

Workshop Report¹ on
Devolved Governance Dialogue I
Organized by Friedrich Ebert Stiftung, Nairobi, Kenya held on July 30, 2013

The dialogue was opened by remarks from the Convener of the Devolution Working Group by highlighting the reasoning behind the formation of the DWG, its objectives as well as the expertise the group commands as far as matters devolution are concerned. He pointed out that one of the major achievements of the DWG has been the issuance of the Advisory Opinions on how devolved governance is being implemented; all directed at both the implementers as well as the watchdog institutions including the civil society and the media. Other initiatives have been auditing of publications and analysis of the complex dynamics of the implementation process of the constitution as far as devolution is concerned.

He later pointed out the key objectives of the Devolved Governance Dialogues with reference to the first one, thus:

- Taking stock of the devolution implementation process
- Evaluating how faithful implementers of devolution remain to the constitutional provisions
- Management of public expectations over devolution
- The state of service delivery from the county and national perspectives

In the dialogue, it emerged that both county and national governments are new entities after the exit of the old centralized system of governance. As such, it is erroneous to point out that county governments are still new while painting the picture that the national government is old. On the same note, the claims by the national government that the county governments are still new and therefore merely rolling out is hypocritical since even the national government is rolling out too. Structures at both levels are being developed and therefore should not be judged as already failed. The question that needs to be addressed is the status of establishment of these structures.

On matters of service delivery in terms of structures and systems with focus on how to deliver the services, who should do it and with which effect should be put in clear focus too. For

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instance, the status of development and submission of county transition plans and progress reports, which was to take place in 120 days (from 30th June 2013) remains to be seen. Yet, to understand the status, there is need to read the reports of transition process. Key things were therefore defined as in need to be watched:

- Everyone has the role to play in ensuring devolution is fully and effectively implemented as a constitutional requirement
- The claims and assumptions that the county governments are not ready and do not have the capacity to manage the devolved funds is but a mirage
- The functions transfer was meant to be phased and that is what is happening- we cannot read any delays after all as many quarters tend to claim. However, it remains unclear on the criteria for the transfer of functions since the requirements for transfer are still grey
- There is need for evaluation of the units which are currently offering services meant to be transferred

From the plenary, the following issues were raised:

- Looking at the extent of readiness of counties, we are meant to question whether the State is ready for constitution 2010 implementation or not. There are technical worries regarding the implementation of devolution as well as the political dimension; which when combined create the basis for the rising tensions
- If the Transition Authority is not functioning optimally, as it has been pointed out, there is need to develop measures of ensuring that it is effective and efficient in delivery of its mandate. Instead, it is being left to carry on with its shortcomings as it keeps on mismanaging transition process. Indeed, this inefficiency and ineffectiveness of the TA should be part of our analysis of the state of devolved governance in Kenya
- There is the push in the political system for the Constitutional amendments. This raises two questions, thus:
 - o To what extent are the county governments going to emerge much more effective than they are now?
 - o To what extent does the national government going to claw back the county governments

The above questions therefore leave the civil society to stand with the position of not supporting the call for amendments as chances for goofing are much higher than making any meaningful gains thereof.

- There is the penultimate call to separate politics and technical aspects of implementing devolution in Kenya. Additionally, the philosophy of devolution is at the state of misunderstanding by key stakeholders, and from the CSOs standpoint, it is threatened. There is need to raise the question on whether the implementers of devolution actually understands the laws and policies regarding devolution.
- There is further the need to address the fears of devolution, especially in terms of the provincial administration and other government civil service is concerned, many of whom do not want devolved governance to mature. Majority of these administrative elites have had the taste of both the national and county governments and do not therefore want to be working at either level but rather to remain in the middle.
- Fears related to resources control both at the national as well as the county levels, especially as regards financial and human resources capacities need to be raised and addressed beforehand.
- Lastly, there are fears linked to likelihood of claw back to the centralized system of governance as a planned way to kill counties begs the question on what needs to be done to fully militate against this possibility. But still, are we rushing devolution implementation?

The next presentation looked at the fears, threats and related solutions to devolution implementation. Devolution is constructed to take place at a big bang approach; but it is a long term process which is meant to take at least three years to transit to effective devolution. This should be made very clear to all stakeholders including citizens in order to help manage the expectations.

Multiplicity of action in the devolution fray makes it much complex especially if there is no proper systematic synergy of coordination. The nature of understanding of devolution systems by all actors remains a major challenge. There is therefore the need for proper clarity in terms of approaches, structures and mechanisms relevant at each stage of implementation. Further to this, implementing devolution system has just taken barely four months and therefore there's no need for a farce to the point of anticipating problems and failures.

Article 6 of the Constitution defines our devolved system which exists in 2 levels of government as distinct and interdependent and they are to operate on the basis of cooperation and consultation. Schedule Four gives separation of functions exclusively and concurrent functions and the particular understanding of these poses challenges thus require function unbundling. This unbundling, though the mandate of TA, has not been done yet this was to precede the functions transfer. The position of CIC is that the transfers should be done as quickly as possible but within the law.

Some key institutions responsible for implementation of devolved systems have failed to effectively carry out their mandate as some have chosen to be politically correct within the system. Such institutions should remain professional and stick to their mandate

Devolution, just as the whole constitution, is being implemented in a political context but the process should not succumb to political demands and pressure. There is further the failure of some institutions to respect the role and mandate of others. This particularly relates to the struggle between the Senate and the National Assembly. As such, there seems to be disregard for distinctiveness between two levels of government. Instead there is an impression that the national government is supervising the county governments, which impression undermines the process of implementation of devolution in particular and the constitution in general.

As regards the relationships between national and county governments at the county levels, there is need to develop a Bill for the restructuring of the current Provincial Administration in order to accord with and respect the county system. Resistance to change and push for status quo remains one of the major stumbling blocks to devolution implementation.

There is need for intensive, focused civic education to the County Assembly members in order to understand their roles and moderate. In any case, the success of implementation of devolution rests on the people of Kenya who are supposed to be vocal, go to court etc to defend the Constitution.