DEVOLUTION IN KENYA & DECENTRALIZATION IN AFRICA - BENCHMARKING

By Javas Bigambo
Consultant, Interthoughts Consulting
Focus of Presentation

- Enabling laws for devolution in Kenya
- Devolved government in Kenya
- Benchmarks on devolution
- Challenges, fears and prospects
- Vital Questions
Laws Operationalizing Kenya’s County Governments

- **County Government Act 2012**

**Provisions:**

- Provides mechanisms for handling the existing diversity in the county governments based on ethnicity, religion and geographical disparities through further units of decentralization.
- Establishment and organization of County Administrative Structure.
- Establishment of County Public Service Authority and the Advisory Boards.
- Establishment of citizen participation mechanisms in County Government affairs through the citizens public forums and county sectoral forums.
- Addresses the problem of minority or special groups participation in the affairs of county governments through the sub county and ward administrative units in the county government.
Enabling Acts Cont’d

- **Urban Areas and Cities Act 2011**

  **Provisions:**

  - Governance and management of Urban Areas and Cities
  - Establishes structures and mechanisms of managing Urban Areas and Cities in Kenya in accordance with article 184 of the Constitution of Kenya 2010.
  - Provides for conferment of municipal status in Kenya (Towns, Municipalities and Cities)
  - Entrenches an integrated Urban Development Plan for the Urban Areas and Cities.
Cont’d

- **Intergovernmental Relations Act 2012**

Provisions:

- Establishes formal structures and framework of cooperation between the two levels of government
- Establishes the framework for dispute resolution mechanism
- Defines relationship principles for enhancing harmony and unity in the affairs of the levels of government
Cont’d

- **Transition to Devolved Government Act 2012**

  **Provisions:**
  - Provides mechanism of how devolved system of government should be implemented
  - Establishes structures that will assist in the implementation of the devolved government
  - **National Government Coordination Act 2013.**

  A law that restructures the national government operation at the county level in a manner that accords and respect the county government structures.
Cont’d

- **Loans and Guarantee Act 2011**
  A law to govern the process of giving loans to the county governments and the relationship between the two levels of government especially when the National Government guarantees loans to the county governments.

- **Public Finance Management Act 2012**
  A law to secure the sound and sustainable management of the financial affairs of county governments, cities and municipalities, and other county public entities and to provide for matters connected thereto.
Understanding devolved governance in Kenya: Structures and institutions

- 2013 - Kenyans have elected Chief executive officers and legislators for the newly formed County governments.

- Cardinal principal of devolution is to decentralise administrative, financial and political power to the local level in order to enhance the efficiency and effectiveness of government.

- Devolution - envisioned to provide opportunity for greater citizen participation in local development and permits the government to respond quickly to local needs (leaders are close).
The County Government

- County Government comprises the County Assembly and the County Executive.
- County assembly is the legislative arm of the County.
- County Executive carries out the executive functions of the county.
Devolution in Africa

- Multi-level government: sharing of authority across levels of government
- More and more countries entrench multi-level government in Constitution, e.g.
  - Uganda (1995)
  - Ethiopia (1994)
  - Nigeria (1999)
  - South Africa (1996)
  - Kenya (2010)
- Zimbabwe - Constitutional entrenchment of multi-level government for Zimbabwe.
South African Constitution Building

- A fusion of strong central government and strong provincial government.
- Final Constitution embraced in 1996 that provides for:
  - quasi-federal
  - Local Government with strong protection in Constitution
SA Government Structure

- Constitutional democracy with a three-tier system of government and an independent judiciary.
- The national, provincial and local levels of government all have legislative and executive authority in their own spheres, and are defined in the Constitution as distinctive, interdependent and interrelated.
- Both national and provincial levels have advisory bodies drawn from South Africa's traditional leaders.

Arms of Government

- The Executive
- Parliament – Consists of The National Assembly and The National Council of Provinces
- Independent Judiciary
SA Provinces

- directly elected (PR) provincial parliaments
- indirectly elected Premier
- legislative powers protected in Constitution
  - some exclusive, most concurrent with national
- (entirely) dependent on national grants
- provinces represented in Parliament (NCOP)
Local government

- 278 municipalities with elected municipal councils
- Constitution lists municipal powers and broad mandate
- Supervised by provinces (& national govt.)
- High degree of self-sustainability (property taxes, service fees → constitutionally protected)
  - E.g. 85% of operating costs self-funded
- National govt. redistributes through grant system
- Concerns:
  - underperformance/maladministration
  - financial viability
  - expectations too high?
Why multi-level government and what are the dangers?

Broad overview of arguments, centred around:

1. democracy
2. development
3. cultural, religious & ethnic diversity
Devolution in Nigeria

- Federal government (a three tier government) with a presidential system
- The Federal Executive
- The Federal Legislature
- The Judiciary
- The State Government
- The Local Government
Benefits of Devolved System of Government

1. Development

- ‘improves allocative efficiency’ – better able to match preferences of residents
- enhances sustainability of development through ‘better citizen participation’ in it
- ‘stimulates innovation and experimentation’ in service delivery
  - For instance, the role of SA provinces in provision of free anti-retroviral drugs.
Challenges

- ‘breeds corruption’ - local discretion and proximity result in elite capture
- ‘promotes inequality’ – devolved/decentralised taxing and spending increases disparities
- ‘causes macro-economic instability’ – devolved/decentralised taxing, spending and borrowing may destabilise the economy
- requires high levels of capacity for success to be realized.
2 Democracy

- ‘restrains concentration of power’
- ‘stimulates citizen participation’
- ‘enhances accountability’
- multiple sites of politics is ‘good for multi-party democracy’ – requires mutual tolerance
  - e.g. opposition governing cities
- subnational governments are ‘seedbed for future leaders’
3 Cultural, religious and ethnic diversity

- ‘diffuses competition for power’ at the national level
- ‘opportunities to govern for more than one group’
- ‘opportunities for special accommodation of specific groups’
- ‘greater sense of unity’ through recognition of diversity
- responsive and caring local/regional government
  ‘(re)connects people to the State’ – constructing Nation State
3 Diversity

- ‘weakens national unity by accentuating local/ethnic/county identity’
- ‘weakens national unity by stimulating secessionist tendencies’
None of the benefits/concerns are absolute - must be balanced in context-specific manner, e.g.

- Ethiopia: ‘ethnic’ federalism, right to secession etc.
- South Africa: avoided ethnicity as political currency

Appropriate design of the Constitution (and statutes)

Three indicators

- autonomy/self-governance – how much local discretion?
- supervision – oversight role of national govt.?
- cooperation – levels of govt. working together?
Development Prism

- improves allocative efficiency’ – better match preferences of residents
- Creates policy making environment, for devolution policy.
- enhances citizen participation’
- stimulates innovation and experimentation’ in service delivery.
Underdevelopment Prism

- ‘breeds corruption’ - local discretion and proximity result in elite capture
- ‘promotes inequality’ – increases disparities
- ‘causes macro-economic instability’ decentralised taxing, spending and borrowing may destabilise the economy
- requires high levels of capacity
2 Democratic Element

- ‘restrains concentration of power’

- ‘stimulates citizen participation’

- multiple sites of politics is ‘good for multi-party democracy’
  - stimulates mutual tolerance
Vital Questions

- Is subnational activity subject to supervisory regulation?
- Is national government empowered to monitor subnational govts?
- **Roles** of national government & county government (Fourth Schedule).
- Of what significance and operational relevance are the County Commissioners?
- How significant is the Transitional Authority?
- Is national government instructed to support subnational govts?
- Is there provision for intervention when a subnational government fails? checks and balances? How effective in the intergovernmental relations platform?
## Devolution in Democracy

### Devolution is a principle of good governance

Devolution in Kenya, by its character, object and principles, envisioned to provide opportunity for greater citizen participation in local development and permits the government to respond quickly to local needs (leaders are close). No doubt, the Cardinal Principal of devolution is to distribute administrative, financial and political power to the local levels in order to augment the adeptness and efficacy of government.

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<td>difference between constitutional principle — instruction to central government and the roles of governors in implementation</td>
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<td>when is devolution appropriate in a democracy and when is a county rendered incompetent?</td>
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THANK YOU

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Connecting Ideas Beyond Borders