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Equity and Gender Concerns in Managing Devolution in Kenya

Overview of the Problem

After many years of debate, Kenya finally promulgated a new constitution in August 2010, among its most significant departures from its predecessor being the provision of devolution of governance to 47 counties. Constitutional devolution responds to demands for substantive decentralization, which grew out of decades of real or perceived unjust inequalities – vertically among individuals and horizontally across counties – attributed rightly or wrongly to bad centralized governance. Devolution implies the democratic and consulted management of development, which should improve attention to grassroots needs, including gender-based disadvantages. Yet, the anticipated benefits of devolution depend on the equitable sharing of resources based on sound data, as well as the improved community participation capacities, including by women.

While the development model that Kenya opted for at independence (as summarized in Sessional Paper No. 10 of 1965) recognized regional disparities, it also exacerbated these through ineffective redistribution systems. Traditional patriarchal practices further disadvantaged women in terms of access to development resources. Moreover, a powerful executive arm of the government patronized the distribution and allocation of public resources, leading to serious regional inequalities. This caused Kenya to become among the most unequal societies globally, thus fuelling sustained demands for a comprehensive constitution review, to provide for a fairer basis of national and sub-national governance.

Inequalities in Kenya are manifested in various ways. For instance, only two out of every ten babies in North Eastern Province are delivered in a health facility, compared to almost eight for Central Province. Nyanza Province's infant mortality rate is double that of Eastern Province and, while seven out of ten households in Nairobi county have electricity, eight out of ten households in Turkana county are lit using firewood. Various studies indicate that previous efforts aimed at addressing inequality and gender concerns in development, especially through use of various types of decentralized funds, have not yielded the desired results, for various reasons.

Soon after independence, the central government assumed delivery of the bulk of social services hitherto delivered by sub-national entities, especially the local authorities. Consequently, the government abolished the authorities' main revenue source, the Graduated Personal Tax, transforming them into ineffectual, debt-accumulating political shells. Meanwhile, gross public financial mismanagement also tended to punish areas without strong political connections to the presidency, and Kenya's incrementalist budgeting system offered little scope for a dynamic rationalization of allocations against changing needs. The challenge is to operationalize a devolved government approach that addresses the foregoing issues.

The Policy Concern

The envisaged devolution is being launched against a backdrop of vast regional inequalities in welfare status. The Commission on Revenue Allocation (CRA) has developed a formula for sharing resources across counties, which are to be augmented by own county revenues. But the CRA formula hardly recognizes the wide variations in county own revenue capacities – variations closely reflecting those in welfare status. Socio-economic disparities translate into differing potential sites of revenue across counties, using evidence from

Kenya's 175 local authorities For example, Isiolo and Wajir counties have single local authorities, compared to 10 and 9, respectively, for Kisii and Kiambu counties. Further, while land or property rates and parking fees are on average the key sources of own revenues, these are unlikely to provide much for the less urbanized counties.

While the Equalization Fund has been established to target marginalized areas, it is too small to enable lagging counties to catch up with leading counties. Additionally, there is lack of sound data on many aspects of across and within county inequalities, the latter fact being of special concern since incoming county managers might overlook in-county pockets of need either through malice, or through a weak capacity for identifying these. Such risk is also likely with respect to the county managers' development of effective participation and civic education frameworks, which devolution legislation has not adequately provided for. Related to the weak capacities of incoming devolution managers is the evidence of a persisting poor understanding of the constitutional and legislative framework for devolution. Anecdotal information suggests that the attraction of county management – notably the Governor's position – is driven by a desire to control the CRA resources, which are much larger than the Constituency Development Fund (CDF) resources. Other areas of likely tensions will include the hiring of county personnel and the rights to local natural resources.

In all these concerns, an effective Transition Authority (TA), its delayed establishment notwithstanding, will be critical to the successful launch of devolution, mapping individual county service needs with their respective human and financial resource capacities for service delivery. To compensate for the delays in its operationalization, TA should liaise with CRA and other stakeholders to exploit the work these latter have already done in relation to TA's mandate, to avoid wasteful duplication. An area of immediate concern for TA – alongside CRA, Kenya National Bureau of Statistics (KNBS), Vision 2030 Secretariat, amongst others – should be attention – based on sound data – to the development gap between leading and lagging areas, which cannot be addressed by the scarce resources available to county governments. This would enable the more equitable use of available resources.

Experiences with Decentralized and Gender Approaches to Development

From Decentralization to Devolution of Service delivery

In response to persisting development disparities, Kenya has previously undertaken piecemeal decentralized service delivery reforms, including the 1970s Special Rural Development Programme, District Focus for Rural Development (1985), Road Maintenance Levy Fund (1993), Local Authorities Transfer Fund (1998), and the CDF (2003). Yet, poverty peaked at an all time high of 57% in 1997, falling to a mere 47% by 2008. Further, the disadvantaging of women, for example, has persisted despite the government's mid-1970s establishment of the Women's Bureau, and Kenya's accession to various global platforms seeking gender equality, such as the 1995 Beijing Declaration and Platform for Action, which focused on mobilizing resources with which to deliver gender equality.

In the context of its extended Bill of Rights (to health, education, employment, etc) (Chapter 4), the Constitution (2010) provides various approaches to fighting vertical inequality among people, including gender inequality, and horizontal inequality among regions. Among its national values and principles of governance, the Constitution invokes equity, which is the equal treatment of equals (regardless of gender), and the appropriately unequal treatment of unequals. Chapter 11 specifies the principles of devolution to include democracy, separation of powers, reliable revenues and gender sensitivity (Article 175). The chapter provides for a County Assembly and County Executive Committee, and specifies their respective functions (Articles 176-186; First and Fourth Schedules). County Assemblies are mandated to promote citizen participation in the conduct of their business. Chapter 12 on public finance embraces the principles of openness, accountability, public participation, and the promotion of an equitable society observing justice in taxation and revenue sharing (Article 201). CRA is mandated to recommend a fair basis of sharing Kenya's revenues between the national and county levels of government, as well as among counties (Articles 215 and 216). Meanwhile, the Equalisation Fund will finance the provision of "basic services... to marginalized areas to the extent necessary to bring the quality of those services in those areas to the level generally enjoyed by the rest of the nation, so far as possible (Article 204)." Legislation has been enacted to operationalize devolution, including the Devolved Government Act, Urban Areas and Cities Act, Inter-governmental Relations Act, Transition to Devolved Government Act and the Public Financial Management Act.

Viewed against devolution theories and international best practices, Kenya's framework looks sound because it is embedded in the Constitution and related legislation, clearly assigns expenditure (functions) and revenues, and specifies frameworks for relations between the national and county government levels, including provisions for conflict resolution. The challenge lies in effective implementation.

Gender and Decentralized Funds Management

Women actually bear the brunt of poverty in Kenya. It is therefore widely believed that addressing issues of equity and gender participation will be key to realizing a more equal Kenyan society. Meanwhile, women's participation in the management of public resources is often very low despite the various gender initiatives the government has committed to. Additionally, the persisting gender neutrality of national accounting frameworks undervalues women's contributions to national development, keeping women in lower paying jobs and businesses, and barring them from access to affordable credit. Consequently, Kenya performs very poorly in measures of gender attainment.

While Kenya became gender aware with the 1976 launch of the Women's Bureau, its weak commitment to that agenda is evident in the inordinately long delays in operationalizing gender frameworks, thus perpetuating gender inequality. The failure to develop gender disaggregated databases to date means that planning, budgeting and development management is gender neutral, in a context in which general welfare data is also lacking. The failure to disaggregate development data undermines the genderized focus of budget-based service delivery and will affect the scope for incoming county governments to design gender-focused interventions.

Among Kenya's eight-odd decentralized funds to date, only the Local Authority Transfer Fund, CDF and Constituency Aids Control Committee allow grassroots choices of what to spend the money on, the use of the other four funds being predetermined at the national level. A study of community participation in decentralized funds management found that only about one out of every four targeted beneficiaries participated in project identification, with even lower rates of involvement in planning and budgeting, implementation, monitoring and overall project management. Significantly, for nearly all management phases of every fund, women's participation rate was lower than that for men, but marginally more women felt the projects focused on actual community needs.

In terms of financial outlays to Kenya's decentralized funds hitherto, CDF has not only been the largest, but has also been important because, unlike most of the other funds which are sector specific, CDF resources can be invested in various sectors in resolving locally identified development bottlenecks. The gender focus of CDF is therefore important since women bear the brunt of poverty and disadvantage. A review of the sectoral focus of CDF spending since its 2003/04 inception to 2009/10 reveals that almost half (46%) of the money has gone to education, with water accounting for 12% while health accounts for 7%. Education's dominance of CDF spending is likely to benefit boys more than girls due to the former's higher enrolment rates, especially among pastoralist communities where women are most marginalized. Spending that improves access to health and water is likely to reduce women's livelihood burdens. However, not all health- or water-spending favours women. Further, spending does not translate directly to service delivery: seven out of every ten CDF-constructed health facilities remained idle by 2008/09.

One motive for increasing women's participation in the management of public funds is that they could influence the focus of spending on themselves, while also raising scrutiny. Yet, a review of women's membership on a sample of 17 CDF executive committees between 2006 and 2008 suggests they are under-represented, and often hold general positions, rather than the influential ones, such as the chair or secretary. Moreover, there was no indication that women's presence on the executive committee was linked to improved funds management.

Policy Recommendations

Arising from the foregoing concerns, the following are among the recommendations for policy and action:

- Despite various anti-reformist threats, Kenya managed to enact a new constitution and the requisite legislation for its implementation. That experience means that Kenyans must ensure the impending March 2013 general elections deliver a pro-devolution government, which will also fully implement the rest of the Constitution.

- It seems that many Kenyans have not read and understood the Constitution and attendant policy, legal and institutional frameworks. It is necessary to harness continuing civic education to ensure correct content and to maximize its coverage given outlays. Further, it is necessary for TA to produce a national participation template, which counties can subsequently domesticate. This exercise should involve the National Gender Commission to ensure that the resulting frameworks open the doors for women to be heard at the grassroots.

- TA will be vetting counties for accession to own service delivery, meaning it will have established – in consultation with CRA, KNBS, Planning ministry, Vision 2030 and other stakeholders – some basic minimum county capacity for such a move. In this light, it should pay attention to counties whose extent of deprivation is such that their accession to own service delivery delays inordinately compares to others. Moreover, it should provide a framework upon which the national government fast-tracks the acquisition of such capacity among the lagging counties.

- An area of emphasis is the update of household welfare data, as well as the regional costs of service delivery. TA should encourage Treasury and other relevant government departments, such as KNBS, to build on the latter's recent update of the National Sampling Survey and Evaluation Programme, to conduct a purposive, devolution focused household welfare survey. The development of these databases must be gender sensitive to enable sub-county level needs assessments to be similarly gender-sensitive, which will complement gender-mainstreaming at the national level.

About SID

The Society for International Development (SID) is an international network of individuals and organizations with an interest in development, policy and governance research and dialogue. Since its creation in 1957, SID has consistently been at the forefront of reappraising prevalent development ideas and has confronted the theory and practice of development, challenging existing practices and suggesting alternative approaches. Over the years, three values have been – and remain – at the core of the Society's work – respect for diversity, participation and equity. SID East Africa is incorporated as a Company Limited by Guarantee under the Laws of Kenya. It serves as the Regional Office of the SID International Secretariat which is headquartered in Rome, Italy.

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