COUNCIL OF GOVERNORS

THE GOVERNOR'S COMPASS

BETTER GOVERNANCE AND ACCOUNTABILITY FOR ULTIMATE DEVOLUTION DIVIDENDS TO ALL KENYANS

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Abbreviations and Acronyms

ADPs	Annual Development Plans
CA	County Assembly
CDF	Constituency Development Fund
CEC	County Executive Committee
CGA	County Government Act
CIDP	County Integrated Development Plan
CFSP	County Fiscal Strategy Paper
CO	Chief Officers
CoG	Council of County Governors
CPMF	County Performance Management Framework
CPSB	County Public Service Board
CRF	County Revenue Fund
FSP	Fiscal Strategy Paper
ICT	Information, Communication and Technology
IGRTC	Intergovernmental Relations Technical Committee (IGRTC)
IR	Intergovernmental Relations
MCAs	Members of the County Assembly
MDA	Ministries, Departments or Agencies
MPs	Members of Parliament
MTP	Medium Term Plans
PC	Performance Contract
PFM	Public Finance Management Act
PSC	Public Service Commission

Managing a Transition in a Devolved System of Government

1

"Notwithstanding the legal chagrin, You become a governor the day you're elected..... because the people think you are". Quote from a former US Governor.

Introduction

After the intense campaign period and the ultimate victory, a moment of transition quickly sets in characterized with uncertainty, anxiety and some level of loneliness. If properly handled, the transition period can provide the public, the media and the legislature an opportunity to understand the style and substance of the new county administration. If poorly handled, the challenges of a transition if left unattended can snowball and grow so large that the new governor loses credibility with the members of the county assembly (MCAs), the county public servants and eventually the public.

The most important goal of any transition is the "long-term" effect it paints in the public psyche. Short-term pressures and unguarded quest to demonstrate achievements should not overshadow the necessity to create a solid administrative foundation to guide the governor's entire term in office. This chapter provides insights to newly elected Governors not only to plan and professionally transcend the current transition period but also serve as the springboard to plan for a seamless transition during and after the next general election. This chapter looks at; Kenya's recent experience of the gubernatorial transition period, the duration of the transition period, financing of a transition, relationship with the outgoing governor, essential elements in a brief for the new governor and his/her staff and key issues newly elected governors should focus on [1].

Kenyan Gubernatorial Experience with Transition

Post-August 2017 general elections were the first time gubernatorial power changed hands from one governor to another. As such, no prior experience existed to guide the transition process from one regime to another. Other than Gazette Notice No. 6409, no other legal mechanism exists to guide the transition process. An attempt to pass the Assumption of the Office of the Governor Bill, 2016 did not see the light of the day as at the time the 2017 general elections were being held.

1 *In addressing these issues, a lot has been borrowed from the experiences of governors in the United States of America as reflected in the many publications of the National Governors Association.*

A critical look at the Gazette Notice No. 6409 reveals the following;

- Its content was largely drawn for the Assumption of the Office of the President Act, 2012.
- The Gazette Notice's framework was not contextualized to fit the devolved system of governance.
- The Gazette Notice's framework created an iron cage and a tunnel vision of the transition process.
- The transition period as laid out in the framework was premised and conceptualized as an event rather than a process.

The Gazette Notice No. 6409 was issued on 3 July 2017 exactly thirty-five (35) days to the general election and empowered the county secretary (an appointee of the incumbent/ outgoing governor) to convene and chair sittings and planning sessions. The late issuance of the Notice and the reference of the committee in-charge as an ad hoc Committee indicates that matters transition were an after-thought and had not been carefully planned for. This assessment is equally supported by the fact that no prior budgetary appropriations had been set aside to support the transition process.

In respect to the tunnel vision set out by the Gazette Notice, preparation for the transition focused more on the festivities of the inauguration moment rather than the substantive, relational and administrative processes that would have prepared the newly elected governor to be ready on day one. In effect, rather than the new governor leading and managing the transition process (directly or indirectly), the county secretary took charge of a process that he may not have contemplated in the first place. Several county secretaries of outgoing governors may have campaigned against the new governor. Thus empowering them to lead a transition process is, to be fair, went against the rules of natural justice for the new governor.

By and large, the transition period as premised in the Gazette Notice was between the election day and the inauguration thus translating the transition onto a one-off event. Such a predisposition gave little time and room for the new governors to wind down campaign messaging and plan to take up the chief executive role. It is for this reason that in some counties the inaugural festivities were forced, acrimonious, and toxic. In some counties, the inaugural speeches were riddled with strong and adverse language about the previous regime or governor reminiscent of a campaign speech.

While there was a little prior experience to draw from on managing a transition from one governor to another, the current transition period presents an opportunity to define and structure a transition as a relational exercise that goes beyond legal prescriptions. Its success will hinge on collaborations and consultations between the outgoing and incoming governors.

The Morning after Election Victory

Although the Gazette Notice allows the governor-elect to designate two persons to join the Assumption of Office of the Governor ad hoc Committee, the realities of losing power

or fading out of public life necessitate that the new governor takes charge of the transition process. This should be executed not by the governor him/herself but through his trusted staff led by a transition coordinator who should head a transition office funded either by the county government or volunteers. Modelled alongside the experience of governors particularly from the United States, it is recommended that upon being pronounced as the new governor, s/he should consider creating a transition office to manage and lead the transition process.

Creating a Transition Office

This office could be based either within the county government offices or without but nearby. This office should be headed by a transition coordinator. The coordinator must NOT be the campaign manager but rather a highly respectable and beyond reproach professional. This individual must be recognized as a personal and close representative of the governor-elect.

Role of the Transition Office

The main role of a transition office is to identify and synthesize the priorities of the new governor including;

- Developing budget and legislative activities.
- Designing the structure and operation of the new governor's office.
- Managing the finances of the transition.
- Handling relations with the outgoing governor.
- Beginning the recruitment of critical staff.
- Handling the personal transition of the family of the new governor [2].

Paying for the Transition

Orderly transition is impossible without adequate funding. Part 14 of the Gazette Notice No.6409 directs that "the respective county government shall meet the costs of the swearing-in ceremony, sitting allowances and other operational costs of their respective committee". Although written in good faith, the Gazette Notice failed to recognize that the transition budget component was never included in the county's budget. Payment for the transition was therefore left to the mercy of the incumbent or out-going governor.

Experience from elsewhere shows that an out-going governor provides funds for the transition through special appropriation for use in the period between election and inauguration. Often this is supplemented with additional legislative appropriation. Thus the preparation of a transition budget is an immediate post-election priority of the transition coordinator.

2 *Refer, The National Governors Association (1998). Transition and the New Governor: A Planning Guide. Washington D.C.*

Other mechanisms of financing the transition period include;

- county government appropriation funds,
- unexpended campaign funds,
- additional fund solicitation as an extension of the campaign,
- use of volunteers, and
- use of contributed services such as office space and copying machines from the private sector etc.

Maintaining Relationship with Out-going Governors

"Political competition should not breed enmity"

President Uhuru Kenyatta.

Toxic political campaigns should not be carried over to the transition period. Whereas joy, excitement and anxiety characterize the new governor's feelings, sadness and disappointments and anxiety characterize the out-going governor's feelings. The transition period is, therefore, a two-way street that must be delicately nurtured for the mutual benefit of both the out-going and the incoming governors.

While the relationship with the outgoing governor may not be congenial, a cooperative spirit by all will help ensure a smooth and seamless transition takes place. Such a relationship need not be extensive but it will be kind for the out-going governor to offer assistance to the new governor and express a desire to make the transition smooth.

Protocols of Reaching-out to Out-going Governors

a) Transition coordinator should coordinate logistical arrangements with out-going governor's office concerning;
   i. Locating office space to house the transition team, and
   ii. Obtaining access to files, telephone and copying equipment.

b) Initial contact should be among the chief of staff of the outgoing governor, the transition coordinator and the incoming chief of staff.

c) The out-going governor should advise staff and departmental heads to cooperate with the new team.

d) The out-going governor should direct staff to prepare issue papers particularly a fiscal overview and a budget analysis.

e) Upon assumption of power, the new governor should prepare and manage a smooth transition for the out-going governor (from a public figure to a private citizen) by;
   i. providing office space to allow the outgoing governor to keep, retain or archive essential personal records, and
   ii. providing essential staff for a limited time to ease the transition out of office.

Content of Briefs from Out-going Governor's Staff

Part 2 (1) (d) of Gazette Notice 6409 identifies one of the roles of the transition ad hoc committee to include, "co-ordinate the briefings of the governor-elect by the relevant county public officers". The content areas identified in the Gazette Notice on the briefings to the new governor largely revolve around county assets, liabilities and human resources.

Briefs to the new governor should go beyond simple quantitative and statistical matters to more administrative and procedural issues that prepare the new governors to deal with immediate pressing issues, intermediate and long-term matters.

Protocols for Doing Briefs for the New Governor

a. With support from the office of the out-going governors, briefing papers for the new the governor should be done by the transition team of the incoming governor.

b. Briefing papers should acquit the new governor and the incoming staff with many outgoing activities in the executive branch and routine administrative and procedural matters.

c. A key brief to the new Governor should be on how to handle emergencies and disasters, including the role of the governors, the role of other agencies of the national governments, who to contact, etc.

d. Both incoming and outgoing staff should prepare a joint brief paper that highlights the problems that have to be dealt with immediately or within the first 2-4 weeks.

e. Both incoming and outgoing staff should prepare a brief about "Urgent Matters" or issues that have reached a boiling point so that the new governor is not caught unaware.

Duration of the Transition Period

For most of the newly elected governors, the transition period is seen as the period between election day and inauguration. The re-elected governors, however, see the transition period stretching past the magical 100 days. In fact, in mature devolved systems, the transition period ends when systems, processes and reforms that have been put in place by the new governors are tested and proved to work or otherwise. That is, the transition ends after the new governor has initiated, implemented a major policy decision or milestone early in his/her term in office[3] .

In the first 100 days in office, the campaign rhetoric and euphoria surrounding the outgoing governor will start to wane off and the attention and focus of the media will be turned on the new governor. The expectant and impatient public will be scanning the environment for evidence of what has changed. The key interest in this turn of events is the focus on what the new governor has accomplished.

3 *Ibid*

Rather than being a moment of handing over power, the transition period is thus, a moment in which most critical management decisions and communication processes are developed and put to test by the new governor. The attention of the new governor should, therefore, be paid to organizing a new government rather than having a momentous and pompous inauguration ceremony. The new governor should thus seek to quickly settle down to work and hit the ground running.

New governors should, therefore, spend more time with trusted friends and campaigns aides to reflect upon key goals of the new government and the roles and responsibilities of different actors during the transition. An unprepared and poorly executed transition period can leave ever-lasting scars in the entire tenure of the new governor.

The following are symptoms of a poorly executed transition process;

- little attention is paid to identifying, messaging and communicating the governor's vision for the county and the inaugural speech is weak and disjointed,
- jockeying and infighting among the new governor's staff because little attention was paid to the organization of the governor's Office which breeds signs of ineptness,
- delays in the recruitment of county executive committee (CEC) members and other key staff causing the press to characterize the new governor as weak and indecisive,
- minimal effort is spent by the new governor to reshape the previous governor's budget, allowing the MCAs to control the budget and allowing the CEC members to deal directly with the MCAs,
- inadequate screening of candidates for key county positions leading to conflict of interest and scandals later in the term, and
- the unpreparedness of the new governor to lead and deal with a major emergency/ disaster causing delays in emergency response, loss of life or loss of funds for cleanup[4].

Key Issues that the New Governor Should Focus On

As the new governor settles into office, s/he soon realizes that the energy required to address citizens' concerns, accomplish the many election promises and the public's expectations far much outpace campaign level energies. If lost in this milieu of things, the new governor may lose focus in leading the county.

The following key issues will help the new governor muddle-through the pressures of a transition;

a) The new governor should develop themes that will steer his/her government and the program priorities that will be prioritized in the first year in office.

b) The new governor should take time to learn in detail the budget process, reshape the budget of the outgoing governor and take a quick evaluation of all departments' operations.

c) The new governor should develop a legislative agenda and package for presentation in a special legislative session and more so during the official opening session of the county assembly.

d) The new governor should be actively engaged in decision making about the organization of the immediate office of the governor and the county executive committee (CEC).

e) The new governor should personally participate in the recruitment of top talent for the governor's office, the CEC and other sensitive county government posts.

Conclusion

Managing the transition is a critical moment in shaping and nurturing the trajectory of the new county administration. It is riddled with joy, anxiety, confusions and most of the time sadness for those leaving the scene of power. The transition not only affects and shapes the thinking and behaviour of both the incoming and outgoing governors and staff but also has an effect on the private lives of the families of the chief executives.

Given the number of people and the nature of the transitional effects, legislation alone may not guarantee a seamless transitional process. It also requires affection and building of relationships between the outgoing and incoming governors. Toxic and acrimonious campaign slogans must not be allowed to cloud the transitional process.

Beyond the ad hoc committee established by Gazette Notice No. 6409, the new governors should take charge and lead the transition process. As said, the transition is not an event but rather a trend-setting process whose success is critical in terms of shaping public attitudes and perceptions about the new county administration.

The governorship is a position of trust held on behalf of the citizens of a particular county and Kenyans in general. From a narrow perspective, the governorship is a privileged position that only a few are lucky to serve. As such, the governorship is an institution that needs to nurture its own rules, customs, beliefs and a code of conduct whether written or otherwise. Whether written or not, customs develop and are practised over time through the mutual agreement among those privileged to serve as governors. Creating rules, customs and traditions on gubernatorial transitions is a sure way of preserving the dignity of "serving as a governor".

Both outgoing and incoming governors must nurture a transition process in a manner that brings dignity to the office of the governor. Smooth transfer of power by an outgoing governor to an incoming one should be a cornerstone in the "Code of Conduct" of a governor. In essence, each governor must plan to manage his transition whether reelected or not so that the incoming governor will reciprocate to others. Transitions need not be a source of enmity but rather the glue that binds those who have been privileged to serve as a governor.

Organizing a Functional County Government for Efficient and Effective Service Delivery

2

Introduction

The structure and functions of the office of the governor are contemplated in Article 179 of the Constitution of Kenya, 2010 which places Executive authority of the county in the county executive committee (CEC). For avoidance of doubt, Article 179 (4) identifies the county governor and the deputy governor as the chief executive and deputy chief executive of the county respectively. Accordingly, therefore, the governor of a county is the overall head of the Executive arm of the county government.

Beyond the Constitution of Kenya 2010, Sections 30 & 32 of the County Government Act, 2012 enumerate specific functions of the governor and the deputy governor respectively.

Some of the key functions of governor include;

- Appointing county executive committee with the approval of the county assembly.
- Constituting the county executive committee portfolio structure to respond to the functions and competencies assigned to and transferred to each county.
- Chairing meetings of the county executive committee.
- Assigning each member of the county executive committee responsibilities through a County Gazette Notice.
- Submitting the county plans and policies to the county assembly for approval.
- Considering, approving and assenting bills passed by the County Assembly.

While the constitutional and legislative provisions concerning the organization and functions of the Executive arm of the county government are clear, guidelines, rules and regulations to put into practice these legal provisions have been missing. Due to this, the composition, organization and functioning of the first county governments revealed major hiccups and a general lack of understanding and challenges in composing and constituting a functional county government. There exist clear parameters to consider in composing a functional county executive committee

Composing a Functional County Government

Whereas, there exists no universal rules on composing a functional government, global public administration practice dictates that chief executives (governors) consider two types of functions or sectors in a government set-up; productive sectors/functions and supportive/facilitative sectors/functions.

Productive sectors comprise of ministries, departments or agencies (MDAs) that directly serve or interact with the citizens on a daily or regular basis. These MDAs tend to be specialized in nature and provide specific and specialized services and benefits to specific segments of the population. Examples of these MDAs include; health, agriculture, lands and attendant matters,

water services, road and infrastructure works, environmental conservation, education etc.

Supportive/facilitative sectors, on the other hand, constitute ministries, departments and agencies that serve or support other departments of government to accomplish their tasks. They seldom have direct contact and interaction with the citizens but manage resources (financial, technical and human) internally within the government. These MDAs facilitate proper coordination and execution of government services. Their functioning and existence cross-cut the entire government. Examples of these MDAs include The County Treasury (finance); Planning; Human Resource Management; Information, Communication and Technology (ICT) etc.

In composing a functional county government, the governors as the chief executives should, therefore, create and be aware of these two types of ministries/departments: productive and supportive. Governors should create a government with both functions but the two should not be mixed. There should be departments for the productive sectors as stand-alone and departments for the supportive sectors as stand-alone. Figure 1 depicts the structure of a County Government.

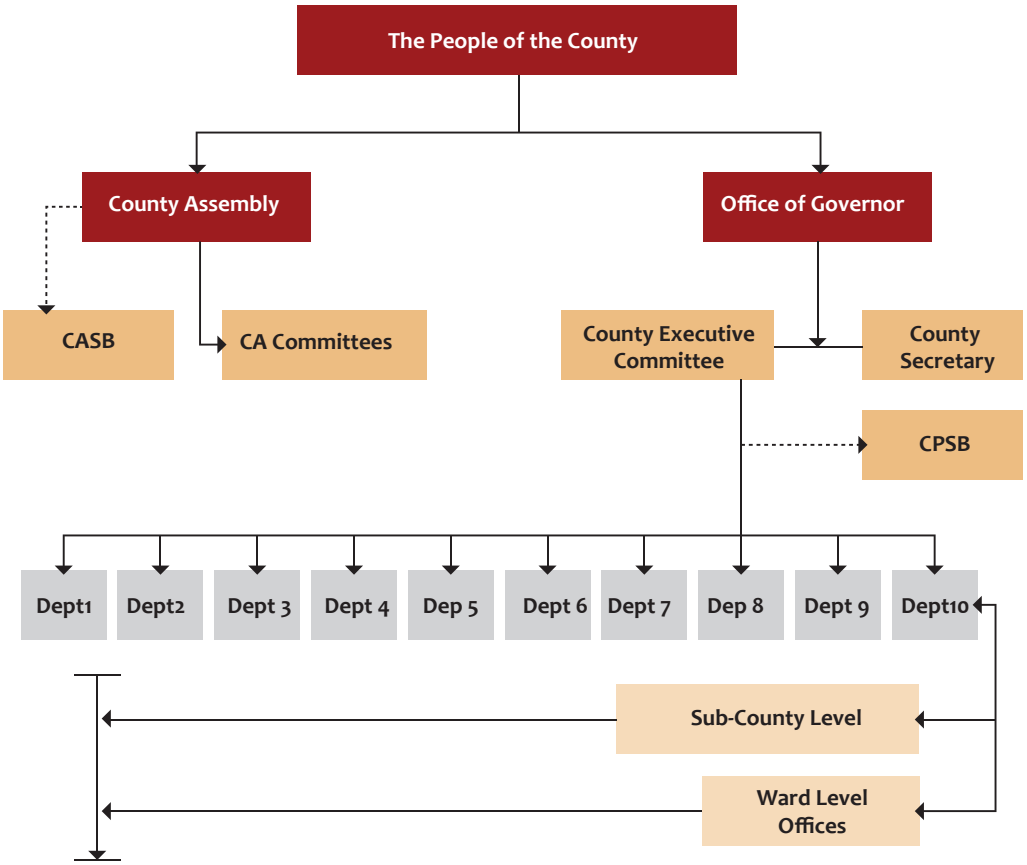

Figure 1: The Legal Structure of the County Government

KEY:
CA – County Assembly
CPSB – County Public Service Board
CASB – County Assembly Service Board
Dep - Department

How Not to Create a County Government

Creating a Department of Education, Vocational Training and ICT: Experience from the past county governments shows that several governors created departments that had both productive and supportive sectors together. By default, and because of the overbearing nature of productive sectors, supportive functions tended to be ignored, never got adequate funding and their impact in the functioning of the county government was generally never felt as envisioned. In some cases, where ICT, for instance, was placed in a productive sector, it created operational inefficiencies and proved to be expensive because each county department procured IT services from different vendors largely because the ICT function within a productive sector was not authoritative enough to coordinate and sanction collective action across the entire county government.

Avoid the Pitfalls of Bureaucratic Gridlocks

The Legal Instrument of Creating a County Executive Committee

Most of the pioneer governors created/composed their governments with minimal guidance and experience on how to do so. Largely, county departments/ministries were put together as a conglomeration of different functions as identified under Schedule Four of the Constitution of Kenya, 2010 that were lamped together to constitute a department. In practice and by law, a key instrument used to create and structure government is an Executive Order.

Executive Order No. 1: The common practice of putting together a government in the commonwealth region is done through the issuance of an Executive Order in a Gazette Notice. Chief executives assuming the reins of power, immediately or soon after inauguration issue an Executive Order. It is this order that organizes or re-organizes the functions and departments of a government. Because an Executive Order affects the operations and functioning of the entire government, its issuance must be through a Gazette Notice.

Practice dictates that any time a government is re-organized or a new government comes to power, an Executive Order be issued and Gazetted in the County Gazette. Section 30

(2) (i) of the County Government Act, specifically requires a governor to;

"by a decision notified in the County Gazette, assign to every member of the County Executive Committee, the responsibility to ensure the discharge of any function within the county and the provision of related services to the people".

An Executive Order once issued and Gazetted can only be revoked by another Executive Order which must also be Gazetted. Once Gazetted, an Executive Order must be implemented to the letter and cannot be varied. Once issued, the governor must be kept appraised on its implementation status through regular reports by the implementing agencies.

Given that national or county legislations are superior in the hierarchy than Executive Orders, where a county assembly finds an Executive Order inimical and unlawful it can pass legislation or a motion to overturn that Executive Order.

Although Section 32 of the County Government Act 2012 outlines the role of a deputy governor which among other things includes deputizing the governor in the execution of the governors' function, such a role DOES NOT include the issuance of an Executive Order of any manner[4] .

Instruments of Managing the Executive Office of the County Government

As noted, the Executive authority in the county is vested and exercised by a county executive committee[5]. Generally, the Executive authority of a government is operationalized and exercised using three key instruments;

- Executive Orders
- Circulars
- Rules and Regulations

Executive Orders

Generally issued by a president or governor concerning the functional demarcations of the two levels of government. They are often used to re-organized or restructure the functioning of the government or for the implementation of government-wide executive decisions or policies. Where re-organization necessitates the creation of a new department or agency at the county level, the Executive (Governor) must consult and seek concurrence from the County Public Service Board[6].

Other instances when Executive Orders can be used include when the county assembly is either on recess or the assembly is unlikely to approve some Executive appointments or decisions. In this case, Executive Orders are issued as a means of by-passing the legislature to get things done and best works when the Executive enjoys a majority in the county assembly that can forestall the assembly's decision or overturn the Executive Order.

Circulars

These are instructions or directives to departments or agencies issued to enhance operational efficiency. They are issued and pegged on some legislations or Executive Orders to correct behaviour, limit action, address some anomaly or bring clarity on some agreed-upon policy or course of action. They can also be issued to implement decisions reached by the county executive committee.

Circulars are usually issued by the accounting or authorized officers which in the case of a county government refer to the chief officers[7]. The county secretary as the head of the County Public Service may also issue a circular to all accounting and authorized officers for any of the aforesaid reasons.

There are two types of circulars generally used in government i.e., circulars with Executive authority and regular circulars. The latter constitute circulars commonly issued by supportive/

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4 *Refer, Section 32 (5) of the County Government Act, 2012.*

5 See, Article 179 (1) of the Constitution of Kenya, 2010.

6 See, Articles 59 (a) & 60 (1) of the Constitution of Kenya, 2010.

7 See, Section 45 (4) of the County Government Act, 2012.

facilitative whose import affects or cuts across the entire government. E.g., a circular issued by the County Treasury to limit travels outside county boundaries as a cost-cutting mechanism. To monitor compliance, circulars with Executive authority attract auditing to assess compliance.

Regular circulars, on the other hand, are issued largely by the productive sectors and compliance is limited within a ministry/department. They are issued by a chief officer of a department to promote operational efficiency within a department.

Rules and Regulations

Often and due to the nature of most legislatures, county assemblies pass laws whose language and legal provisions are broad and often vague as a result of the quest by the legislators to reach a compromise that seeks to accommodate the diverse interests of interested parties. The resultant of this compromise is often a law that is difficult to implement because its provisions are too general, ambiguous or at worse vague.

Because of such difficulties, rules and regulations are formulated to bring clarity on the implementation of legal provisions authorized by a legislature. Such rules and regulation are drawn by the department of the executive arm on whose request or attention the legislation was developed. Like circulars, rules and regulations must be anchored on some legislation or provisions of law.

County Planning and Performance Management for effective and Efficient Service Delivery

3

Introduction

In their election manifestoes and during the political campaigns, governors promised the electorate and committed to undertake several activities for them. The list of things to be undertaken includes the construction of road, fighting corruption and cartels, solid waste management and clean-ups, functional healthcare, provision of water, social protection, youth employment etc. Though done in good faith, upon assuming power and after a scrutiny of the budget, the governor soon discovers that available resources are inadequate to achieve all the promises made to the electorate.

So, how should governors deal with these many demands and remain relevant and leave a legacy in the management of county affairs? This chapter provides insights to new governors on how to set priorities, the legal basis for county planning and the necessity for creating a performance management system to manage and demonstrate development results to the citizens of the county.

Setting Priorities

Most governor's campaign on a change platform. The urge among governors to do more to satisfy a majority of the electorate is insurmountable. Experience from seasoned governors shows that the quest to do everything at the same time may not yield much. They advise that success in governorship hinges first and foremost on focus.

Out of the many things and campaign slogans promised during the campaigns, governors are advised to select at least three to five things that they will want to accomplish while in office, develop a sound public information program to let people know what they plan to do and devise methods of evaluating performance using outside sources.

The 3-5 key issues should be based on the values that the governor cares about and will ultimately constitute the strategic goals of the governor's tenure. It is these issues that will eventually serve as the cornerstone of the governor's legacy. Operationally, the selection of a few priority issues allows the governor flexibility to deal with other hot button issues or crises as they arise[8].

New governors are advised to concentrate on the selection of real issues and not fall into the trap of championing campaign slogan or simply a style of governing. While it is fashionable and appropriate to advance a new approach about the management of the county government's affairs, matters of style should not blind the new Executive from tackling difficult problems facing the county.

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8 *See, The National Governors Association (1998). Transition and the New Governor: A Planning Guide. Washington D.C.*

For instance, a commitment to 'end cartels'; commitment to 'lead an open government'; a promise to create a 'lean and efficient government'; or an 'anti-corruption crusade' undertaking are all useful but must not be confused with the 3-5 issues of focus that will define the governor's long-term achievement.

Under a performance management system, new governors are advised to define what "***Success will look like***" after their term in office[9]. Success in the developing world is associated with the public investments in projects, programs and policies that change people's lives for the better. For example, increasing household incomes, increasing access to safe drinking water or reducing crime in the city and towns or environmental conservation all depict success is achieved.

Management reforms such as elimination of ghost workers, automation of revenue collection, performance contracting etc are all useful techniques of enhancing efficiency in county governments. But they are only processes that must be linked to the achievement of development and demonstrable results associated with the 3-5 issues of concern to the governor.

In essence, therefore, governors should not fall into the trap of 'how things work' but rather 'what is to be accomplished'. The latter ought to be the concern of the governor's appointees or managers/administrators. Governors should pay attention to the former. Paying too much attention to how things work makes governors lose sight of the 3-5 substantive issues that he seeks to accomplish.

Criteria for Selecting Key Priority Areas of Focus;

a) Narrow down the long list of the campaign (manifesto) promises to 3-5 issues.

b) Base the selection of issues on the values you (Governor) cares most about.

c) Define what success will look like after five (5) years or at the end of your term as governor.

d) At all costs, avoid campaign slogans.

e) Pay attention to what is to be accomplished and not how things work.

The selection of 3-5 areas of focus by the governor and at the county government level should be carefully planned. In a government setting, planning and prioritization of things to accomplish are never done in a vacuum.

At the global stage, planning is guided by the international convention to which the Republic of Kenya is a signatory. In the spirit of Article 2 (6) of the Constitution of Kenya, 2010, planning at the county level must be cognizant of Kenya's international commitments. At the national level, planning at the county government level is legally prescribed and governors should be aware of the legal environment that circumscribe county planning.

9 *See, Kusek & Rist (2004). Ten Steps To Build a Result-Based Monitoring and Evaluation System.*

Planning at the County Level

Planning at the county level is constitutionally provided for under Article 220 (2). To give meaning to this constitutional provision, both the County Government Act, 2012 under Sections 102-115 and the Public Finance Management Act, 2012 prescribe a planning framework for the county governments. The following Sections of both the CGA, 2012 and PFM 2012 outline the planning framework;

The PFM Act, 2012

Section 126 (1) requires every county to prepare a development plan which identifies:

a) Strategic priorities for the medium term that reflect the county government's priorities and plans.

b) Programs to be delivered with details for each program of -

   a. The strategic priorities to which the program will contribute.

   b. The service or goods to be provided.

   c. The measurable indicators of performance where feasible.

   d. The budget allocated to the program.

The CGA, 2012

Section 103 identifies the objectives of county planning that include;

- To ensure harmony between national, county and sub-county spatial planning requirements.

Section 104 warns that;

- No public funds shall be appropriated outside a planning framework developed by the CEC and approved by the county assembly.

Section 105 specifies that planning in the county requires a county planning unit to;

- Coordinate integrated development planning within the county.
- Ensure linkages between county plans and the national planning framework.
- Ensure meaningful engagement of the citizens in the planning process.

Section 107 (2) identifies four (4) types of plans to be developed by the county government which include;

- County Integrated Development Plans
- County Sectoral Plans
- County Spatial Plans
- Cities and Urban Areas Plans

Section 107 (2) mandates that "County Plans shall be the basis for budgeting and spending".

Section 108 specifies that "there shall be a five-year County Integrated Development Plan (CIDP) for each county" which shall have;

a) Clear goals and objectives

b) An implementation plan with clear outcomes

c) Provisions for monitoring and evaluation, and

d) Clear reporting mechanism

Section 37 identifies the role of Executive Committee in the urban area or city planning to include among other things;

Facilitate the coordination and alignment of the integrated development plans of different cities or municipalities within the county and with the plan's strategies and programs of the national and county governments

It is evident from the above that the legal framework on county planning is quite comprehensive and detailed and gives county governments little room to manoeuvre. The challenge for most governors, therefore, is how to translate and put into practice most of the legal provisions aforementioned. The solution lies in the willingness of county governments to embrace performance management.

Enmeshing County Planning with Performance Management

Closer scrutiny of Section 126 of the PFM Act, 2012 and Section 108 of the CGA, 2012 hints at the need for county governments to embrace performance management. As a management style, performance management refers to a set of activities implemented that set to increase/enhance organizational performance by matching employee performance to predetermined performance goals.

A clear prescription for a performance management system is provided under Section 47 which specifically requires the county executive committee to design a performance management plan to be used to evaluate the performance of the county public service and the implementation of the county policies.

Specifically, the plan is required to provide for among others;

a) Objective measurable and time-bound performance indicators.

b) Linkage to mandates.

c) Annual performance reports.

d) Citizen participation in the evaluation of the performance of county government.

e) Public sharing of performance progress report.

Whereas both the PFM, 2012 and CGA, 2012 mandate the development and adoption of a performance management plan or system, the latter goes further to require such a plan or

system to be aligned to national strategies, plans or frameworks. It is in this context that the Council of Governors developed the County Performance Management Framework (CPMF) to promote harmony, facilitate the exchange of information, coordinate the execution public services and enhance the capacity of the county governments as required under Article 189 of the Constitution of Kenya, 2010.

Objectives of the County Performance Management Framework

- To promote accountability in service delivery by ensuring that tasks are performed efficiently, effectively and economically.
- To provide a mechanism for a citizen to engage and evaluate the performance of their county government.

Operationalizing the County Performance Management Framework in the County

At the beginning of this chapter, governors were advised to prioritize and select 3-5 issues that will define their legacy at the end of five (5 or 10) years. Using the seven (7) components of the CPMF, this section provides essential steps of fitting the 3-5 key priority issues into the CPMF.

(i) Linking the 3-5 issues to the National Development Plan: Vision 2030

As provided under Section 103 of the CGA, 2012, county development plans must be linked to the national development plans. The Republic of Kenya is a unitary State with one overriding development blueprint which currently is the Vision 2030. The governor's 3-5 development priorities should be aligned to Vision 2030's development priorities identified in the different sectors of the three pillars (economic, social and political governance) of Vision 2030.

(ii) Linking the 3-5 Issues to10-Year County Spatial/Sector Plans

Section 110 of the County Government Act, 2012 requires each county to develop a 10-Year Spatial Plan which forms part of the county integrated development plan. Spatial plans give guidance on the use and management of land in a county and the required land investment needs. The development of the spatial plan should be aligned to various sector priorities of the three pillars of Vision 2030 and the attendant Vision 2030 enablers such as land reforms.

Beyond Spatial Plan, County Governments are also required to develop 10-Year Sectoral Plans as per Section 109 of the CGA, 2012. These plans are the basis for budgeting and performance management at the county level and should also be developed and aligned to development priorities of the various sectors of the three pillars of Vision 2030.

A sector in the county government set refers to a department headed by a CEC Member. There is a high likelihood that the 3-5 issues that are dear to the governor will be domiciled in either one or two departments. The governor should, therefore, ensure that as the responsible departments develop their sectors plans, the 3-5 strategic issues that s/he cares about are captured in the sector plans.

(iii) Linking the 3-5 Issues to the County Integrated Development Plan

County Integrated Development Plan (CIDP) at the county level is the equivalent of the Medium Term Plans (MTP) at the national level. At the county level, CIDPs are 5Year plans that implement Vision 2030. CIDP is a 5-Year development plan that paints the development vision of a county and identifies all development priorities and the attendant strategies required to achieve the county's development goals. The governor's 3-5 strategic goals should drive the development of the CIDP's development priorities which should, in turn, be aligned to the 10-Year spatial and sectorial plans' development objectives discussed above.

The key components of a CIDP include; the governor's clearly laid out a vision for the county, 3-5 clearly stated goals and objectives.

(iv) Linking the 3-5 Issues to the Departmental Strategic Plans

The CPMF requires that each department in the county government develop a 5-year strategic plan that clearly identifies the strategic goals that each department strives to achieve. The governor should ensure that the departments that will be responsible for the implementation of the 3-5 issues of interest integrate the same in their strategic plans as key strategic objectives.

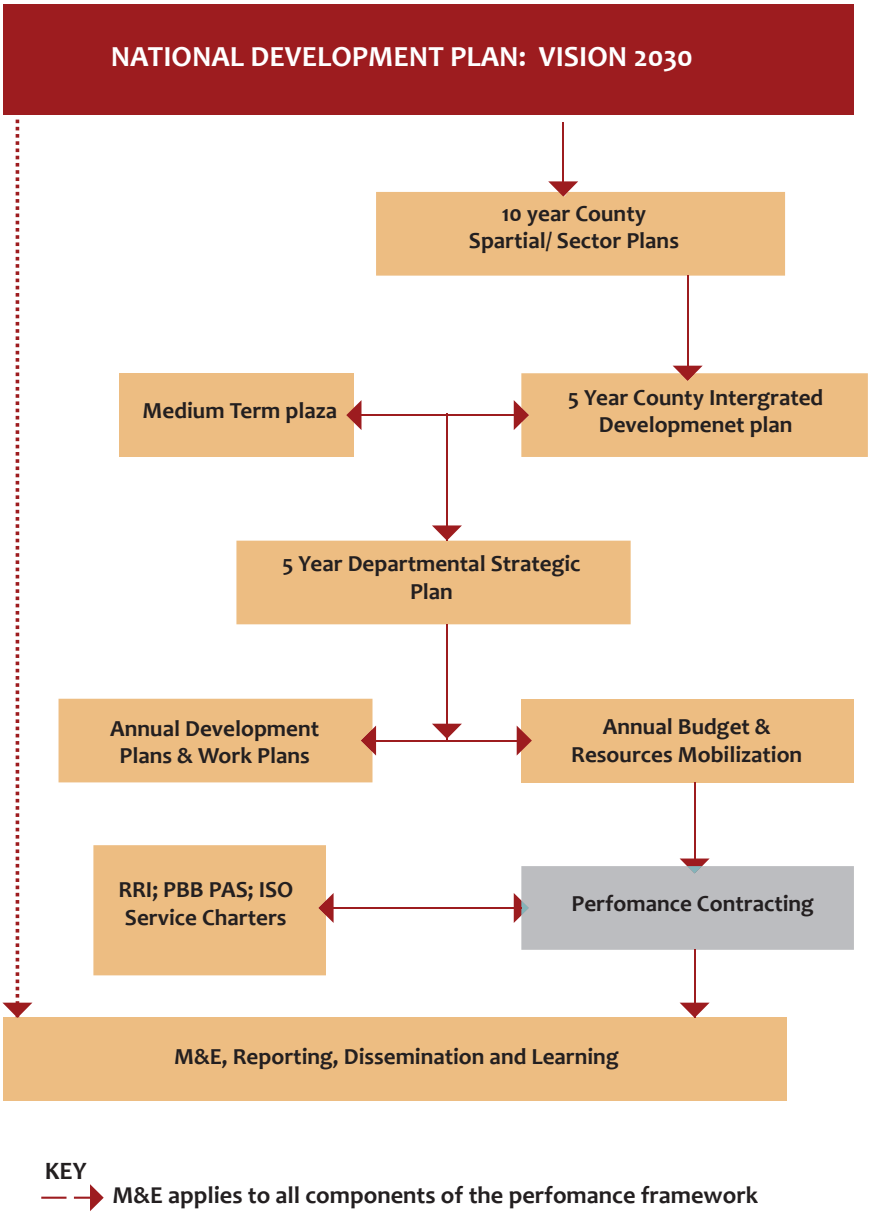
(v) Linking the 3-5 Issues to the Annual Development Plans

An Annual Development Plan (ADP) largely relates to the capital investment priorities that are annually identified within the scope of a department's strategic plan and available resources. The 3-5 issues must be linked to the ADP to ensure that annually these issues are given attention and prominence that they deserve. ADP, therefore, operationalizes on an annual basis, the strategic objectives of a department's strategic plan.

While the Annual Development Plans (ADPs) should be derived from the CIDP as outlined in Section 126 of the Public Finance Management Act, they nonetheless must be aligned to the strategic objectives identified in the departmental/ministerial strategic plans. ADPs provides a roadmap for implementation of projects, programmes and initiatives by the relevant departments as identified in the CIDP and as prioritized in the departmental strategic plan and with specific attention to the governor's strategic issues.

ADP details prioritized projects, planned activities, locations, actors, budget, risks and assumptions for each year. The governor should pay attention and monitor the development of the ADP to ensure that adequate resources are set aside for the respective department/ministry for them to deliver the expected results. Figure 2 below shows the seven components of the CPMF.

Figure 2: County Performance Management Framework



(vi) Linking the 3-5 Issues to Work Plans

Work plans are a set of activities or tasks undertaken at an individual or organizational level within a specified period (quarterly, semi-annually or annually). Activities are all those things, services/goods for which resources are expended to enable a department to execute its mandate. Work plans should be developed or identified from the ADPs and the strategic objectives of the departmental strategic plans. Work plans apportion responsibility to departmental sections or divisions and individuals or employees.

Using work plans, the governor should ensure that specific activities or service are provided and apportion specific responsibility the CEC members of the relevant departments charged with the overall responsibility of achieving results associated with the 3-5 issues of interest. Responsible department/ministry shall then develop its work plan aligned to the 3-5 issues as identified in their strategic plans. It is through these departmental work plans that the governor sets annual performance targets for the CEC members that will subsequently be used during negotiations for performance contracts. At the individual level, work plans are used to evaluate employee performance using performance appraisals.

(vii) Annual Budget; Resource Mobilization

A budget outlines a government's expenditure priorities and programmes/projects in line with the strategic objectives of the CIDP which is cascaded down to departmental strategic plans.

Departmental work plans and the activities/tasks identified therein to provide the basis for costing and estimating budgetary resource requirements. Each department's county executive member should therefore annually formulate and cost activities, tasks, projects and programmes that are consistent with the objectives of the CIDPs and the department's strategic plan's priorities and ensure that they are incorporated in the County Fiscal Strategy Paper (CFSP).

Governors should ensure that specific activities associated with the 3-5 issues are costed and budgeted for. In developing budget estimates, the targeted department should ensure that the expected deliverables of each budgeted activities/tasks, projects or programs are achieved.

(viii) Performance Contracting and Staff Performance Appraisal

A performance contract (PC) is a negotiated agreement which allocates obligations and responsibilities between the county government and its agents. It seeks to enhance results, make governments more accountable and use resources more prudently for quality services. It entails negotiation of performance targets, assignments of weights to performance criteria, vets performance contracts, reviews implementation of PCs, track performance reporting, conducts mid-year evaluation and releases of results.

In respect to the 3-5 issues of interest to the governor, s/he should personally sign a PC with the CEC members and demand that the same is cascaded to the chief officers, directors, sub-county and ward administrators to ensure that services and benefits of his initiative accrue to the lowest level.

(ix) Holding Individuals Accountable for the delivery of the 3-5 Issues through Staff Performance Appraisal

Just like PC, service charters or RRI, staff performance appraisal is an initiative or tool that helps implement a performance management framework or system within an organization. Staff performance appraisal is an assessment or evaluation on employees' performance against the pre-determined and agreed upon targets associated with the 3-5 issues of concern to the governor. Appraisals should be undertaken either quarterly, semi-annually or annually between an employee and his or her supervisor.

(x) Monitoring & Evaluation, Reporting and Learning

Under the County Performance Management Framework (CPMF), all its components are annually monitored and evaluated. Like in the NPMF, the Vision 2030, 10-Year Spatial/Sector plans, CIDP, departmental strategic plans and annual work plans and budgets, all should have a set of targets and indicators that are used to track progress. Regularly, the governor should demand to have data collected for each indicator for all the CPMF components and more so in respect to the 3-5 issues of interest. This should be collected and evaluated or assessed against pre-determined and agreed upon targets with each CEC member.

On a semi-annual or annual basis, the governor should demand a report based on the collected data for two main reasons. First to make decisions concerning resource allocations or change of strategy. And second, to inform the citizen on the progress the county government has made or otherwise in achieving the development results associated with the 35 strategic goals.

Conclusion

A performance management framework helps sieve through and manage the many promises made by the governor and list of demands made presented by the citizens. It helps the governor to focus on a limited number of core issues that ultimately will define his/her legacy. Performance management at the county level is, however, legally prescribed and governors are better off if they acquit themselves with the provisions of the applicable law to establish the linkages between planning and performance management.

Far from being a linear process, performance management is a sequential and local process that packages election promises into development goals and objectives. A governor is likely to have a greater impact on the development of his/her county if s/he selects 3-5 critical issues. If implemented through the CPMF, the governor will have adequate time to deal with other issues with little worries on the development trajectory of the county.

Management of Human Resource Function at the County Level: Procedures, Roles and Responsibilities of Various Actors

4

Introduction

Although not mandatory, the legal architecture created for the appointment of key staff especially the county executive committee (CEC), county secretary and chief officers allows and contemplates a hostile take-over. Hostile in the sense that the law allows the new governor to fire all heads of operating departments plus the authorized and accounting officers all at once. In fact, as per Section 42 (2) of the County Government Act, 2012 the appointment of new CEC ought 'to be finalized with 21 days of the swearing-in of the Members of the County Assembly' (MCAs). Though the law provides for this kind of hostile take-over, appointments should be handled with some level of toughness and diplomacy.

Based on experiences of the first term of governors, this chapter highlights the key considerations in setting up staff in the governor's office, the key staff required to support operations in the governor's office, composition and selection of CEC members and chief officers and key factors to consider in putting together CEC. The chapter also explains the role of various actors in the management of human resources in the county and the attendant challenges.

Staffing in the Governor's Office

The office of the governor constitutes both the governor and the deputy governor as one institution whose functions are clearly spelt out in Section 30 of the CGA, 2012. In the first term of the county governments, some counties separated the two offices when indeed they are the same. Because of the nature of functions of the governor's office, the

the governor may consider appointing an accounting officer (chief officer) given that the office is a spending entity that has a vote in the budget.

Staff in the Governor's Office

New governors usually come to the office with staff that worked tirelessly during the campaign to get the governor elected. Some come in as advisors or directors of various portfolios not recognizable in the county public service. If the staff are not carefully handled because they feel entitled, they may scuttle the governor's agenda and erode the public goodwill towards the governor.

The immediate challenge that the staff pose to other staff on the county public service include; control, the span of their authority/mandate and pay or rank comparative to the rest of other staff in the service. Experience from the first cadre of staff in the governors' office indicates that a majority of these staff equated themselves to the level of CEC members or even slightly above them. In the first term of governors, this matter found its way to the Salaries

and Remuneration Commission and a resolution was reached to place them in equal ranks as directors or immediately below the chief officers[10].

Experienced and former governors from other parts of the world advise that campaign staff may not necessarily make good administrative staff because the demand for governing are quite different from those of running for office. An immediate challenge to new governors is the difficulty of not selecting trusted and loyal campaign workers who worked so hard to deliver an election victory. Notwithstanding this, three (3) key essential staff in the governor's office include; chief of staff, communication director (advisor) and legislative liaison (director)[11]

Chief of Staff

This position should be given to a professional and most preferably someone who was not the campaign manager or somebody who directly managed the campaign. This is the senior-most position in the governor's Office. The incumbent coordinates the CEC (cabinet) affairs and oversees other staff in the governor's office. The holder coordinates the governor's meetings and handles the governor's schedule. Besides, the holder coordinates the governor's participation in the county and national government affairs.

Duties of the Chief of Staff

Beside general administrative work, the key functions of a chief of staff include;

- Managing cabinet (CEC) affairs.
- Scheduling the governor's events/activities/appointments and coordinating strategic communication.
- Making decisions on the effective functioning of the governor's office.
- Monitoring and screening of staff work before the governor sees it.

Communication Advisor

Perhaps this is the only position suited to the person who managed communications during the campaign. The holder should have direct access to the governor.

Duties of Communication Advisor

- Shaping the new governor's image as a leader, manager and policymaker.
- Point of contact for the media seeking information about the new governor and the governor's program.
- Arranging news conferences and preparing news releases.
- Advising the Governor and staff of potential media reaction to proposed policies.

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10 *See, Salaries and Remuneration Commission Circular No. SRC/TS/CGOVT/3/16 of 29th July, 2013. "Remuneration and Benefits for Staff Serving in the County Government".*

11 *See, Salaries and Remuneration Commission Circular No. SRC/TS/CGOVT/3/16 of 29th July, 2013. "Remuneration and Benefits for Staff Serving in the County Government".*

Legislative Liaison

This position is suited to someone with good political acumen and negotiation skills. The holder will champion the governor's agenda in the county assembly to ensure that laws are passed on time and budget approved to fund the governor's initiatives. A tried past MCA or politician will be an ideal candidate for this position but must be made to work with or through the chief of staff. Should work closely with the director of budget to ensure that the governor's 3-5 priority issues are funded.

Duties off a Legislative Liaison (or Political advisor)

- Overseeing the development of the legislative program across the county executive departments.
- Coordinating lobbying activities of the administration and negotiating issues with the legislature.
- Coordinating departments' legislative proposals and mobilizing support for the governor's legislative program.
- Advising the governor and CEC members on probable legislative reactions to the Executive's legislative proposals.

While the governor is at liberty to create other positions within his/her office, the above three are considered essential to take forward his/her agenda. The governor is however cautioned not to overstaff his/her office with too many advisors. These advisors must also know that outside the governor's office, the county secretary oversees the functioning of the rest of the county public service with support from the chief officers. Instructions and orders from these advisors to other cadres of staff outside the governor's office must be channelled to the office of the county secretary through the chief of staff.

Composing the County Executive Committee

The county executive committee (CEC) is the equivalent of the cabinet at the national government level. During the transition the new governor is simultaneously pressured to recruit CEC members, to identify and prioritize on 3-5 issues and to recruit the right people. At the same time, new governors are bombarded with requests for employment from friends, relatives and those who worked in the campaign.

Even though Section 35 of the CGA 2012 allows the governor to nominate CEC members without expressly advertising for the positions of the CEC members[12], potential conflicts and fallouts from a process not seen as fair are not worth the trouble. One of the best ways to deal with these pressures for jobs and the attendant screening process for the CEC positions is to establish an open application process. This will help track those interested in the CEC positions and also offers a mechanism of ensuring that everyone was accorded some attention.

An open application process helps sort out the interests of many supporters for consideration for lower-level positions. The key here should be the establishment of a process that is professional and beyond reproach.

12 *See, Section 35 of the County Government Act 2012, on Appointment of County Executive Committee Members.*

Although some governors may opt to have a professional firm or a transition committee handle the application process including the screening of candidates, governors should take a personal interest in the recruitment of CEC members and their chief officers. This will help the governor to assess the suitability of various candidates and match them with their capacity to drive their 3-5 priority issues.

Factors to Consider in Hiring CEC Members and Chief Officers

i. **Take time and hire people** that will be entrusted with enormous responsibilities. This should allow the new governor to learn from the incumbent CEC before they are replaced.

ii. **Recruit strategically** – governors should match the CEC dockets with the 3-5 issues in mind. This should also involve balancing political and professional considerations i.e. if a CEC member is a politician, the chief officer should be a professional or if a CEC is a professional from the private sector, the chief officer should be a professional from the public sector.

iii. **Consider critical constituencies** – Governors must consider hiring persons with significant political bases. On a positive side, those with significant political bases and share the governor's vision can be valued members of the governor's team. On the negative side, those with independent political bases may not pose a threat to the governor directly but may resist the discipline of working through the new governor's staff and will often demand direct access to the governor more often than other types of staff.

iv. **Screen and rescreen the CEC applicants** – Governors should conduct thorough and extensive background checks on all potential CEC members and the chief officers. They should consider using national government agencies to conduct checks and screening. Requirements for financial disclosures or the signing of financial declaration forms should be considered as part of the screening process.

v. **Consider county assembly confirmation hearings** of CEC and Chief officers- CEC members and their chief officers require county assembly approval before their appointment[13]. Issues identified during screening should be considered in light of potential hearings and publicity and appropriate strategies developed to address the issues.

vi. **Potential Appointees should believe in the governor's Agenda** – it is recommended that during the interviews, the governor should describe issues in the 3-5 priority issues and ask the candidate to respond. The candidate's response should flag-out to the governors as to whether the candidate believes in his or her ideals.

vii. **Plan and prepare for the end of the relationship (termination of service)** – The governor must always think about how an employment relationship might end before offering a job to a prospective employee. The governor should demand

13 *See, Articles 35 (2) & 45 (1) (b) of the CGA, 2012*

undated resignation letters from the CEC and chief officers to make sure they serve at the governor's pleasure. Before demanding this letter, governors should spend time with the CEC members and the chief officers to discuss a variety of reasons as to why parting ways may be necessary.

Using the CEC as a Resource

Section 179 (1) of the CGA 2012, stipulates that executive authority rest with the county executive committee. Once constituted, the governor should make early and effective use of the cabinet for the successful execution of the priority issues.

CEC or the cabinet can be used to perform a variety of functions such as serving as advisory boards, policy generators, issues forums and a debate avenue. To this end, governors are advised to enhance their powers by using a multi-tiered cabinet structure and the use of cabinet subgroups to develop and manage policy in the county.

Managing the County Public Service

While the governor has powers to hire and fire CEC Members, county secretary and chief officers as per Sections 40; 44 (2) (c) & 45 (5) respectively, all other employees in the county government are employees of the County Public Service Board (CPSB) as their employer[14].

The county secretary as the head of the county public service exercises supervisory powers over all staff of the county government through their respective chief officers (CO). The COs, as per the PFM Act, 2012 and the CGA, 2012 are both the accounting and authorized officers. The former relates to the management of assets and liabilities of a county department and the latter refers to the overall responsibility for the human resources within a department.

COs in any department exercise delegated powers of the CPSB on matters related to discipline and transfers. Although governors have overall influence over staff matters in the county public service, any disciplinary matter must be channelled and handled through the CO and the attendant disciplinary committee within a department.

In cases where staff feel unfairly treated and have reasons to believe that the CPSB may not render justice to them, they can directly appeal to the Public Service Commission at the national level for redress[15].

One of the key functions of the CPSB is to create and abolish offices in the county public service. This implies that although the governor has powers to re-organize and create new offices within the public service, this decision must be made with concurrence from the CPSB. This process also applies to the process of abolishing an office in the county public service[16].

14 *See, Article 59 (1) of the CGA, 2012*

15 *See, Article 234 (2) (h) of the Constitution of Kenya, 2010.*

16 *Opt., Cit.*

Conclusion

Soon after being sworn in, the new governor is faced with three key challenges; creating and executive team in the governor's Office, translating election promises into 3-5 issues and recruiting staff to high-level positions i.e., CEC members and chief officers. It is generally recommended that the governor establish an open application process to give all those competing for the positions a fair chance. The governor is encouraged to attend in person the interviews of the top staff and more so for those that will be driving his/her agenda in the 3-5 priority areas.

The governor is encouraged to source for a professional beyond reproach for the recruitment of immediate staff in the executive office such as chief of staff. While some governors may want to fill the position with the former campaign manager, this is highly discouraged because of a feeling of entitlement that is tagged along with a campaign manager.

There are several key factors to consider when recruiting CEC members. The governor should pay attention to these factors and balance between achievement of his/her strategic priorities and other needs. Importantly, before prospective CEC members are offered a job, they should have a candid discussion about the potential reasons for separation. This way, the premium of loyalty and performance is placed in the heads of potential CEC members.

Although the governor has overall influence over human resource matters in the county public service, the law as it relates to human resource management places responsibility in the hands of the chief officers who exercise delegated powers of the CPSB. Disciplinary matters of any sort for staff below the rank of chief officers should, therefore, be handled through laid down procedures of the CPSBs.

Management of Human Resource Function at the County Level: Procedures, Roles and Responsibilities of Various Actors

5

"Show me Your Budget, and I show you the type of Government You're"!

By Government Finance Officers Association

Introduction

The legal framework on financial management at the county level is extensively outlined in Chapter twelve of the Constitution of Kenya, 2010 and the Public Finance Management Act, 2012. The overall responsibility for the management of public finance at the county level rests with the County Treasury under the leadership of the county executive committee member in-charge of Finance[17] . Given that a large part of public finance revolves around taxing, borrowing and spending, the budget document becomes a critical document in not only the management of public finances but also in designing, communicating and implementing public policy decisions.

The yeast of this chapter is to provide insights into the new governor on how to utilize the budget and the budget process to articulate and advance his/her strategic priority issues. An attempt is made in this section to intertwine key policy documents specified in the PFM Act, 2012 with the governor's promises as crystalized into 3-5 priority issues. The underlying goal in this section, therefore, is to give life to the often abstract budget document and make it a friendly management and policy tool at the disposal of the governor in the management of county affairs.

Why the Budget Matters

Far from being merely a spending plan, the budget document, its preparation and adoption express the basic political values of a government. Budgets not only represent plans for the future, but they also mould that future by the policies they contain. A good budget brings order to an uncertain world[18].

If there is anyone common thread that links together the many different parts of a county government or any other organization, it is the budget. The budget provides the new governor with an excellent opportunity to reshape the activities of a county government to reflect his/her priorities and values early in the new term. As such, through the budget process, the governor can change the direction of the county government.

17 *See, Article 104 of the Public Finance Management Act, 2013.*

18 *See, R. Bland (2007). Budgeting: A Budgeting Guide for Local Government. ICMA, Press.*

New governors should look at the budget strategically as an important vehicle for achieving key objectives and preventing mistakes. As an important tool for managing the government, the budget signals the public priorities of the new county government.

Because of the aforesaid reasons, an early decision for a new governor is to appoint a director of the budget in his or her office as one of the key strategic advisors. The person chosen to this position should have the best understanding of how the budget is organized, the sources of revenues for the county government, spending obligations and commitments and debt obligations.

How to Use the Budget to Advance the Governor's Priorities

Through the budget expertize of the budget director, the new governor can use the budget in the following ways.

a. A Learning Tool or Reference Point

Soon after the inauguration and as the public's and media's memory fades off about the previous government, the citizens of the county immediately assume the new governor is an expert and master of all manner of issues and intricacies of government affairs. Matters are made worse if the county executive committee members are not yet in the office to offer expert opinion on some of the issues of concern to the citizens.

In such cases, the budget becomes the most important tool to refer to because chances are that the issues of concern may have been prioritized in the budget but perhaps not actualized. A Budget Outlook Paper may perhaps offer insights on the reasons behind no action. With the help of the budget director, an analysis of current and previous budgets may provide clues to some of the issues raised or inquired by the citizens or the media.

b. A Management Tool

Based on the governor's priority issues that have been budgeted for and ready for implementation, a budget can be used to set departmental performance targets annually or semi-annually. For the county assembly, the Executive's priority spending areas constitute a package of promises made to the people that if funds are made available, the county government will provide a specified level of public services.

At the departmental level, the amount made available constitutes a kind of contract between the CEC member and the governor that specifies the level of services to be delivered in return for a level of appropriation. The role of the governor is to ensure that such a contract is adhered to.

c. A Legislative Tool

Section 8 (1) (c) of the County Government Act, 2012 confers upon the county assembly (CA) "powers to approve the budget and expenditure of the county government". Blanket exercise of these powers in the past gave CAs powers to mutilate the Executive budget prepared by the governors. For guidance on these unchecked powers, the National Treasury through Legal

Notice No. 33 curbed the CA's powers to alter departmental budgetary votes by an increase or reduction of up to 1% only[19].

Based on the experience of the pioneer county assemblies, MCAs used the budget as an avenue to score political points and an avenue to settle political wars[20]. The governor should develop the budget with caution to avoid allowing the legislature too much influence to act early in the process thereby losing leverage later and jeopardizing his/her image as a strong executive.

Governor's participation in the budget process must be carefully and strategically developed. In the earlier stages of budget development, the governor should be highly visible to set priorities and get departmental reactions. It is recommended for the governor be deeply immersed in the process to develop a coherent, consistent and viable executive budget proposal.

Once the legislative process kicks in earnest, the governor should step back, but remain vigilant of all the budget issues and but look desperate to negotiate. Toward the end of the legislative session, however, the governor should be highly visible again with a clear message that s/he will be the final decision maker and has the authority to review the final county assembly product from a county-wide perspective[21].

Key Institutions in the Management of County Public Funds

a. County Revenue Fund

Section 109 of the PFM Act, 2012 requires the county government to establish a County Revenue Fund (CRF) as per the provision of Article 207 of the Constitution of Kenya, 2010. All monies paid out or received into the county government should pass through the CRF unless stated otherwise by an Act of Parliament or a law passed by the county assembly.

The law requires the account for the CRF be at the Central Bank or in a bank approved by the county executive committee member responsible for finance and shall be kept in an account to be known as the "County Exchequer Account". This account cannot be overdrawn.

b. The County Fiscal Strategy Paper

This is a document that spells out the medium and long term strategic priorities and policy goals of the county government. It provides revenue estimates or projections to finance the proposed budget, outlines the expenditure items and any borrowing proposed. For a new governor, the fiscal strategy paper is the best avenue to articulate and present his/her priorities of interest.

It is in this document that the 3-5 issues of interest to the governor should be articulated and the attendant expenditures prioritized. This paper is therefore forward-looking and provides the basis for budgeting.

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19 *See, Legal Notice No. 33. Legislative Supplement No 18 to the Public Finance Management Act 2012. Issues on 20th March,*

20 *The protracted wars between the Executive and Legislative arms of the Makueni County Government 20142015) epitomizes this scenario.*

21 *See, The National Governors Association (1998). Transition and the New Governor: A Planning Guide. Washington D.C.*

By the 28th of February of each year, the county treasury is required to submit the Fiscal Strategy Paper (FSP) to the county assembly. The FSP is expected to be aligned to the objectives of the Budget Policy Statement of the national government.

c. Budget Review and Outlook Paper

The paper provides a rearview mirror on the financial performance of the county government in the previous fiscal year concerning the resources that were appropriate or made available. The paper also provides updates details about the economic and financial forecast and changes thereof based on the most recent FSP.

This paper is important to the new governor in one important way. It gives the governor a picture of essential economic indicators that serve as the basis for making decisions concerning expanding programs or scaling down planned initiatives. It, therefore, justifies funding of the priorities articulated in the FSP.

Financing County Governments

The legal foundation of funding county governments is found in Article 6 (1) which divides the territory of Kenya into 47 counties and one national government. Additionally, Article 202 of the Constitution of Kenya, 2010 makes it clear that revenue raised nationally shall be equitably shared among the national and county government.

The import of the above Articles confers the role of raising revenue on the national government outside the county own source revenue enumerated in Article 209 (3) of the Constitution. The equitable share from the national government to the counties is, therefore, a right granted by the Constitution and not a privilege from the former to the latter.

By law, county governments are entitled at least fifteen per cent (15%) of all revenues raised by the national government and shall be based on the last audited accounts of revenue received as approved by the National Assembly[22] . It is this share of 15% that is referred to as equitable share which is shared among all the 47 counties.

Revenues Sharing Between the National and County Governments

Among other functions, the Commission on Revenue Allocation (CRA) is charged with the responsibility of making recommendations on sharing of revenue raised nationally; first, between the national and county governments and second, among the county governments.

Division of Revenue Bill

This Bill is passed by parliament two months before the end of each financial year. It provides the legal basis for sharing revenue between the national and county governments.

22 *See, Article, 203 (2) & (3) of the Constitution of Kenya, 2010.*
See, http://www.crakenya.org/ .

County Allocation Revenue Bill

This Bill is also passed two months before the end of each financial year and serves as the basis for dividing among counties the revenue allocated to the county governments as equitable share. The Commission on Revenue Allocation has devised a formula for sharing revenue among the counties. The formula has several parameters which include;

- Population 45%,
- Basic equal share 25%,
- Land area 8%, and
- Fiscal responsibility 2%24.

Attempts to revise this formula has faced strong resistance from the Senate and the political class largely because of the politics surrounding the formula. In its current form, the formula is perceived to favour counties with large landmass but are scarcely populated at the expense of those with a large population but are small in size (land-wise). As new governors get acquainted with this formula they must be aware of the politics of "one man, one vote; one kilometre, one vote".

Conditional and Unconditional Grants

Conditional grants (categorical grants) are monies given to counties for specific purposes and cannot be used outside the intended purposes. Conditional grants are largely used when the national government wants to provide services uniformly across the entire country. Examples include monies for; free maternal care and money for all level five hospitals. These grants usually have strings attached including following stringent rules on spending and reporting back.

Unconditional grants are the monies given to the counties with some level of flexibility on where to be spent. An example of this type of grant is the maintenance of the rural roads where the county has the flexibility to determine which type of road to be fixed.

Emerging Fiscal Relations Issues

Unfunded Mandates

Mandates are simply orders or instructions from one level of government to another requiring the other level of government to undertake a function or mandate that ordinarily belong to the level of the government issuing the instructions. When such orders are given without attendant funding, such orders are referred to as unfunded mandates because the level of government expected to execute the orders is meant to look for resources from somewhere to pay the execution of the orders.

The new governor will be better served to know that there is a different type of unfunded mandate emerging at the county level where the national government ignores or leaves it open for counties to undertake certain functions that by Schedule Four belong to the national

government. A good example is the construction of infrastructure in primary and secondary schools. Also, the construction of police posts and housing and purchase of police vehicles have consumed a huge budget of the county governments' resources.

Where a refund mechanism does not exist, then the national government funds available at the county level e.g., Constituency Development Fund (CDF) should be used to fund such projects.

This requires the new governor to forge a good working relationship with local members of parliament (MPs) to utilize national government funds for national government functions.

Conclusion

The budget is an important document in the management of public affairs of the county government. New governors must pay close attention and even attempt to influence the first budget during the transition. Governors should avoid making excuses and more so blaming the shortcoming of the budget on the previous governor.

By not being engaged in the preparation of the first budget, the governor allows a window of opportunity to slip by that should be used to articulate the most important goals of the new county government. New governors cannot afford being accused of lacking leadership by simply accepting to implement the previous regime's budget without influencing it and even changing it.

Budgets play many roles including management and legislation and the new governor will be better placed if s/he learnt to exploit the two roles to advance his/her agenda through the budget. Understanding the various public finance management tools available to advance his/her cause will greatly benefit the new governor.

Intergovernmental Relations in Kenya's Devolved System

6

Introduction

The subject of Intergovernmental Relations (IR) is complex than ordinarily and widely acknowledged. For most people, intergovernmental relations come to mind after disagreements between the levels of government emerge and boil over to the courts. Unknown to many, the glue of intergovernmental relations in the public service of both levels of government that is exercised almost on a day-to-day basis through myriad interactions that seek to solve common problems that often defy geographical and legal functional demarcations.

Intergovernmental relations, in essence, is devolution in action. It refers to the complex network of day-to-day inter-relationships among the governments within a devolved system. Broadly, intergovernmental relations refers to a set of policies and mechanisms by which the interplay between different levels of government serving a common geographical area are managed[23]. It deals with the political, fiscal, programmatic and administrative process by which resources are shared by different levels of government.

Although the subject of intergovernmental relations is new in the Kenya context, it is an evolving and growing topic whose footprints are still being traced in the last four years. Narrowly, it is synonymously associated with the activities of the Council of Governors. Since intergovernmental relations is devolution in action and cognizant of the prevailing mistrust in the implementation of devolution between the national and county governments in the first term of the implementation of the Constitution of Kenya, 2010, intergovernmental relations has evolved fairly well despite a few hiccups.

This chapter explains the importance of understanding intergovernmental relations by the governors. It lays out the legal context of intergovernmental relations in Kenya, highlights and contextualizes different models of intergovernmental relations. The chapter also looks at the legal structures of managing intergovernmental relations and finally ends with a reflection on the practice of intergovernmental relations in Kenya and elsewhere in the world.

Why Governors Should Care About Intergovernmental Relations

An understanding of intergovernmental relations is important to every governor because this is the subject/area that defines the scope and territory of the administrative world that s/he has offered himself or herself to lead and live in. It helps governors understand and answer a basic question: who does what with what resources?

23 *Refer, Shafritz, J.M; Russell, E.W., & Borick, C. P. (2007). Introducing Public Administration, 5th Ed. Pearson, Longman. New York.*

Beyond administrative boundaries, governors ought to understand that intergovernmental relations deal with functional allocations between the national and county governments because it is necessary to distinguish national and county issues to prioritize the use of county resources and avoid a scenario where the county government subsidizes the national government.

Legal Context of Intergovernmental Relations in Kenya

To contextualize the legal architecture of intergovernmental relations in Kenya, there is a need to reflect on the basic eternal questions that have besieged the subject over time. These include;

- Which level of government should have overall responsibility for what functions?
- What portion of the locally raised taxed should be returned to the counties for service delivery?
- Which level of government is best suited to tax raise and which level of government is best suited to spend the raised monies for service delivery?
- Where functions are shared between levels of government, how should each function be divided between the national and county governments?
- Which level of government should be involved in the provision of services that are local e.g., street lighting and who should pay for it?

The answers to these questions can be found in the text of the Constitution of Kenya, 2010 and the Intergovernmental Relations Act, 2012. Various Articles of the Constitution 2010, lay out an extensive intergovernmental relations framework. To begin with, Article 1 (1) of the Constitution provides that;

"All sovereign power belongs to the people of Kenya". The exercise of this power as expressly stated under Sub-Article (4) is "exercised at the national and county levels".

The Constitution in this respect creates dual sovereignty exercised by two levels of government. Article 6 of the Constitution goes further to clarify that;

(1) The territory of Kenya is divided into forty-seven (47) counties.

(2) The governments at the national and county levels are distinct and inter-dependent and shall conduct their mutual relations based on consultation and cooperation.

The import of Article 6 (1) is that although the constitution creates and recognizes two levels of government, it does not specifically assign any territory to the national government. The import of Article 6(2) is that, of the two levels of government, none of them is assigned supervisory powers. Both Articles 1 and 6, therefore, provide geographical and administrative tentacles of managing intergovernmental relations.

Although Schedule Four of the Constitution provides functional demarcations of the national and county governments, Article 186 of the Constitution provides further guidance on functional responsibility for the performance of different categories functions. This Article specifically identifies three (3) types of functions;

- **Exclusive functions** – functions assigned to a specific level of government. For example, national security is assigned to the national government whereas street lighting or licensing of dogs is assigned to the county government. Constitutional responsibility for the provision of these type of functions rests with the level of government assigned the said functions[24]. Intergovernmental relations issues regarding these type of functions are often easy to deal with through available intergovernmental mechanisms and structures.

- **Concurrent functions** – these are functions assigned to two levels of government. They have shared functions. For example, health policy and agriculture policy development are assigned to the national government. However, the county governments are also assigned agriculture and county health services and so is tourism which is a shared function[25]. Constitutional responsibility for the provision of these functions rests with both levels of government. Though not insurmountable, conflicts and disagreements over these type of functions are often challenging to resolve.

- **Residual functions** – these are functions that were not assigned to any level of government as per the Schedule Four. They are the functions that may have been forgotten to be assigned to a particular level of government. For example, immunization, disease surveillance, HIV and AIDS control etc. Constitutional responsibility for the performance of these functions rests with the level of government that performed them before devolution[26]. Issues arising out of these functions are also often easy to resolve through intergovernmental relations mechanism.

Beyond the above, the Constitution under Article 187; 189 & 191 broadly lay out an intergovernmental relations operational framework in respect to the transfer of functions and powers between the levels of government, responsibility for the performance of assigned functions, a mechanism for cooperation between the two levels of government and a roadmap to guide the resolution of conflicts in respect to conflict of laws of the two levels of government.

It is fair to comment therefore that the Constitution of Kenya, 2010 lays out an extensive framework of structuring intergovernmental relations. This framework is further expounded by the Intergovernmental Relations Act, 2012 which not only articulates the principles of intergovernmental relations but also outlines the structures of IR and mechanisms of transferring, delegating powers, function and competencies between the two levels of government.

Structures of Intergovernmental Relations in Kenya

The Intergovernmental Relations Act, 2012 establishes four key structures to manage intergovernmental relations. These are The Summit; The Council of County Governors (CoG);

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24 *See, Articles 186 (1) & 187 (2) (b) of the Constitution of Kenya, 2010.*

25 *See, Article 186 (2) and Schedule Four of the Constitution of Kenya, 2010. 28 See, Article 186 (3) of the Constitution of Kenya, 2010.*

See, Article 186 (3) of the Constitution of Kenya, 2010.

the Intergovernmental Relations Technical Committee and the Intergovernmental Relations Secretariat. The functions each of these structures are here below outlined.

The Summit

Is the apex body of intergovernmental relations and comprise of the president as the chairman, the CoG Chair as the vice-chair and all the forty-seven governors. The law requires that the

Summit be held at least twice a year. The key functions of the Summit include among others;

- Forum for consultation, and cooperation between national and county governments.
- Forum for consideration and promotion of matters of national interest.
- Monitoring the implementation of national and county development plans and recommending appropriate action.
- Evaluating the performance of national or county governments and recommending appropriate action.
- Coordinating and harmonizing the development of the county and national government's policies.
- Facilitating and coordinating the transfer of functions, power or competencies from or to either level of government[26] .

The Council of County Governors

The Council is made up of the forty-seven (47) Governors with the chairman and vice-chairperson elected from amongst the governors. The main functions of the Council include;

- Forum for consultation amongst county governments.
- Forum for sharing information on the performance of the counties in the execution of their functions with the objective of learning and promotion of best practices.
- Forum for considering matters of common interest to county governments.
- Forum for dispute resolution between counties.
- Forum for receiving reports and monitoring the implementation of inter-county agreements on inter-county policies[27] etc.

Intergovernmental Relations Technical Committee (IGRTC)

This is the technical arm of intergovernmental relations comprising of a chairman and eight members all of whom are competitively recruited and appointed by the Summit. The principal secretary for matters relating to devolution is also a member of the Committee. Its main functions include;

- Responsible for the day-to-day administration of the Summit and the Council i.e., implement the decision of the Summit and the Council and also facilitate the activities of the Summit and Council.

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26 *For detailed list of functions of the Summit, see Section 8 of the Intergovernmental Relations Act, 2012.*

27 *See, Section 20 of the Intergovernmental Relations Act, 2012.*

- Take over the residual functions of the transitional authority.
- Convene a meeting of the forty-seven county secretaries within thirty days preceding every Summit meeting.
- Perform any other function as may be conferred on it by the Summit.

Intergovernmental Relations Secretariat

This is the administrative arm of the IGRTC headed by a secretary who is competitively recruited and appointed by the technical committee with the approval of the Summit.

Despite the extensive legal framework for intergovernmental relations, on their own, the Constitution and the attendant legislations do not provide all the details on how governments should relate to each other. In fact, and quite often the Constitution is vague in laying out the balance of power between the levels of government. Intergovernmental relations structures are almost always designed to accommodate differing communities of interests that may be social, political, economic or ethnic in nature.

Models of Intergovernmental Relations

The image that is often created of our devolved system is that of a layered government consisting of two distinct levels of government closely similar to what one would get under a federal system. Notwithstanding the provisions of Articles 1 & 6 (1) (2), Kenya is still a unitary state made up of forty-seven county governments and one national government. Though we have two levels (layers) of government, they are not separate but interdependent.

The evolving intergovernmental relations between the national and county governments in the first four years of devolution gives credence to the emergence of two models of intergovernmental relations. These are; a dualist model and a cooperative model.

Dualist Model

A dualist perspective views the county governments as distinct and functionally separate from the national government. Although the dualist acknowledges that the two levels of government exist in the same territory and serve the same citizens, they nonetheless see county governments as distinct and separate in their actions.

The dualist draw their authority from the strict reading of Articles 1; 6 (1), (2); and broadly Chapter Eleven (11) of the Constitution of Kenya, 2010. The underlying character of intergovernmental relations under this model is that of suspicions between the two levels of government, combativeness, confrontation and minimal consultations.

Under the dualist model, rather than resolve conflicts through existing intergovernmental relations structures, judicial redress becomes the readily available mode of conflict resolution. This modus operandi prevails largely because actors of a higher level of government often ignore or broadly define the scope of their mandate that is often interpreted by actors of a lower level of government as a usurpation of their authority.

Due to the infancy of devolution and a lack of capacity for a majority of actors in both levels of government, a dualist intergovernmental relations model characterized the first four year

of devolution in Kenya. Examples of cases of contestations between the national government and county governments including but not limited to; street lighting program by the national government, procurement of medical equipment for the counties by the national government, recruitment and deployment of medical personnel to the counties by the national government etc.

Cooperative Model

This model rests on the premise that county and national governments cooperate and work jointly to solve common problems rather than conflicting and sometimes behaving like hostile competitors pursuing similar or more likely conflicting end. Cooperative relations manifests itself not only vertically (between and county and national levels) but also horizontally between and among the county governments.

While acknowledging the distinctness of the two levels of government, proponents of this model pay more attention to the need to "conduct their mutual relations based on consultation and cooperation. Authority for this modus operandi is drawn from Article 189 of the Constitution[28].

This model seeks to utilize institutional structures created through the Intergovernmental Relations Act, 2012 to resolve disagreements and conflicts. An example of a case that utilized this model is the doctors' strike that had lasted for 100 days. The national and county governments jointly agreed on a formula to resolve the strike that was binding for both levels of government.

Intergovernmental Management

This refers to the processes and systems put in place by the government machinery (public service) of both levels to ensure that devolution works. As such, the public service becomes the glue that ensures devolution works successfully.

For the most part, intergovernmental relations deals with legal and structural issues, between the two levels of government and the attendant financial relations. Intergovernmental management, on the other hand, focusses on implementation and problem-solving in a devolved system. Unfortunately, often intergovernmental management is visible when a crisis arises or a tragedy occurs e.g., a doctors' strike or an outbreak of an epidemic such as cholera.

Intergovernmental management deals with the coordination of programs and accountability issues in a multi-organizational setting. The danger to guard in intergovernmental management is the tendency of actors of the higher level of government assuming supervisory powers to the extent of wanting to micromanage actors of the lower level of government[29] .

Under intergovernmental management, various cadres of staff from different levels of government e.g., in health, finance, vocational training, public housing, environment etc, often communicate with each other daily in respect to their duties. They also belong to the same

28 *See, Article, 189 of the Constitution of Kenya, 2010.*

29 *Refer, Shafritz, J.M; Russell, E.W., & Borick, C. P. (2007). Introducing Public Administration, 5th Ed. Pearson, Longman. New York.*

professional association and possess the same professional training as doctors, accountants, nurses, public health workers etc.

In dealing with a common problem such as an outbreak of disease e.g., cholera, health professionals from both levels of government often consult each other and seldom care about the geographical and functional demarcations between the national and county governments.

Governors are therefore better advised to nurture and foster intergovernmental processes for effective service delivery. This is so because public servants of both levels of government exercise considerable powers over the nature of intergovernmental programs to be implemented and how to do so.

Conclusion

Intergovernmental relation is a complex subject than ordinarily understood. In Kenya, this subject is evolving and any attempt to describe it will be tantamount to providing a snapshot of a moving picture given its infancy.

Governors are encouraged to understand the working of intergovernmental relations to avoid the dangers of subsidizing the functions of another level of government. Additionally, intergovernmental relations help governors to align their strategic priority issues within the scope and mandate of the county government or take advantage of the opportunities and resources from the national government to advance the interests of their counties.

Intergovernmental relations provides a forum for all the 47 governors to advance and protect the interests of counties. It also provides a better mechanism for solving common problems that confront counties through economic, social and political cooperation using the intergovernmental relations structures.

The glue of intergovernmental relations is the public service that implements the decisions of the Council of Governors and the Summit. Governors are advised to create systems and processes that foster intergovernmental management to allow public servants from both levels of government to solve common problems.

Leadership and Integrity in the Public Service

7

Introduction

Leadership and integrity apply to those who enter the public service with the drive to serve and help develop their community, county and country. The obligation for integrity and to uphold that law requires that one subjugate one's personal beliefs to discharge the duties of the office sought for.

In taking an oath of office and accepting to serve in the office of the governor, one makes a promise to live up to the obligations of the office and to frame his or her judgement by standards embedded in the office of the governor's responsibilities. In essence, therefore, the official responsibilities of a governor and the virtue of integrity are interlinked.

The governor, his or her public officials such as county executive committee members are expected to serve individual citizens and to be accountable to the people of their county. These responsibilities extend to the promotion of the democratic process itself. Beyond looking at the legal framework for leadership and ethical conduct in the public service in Kenya, this chapter provides governors with alternatives of enhancing integrity in the county public service that complements existing legal mechanisms and codes of conduct.

Legal Context of Leadership and Integrity

Ethical conduct is an essential aspect of public service all over the world. For ethics to guide the attitudes and behaviours, public officers, it must be integrated into the way public officers think about their work and incorporated into their day-to-day behaviour. In Kenya, both the Constitution of Kenya, 2010 and the Leadership and Integrity Act, 2012 heavily prescribe the behaviour and conduct of public officers in the discharge of their duties. A closer look of the existing legal mechanism largely prescribes the "do's and don'ts" in the public service both at the national and the county levels.

The Ethics and Anti-Corruption Commission

Under Article 79 of the Constitution, the Ethics and Anti-Corruption Commission

(EACC) was established by Parliament through the passage of the Ethics and Ant-Corruption

Commission Act, No. 22 of 2011. Among other functions, EACC is mandated to;

- Develop and promote standards and best practices in integrity and anti-corruption.
- Develop a code of ethics.
- Work with other State and public offices in the development and promotion of standards and best practices in integrity and anti-corruption.
- Investigate and recommend to the Director of Public Prosecutions the prosecution of any acts of corruption or violation of codes of ethics.

- Oversee the enforcement of codes of ethics prescribed for public officers.
- Raise awareness on ethical issues and educate the public on the dangers of corruption and enlist and foster public support[30] .

As a constitutional body, the EACC's mandate is therefore concurrent and traverses both the national and county government boundaries. The "public entity" as defined in the Leadership and Integrity Act, 2012 identifies the EACC as the one responsible for developing codes of conduct for public officers at both the national and county government levels[31].

The office of the governor is a state office and as such, it is a position of public trust and the authority and responsibility vested in a governor are exercised in the best interest of the people of his or her county in particular and in Kenya at large. In exercising this authority, the the governor shall ensure that s/he;

- Demonstrates respect for other people.
- Brings honour to the nation, county and dignity to the office of the governor.
- Promotes public confidence in the integrity of the office[32].
- His/her conduct in private affairs maintains integrity in the office of the governor[33].

No other authority minutely prescribes a standard of behaviour of a public officer in Kenya than the Leadership and Integrity Act, 2012. In detail, it enumerates the "do and don'ts" in the public service as summarized in table 7.1 below.

30 *See, Section 11 of the Ethics and Anti-Corruption Commission Act, No.22 of 2011.*

31 *See Part I – Preliminary of the Leadership and Integrity Act, 2012.*

32 *See, Article 73 of the Constitution of Kenya, 2010.*

33 *See, Section 32 of the Leadership and Integrity Act, 2012.*

Table 7.1: The Dos and Don'ts Prescribed in the Leadership and Integrity Act[34]

Dos	Don'ts
Carry out duties of office efficiently and honestly	Shall not use the office to unlawfully or wrongly enrich himself or herself
Carry out duties in a transparent and accountable manner	Shall not accept a personal loan or benefit which may compromise a state officer in carrying out the duties
Keep accurate records and documents relating to the functions of the office	Not engage in activities that amount to an abuse of office
Report truthfully on all matters of the organization which they represent	Not engage in wrongful conduct in furtherance of personal benefit
Carry out official duties in a manner that maintains public confidence in the integrity of the office	Not misuse of public resources
Treat members of the public with courtesy and respect	Not discriminate against any person, except as expressly provided for under the law
Not discriminate against any person, except as is expressly provided by law	Not engage in activities that may lead to removal from a professional body
Maintain high standards of performance and level of professionalism within the organization	Not falsify any records

Conflict of Interest

The basic standard of integrity for state and public officers is that there should not even be an appearance of a conflict of interest in the conduct of public affairs. This basic standard helps protect the integrity of the organizational process. Governors should, therefore, feel a special obligation to act in such a way as to strengthen the integrity of all administrative processes in the conduct of county affairs.

Specifically, the law requires that a public officer avoid conflicting or appear to conflict with state officer's or public officer's official duties". A governor or any of his or her appointees in the county government are prohibited from awarding a contract to;

- himself or herself,
- the governor's or his/her public officers' spouses of children,

34 *See, Articles, 10; 11; 12 & 13 of the Leadership and Integrity Act, 2012.*

- a business associate or agent of the governor, and
- a corporation, private company partnership or other body in which the governor or his appointees have a substantial or controlling share.

Developing a Code of Conduct in the County Public Service

Although the law allows a county government flexibility to develop a code of conduct for its public service, the same law prescribes pretty much the contents and process of developing such a code of conduct. Largely, the content of a County Code of Conduct must be aligned to the content in Part II of the Leadership and Integrity Act, 2012 i.e., Sections 6 – 36 of the Act.

In the absence of a County Code of Conduct, the general Leadership and Integrity Code prescribed in Part II of the Act shall apply in the conduct of county affairs.

Process of Developing a County Code of Conduct

Taking into consideration the provisions spelt out in Part II of the Leadership and Integrity Act,

2012, a county, may on its own volition and with support from EACC develops its Code of Conduct for its public service. The process of developing such as code entails;

i. County develops its code of conduct guided by the provisions of Part II of the Leadership and Integrity Act, 2012,

ii. County submits the developed code of conduct to the EACC for approval,

iii. The EACC considers and approves it with or without amendments for publication in the Gazette within thirty (30)days of receipt of the Code, and

iv. The county government shall Gazette its Leadership and Integrity Code within ninety (90) days of receipt of the approved Code.

Enforcement of the Leadership and Integrity Code

The overall mandate of overseeing the implementation of the Leadership and Integrity Code rests with the EACC. The Commission is, however, empowered to delegate to state organ power to ensure compliance and enforcement of the code.

For the counties that have not developed their Codes of Conduct, enforcement responsibility rests with the EACC. For the county governments that have developed and Gazetted their Code of Conduct, the responsibility for enforcement is assumed delegated from the EACC to the county.

Upon appointment as a CEC member or a chief officer or the governor is elected, he/she shall sign and commit to the specific Leadership and Integrity code issued by the county government (where it is developed and Gazetted) at the time of taking the oath of office or within seven (7) days of assuming a state office. Form J below is a template of the Integrity Code for CEC members of the county government.

Form J

FIRST SCHEDULE (Para. 6(3))

COMMITMENT TO THE LEADERSHIP AND INTEGRITY CODE FOR STATE OFFICERS IN THE COUNTY EXECUTIVE COMMITTEE OF……

I…….holder of National ID/Passport No…….... and Post Office Box No. …….. having been elected or appointed as …… in the

County Executive Committee of …….. do hereby confirm that I have read and understood the Leadership and Integrity Code for State Officers in the County Executive Committee of …….…… and hereby solemnly declare and commit myself to abide by the provisions of the Code at all times.

SIGNED at ……..

By the said ……..)

……) Deponent

This……..day of……20……..)

)

Before Me)

)

)

)

)

……..……)

Judge/ Magistrate/ Commissioner for Oaths

Experiences on Enforcement of Codes of Conduct

Many public organizations have crafted comprehensive codes of conduct or sophisticated corporate governance requirements. Despite this, within these organizations, many unethical behaviours are practised or at least condoned. While it is acknowledged that compliance mechanism such codes of conduct certainly help public officers behave in an ethical manner (or at least in a manner pre-conceived as ethical by those who institute such codes of conduct) they have certainly not eliminated vices in the public service. Obeying something just because it has been codified into a rule is equivalent to being told, "because I said so"[35] .

It is therefore noted that compliance mechanisms such as a code of conduct are not enough and that ethical training, leadership and culture change in management of public affairs are crucial to ensure that ethical frameworks are implemented and embedded within the fabric of the organization[36].

County governments are therefore urged to view entrenchment of integrity as operating along a continuum where on the one end is a reliance on a regulatory mechanism (Code of Conduct) and, on the other end, a reliance on the personal integrity of individuals to act ethically. Integrity in the public service should be driven by a sense of duty i.e., the urge to serve others, to benefit society or to advance the public interest[37]. This urge is beyond codification and enforcement of compliance. It is individualized and self-driven.

Ethical Leadership: A Call for Paradigm Shift:

Article 73 (2) of the Constitution of Kenya, 2010 enumerates guiding principles of leadership and integrity which include;

- Selection based on personal integrity, competence and suitability.
- Objectivity and impartiality in decision making and ensuring decisions are not influenced by nepotism, favouritism or corrupt practices.
- Selfless service based solely on public interest.
- Accountability to the public for decisions and actions.
- Discipline and commitment in service to the people.

The constitutional provisions above are in line with past trends of prescribing ethical leadership and behaviour in law. In essence, Kenya's style of entrenching integrity has largely been through legal control mechanisms such as creating ethics agencies (EACC), codes of conduct and sanctions for breach of code. This approach has largely focused on ethics management in public service. The results of ethical conduct have largely not changed if the number of unethical practices is anything to go by.

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35 *See, Cox, R.W. (2009). Ethics and Integrity in Public Administration: Concepts and Cases. M.E. Sharp. Armonk, New York.*

36 *Ibid.*

37 *See, Svara, J. (2007). Ethics Primer for Public Administrators and Nonprofit Organizations. Jones and Bartlett Publishers, Sudbury, Massachusetts.*

A paradigm shift is therefore required in entrenching integrity in the public service and more so at the county level. Rather than relying on ethics management, there is a need to shift to an ethical management approach.

An ethical management approach relates to how individual public officials behave with integrity, how they must set a personal example and how they treat others both within the county public service and outside it. Ethical management is ethics in action and expresses itself in the day-to-day practices and predominantly boils down to individual responsibilityt[38].

Ethical discourse in the public service revolves around the relationship between individuals, values and environment. Leadership is thus an inherently ethical task. Unethical leadership cannot foster a virtuous organizational culture and cannot have the moral authority to sit in judgement on the individuals[39] within the county public service.

Truly ethical leadership at the county level consolidates legitimacy and credibility to the purpose and vision of the County Government thus creating trust and developing a personal relationship. Ethical management operates within the parameters of respect for others and recognition of different perspectives.

Characteristics of ethical leadership

- An outward-oriented people focus that seeks to develop followers,
- High visibility of good conduct by the Governor/leader,
- Open communication and good listening skills,
- Sets standards for self and others and does not tolerate lapses in conduct,
- Strong accountability, and
- A broader understanding of issues and greater ethical awareness of concepts such as common good[40].

Leaders are not solitary figures but rather members of a community. They play several roles such as moral individuals, public servants, the steward of the county, coach for the appointed officials and other public servants.

38 *See, Opt, Ibid.*

39 *See, Ciulla, J.B (2001). Carving Leaders From the Warped Wood of Humanity." Canadian Journal of Administrative Science, No.18 (4): pg.,313-319.*

40 *See, Svara, J. (2007). Ethics Primer for Public Administrators and Nonprofit Organizations. Jones and Bartlett Publishers;, Sudbury, Massachusetts.*

Strengthening Accountability and Oversight in the County Government: The Role of Public Audit, Controller of Budget and Ombudsman

8

Introduction

Good governance, transparency and accountability are identified in the Constitution of Kenya as national values and principles[41]. Additionally, Article 232 of the Constitution also identifies accountability for administrative acts, transparency and provision to the public timely and accurate information as values and principles of the public service. Further, other values and principles of the public service listed in the constitution include; efficient, effective and economic use of public resources, affording equal and adequate opportunities for appointments, training and advancement, responsive, prompt, effective, impartial and equitable provision of service etc.

To ensure compliance with these constitutional provisions, the constitution has placed administrative responsibility for accountability and oversight in three bodies i.e., the Office of the Auditor General (AG), the Controller of Budget (COB) and the Commission on Administrative Justice (CAJ). Whereas the first two (AG & COB) exercise oversight over efficient, effective and economic use of public resources, the CAJ exercises oversight over county government administrative processes in respect to the national and public service values and principles in addition to giving life to Article 47 of the Constitution.

As per Article, 248 (3), the office of the AG and COB are recognized as Independent Offices whose mandate cuts across all governments entities (ministries, departments and agencies) and all the three arms of government (for the national government and the two arms of the county governments). It is for this reason that the AG as constitutional authority to audit the financial statements of the county governments.

Similarly, the COB constitutional authority to authorize all withdrawals of public funds from the Consolidated Fund (national) and County Revenue Fund (county) or any other fund established by either level of government. Equally, the CAJ oversees the implementation of fair administrative practices in both levels of government. This chapter, therefore, highlights the roles of the three bodies in enhancing accountability and oversight at the county government level. The intent here is to appraise Governors of the constitutional mandate of these bodies to strengthen collaboration and cooperation with the three bodies.

The Office of the Auditor General

The Office of the Auditor General (AG) is established by Article 229 of the Constitution of Kenya, 2010 whose audit reports are submitted to Parliament and the county assembly.

41 *See, Article 10 (2) (c) of the Constitution of Kenya 2010.*

The mandate of the AG (in respect to county government) is to audit and report in respect of the financial year on;

a) The accounts of all funds of the national and county governments.
b) The accounts of all funds and authorities of the national and county governments.
c) The accounts of the National Assembly, the Senate and the county assemblies.
d) The public debt.
e) The accounts of any other entity that legislation requires the AG to audit[42] .

Key Areas of Focus by the Auditor General

Apart from the general examination of financial statements of a county government, the AG conducts audits on the following;

- Assets (current and fixed) held by the county government.
- Financial statements of all the monies received and expenditures incurred.
- Summary statement on funds appropriated by the county assembly (on revenue and development.
- Bank accounts held and cash flow state.
- Procurement of goods and services.
- Project implementation and status.
- Internal control measures and structures.

Responsibility of the County Government in Auditing

The governor as the chief executive of the county government under the guidance of the county treasury through the CEC member responsible for finance ensures that financial statements in respect to the above focal areas are accurate and prepared in accordance to the International Public Sector Accounting Standards (cash basis) for purposes of internal control.

The governor should put in place or ensure there exists a County Internal Audit Committee whose duties include but not limited to;

- Review governance mechanisms of the county government to promote transparency and accountability concerning the finances and assets of the county.
- Conduct risk-based value for money and systems audits aimed at strengthening internal control mechanisms that might affect the achievement of the county's strat safeguards for their protection.
- Assure that appropriate institutional policies and procedures and good business practices are followed by the county government.
- Evaluate the adequacy and reliability of information available to management for decision making concerning the county and its operations[43].

42 *See Article 229 (4) of the Constitution of Kenya, 2010.*

43 *See Article 229 (4) of the Constitution of Kenya, 2010.*

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