



## **DEVOLUTION POLICY REVIEW**

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### **ABOUT THE DEVOLUTION FORUM**

The Devolution Forum (TDF) is a multi-sectoral alliance convened by civil society, to bring together like-minded networks, organizations and individuals united for the promotion and protection of devolution and its implementation as enshrined in the Constitution of Kenya 2010.

#### **Overview of draft**

We commend the Ministry of Devolution and Planning (MDP's) efforts and determination in the quest towards a devolution policy. We note that this is the second attempt by the ministry and undertake to support the process through all means possible and available for engagement. We also welcome the proposed inclusive, stakeholder engagement process, which the policy process proposes is to adopt.

We however raise some fundamental concerns regarding the approach to the policy.

#### **1. General Overview**

TDF is concerned that the policy document fails to add value when it simply points to other policy interventions that are needed to achieve the aspirations of devolution.

## 2. Timing and Context

Whereas there is no existing agreed devolution policy, the devolution laws were informed by the sessional paper prepared by The Task Force for Devolved Government (TFDG). Whereas the paper was never adopted, it informs the conceptual framework in which devolution is presently being employed. It should therefore serve as the basis for a subsequent policy review.

We note that the constitution anticipated a three year transition period and prior to embarking on a new policy making process, five years into the implementation of devolution, there is a need for a comprehensive audit to address the status of the transition and actual needs of the subsequent implementation period.

### **Recommendation:**

Undertake a rapid assessment of the status of implementation of devolution based on the framework under the present devolution policy to identify key issues to inform the second devolution policy.

As civil society, we are prepared to contribute to the framework for assessment and audit as well as policy inputs and data collection, reviews and so forth towards such an audit.

Such an audit would address issues such as

- What is the status of the transition activities?
- What have been the successes and bottlenecks?
- What are key issues to be addressed in the next 3 years?
- What is the role of transition institutions namely CIC and TA?
- Which institution/s will take over pending transition activities?

## 3. Purpose of the policy

The policy identified 11 pillars as enablers for the objects of devolution in 2.5. (Conceptual framework). These pillars are captured as variables, which aptly capture key factors in successful implementation.

The purpose of the draft policy is also obscure no doubt due to an inadequate situational context. We suggest that the **purpose of the policy should address the pending transition activities and the need to establish appropriate post transition mechanisms, as well as entrench devolution through capacity development.**

It is noteworthy that the policy does not provide an implementation period. It is anticipated that the implementation context and concerns of devolution will change as implementing institutions mature. **We propose a three-year implementation**

**period from March 2016 in line with the timelines provided in the constitution.**

#### **4. Policy Requirements Not Met**

Whereas the pillars identified are agreeable save the recommendation made above; Part 3 of the policy, which purposes to provide depth to each pillar, is grossly inadequate and does not meet the requirements of effective policy. The treatment of each pillar should address:

Define the variable and unbundle it. Provide a status on each and emerging challenges. Identify priorities for the next implementation period and institutions responsible, functional mandates, intergovernmental considerations and budget implications.

#### **5. Background to the devolution policy**

The paper attempts at capturing the background to the proposed policy. However, it fails to capture the status of implementation between 2010 to date, and subsequently fails to address key bottlenecks of the devolution process. Fundamentally provides an inadequate treatment of the political context of the implementation process, which is one of the factors frustrating successful devolution. The policy also fails to address the significance of the transition period, its achievements and challenges. The SWOT analysis is too simplistic and contradictory; the situational analysis should capture the complexity of issues and overlapping stakeholder mandates.

#### **6. Legal and Institutional Framework**

The legal and institutional framework is also simplistic and falls short of the requirements of a national policy on devolution. The values of the policy (2.4) should include intergovernmental cooperation in line with Article 6(2). The policy should also be informed by a deeper review of the application of the devolution laws and policy through an audit of the same.

#### **7. Policy formation process**

On a positive note, the draft proposes an inclusive and participatory process, but does not provide the timelines, inputs and responsibilities of respective institutions. It should also provide clear timelines on the proposed legislative process of the policy up to its adoption. The process should be supported by a work plan and budget. It should also provide clear principles for engagement key of which is transparency and respect for reciprocal roles of civil society and government.

## **8. The Implementation Framework**

Whereas part four introduces an implementation framework, it fails to provide one. This in part is due to the obscure policy purpose and process.

## **9. Impartiality**

We understand that the policy document is as a result of the efforts by The Taskforce on Devolution. We are in support of the resolution to establish a Task force to steer the process as did the TFDG established in 2011. However, we propose that the current task force undertake to mirror the composition of the earlier TFDG, which drew from multiple stakeholders with an emphasis on competence. We urge it be headed by persons with a positive record of accomplishment in support for devolution and include civil society representatives. The Devolution Forum vows to support this process.

## **10. Outstanding issues**

We note that due to the inadequate contextualisation the paper ignores numerous fundamental issues, which include and are not limited to:

### **a. Unbundling and Costing of Functions**

The Policy document should speak to the ongoing debate on the issues of transfer unbundling, and costing of functions.

### **b. Land Issues**

In light of the on-going conflicts over institutions on land administration, the focus of land administration should be less about the institutions and more about the process of administration. The policy should provide for the transfer of functions from the boards appointed to by the centralized government to the boards under the National Lands Commission.

### **c. Urban areas and cities management**

Whereas the draft policy notes the importance of UACA management it fails to address the bottlenecks in the operationalisation of the Act.

### **d. Rationalization of Parastatals**

There is no clear framework for transferring or management and ownership of sector based companies previously under then central government line ministries such as agriculture, but which have been assigned counties. Tension over control of such firms is predominant with production activities being disrupted.

**e. Bilateral agreements between county governments and foreign companies**

The autonomy of county governments provides a chance for county governments to enter into bilateral agreements with private entities in bids to attract foreign direct investments to their respective counties. Thus the policy documents should address the procedure counties should undertake while entering into such agreements including but not limited to public participation, scope of tax relief counties should ideally offer among other things.

**f. Use of conditional and unconditional funds**

The Auditor General Report of 2012/13 reports on over 35 funds under various ministries some of which should have transferred their functions to the county governments. The status of these funds is not clear.

This policy should guide intergovernmental fiscal relations, transparency and accountability at both levels of government. It would ensure the use of funds does not undermine the autonomy of county governments, as is presently the case in the Budget Policy Statement 2015.

**g. Monitoring & Evaluation (M&E)**

The draft policy repeatedly refers to the need for M&E and purports to establish an M&E framework. It fails to address the status of the National Monitoring and Evaluation Framework NIMES.