the periods preceding elections. In most cases, people get political appointments with the aim of wooing them to vote for the incumbent.

2.5. Opportunities

Despite the huddles that the national and county governments continue to face there are opportunities that can be tapped. Firstly, every county has come up with a County Intergrated Development Plan that runs for five years i.e. between 2013 and 2018. If implemented, this could aid in the development of the different counties. In addition, there is a County Development Profile that outlines the major challenges facing each sector and the key priority areas. Secondly, parliament has come up with the Intergovermental Government Relations Act which provides for three major institutions that are useful in dispute resolution, coordination and intergovernmental cooperation. They include: the Council of County Governors (the Council), the National and County Government Coordinating Summit (the Summit) and the Intergovernmental Relations Technical Committee (the Technical Committee) (Mbondenyiand Ambani, 2012).

The Summit consists of the president and the forty seven county governors and basically looks at matters of national interest including the monitoring and evaluation of national and county development plans amongst others. The Council consists of the county governors who elect a chairperson and vice chairperson from amongst themselves and they mainly look into issues that are of common interest to county governments such as dispute resolution between counties and inter-county development projects amongst others. The Technical Committee on the other hand is responsible for the administration of the Summit and the Council. Thirdly, every county is endowed with resources which include coffee, tea, wildlife, coal, oil and freshwater lakes amongst others that if exploited and revenues generated are used for the benefit of the county then the county will grow.

2.6. Experiences and Lessons learnt

Several lessons can be drawn from the experiences of devolution in Kenya. Firstly, if the process of devolution is not participatory as provided for in Article 174 in the Constitution of Kenya, then there will be resistance to change as witnessed by the riots that took place in different counties due to the implementation of the tax by-laws. Secondly, decision-making should be informed by research and development in order for both the national and county government to make the right decisions. Thirdly, the devolved governments need the political goodwill of the government and its commitment in order for the whole process to be effective. There is need to critically examine the reform timing and sequencing.

In most cases reforms are initiated at a time when they are meant to minimize political losses whereas this should not be the case (Polidano, 2001).Sequencing has to do with whether the reforms should be done in phases or all at once. There is also need to integrate a continuous programme of capacity building for county administrators and the populace so that they can understand their role in the reform process. Ethnic concentrations in certain counties cannot be avoided instead there should be measures put in place to enhance intra and inter-county unity. South Africa has had the same problem and having had devolution for the past 20years we can learn from them. (www.southafrica.info)

3. Conclusion and Recommendations

In conclusion, it can be observed that public sector reforms at the county level and the national level will require a change of culture whereby public servants recognize that they are servants and therefore they should faithfully serve the people of Kenya. It also requires a more responsive approach to service delivery that is devoid of bureaucracy, corruption, favouritism and over-centralization amongst others. This will require a change in attitudes among the public servants and the political good will from the government.

There is no variety of solutions out there that can be used by all countries across the board. Each country must come up with reforms that are culture sensitive.

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