Chapter 9
Devolution

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148. The 2010 Constitution created a devolved system of government whose aim was to decentralise power and increase access to services across the country. In terms of creating a major departure in the governance of the country and the management of public resources, devolution has largely been a success.

149. However, devolution is still frustrated by serious challenges that, if left unaddressed, will raise questions about its political and economic sustainability.

150. Kenyans overwhelmingly told the Taskforce that they wanted their counties to remain as they are but with services further decentralised to the Ward level. They want far better service delivery and for development projects to receive enough oversight to prevent wastage and corruption. Kenyans want the means to report projects that are being shoddily developed, and to see this information acted on by the relevant institutions. They also wanted the duplication of roles by County and National Public Officers eradicated, and most of their tax funds allocated to development projects. A majority of those speaking to the Taskforce want funds to County Governments increased with more functions being devolved. Kenyans want to be consulted, through the public participation process, on planning and budgeting.

151. Though devolution has improved inclusion and service delivery, a sizeable number of the challenges we experienced prior to 2010 still trouble us. Some of the institutional reforms that should have been carried out to align governance with the new constitutional imperatives are yet to take place. Treating Kenyans as if they have no right and power in policies, laws, budgeting and development projects is the order of the day. Counties are suffering from corruption, nepotism, delays in decision-making, development of projects not relevant to the needs of a locality, and inefficient and ineffective delivery of services.

152. The two levels of government have also faced corruption, ethnic antagonism, a bloated workforce, divisive elections, duplication of roles, citizens' lack of capacity to hold leaders accountable, inequality, exclusion and marginalisation, lack of integrity, State capture, a deficit in safety and security, and skewed resource allocation.

153. Most of the views on devolution given by Kenyans to the Taskforce revolved around the following issues: (a) the revenue share between National and County Governments; (b) how to resolve exclusivity and marginalisation in the Counties; (c) how the Counties can more effectively carry out their mandates; and (d) how to enhance the economic growth in Counties, and their ability to raise revenue without discouraging economic dynamism due to red tape. The overriding concern for Kenyans is to identify and deal effectively with these challenges facing devolution.

154. The Constitution set the aggregate minimum transfer to Counties at a minimum of 15 per cent of centrally collected revenues based on the latest audited national revenue

receipts. The Constitution also mandates additional transfers depending on functions delegated to counties.

155. There is much to be said for the greater devolution of resources, particularly financial ones, but this should be guided by effective implementation and accountability. These should be central criteria to the entrusting of monies from the central public purse. Increased revenue flows to Counties should also follow functions. Most of the submissions given to the Taskforce advocated for more resources to be given to Counties but also that they should be more accountable and more inclusive in their programming. Kenyans called for increased and more effective oversight and auditing, specifically focused on the need to tame corruption; monitor County spending; reduce recurrent expenditure; increase citizen participation in spending decisions; do away with the tendency of politicians to reward cronies and family with employment; and reduce the wage bill.

156. The same calls for inclusion that were made by Kenyans regarding the National Government Executive were made for the Counties. The 'winner-take-all' phenomenon in Counties, following elections, is said by many Kenyans to lead to discrimination, inequality and inequity in resource distribution. Ethnic minorities not perceived to be part of a winning coalition, or who, for some reason, are not political supporters of the County regime in place, are often excluded. The cruel irony is that Article 174(e) of the Constitution provides that one of the objectives of devolution in Kenya is 'to protect and promote the interests and rights of minorities and under-served or discriminated-against communities.' It is for this reason that the Taskforce strongly feels that measures leading to greater inclusion, equality, equity, and basic fairness at the National level should be mirrored in the Counties, both in law, policy and administration.

157. One of the challenges identified that compromises County service delivery is the arbitrary, nepotistic or crony recruitment of human resources that ignores merit and inclusivity. There remain strong concerns that despite the existence of the County Service Boards, hiring is still deeply unfair. To solve this, it was proposed that the independence of the Public Service Commission should be replicated at the County level. Such a function would be responsible for the recruitment of the County staff, setting reimbursement levels that are in harmony with the National Government, ensuring inclusivity, and raising the skills and capabilities of those employed. There is ample scope for County Government to also embrace performance management with clear metrics to enhance staff effectiveness. Steps should also be taken to strengthen the ability of the Members of County Assemblies in providing proper oversight on the County Government.

158. To enhance economic growth in the Counties is crucial otherwise the devolution experiment will stall and even reverse. What is crucial is for Counties to be guided by a greater focus on being competitive in attracting their residents to be more entrepreneurial, and for investment from other parts of the country, and abroad, to

flow into the County. At the core of this is for the County Government's regulation and revenue collection to not crush incentives for investment and innovation. It cannot be exaggerated how important it is for every County to establish and publicise an Entrepreneurship and Investment Code that it implements in predictable and effective manner. Even as the Counties raise local revenue, they must keep red tape to a minimum while being aware that they are in competition not only with other Counties but with other countries and their internal regions. We are in a global economic race and must equip ourselves to prosper.

159. There is a nationwide lament that corruption has permeated both the Executive and legislative arms of County Governments. This impedes service delivery and development and may generate disaffection with the system of devolved government. County governments were blamed for excesses, corruption, and failure to improve service delivery. It was also noted that political interests tend to override public service delivery. There was a strong perception that the procurement of goods and services was undertaken in disregard of procurement laws and best practices, and that the process was characterised by patronage and nepotism, misallocation of funds, and other governance ills. Local leaders were also accused of outright impunity and perpetual pursuit of selfish interests. If corruption in Counties is not brought to heel, it will eventually lead to the failure of devolution, as citizens seek different governance and management models. Of great concern, as well, has been the inability of the Counties to mobilise their own domestic resources and to properly account for those that they receive.

MAJOR RECOMMENDATIONS

160. **Retain the 47 Counties and support the voluntary process of Counties forming regional economic blocs** — By and large, Kenyans are happy with devolution and would like for the existing 47 counties to remain in existence. However, there was a strong enough sentiment that needs further consultation with Kenyans. It noted that while Kenyans are strong supporters of devolution and their counties, they also want better value for money and more money to be used for development as opposed to high recurrent and administrative costs. Perhaps there is a way that the 47 Counties can be maintained as the focus of development implementation and the provision of services, while representation and legislation are undertaken in larger regional blocs.

161. **Increase the resources to the Counties by at least 35% of the last audited accounts**. Money follows functions. We urgently, and comprehensively, need to complete the costing of National and County functions. Money for devolved functions should be for service delivery to Kenyans, meaning that the CRA, in its allocation formula, should focus on the distance from the centre of the County to its furthest area as opposed to the general size of the County. It should also target key areas such as agriculture, health and the rapid urbanisation occurring in all.

A. In accordance with the Fourth Schedule to the Constitution, complete the transfer of functions from the national to County Government, cost the transferred functions, and ensure that money follows function. In the case of concurrent functions, avoid duplication and wastage.

B. Parastatals carrying out County functions should be either wound up or restructured. This should be synchronised with the implementation of the already completed parastatal reforms policy.

C. The allocation process should be simple for all citizens to understand, and should be guided by equality, equity, and special needs, in that order.

D. **Public resources should follow people not land mass** – The increase of monies to the Counties must be guided by a revenue allocation formula that is informed by population, and then takes into account devolved and urgent needs such as health; agriculture, which accounts for the majority of livelihoods and includes livestock and fishing; education (ECD); and the provision of a basic share for all Counties to share equally. It must be focused on service delivery to settled and serviced areas, meaning services from the centre to the furthest point in the County rather than land mass. In addition to the formula, areas that have hitherto been marginalised should be uplifted through the Equalisation Fund for a set period.

E. Make monies generated by Counties more transparent and better managed. And create an incentive for the transparent generation of resources by Counties by providing more money from the national kitty linked to this.

F. The Commission on Revenue Allocation should assess what Counties should be collecting and factor it into the annual allocation.

G. County Integrated Development Plan should be linked to a transparent assessment of the development needs of each Ward.

H. Cut taxes in relation to Auditor General audits — It is better that money remains in Kenyans' pockets until there is more accountability and governance on its use at the National and County levels. Then taxes can be increased with improvement.

162. **Changes to the County executive** —

A. The running mate of every candidate for the position of Governor should be of the opposite gender.

B. **Filling vacancies** — Where a vacancy, for any given reason, occurs in the Deputy Governor's office, and the Governor fails to appoint a replacement within 90 days, the Speaker of the County Assembly, with the approval of the Assembly, shall nominate a Deputy Governor.

C. Limit arbitrary, nepotistic or crony recruitment of human resources that ignores merit and inclusivity. It is proposed that the independence of the Public Service Commission should be replicated at the County level. Such a function would be responsible for the recruitment of the County staff, setting reimbursement levels that are in harmony with National Government, ensuring inclusivity, and raising the skills and capabilities of those employed.

163. **The healthcare function** — Kenyans need far better healthcare if this country is to be productive and prosperous. Paying for healthcare eats into family savings and prompts rash sales of land, which sometimes lead to future conflict. To this end, the following should be undertaken:

A. **Health Service Commission** – Even as we retain health as a devolved function, the human resourcing element should be transferred to a Health Service Commission.

B. Health function should remain with the Counties and funds should follow functions.

C. We need a far stronger focus on preventive and primary care.

D. NHIF administrative costs should be cut down sharply through using technology, cutting down on corruption and increasing productivity. These administrative costs should be at 5–10%.

E. Kenyans need a Patients' Bill of Rights to tackle the following issues: Billing is filled with corruption and inflation when Kenyans are at their most vulnerable. No hospital should hold people forcefully. There should be consequences for misdiagnosis. All facilities must be obliged to stabilise emergency cases. All patients are owed polite and considerate service.

164. **County Government spending** — Supervision of County Spending, investment and employment is failing at multiple levels which is leading to copious amounts of waste and corruption that compromise Devolution which is otherwise very popular with Kenyans. The response should be much stronger oversight by the responsible bodies, actions to cut wasteful costs, and assign a greater proportion of County finances being assigned to development.

A. Financing the development of each Ward to at least 30% of the County development budget within the five-year term.

B. The ratio between development spending and recurrent expenditure in the counties should match the national one at 70:30.

C. Strengthen the oversight independence of County Assemblies by ensuring that the transmission and management of County Assembly budgets are insulated from arbitrary or politically-motivated interference by County Executives; these

processes should also be subjected to rigorous public finance management processes.

D. Limit the number of people that may be employed in the County Government by providing a set, nationwide, ratio, as a ceiling, between County population and number of employees. Also fix the maximum number of Ministries that a Governor may establish.

E. There are significant savings in eliminating duplication of functions and jobs between National and County Government. Also, rationalise jobs within the County Governments, particularly where there is over-staffing or duplication.

F. To stop the abandonment of incomplete projects with each change of administration, the Treasury should not release monies to the new Governor before obtaining a list of incomplete projects and a plan for their completion. In cases where the incoming Governor does not want to complete a project, there should be a detailed explanation of the legitimate cause for it being halted.

G. Projects initiated in the final year of an electoral cycle should receive extra scrutiny from the Controller of Budget, the County Assembly, the Senate, and all oversight authorities.

H. Strengthen the office of the Auditor General, which should be devolved to oversee Counties' accounts and to report them in an accessible and straightforward way.

I. The Controller of Budget should assess, verify, and confirm that monies released has been applied to the stated objectives before the release of the next tranche.

J. Counties to budget more development money to respond to specific needs in the Wards rather than granting a lump sum to Counties or constituencies.

K. Commission on Revenue Allocation to change its revenue allocation formula — particularly in allocating funds for the marginalised — to target Wards in the County budgets.

L. Bureau of Statistics to provide an objective and localised measure of the wellbeing and human security, including environmental sustainability, of Kenyans to measure national, County, and Ward performance.

M. Conditional grants can be used to encourage collaboration between Counties, and the formation of blocs that improve development planning and delivery.

165. **Counties also must grow the economic pie** — Counties should be guided by a greater focus on being competitive in attracting their residents to be more entrepreneurial, and for investment from other parts of the country, and abroad, to flow into the County.

A. At the core of this is for the County Government's regulation and revenue collection to not crush incentives for investment and innovation.

B. **Biashara mashinani** — There should be high-priority efforts by every County to support local groups to develop businesses through partnerships. The County Government should ensure that small and emerging businesses are easy to start, and that they find it easy to navigate regulations and bureaucracy and to get their goods to market in a timely way.

C. Every County to establish and publicise an Entrepreneurship and Investment Code that it implements in predictable and effective manner.

D. Even as the Counties raise local revenue, they must keep red tape to a minimum while being aware that they are in competition not only with other Counties but also with other countries and their internal regions.

166. **No double taxation and double regulation at the National and County level —** The inter-governmental mechanisms should be developed and clarified to ensure that this aim is consistently met.

167. **More cohesive Counties** — Strengthen dialogue and integration of communities in the Counties, especially those that are multi-ethnic, with a focus on ensuring minorities are heard and respected.

A. More transparent and well-structured public participation can be assisted by the Public Rapporteur office that the Taskforce is recommending. In addition, Governors should hold one-day open forums to update citizens on the state of delivery and governance in the Counties.

B. Utilise Elders to strengthen cohesion and mediate conflicts.

C. More cultural awareness and respect programming by County Governments.

D. Integration of schools in the County.

E. More shared development and dialogue projects by communities that have had histories of conflict.