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Repoa Brief

Strengthening Intergovernmental Relations for Improved Service Delivery

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Key messages

- Functions of national and county governments are broad and non-specific, making unclear the line of division of labour
- Transfers from the national government, while are very crucial, but are not sufficient to cover local needs of service delivery
- Multitude number of local revenues are costly to administer, making them only cover collection administration with little or no contribution to local development

Introduction

Kenya is four into the implementation of devolved system of governance. To effectively implement the devolved functions, it is necessary to specify much more explicitly the roles of the two levels of government in public service delivery. The policy brief provides a platform on which the national and county governments can engage in the task of planning for and delivery of devolved functions from a common starting point with a view to strengthening intergovernmental relations. This policy brief was based on a recent study on "Understanding Devolution in Kenya and Tanzania: Case for Kenya" by KIPPRA. International best practice shows that successful devolution requires a well-defined and consultative process for formulating and defining functions by the two levels of governments under effectively managed, coordinated and adequately resourced frameworks. Hence a substantial portion of this brief focuses on the process that can be undertaken which, while relying on the basic framework for devolving services, also takes into account the substantive knowledge of activities and the work currently in progress at the county and national level.

Findings

Devolution in Kenyan Context

Article 6(2) of the Constitution of Kenya, 2010 (CoK 2010) establishes national and county governments as distinct, but interdependent each with its own functions. Article 6(2) also requires that both levels of government relate to each other in a consultative and cooperative manner. The functions of both levels of government are provided for in Article 185, Article 186(1) and listed in Fourth Schedule. Article 21 (Implementation of Bill of Rights), Article 62(2) & (3) (Vesting of Land on County Governments), and Article 235 (County Public Service), amongst others, delineate further functions, and imposes obligations on both levels of government in the execution of their

mandates. County governments as constituted under the CoK 2010 clearly have more responsibilities and power than local governments under the previous constitution.
The CoK 2010 through provisions of Article 186 further classifies the functions assigned to each level government as exclusive, concurrent or residual. A review of the functions as articulated in Schedule 4 of the Constitution of Kenya 2010 points to the following: i) National government is largely assigned policy, regulatory and capacity building functions; ii) County governments are mainly responsible for the service delivery burden; iii) More critically, under Article 43, county governments functions and mandates are articulated; and where the functions cannot be explicitly distinguished as exclusive or concurrent, they should be classified as residual and assigned to the national government.

Consequently, the functions assigned to the national and county governments in the Constitution of Kenya 2010 are generally broad and in some cases non-specific. This is a trend observed in other countries. Therefore, to effectively implement devolution of functions as required by the Constitution 2010, it will be necessary to specify more explicitly the role of intergovernmental relations in public service delivery activities over which each level of government's unclear roles are made explicit within the constitutional provisions. This is primarily to limit conflicts and the attendant litigation as well as avoid wasteful duplication of effort amongst others.

Objects and principles of devolved government

The objects and principles of devolved government are clearly spelt out in Articles 174 and 175. While both these provisions are important, without minimizing the import of any of them, Article 174 (h), says that one of the objects of devolution of government is, *"to facilitate the decentralization of State organs, their functions and services, from the Capital of Kenya."* Read together with Article 1(4), which provides that the sovereign power of the people shall be exercised at the national and county levels, it can be argued that when national government is delegating its functions and services, it can do that through county governments and cannot bypass them.
An analysis of the fourth schedule lists of functions of both the national and county levels of government indicates that to a large extent, this principle has been followed in the assignment of functions. For instance, in the areas of agriculture, housing, energy, veterinary services, health, education, protection of the environment and natural resources, land planning, consumer protection, the national economy and planning, labour, monetary and currency matters as well as language, the national level of government has been assigned the function of policy formulation and setting of national standards. Although in the area of health the national government has been assigned the function of running national referral health facilities, the main function in the health sector is to formulate health policy and to set the health standards. Similarly, even though in the education sector the national government has been assigned the function of primary and secondary schools as well as the colleges and universities, its main role in education is the formulation of education policy, the setting of education standards, curricula, examinations and the granting of university charters.

On the other hand, the analysis of the devolved functions shows that the county level of government has been assigned the function of implementation of the policies and standards formulated and set by the national level of government. In agriculture for example, the county governments are supposed to engage in the actual agricultural development in the areas of crop and animal husbandry, livestock, plant and animal disease control and fisheries. In the health sector the county governments have been assigned the bulk of the primary health responsibilities. Counties are responsible for the county health facilities and pharmacies;

ambulance services; promotion of primary health care; licensing and control of undertakings that sell food to the public; veterinary services; cemeteries, funeral parlours and crematoria; and refuse removal, refuse dumps and solid waste disposal.

Further, a number of service delivery functions devolved to counties under the Fourth Schedule are concurrent; meaning that there will be considerable integration between the roles of national and county governments. The delivery of services associated with concurrent functions by the two levels of government will demand considerable coordination, including a very clear definition of what activities will be performed at each level. The process of functional assignment process set out in this framework policy brief is intended to address these issues.

Gaps in interaction of national and county governments

The fundamental institutional framework of assigning services to devolved units follows the principles for assignment of services to sub-national governments. However there are challenges to the national or county governments in the assignment of (or the process of assigning) appropriate functions. These are: The national and county governments are prone to duplication of effort, unsatisfactory fiscal performance of devolved units due to capacity constraints.

Assigned revenues are almost never adequate to meet the local expenditure requirements. This means that central government transfer programs are inevitably required. The three years of revenue generation across counties indicate that the county governments often use too many unproductive revenue sources that barely cover the costs of collecting them. One of the most critical international lessons of local tax reform is that sub-national governments should focus their energies on systematic development of a few local sources of revenue that can provide substantial yields and establish a better link between the taxes local residents pay and the benefits they receive.

Further, there is no clear legal framework for transferring resources and functions from the County level to sub-county levels, or and micro units within the Counties. This has led to concentration of resources at County headquarters, while the sub-county units remain either under resourced and or under supported. There is also need, to strengthen coordination between national government transfers to counties, service delivery and constituency resource allocations and spending across all counties.

Implications for policy

Developing an appropriate intergovernmental fiscal transfer system

Intergovernmental transfer programs serve multiple often-interrelated purposes. First, they help to cover sub-national government fiscal imbalances, supplementing inadequate local own-source revenues to improve the ability of sub-national governments to meet their expenditure responsibilities.

Second, they can be used to meet national redistribution objectives, helping to offset fiscal capacity differences among sub-national governments. Third, they can be used to encourage local expenditures on particular goods and services that exhibit positive externalities or are considered to be basic needs that should be distributed less unequally than the ability to pay for them. Most transfer systems are intended, at least officially, to meet these objectives, and they use a variety of types of mechanisms to do so. There are several typical issues and problems involved in designing transfer systems and programs.

Too many transfer programs with different allocation criteria create an administrative burden for local officials and provide incentives for unproductive competition and strategic behavior. In some cases, transfer programmes may substitute local tax effort rather than stimulate it.

Common reforms that can be put in place to overcome these and other challenges include: moving towards consolidated programs with more transparent allocation mechanisms; introducing incentives for good fiscal discipline into the access criteria and distribution formulae; and starting new programs incrementally.

Developing adequate county governments access to investment capital

Sub-national governments in many developing countries get much of their capital budget from intergovernmental transfers. Some decentralized governments, typically states, provinces, and large cities, are able to borrow in some countries. There is an ongoing debate to allow counties to borrow. A key institutional design across counties is to develop and enforce credit limits. Also, access to capital markets can be structured to be direct in cases where decentralized governments are relatively strong.

Deepen capacity and institutional/devolution systems

Most counties face a risk of over-employment and duplication of functions by national government and county government employees. Across a significant number of counties, the former local authority staff were retained, and additional workers employed without proper rationalization of the staffing requirements. This has led to over-employment and relatively large wage bills existing side by side with human resource capacity gaps. To address this challenge, it would be critical to deepen and institutionalise regular capacity building programmes across counties.

Ensure strong link between county and national plans and budgets

Despite the fact that most Counties have developed County Integrated Development Plans, the plans are weakly linked to the national government plans. The medium-term plans of the Kenya Vision 2030 and the medium term expenditure frameworks and budgets should be aligned to CIPDs developed by the county governments.

There is also inadequate monitoring and evaluation system; and effective data management systems. If not addressed, this situation would make it difficult for both national and county governments to assess impact of public spending by both levels of government and other stakeholders.

Functional responsibilities are what role players – governments at all levels and non-government institutions, are expected to do in the process of delivering a country's public services. Clarity in this framework is key to effective identification of and allocation of other resources such as staffing and financial resources. Where functional assignment is not properly done, public services will be inefficiently provided and scarce resources inappropriately utilized. A major consequence of this lies in the resultant lack of competitiveness of local and sub-national economies as well as provision of public services in a manner that is unresponsive to the welfare needs of citizens. This scenario can exacerbate lack of inclusiveness and can over the long-term act as a threat to national cohesion. Development of an appropriate intergovernmental fiscal transfer system would enable county governments to plan and implement planned activities in a timely and efficient manner.

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