



International Center for Policy and Conflict

**MAKING COUNTY
GOVERNMENTS DELIVER IS
EVERY KENYAN'S BUSINESS**

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ABOUT THIS BRIEF

The purpose of this policy brief assessment is to highlight key problems in governance, service delivery, financial management and labour relations, to identify the root causes of mixed performance and unsmooth functionality in the Counties, and offer possible solutions.

This brief is part of the International Center for Policy and Conflict project on Africa Local Governance Initiative. This Initiative identifies an effective system of local government as important for both political and economic reasons. It shares power and promotes the accountability of local public services. It also helps to fit those services to local needs and preferences.

In 2013, the Center conducted a survey on the preparedness of the country to roll out devolved system of government¹. After two years of the devolution, the Center generated a special report on the Challenges and Opportunities of the devolution published in Nairobi Law Monthly 2015 edition². Both documents are available.

1. EXECUTIVE SUMMARY: CHALLENGES AND OPPORTUNITIES FOR DEVOLVED SYSTEM OF GOVERNMENT

The Constitution of Kenya 2010 will be exactly six years old in August this year. It not only significantly restructured the government and redesigned how the people relate to it but also drastically established new systems of governance. A revolutionary hardware that require demands astute software to achieve its vision.

The key challenges still confronting Kenya remain human security; functioning legal order; inclusive accountable governance processes; legitimate competent government; and sharing prosperity fairly and quality services. Establishing sustainable security and rule of law is essential for protecting human rights, stability and for enhancing business climate. Devolution has central to play in the policy discourse on these pertinent issues.

Globally and locally, unemployment, exclusion, poor governance, human rights abuses and security deficit are identified as major sources of instability and conflicts. Devolved system of governance and Sustainable Development Goals (SDGs) reflect paradigm shift mainly from growth-based economic model to sustainable and equitable economy and inclusive societies. Devolving power and resources is major milestone in tackling inequality, reducing fragility, and building communities resilience.

Before 2010, Kenya did not have a presidential and cooperative devolved system of governance. It had a hybrid mongrel of presidential and parliamentary systems.

¹ <http://www.icpcafrica.org/index.php/resource-center/devolution-reports/42-policy-brief-note-on-devolution/file>

² Two years of Devolution: Implementation and challenges. What Next?- <http://www.nairobilawmonthly.com/index.php/in-focus/363-two-years-of-devolution-implementation-and-challenges-what-next>

The promulgation of new constitutional order offered renewed hope and aspiration to people and country ravaged by many years of dictatorship, corruption and human rights violations. However, there is condition succinctly captured by Philip J. Crowley, former Assistant Secretary of State for Public Affairs. He said, "Full implementation of the letter and spirit of the constitution is crucial to realize the promise of a democratically stable and prosperous future for all Kenyans."

Apart from ushering far-reaching changes to Kenya's system of governance and creating two levels of governments, the Constitution fundamentally restructured the state and the core institutions of governance. Six years down the line, nothing significant has happened in restructuring the national government and its agencies.

According to the Interim Report of the Working Group on Socio-Economic Audit of the Constitution of Kenya 2010, National Assembly appointed working group, the single largest economic and financial risk which adoption of the Constitution portends is "failure of the National Government to rationalize and downsize consistent with functions and structures mandated in the Constitution". The size of National Government and its budgetary allocation has increased by 18% while that of the County Governments remains restricted at 7%.

The Report observes that the Constitution requires national government and its various agencies to be restructured and re-aligned with the devolved structure of government. Unfortunately, the system remains largely in place as it was before, with only change of names but not the prerequisite and necessary structural, operational and funding transformations. In terms of assignment of functions, with the exception of security, education and foreign affairs, the National Government is assigned policy and regulatory functions while counties are assigned service delivery functions, which is the core of improving and increasing human wellbeing and human freedom through significantly devolving resources, authority, technical expertise, information availability, and deepening local democracy.

It is unfortunate 'the country's attention on the size and cost of government has focused on the new structures and offices created by the Constitution' namely the County governance, the working Group Report notes. The implications of the failure to restructure the National Government, which are enormous, have not received as much attention.

The potential implications of changes on the size, structure and cost of running the National Government are significant. This restructuring of national governance and administrative system include civil service, parastatals and corporations. There are many unnecessary duplicative national governmental agencies and parastatals. It is time to make hard decisions without retreat. It will be an uncomfortable radical shift but necessary. It is people, individually or through their enterprises, that produce the goods and services.

This demand removing all form of duplications, rationalizing and designing proper governance architecture system creating an effective less costly organizational structure of government and assigning to the county administration at county level certain national government functions while national government only being represented in Counties by technical officers working and coordinating with their equivalents in the county departments.

Apart from governance restructuring, both levels of government must rationalize all earnings that a public officer can earn while working in government and peg it on performance and productivity. Also, ensure no public officials are involved in private employment while serving in public service.

A transformed coherent, representative, competent and democratic devolved system of government plays a major role in effectively meeting the needs of the citizens and strategic interests of the country. Counties are essential elements for deepening and widening of Kenya's democracy, improvement of service delivery, and are vital economic hubs. Devolved governance provides critical opportunities for women in grassroots to engage & influence economic policy planning.

The country needs a new socio-economic paradigm. Vision 2030 needs fundamental review. Vision 2030 cannot oust the Constitution. It is for the Vision to shift and conform to the constitutional reality of devolved governance and development policy.

At the heart of the devolved system of governance and development policy framework is the right to equal development, improving livelihoods and living standards of all people, social inclusion and sharing wealth and opportunities equitably. It offers the nexus between governance, security and economics.

The County governments are far from consolidating prerequisite institutions, systems and processes necessary to effectively deliver their mandate. Overall, county governance has gained significant attraction and support despite the fact that national government has continued to retain the lion share of the national revenue. The ability for Kenyans to reap benefits of restoration of pluralism and enactment of a new constitutional order is dependent on actualizing the core promise of the Constitution: DEVOLUTION.

The national government is deliberately setting up County governments against people and county workers by withholding these funds. It is delaying the costing of functions so as to keep funds at national level while depicting the County governments as failing.

While counties have formal responsibilities over major categories of spending and accounting for huge crucial sectors of the economy spending, including basic services like health, agriculture, roads etc, they have fewer powers to raise their own revenue.

County governments need significant capacity and powers to raise their own revenue in a bid to enhance financial sufficiency; strengthen fiscal responsibility and compensate the well-developed counties that stand to lose from a more equalization-based system of resource sharing transfers.

The current revenue and taxation policy is fiscally unbalanced. The national government continues to determine fiscal and taxation policy with very limited participation of the county governments. The national tax revenue available for equitable sharing between the two spheres of the government is significantly retained by the national government.

The implementation of the devolved fiscal policies for the delivery of quality public services is yet to give the desired efficiency and effective delivery. This is informed by two factors. First, the national government is still controlling the largest segment of the national budget through state departments

even in situations where the functions have largely been devolved. Secondly, the taxation and fiscal policy is still favourable to the national government.

There are urgent needs for appropriate system of intergovernmental relations on revenue sharing and taxation policy as there are still major shortcomings in the current devolved fiscal policy system and key reforms urgently needed.

Increased own-revenue generating capacities could be achieved for instance, by allowing counties to levy, with limits, a surcharge on the fast-growing personal income tax, or by shifting to them the power to levy some domestic excises. In addition, giving counties the freedom to set their own rates and improving the property valuation methods could also boost the counties' source of revenue and especially for the more urban and prosperous counties.

International experience suggests that greater levels of revenue autonomy tend to bring significantly higher benefits than costs. The new administration has a clear electoral mandate to deliver on key priorities that must ensure that visible, tangible and positive changes are felt in all our rural and urban communities

The next crucial phase of devolved governance is consolidation. There is enough 'hardware' of devolution. It is time for 'software' of devolution. This will require adopting specific policy, legislative and budgetary measures to institutionalize the developmental county, improve public and social services, and strengthen democratic institutions. There is a need to ensure that Counties are responsive, efficient, and effective and value for money is realized with the allocated public resources

2. ASSESSMENTS OF COUNTY GOVERNANCE, SERVICE DELIVERY, FINANCIAL MANAGEMENT AND LABOUR RELATIONS

Establishing an effective and efficient devolved system of governance is a challenge that takes time to overcome. There are significant difficulties experienced in the day-to-day decisions making and in defining a clear separation of responsibilities vis-à-vis intergovernmental functional and financial relations. This must be understood as an ongoing process that needs serious level of commitment over the years.

In the last three years, county governments have contributed to the achievement significant number of social and economic development deliverables despite establishment challenge. Majority of people have increased access to a wide range of basic services and more opportunities have been created for their participation in the economy and governance.

Enormous progress has been made in both establishing county governments and service delivery but much still needs to be achieved before all 47 counties are fully functional, effective, efficient, responsive and sustainable.

Democratizing the highly centralized system of government that has existed for 50 years require a painstaking total transformation of all public institutions and the services provided by the state. County

government as government closest to the people demand particular attention as the services is expected to provide affect the daily lives of most ordinary people of the area under its jurisdiction: The County.

The County government is correctly understood as the pillar of democracy where politics meets people. Consequently, the policy plans and decisions should be the result of a participative process.

The county administration has a clear electoral mandate to deliver on key priorities that must ensure that visible, tangible and positive changes are felt in all rural and urban communities in the county. These changes must focus inter alia on building a sustainable developmental county, improve public services and strengthen local democratic institutions of governance. This is the point of departure for the priority of intervening, stabilizing and supporting county government in order for it to fulfill its core constitutional mandates.

Article 190 of the Constitution obliges the national government to assist Counties to develop the administrative capacity required for the effective exercise of their powers and performance of their functions.

The most significant characteristics of the system of county government are that it is constitutionally entrenched, it now enjoys original powers derived from the Constitution and it has to be democratically based. From the perspective of the local level, the national administration has for long been removed from people to tackle their problems and support communities adequately. This fact has been borne out in many evaluation review processes.

There are many examples throughout the world where governments have adopted centralized systems because decentralization was not able to deliver properly. These countries preferred the seemingly easy solution of recentralization instead of thoroughly reviewing the devolution system to identify and deal with any failures and defects.

It is still clear that a number of stubborn service delivery and governance problems still affected Counties. These areas include:

- a. Huge service delivery and backlog challenges,
- b. Poor communication and accountability relationships with communities;
- c. Problems with the political administrative interface;
- d. Corruption, patronage and nepotism;
- e. Poor financial management and accountability;
- f. Quality and quantity of service delivery;
- g. Weak unstructured public participation and engagement platforms;
- h. Insufficient county capacity due to lack of scarce skills.
- i. Proper human resource management and labour practices

These problems can be categorized into four namely: **Governance, Service Delivery, Financial Management and Labour practices.**

2.1. Governance

The effective functioning of the County begins with effectiveness, capability and integrity political leadership. The overall positive progress and success of the county governance in Kenya so far needs support and addressing emerging challenges. There are both internal and external factors that apply to poor governance, service delivery challenges, and county government capacity and performance.

2.1.1. External factors that affect county governments include:

- i. National government policies, budgetary and legislative measures
- ii. Intergovernmental fiscal policy system
- iii. National legislative and governance framework
- iv. Weak monitoring and oversight
- v. Capacity building and technical support

2.1.2. Internal factors impacting on County Governments are:

- i. Political governance leadership
- ii. Institutional and organizational capacity
- iii. Ethics and governance practices
- iv. Policies and programmes development and implementation
- v. Monitoring, accountability and enforcement
- vi. Budget and revenue deficits
- vii. Staffing and labour practices
- viii. Huge variables in spatial location, skills base and socio-economic legacies

A central challenge for the many county governments has been their viability and ability to build strong institutions capable of delivering without political interference and patronage.

The lack of values, principles and ethics in these cases indicates that there are officials and public representatives for whom public service is not a concern, but accruing wealth at the expense of poor communities is their priority. A culture of patronage and nepotism is now so widespread in many County governments that the formal accountability system is ineffective.

The critical solution is how county government can bring the necessary enforceable checks and accountability into the system and integral to this would be mechanisms for improved monitoring, an early-warning system and strengthened means for intergovernmental oversight and support measures. County governments need governance policy coherence, proper reporting systems and stronger county institutional and organizational abilities. There is need to shared vision and a coordinated approach between national and county departments despite being distinct and interdependent.

In respect to community engagement with public representatives and county government officials, genuine participatory process is crucial in order to ensure democratic and accountable county government, and guarantee local population needs preference are prioritized

2.2. Service Delivery

The Constitution enjoins that county government must: *ensure the provision of services to communities in a sustainable manner; promote social and economic development; and promote a safe and healthy environment.*

There is clear and demonstrable progress made by county governments in accelerating access to basic services. There is considerable scope for further improvement in both the quantity and quality of provision bearing in mind the size of the service backlogs and the pressures from population and expectations.

One thing is discernible: variation in service delivery between different counties. This is partly because some counties have greater institutional strength and stability, whereas the majority of Counties are much weaker in terms of both economic and human resource capacity. This situation can paint a rather skewed picture of county governments wherein the challenges of the majority of Counties overshadow the more positive impact that the few well-capacitated and effective Counties may be having on the larger proportion of the population.

The unique challenges faced by weaker and more vulnerable Counties include complex rural development problems, including a massive infrastructure backlog legacy that requires extraordinary measures to address funding and delivery capacity requirements. On the other hand, it has been demonstrated above that urban and relatively more stable municipalities are also being challenged due to increased urban growth, new household formation and population growth that require better spatial and infrastructure planning and more credible public participation and community interface systems.

Service delivery challenges in Counties can also be attributed to elements of uneven and unstable governance practices. There is evidence of a high incidence of irregular or inappropriate appointments, coupled with low capacities, poor skills development programmes and weak institutional management. Those Counties in historically marginalized areas experience the added challenge of access to skills and little understanding of their spatial and economic realities. They generally lack the financial and human resources to deliver on their constitutional and legal mandate and on citizen expectations.

It is noticeable that less developed Counties contributions to the national gross value added is smaller indicating weak local economies, high unemployment rates (pointing to high poverty levels) and demonstrates socio-economic vulnerability of Counties. There are some cases where leaders make unrealistic promises thus creating a crisis of expectation rather than a more developmental approach where communities are empowered to understand the workings of county governments and how service delivery and development can be addressed with their participation and involvement.

Many Counties have also not been effective in mediating service delivery expectations, and mobilizing and supporting communities and other agencies into tapping into the wider network of state and non-state resources. At the same time, the national sphere of government has not deepened the reach of its programmes sufficiently, and has not supported Counties and local communities effectively.

The service delivery constraints reveal the imperative of dire need creating a new policy framework for the practice of devolved governance across the two spheres of the governments. Whilst change and maturity in the governance systems would assist, the weakness of institutionalization of devolved

governance constrains the evolution. The need for a change in how leadership and management echelons think and perform is also critical to success, as cooperation for service delivery in all its manifestations cannot be managed on a legislative, policy or technical basis alone.

Highly uneven responsiveness to the challenges of the county government in the management and provision of services has contributed significantly to the eroding public confidence with county governance. In addition, the ineffectiveness and poor implementation of the County Integrated Development Plan (CIDP) affects service delivery. The CIDP is a vital tool as it is the representation of most aspects of service delivery in the County. Disorganized intergovernmental coordination and the demand realities on the ground fundamentally affect service delivery.

The lack of a relationship between a system of service delivery indicators that enables County government to assess the performance and the planning related to powers and functions assigned is equally highly problematic. Policy goals have to be realized through a joint governance and fiscal lens. Efforts to improve services will not be effective if premised upon the same old assumptions that have bedeviled service delivery expectations. Local economic development is of critical importance in service delivery but has been erratic in practice due to the skills required to shape and direct economic growth in local spaces

The key point to emerge from reviews of service delivery is that progress has been made though uneven across the country with different issues facing different Counties, reflecting variable socio-economic conditions and county competence. In addition to the governance and institutional constraints to effective intergovernmental planning, each county has its specific challenges and variations in service delivery strengths and weaknesses. The expectations from intergovernmental cooperation have largely not been met. The result is that it is still not clear how the various intergovernmental relations structures function and the extent to which they foster meaningful cooperation in service delivery.

In short, poor governance systems, weak implementation of county integrated development; limited community/ civil society engagement and mobilization; inadequate budget and revenue base, historical spatial legacies, and limited capacity and skilled labour are some of the factors affecting service delivery in most Counties.

2.3. Financial Management

Kenya has a long history of inequity and inequality. Due to this fact, there remain significant areas of the country with limited social and economic development. Concentrations of development and economic wealth in certain parts of the country, contrasting with poverty in other parts was at the center of constitutional reforms agenda.

Devolved system of government addresses this historical curse through the intergovernmental fiscal system, which is based on a redistributive approach across all Counties through the system of transfers.

The system is based on the understanding that the redistribution challenge is largely a national issue and must be addressed primarily through the national system of transfers. To increase the efficiency of service delivery, dependents should be on the ability of the county governments to properly put in place

systems of policy formulation, budgeting, planning, implementation and reporting. However, many Counties are not in a position to meet their developmental mandate due to an inadequate economic base or high levels of poverty and unemployment. Internal County systems' weaknesses result in cumbersome administrative and budgeting systems, inefficient service delivery, poor management and disproportionate wage bills.

While there are many examples of exceptional efforts and remarkable successes by individual Counties, the County government system does not, at present, appear to be responding to these challenges very effectively. Many Counties can simply not leverage the funds they need for even moderate County functionality. The strategies to address service backlogs are therefore now coming up against significant cost pressures.

Compliance with the current financial management system is a constant challenge for many Counties. Poor financial management and lack of controls and accountability systems impacts negatively on service delivery for communities. The Auditor-General's report has identified a lack of controls, mismanagement and lack of governance principle as the key reasons for the state of despair in Counties. Counties are showing a poor ability to accurately plan and spend their budgets i.e. credible budgets. A credible budget is regarded as one with a variance of less than 20 per cent.

The basic assessment so far reveals that the financial environment in Counties is a highly problematic area. It is fraught with a poor skills base, weak support systems, and is open to abuse and fraudulent activities. Many Counties lacking enough tax base, inadequate equitable and with a weak revenue base simply cannot leverage the funds they need for even a moderate County functionality.

One of the basic principles underlying County finances is the principle that county government is supposed to be substantially financed by means of own resources. This is an important feature of any democratic local government system. It ensures that local government is directly accountable to local residents for the functions they perform and the services they provide.

With respect to financial management, Controller of Budgets reports provide clear evidence of the dire financial situation of Counties. County revenue collection has begun to fall as greater reliance is placed on transfers as a revenue source. Counties continue to face capacity constraints in conceptualizing and implementing developmental spending programmes.

The growing transfers' dependence could easily create a dependency syndrome, which in future might be unsustainable. Furthermore, if Counties had collected half of their outstanding debts, they would have had more revenue with which to fund the delivery of services. The increase in outstanding consumer debts highlights possible governance problems.

The policy context for financial management may be over sophisticated for many Counties, and expectations too high. The principle of a differentiated approach towards the different Counties may need to be further entrenched in the financial management policies for county governments.

It makes sense to extend financial freedoms and flexibilities to competent Counties in order to speed up the provision of services in a manner that can be sustained and to address bottlenecks, backlogs and neglected repairs and maintenance. Conversely, better technical assistance should be provided to

Counties with weak capabilities in financial management, external borrowing, income generation and debt collection.

2.4. Human Resource And Labour Relations

County Governments are constantly facing disruptions due to the county labour force unrest. Labour disputes are centered on labour policies, salaries and benefits, personnel management and inadequate working tools. Pro-longed strikes, court actions and go-slows fundamentally exacerbate the instability in administration with a serious impact on service delivery and illustrate the unprofessional lack of concern for building a dynamic labour force.

The indifference or incapacity to sort out pay parity issues, and health and safety standards or the ignoring of agreements, all point to dysfunctional human resource management and weak integrity and ethics within the Counties.

Lack of cooperation, poor communication and poor relations between management and workers have led to an effective breakdown in a functional relationship between the County governments and workers. The incidence of low productivity, poor motivation of the work force and poor supervision are constant issues raised. Other labour issues that have been identified as of importance include skills development and training, occupational health and safety, recruitment and appointment processes, post structures, outsourcing and temporary workers.

There is reported political interference in recruitment resulting in the flouting of procedures and policies for sound human resource practice. There have been claims of nepotism and favouritism resulting in erratic appointments and promotions. Cases have been cited where posts are filled without being advertised; people are appointed for posts that they lack technical skills and job evaluations and job descriptions are not in place.

The assessment on human resource and labour relations issues indicates that the current municipal working environment is not an attractive proposition. The poor human resource management prevalent in many municipalities does not assist in attracting and retaining the skilled and professional staff required to ensure service delivery. This is further compounded by political interference in the recruitment process, appointment of persons to non-existent positions and disparities in salaries. A lack of compliance with work place obligations have been reported widely.

County governments need to develop an elaborate uniformity human resource management and labour practices policies and laws. The greatest challenge involves aligning the human resource management practices between the public service at national level and Counties. This involves aligning the remuneration, grading and conditions of service dispensations.

In moving forward on skills development, specific attention will need to be given to career pathing, defining and enforcing minimum competencies for posts, better investment in apprenticeships, applicable programs for relevant management and leadership training.

There is an urgent need to facilitate engagements between the workers and county governments to stabilize the deteriorating relationship, illustrated by protracted labour disputes. The way the current organizational rights collective agreement is implemented, mediated and monitored, requires review.

3.0. GENERAL CONCLUSION

The establishment and transformation of county governments has probably been the largest undertaking within the entire democratic governance transformation process after promulgation of the Constitution in August 2010. Enormous progress has been made but much still needs to be achieved before all 47 Counties are fully functional, effective, efficient, responsive and sustainable.

Strong county governance plays a critical role in human and economic development. Devolving power from the national government to the sub-national units enables women and men to participate in decision-making directly, and to hold local officials and institutions accountable to the communities and individuals they are meant to serve. Local governments can be more responsive to local needs, make better use of resources and direct them towards providing basic social services and building appropriate sustainable local economic development regulatory framework.

In response to the numerous governance performance and service delivery failures, there is need to conduct a comprehensive assessment to ascertain the key problem statement per thematic area and to establish the root causes of poor performance, distress or dysfunctionality in the Counties. The assessment should focus on four thematic areas namely: governance, service delivery, financial management and labour relations. The could be immediate as there is need to make certain adjustments and reforms in the leadership, policy, regulatory and oversight environments of the County governments.



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