KENYA

Merely tinkering with satus quo will not do

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The successful implementation of the 2030 Agenda requires bold and transformative steps that are urgently needed to shift the world on to a sustainable and resilient path. In order for it to be a collective journey, on which no one should be left behind, the scale and ambition of the 17 Sustainable Development Goals and 169 targets require a broad and integrated approach not only to balancing and realigning the normative architecture of the global economy but also to restructuring regional and national political-economic practices. Politics as usual and economics as the determined by the rich and powerful will have no place on this new path. Merely tinkering with uncomfortable edges of the micro-economic status quo will not do. The historical direction and social-structural content of such a shift will involve the modification of the deep structures of poverty in the periphery economies up to and including addressing the different aspects of state autonomy and the underlying democratic deficits that stand on the way of building sustainable national economies.

Following the Millennium Summit in 2000, Kenya signed on to the MDGs as a unitary nation-state; then and even now, married to and morbidly addicted to a neoliberal free-market economic agenda. As a significant aspect of post-colonial elite engineering of economic marginalization, centralization of local extractive mechanisms and rendering them amenable to external manipulation has become a distinct disincentive in regard to adopting a national strategy to implement the 2030 Agenda. The Kenyan state, as we know it today, was cobbled together nearly a century ago by the British colonial extractive schemes and imperial calculations that resulted in its marginal integration into the global economic pecking order. From an ecological point of view, it was awkwardly carved out from a local ethnographic landscape that was rich not only in cultural diversity but also in terms of social organization. As colonialism continued to broker the eventual articulation of the Kenyan nationalities with the colonial capitalist market and the wider/globalizing imperialist interests, distinct ecological and geopolitical factors kicked in to define the process by which the extractive market would shape the horizontal as well as the vertical differentiation of the colonial population.

A significant element in the organization and projection of colonial power dynamics and the accompanying normative superstructure involved a systematic revision of the discrete moral tribal economic units in a bid to orchestrate and impose upon them a sense of strategic unity around a common extractive economic logic that would set the structural foundations for unequal economic underdevelopment. This meant that the colonial-state-generated resources were to be directed to economic regions, sectors and, by extension, ethnic groups occupying such spaces, in which state-bureaucratic investments and extractive commercial opportunities would maximize the extractive capabilities, expand economic opportunities and enhance strategic benefits of the colonial political economy by producing greater yield in profit, tax and foreign exchange earnings.

The logic went as follows: development policy must follow the regional distribution of so-called high potential economic activities. Otherwise known under the moniker: the tribal phyll economic model,[1] it gave uncanny reality to the belief that such a system of promoting development would end up concentrating all development resource inputs into the green parts of the country, since agriculture continued to be the main driver of both colonial and post-colonial economies. It follows, therefore, that good roads, good and well-equipped schools, better health facilities and the whole structural weight of state-bureaucratic hegemony provided the template and rationale for unequal distribution of basic public resources and services, leading to overall unequal development and deep-seated inequalities across the board. Together, these factors account for the extraordinary levels of inequality that escapes the attention of the Washington-based multilateral institutions that regularly assess the country's economic performance.

This is the general background against which the MDGs were negotiated, adopted and supposed to be domesticated and implemented by many African countries, including Kenya. It also explains, but only in part, how and why Kenya's performance in respect to the achievements on the MDGs were, by any standards, dismal and in fact ended up falling short of meeting the expectations of the general population.

On the other hand, at the time of adopting the MDGs' successor development plan - the 2030 Agenda for Sustainable Development – Kenya was, by law, no longer a unitary nation-state, a new constitution having ushered in a new political-administrative and economic orientation along with the accompanying institutional structures designed to guarantee its realization. Collectively, the changes in both governance and politics went by the name "devolution" or "subsidiarity," which was intended to de-centre both state authority and the economy. There cannot be any doubt that, in Kenya's post-colonial history, devolution is far and away the most transformative change for public sector governance systems and public administrative structures so far experienced in the region. It seeks to empower Kenyans of all walks of life to lay claim to a greater influence and impact on the decision-making bodies and processes. Furthermore it is intended to institutionalize development and governance at the local level by availing services closer to those who consume them. It is also meant to afford citizens the opportunity to have a say in the way they are governed and in the way resources are utilized and employed to spur development.

Ideally, such a transformative agenda should dovetail neatly with the strategic requirements of Agenda 2030, particularly if the subsidiarity implications of devolution and the democratic dividends that should come out of the process can contribute to the modification of the deep structures of inequity in periphery economies.

The 2030 Agenda for Sustainable Development builds on and critically deepens the experience with the MDGs. That is why, from a strategic point of view, it departs from its predecessor plan of action in that it re-focuses on issues that were merely reflected in the Millennium Declaration but hardly dealt with in the MDGs. These include but are not limited to issues of effective institutions, good governance, the rule of law and peaceful societies. The departure signals a renewed effort in the implementation of the 2030 Agenda to common and universal imperatives of sustainable social development – meaning that it applies to all countries at all levels of development, but not ignoring the fact of their relative/different capacities, circumstances and levels of development.

All the above threaten to leave Kenya without a phone number, so to say. But if Kenya's phone number has successive ethnic-supremacist dialing codes, it will still have to go through an automated answering system, saying: "not ready for a national democratic state to orchestrate the strategic preconditions for a serious discourse intended to lay the ground for changing the course of our destinies from the point of view of democratic politics and inclusive economic

1 An economic analogy model of resource limitation in plants, developed and popularized by Arnold J. Bloom, F Stuart Chapin and Harold A. Mooney.

development."

The mixed fortunes of subsidiarity

A quick review of Kenya's colonial and post-colonial history shows that the country has, for the better part of its existence been a unitary nation-state with highly centralized governing structures - exercising an overbearing control over the sub-national entities and interests up to and including the various arms of government, namely the executive, the legislature and the judiciary. The first independent Government, under Jomo Kenyatta, in an effort to enforce the neo-colonial policy of a monolithic and patrimonial authority, went out of its way to engage in a serial effort to amend the constitution soon after independence in 1964; effectively scrapping the regional governments and practically reverting to the use of the erstwhile colonial Provincial Administration in an effort to re-engineer a local elite hegemony with strong tribal undertones. Moreover, the governance structures established under the Local Government Act lacked the required political, administrative and fiscal powers for independent policy action. Instead, central government retained control of the local governments through the administration officers (hired by and placed under the direct control of the same central government). The purpose was to concentrate hegemony and post-colonial commonwealth and development opportunities in the exclusive hands of a budding national elite, enjoying strong and comprador ties with the strategically retreating colonial phase of predatory imperial capitalism.

The underlying key economic rationales and growing demand for decentralization are well articulated by economic theorists Richard Musgrave and Wallace Oates,[2] who argued that given the disastrous experience with post-colonial concentration of authority in the national government the clamor for decentralization would become a significant plank of the reform politics that would result from the increased marginalization of certain sections of society or regions of the country and national economy respectively. They further maintained that a successful clamour for subsidiarity was bound to improve governance in public service provision by effectuating the demand for efficiency in resource allocation arising from devolution of structures and functions of government.

This argument derives from the observation that sub-national governments are closer to the people than the central government and as a result have better knowledge about local needs and preferences needed for good planning and implementation of sustainable economic development. Local governments are therefore better placed to respond to the diverse needs of the local people. In addition, decentralization is believed to narrow the social diversity and subsequently the variation in local preferences and corresponding strategic priorities. This, it is further argued, has the vicarious if not direct effect on reducing the opportunities for conflicts among different communities. It is in the same vein that development economist Charles Tiebout[3] avers that decentralization promotes unsustainable competition among the sub-national governmental entities and thus enhances the chance that governments will respond efficiently to local needs with the necessary commitment to equitable growth of the national economy. As a result, countries are able to attain higher levels of efficiency in the allocation and use of public resources.

Empirical evidence on the general impact and transformative reach of devolution shows mixed results. For example, a study of the federal state of India suggests that decentralization promotes government responsiveness in service delivery, especially if the media and civil society are active at the local level.[4] A study carried out in Italy indicates that devolution may exacerbate regional disparities in

2 Richard Musgrave, Economic Theory of Fiscal Decentralization; The Theory of Public Finance, New York: McGraw-Hill, 1959; Wallace E. Oats, Fiscal Federalism, 1972; repr. edition Edward Elgar Publishers, 2011.

3 Charles Tiebout, "A Pure Theory of Local Expenditures," Journal of Political Economy, 1956.

4 Timothy Besley and Robin Burgess, "The political economy of government responsiveness: Theory and evidence from India," 2002.

public spending and economic outcomes,[5] but only if local-level social actors are disempowered by limited information.[6] Despite such isolated misgivings, several factors have been identified as being capable of determining the efficiency of decentralization frameworks. First is the crafting of a constitution and the accompanying legal framework that spells out the role of each level of government, including the rules governing fiscal arrangements and public service delivery system, and mechanism for conflict resolution.[7] Second is the democratic resolution of all the outstanding issues of the nation-state, beyond constitutional measures designed to take care of the broader elements of subsidiarity. These may include a raft of affirmative action measures that seek to redress historical inequities that compromise and undermine the transformative capacity of devolution so that it is reduced to a rainstorm that does not lift all the boats. Poverty and its skewed distribution in society then becomes a system of oppression, within a definite historical context, economic rationale and power relations. It is not a series of bloopers in which the unfortunate sections of society are trapped.

The story has not been different in Kenya. The Jubilee government that was involved in the negotiation and finalization of the 2030 Agenda has neither the history, the ideological orientation nor the political will to deal with its normative, let alone ideological implications. A domestic buy into the 2030 Agenda was, therefore, understandably off the cards. Within its governmental ranks are die-hard anti-devolutionists and neoliberal extremists, wedded to the status quo dominated by an alliance of tribal oligarchies. Rapid accumulation of wealth in the hands of a tiny elite and over-concentration of resources at the tribal epicenter of the national economy remains the in-thing. A level of corruption never before experienced in post-colonial Kenya is driving an extreme concentration of wealth in the opportunistic axes of tribal alliances of elite oligarchies that can only prepare the country for potential social turmoil as the crisis of capitalism threatens to bring not only third world economies to their knees but also push the economies of the Global North down the spiral of a terminal decline.

Institutional integrity and effectiveness

The successful implementation of the 2030 Agenda, not necessarily as designed but definitely as wished for by those adversely affected by the dogma of free-market economics, requires the support of an innovative institutional smart grid that connects existing and desirable institutional resources through participatory policy actions and democratic governance structures that promote equitable economic growth. Such an institutional grid will need to innovate and adapt to produce positive political-economic outcomes for the people as well as ensure their own institutional livelihood and the country's well-being. The realization of equitable development, therefore, hinges heavily on strong institutions among which are institutionalized political parties, cohesive proactive states, efficient economic governance systems/agencies and a democratic national ideological consensus with neither permanent outsiders nor hegemonic insiders. At the very core of these institutional and social-structural imperatives is the need for institutional power and capacity to alleviate structural inequalities that produce unnecessary poverty and indignity for the majority in an elite-mismanaged economy.

In Kenya, politics as usual and economics skewed in favour of a powerful minority, has conspired with the reckless adoption of a system that has produced a neo-liberal political-economic environment that, in turn, militates against the basic tenets of the post-MDGs agenda. For many, the system appears rigged in favour of "democracy without choice." It is a situation in which voting for any of the competing political platforms barely changes the normative trajectory of government's social and economic policies.

5 Lapo Calamai, "The Link between Devolution and Regional Disparities: Evidence from the Italian Regions," Environment and Planning, 2009.
6 O. Azfar et al., " Conditions for Effective Decentralised Governance: A Synthesis of Research Findings," IRIS Center, University of Maryland, 2001.
7 O. Azfar et al. "Decentralization, Governance and Public Service: The Impact of Institutional Arrangements." In M.S. Kimenyi and P. Meagher, eds. Devolution and Development: Governance Prospects in Decentralizing States. Ashgate, 2004.

Frustrated with such politics, the lack of sovereignty of citizenship constitutes a starved space from which to not only re-imagine progressive alternatives centred on democracy, social justice and human dignity but more importantly to reaffirm that "another world of equitable economic development is possible." In this scheme of things, the Kenyan Parliament, as Habermas[8] would observe, has become a centre for merely documenting "internally haggled out resolutions" and, most awkwardly, turned into a formal gathering for the display of tribal myopia and a noisy kennel where the value of a dog is measured against how loud it can bark at the canines from different necks of the wood. Its oversight functions have been reduced to a macabre game of tribal hatchet men chasing each other in the thickets of impervious tribal defense mechanisms that keep logic and reason a safe distance away from what is clearly good for the wider society. The judiciary in turn has its adjudicatory functions reduced to a free-market instrumentality - a place where justice is a commodity on sale for the highest bidders and a sanctuary for politically correct sections of society and where probity and hard work can guarantee no one either justice or well-being.

For its part, the financial sector is in turmoil as its banking sub-sector reels in chaos under extreme deregulation compounded by economic banditry and state-bureaucratic complicity. The recent cases of Chase Bank, the National Bank of Kenya and Imperial Bank failures are symptomatic of the looming state failure and its incapacity to hold its institutional wirings in place. Inside the government is ensconced or precariously embedded a deep state system of closet authority that ministers to the neoliberal excesses of a tenderpreneur[9] elite and politically correct oligarchy. They have driven corruption and impunity to the surface of a public sphere that is a pale shadow of the country's glorious history of anticolonial struggles; a public sphere where some corrupt officials are too well connected and too politically or tribally correct to be subject to the rule of law! Financial resources stolen from public coffers are easily converted into political power, built around ethnic hegemonies that are inimical to the need to rebuild the power of labor over capital; with the result that concentration of wealth is increasingly taking a tribal line as an inconspicuous and distant basis for class conflicts.

The rule of law and social peace

Placing the Rule of Law at the center of the 2030 Agenda for Sustainable Development could not be timelier. For Kenya and many other African countries it comes at a time when many of them have gone through many bouts of social instability. In the case of Kenya, it is gaining currency as intimately connected with sustainable social development, particularly when the country is struggling to come to terms with a turbulent past: of many years of intermittent post-election violence, mega-corruption scandals (Anglo-leasing, Chicken-gate, Eurobond sales, National Youth Service scheme[10]) and many other instances of official larceny, extra-judicial killings, official tempering with ICC witnesses, roadside decrees that make a mockery of budgetary laws and procedure.

Whether under its own name or that of a sister moniker such as "access to justice," law and order or government bound by law, equality before the law, predictable and efficient justice or lack of state violation of human rights,[11] the doctrine of the rule of law is becoming a necessary ingredient in the successful implementation of the next generation of MDGs. No state or society can muster the political capital needed to change course in favour of sustainable development if it fails to appreciate the indispensable relationship between choices among development paths and options among legal priorities.

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8 Jurgen Habermas, The Structural Transformation of The Public Sphere, London, Cambridge University Press, 1962 (trans 1989).

9 Term for a person in government who abuses their political power and influence to secure government tenders and contracts

10 See http://www.businessdailyafrica.com/How-UK-sleuths-unearthed-Kenya-scandal/-/539546/2527142/-/12a1fcrz/-/index.html; http://allafrica.com/stories/201603170602.html

11 Rahel Kleinfeld, Competing Definitions of the Rule of Law," in Thomas Carothers, ed. Promoting the Rule of Law, New York, Carnegie Endowment for International Peace, 2006.

That is why, even in the midst of an increasing cacophony of voices that have replaced narratives of import substitution industrialization and export led growth as well as “there-is-no-alternative” to neoliberalism, all agree on one thing: sustainable development requires strong institutions underpinned by the rule of law.

Whatever challenges an economy might be facing, be it the need to overcome market failures, strategizing/negotiating its relationship to the global neoliberal economy, attracting foreign capital, maximizing state-interventionism, shaking off of the sovereign debt burden and /or protecting the national/periphery economy from the near-terminal crisis of capitalism - each of these requires a somewhat different use of state power, a corresponding legal framework and institutional construction of appropriate mechanisms for effective public administration.