

Good Governance and Ethics in Institutional Leadership: A Review of County Governments in Kenya

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Abstract: *Good governance is essential in providing structures and processes that ensure accountability, responsiveness, transparency and adherence to the rule of law. It entails rules, policies, laws that guide activities which entrench of a culture of excellence. Consequently, leaders steer their administrations in the right direction by implementing sound governance systems. On the other hand, ethics provides a moral compass, which is critical in determining right and wrong actions. This enhances personal responsibility and promotes social order. Good governance and ethics are therefore complimentary concepts that are significant in ensuring that institutions achieve their mandate. The role of good governance and ethics in the political leadership in Kenya cannot be overlooked. The enactment of The Constitution of Kenya, 2010 saw the establishment of a decentralised system of government, comprising 47 Counties. This presented a new frontier for accelerating development and service delivery to the citizenry. However, Counties have been marred with political, fiscal and administrative challenges. It is therefore essential to assess the role of good governance and ethics in Kenya's decentralized system, which can contribute in addressing these emerging challenges. This includes addressing the capacity of the leaders, governance systems and structures as well the need for establishing an ethical culture.*

Keywords: *Ethics, Good governance, County government, Ethical leadership, Ethical culture*

1. INTRODUCTION

There is increasing pressure for organizations to adhere to ethical practices to facilitate good governance. Arulrajah (2016) enumerates the main elements of good governance as: accountability, transparency, rule of law, participation, inclusiveness, responsiveness, consensus, effectiveness and effectiveness. Good governance is therefore critical in public administration (Downe et al., 2016). On the other hand, ethics provides a moral compass, which is critical in distinguishing right and wrong actions (Grimani & Gotsis, 2022). This increases personal responsibility and supports social order. Good governance and ethics are therefore complimentary concepts that are significant in ensuring that institutions achieve their mandate.

Institutional leadership falls within the main domains of governance namely: corporates, governments and non-governmental organizations. Northouse (2015) observes that leadership is a universal phenomenon which involves a process where a leader influences the followers to achieve set goals. Increased ethical scandals emanating from the processes of leadership have bolstered attention on ethical leadership, which derives its constructs from ethics and leadership (Northouse, 2015). The study of ethics can be traced to Greek philosophers such as Aristotle, Plato and Socrates. It is also related to European renaissance and political philosophers including Niccolo Machiavelli. Den Hartog (2015) notes the ethical leadership involves demonstrating appropriate conduct according to sound principles; and improve the common good of the society.

According to Hassan (2019) there is a growing interest among public administration scholars to evaluate the influence of ethical leadership in public organizations, as it has been seen to impact positively on public service motivation, organizational citizenship behavior, and willingness to report incidences of unethical conduct of others and reduce workplace incivility and corruption. Instructively, Hassan (2019) distinguishes between unethical leadership and absence of ethical leadership. The former is said to be ethically neutral leadership, while the latter refers to leader behaviours and actions that are illegal or violate the existing moral standards.

One of the spheres of institutional leadership is in devolved governments. According to Gow and Van Sant (2019), the late 1970s and early 1980s have witnessed a growing interest in devolution in many developing countries. Devolution entails a system where national governments devolve functions to sub-national governments (Rodríguez-Pose & Gill, 2017). The devolved units have a well-defined geographical boundaries that are legally recognized. They also exercise authority as per the laid down laws, and often derive their mandate from constitution of their respective countries. The promulgation of the Constitution of Kenya, 2010 saw the establishment of a decentralised system of government, comprising 47 Counties (Kenya Law Report, 2010). To address ethical issues in governance, Chapter six of the Constitution of Kenya 2010 enumerated responsibilities of leadership, oath of office for state leaders, financial integrity of state officers, citizenship and leadership, legislation on leadership and the establishment of the Ethics and Anti-Corruption Commission (Ethics and Anti-Corruption Commission [EACC], 2018). The section on leadership and integrity addresses several issues regarding ethical conduct of state and public officers namely: personal integrity, competence and suitability, free and fair elections, objectivity and impartiality in decision making, selfless service and accountability to the public for decisions and actions.

To ensure that state and public officers respect the values, principles and requirements envisaged in the Constitution of Kenya 2010, Leadership and Integrity Act, 2012 was enacted (EACC, 2018). Further, the Institute of Economic Affairs (2015) as cited in Ngigi and Busolo (2019) enumerates other legal frameworks for accountability in the administration of public affairs in Kenya. These include: the Public Officer Ethics Act of 2003, Civil Service Code of Regulations of 2006, Anti-Corruption and Economic Crimes Act (Cap. 65) of 2003, Public Procurement and Disposal Act of 2005 and Public Finance Management Act of 2012.

2. STATEMENT OF THE PROBLEM

A review of literature indicates that devolved governments in Kenya have faced a myriad of challenges ranging from corruption, fraud, dishonesty and embezzlement of public funds, as a result of bad governance (Khaunya & Wawire, 2020; Madubwe & Iravo; 2018; Kyalo et al., 2017). The incidences of corruption have been of great concern to international finance institutions such as the World Bank over the years (Mutangili, 2019; Harrington & Manji, 2013). Further, the challenge of bad governance has resulted to poor accountability in various county governments. For instance, the report of the auditor general on the county assembly of Nairobi city for the year ended 30 June, 2020 indicated an adverse opinion. This was based on among other issues, unsupported payments of kes. 97,802,709 disbursed for foreign travel and subsistence allowances (Office of the Auditor General, 2020). Further, the Ethics and Anti-Corruption Commission (EACC) has continued to raise concerns about some of the county leaders' lack of integrity and their involvement in misappropriation of public resources. According to Okoth and Muthike (2021), the governors of Wajir, Nairobi and Kiambu counties were impeached on grounds of gross misconduct, corruption allegations and violation of the constitution.

Conversely, good governance and ethics offer an enormous opportunity for operational efficiency in organizations; hence its adoption is crucial in public sector management (Fotaki et al., 2020; Muthoka & Waswa, 2021). Indeed, a study on the influence of ethical leadership practices on governance in Uasin Gishu County, Kenya determined that ethical leadership practices have a positive and linear relationship with governance (Kosgey et al., 2020). Therefore effective governance can be realized when public servants observe unparalleled accountability and transparency standards. Equally, the study noted that entrenching work place ethics promotes efficiency and effectiveness in service delivery. This was corroborated by another study on the influence of governance practices on performance of County governments in Kenya, in which Muthoka and Waswa (2021) established that internal controls, stakeholder participation, internal audit standards and transparency have a positive and significant relationship with performance of County governments in Kenya.

Furthermore, in an empirical study on the effect of ethical practices and organizational structure on the relationship between strategic leadership and service delivery of county governments in Kenya, Gaitho (2019) posits that ethical practices and strategic leadership are significant in influencing service delivery in county governments in Kenya. Consequently, the study recommended developing and monitoring ethical behaviours in county government officers as well as implementation of

sanctions on unethical conduct. Consequently, this paper sought to further explore the role of ethics and good governance in enhancing the gains of the devolution in Kenya through extensive literature review.

3. DEVOLUTION, GOOD GOVERNANCE AND ETHICS

3.1. Devolution in Other States

Devolution is widely practiced in many countries across the world. In United States of America, devolution from central government to the fifty sovereign states of United States of America (USA) has promoted a broad based popular participation in development matters, thus positively influencing the various devolved units (Ayala et al., 2022). USA has a high level of accountability and transparency that has significantly improved ethics and governance through participation and inclusion. According to Rodríguez-Pose and Gill (2017) devolution in USA has ensured that local governments access federal funds for housing, healthcare spending among other services. It has also increased collaboration as local governments in each region are incentivized to work together to access federal funding to run their affairs. Decentralization of power and resources in USA has created opportunities for checks and balances through Congress and within the states as well as local governments.

Japan also has a decentralized system of governance since the early 1990s and has achieved significant milestones in creating a cordial relationship between centralized and local governments (Leonard Hijino, 2021). Japan practices a two tier system of government consisting of 47 prefectures and about 1800 municipalities which include cities, towns and villages. The country has taken various steps to promote decentralization of government including organizing community forums and annual conferences to increase participation in city planning and development (Ohta et al., 2021). Local governments have developed a deep understanding of the community issues through various forums and improved their planning, resource allocation and utilization. Devolution in Japan has promoted effective collaboration among citizens by enhancing in-depth dialogues between members of the communities while brainstorming solutions to their challenges.

In addition Santagati et al., (2020) observes that the policy of decentralization in France was initiated by the French parliament by passing Gaston Defferre Laws in 1982. The executive powers, financial resources and some administrative functions have been transferred to the local governments providing a great measure of autonomy and development. Decentralized governments have increased reforms and positively transformed the local systems of government. The decentralized authorities have the capacity to manage their public policies, run the public transport and collect local taxes to manage the intercommunion structures. France has experienced equalization of financial resources as the local authorities are allowed to spend their resources based on the needs of their constituents (Santagati et al., 2020). Devolution has changed and modernized administration of the French Communes and other devolved units of government and increased their collaboration through intercommunal structures.

Some African countries have also adopted the decentralized system of government. For instance, South Africa established a devolved system of government which was confirmed in the 1996 constitution (Steytler & Ghai, 2016). This was aimed at addressing challenges of a highly centralized government such as abuse of power, widespread inequality and poor development. While Kenya has just one level of government under the national government, that is the County government; South Africa has two levels namely the provincial and local governments. In review of ethics, accountability and democracy as pillars of good governance in reference to the case of South Africa, Koenane and Mangena (2017) argues that for post-colonial and post-apartheid present-day Africa these pillars are usually disjointed. The authors posit that this ought not to be the case, as the outcome can be disastrous. Democracy entails not only voting but holding the government accountable. This is enabled by upholding the citizens' rights to query governance and participation in public affairs.

In a study on the limits to citizen engagement and downward accountability in the context of decentralization by devolution in Tanzania, Mmari and Katera (2018) note that the decentralization process has widened the democratic space for citizen engagement. This is especially in the development administration at the community levels. However, there still exists some bottlenecks in achieving complete accountability and effective engagement of citizens. Further, Mmari and Katera

(2018) argue that minimal financial and administrative discretion by Local Government Authorities (LGAs) lessens the effectiveness of citizen involvement and downward accountability. Moreover, there needs to be a framework for more credible citizen participation and feedback systems. Additionally, the downward accountability is hindered by inadequate access to information and capacity of citizens and civil society organizations to execute regular public disbursements tracking and budget analysis.

In summary, the assessment of devolution as practiced several jurisdictions in the various empirical studies reviewed indicates that irrespective of the contextual differences, accountability and transparency are ethical practices that enhance the effectiveness of devolution. Another key observation is that citizen participation in governance is critical in enhancing accountability. Further, it is not only important to establish the framework for public participation, but also ensure that it is functional and feedback yielded is considered in policy formulation and implementation.

3.2. Devolution in Kenya

In an enquiry on whether devolved governance in Kenya is a false start in democratic decentralization for development Khaunya and Wawire (2020) sought to query the efficiency and effectiveness of the devolved system of government. The research indicated that devolution endeavored to address challenges such as bureaucratic inefficiencies, poor accountability and transparency, imbalanced distribution of national resources and non-participation of communities in local development. The study established that County governments had made significant progress in improving participation of stakeholders on development at County level, attainment of devolvement of funds, establishment of employment opportunities, enhanced accountability on the political system and devolvement of particular key functions to the local level. Khaunya and Wawire (2020) however note that these achievements have been overshadowed by challenges such as financial impropriety, nepotism, insufficient funding, 'devolved' corruption and bureaucracy. Other challenges cited included: incapability to take up some devolved functions, mistrust among stakeholders, diminishing political goodwill, different implementers of devolution with varied cultures and approaches, a ballooned workforce, duplication of duties and political dominance wars. Furthermore, counties are intimidated by a domineering National Assembly and Executive, an ardent County Assembly, and a weak legislature and institutional framework. Therefore, the challenges that had beleaguered the centralized system of governance still remain within the devolved system. Hence, benefits of devolution to be fully realized, these weaknesses need to be addressed.

Khan and Naeem (2020) posit that corruption causes unequal access to public facilities and education due to skewed social spending. In Kenya, bad governance in some of the county governments has increased cases of marginalization and lack of access to critical government services. According to D'Arcy and Cornell (2016), patronage and rent seeking are vices that are prevalent in decentralized government systems. They further allude devolution has amplified these unethical practices with the adage that it is "everyone's turn to eat" being predominant. Moreover, the National Cohesion and Integration Commission (NCIS) noted significant cases of unfair hiring and skewed recruitment of staff from one ethnic community (Onsongo, 2016). It has also accelerated fraud in public procurement, hindered development and endangered democracy in Kenya. From the foregoing, bad governance has led to gross violation of chapter six of the Kenyan constitution that emphasizes on leadership and integrity. It has also led to lack of openness in resource allocation which has resulted in inequalities and a rise in poverty levels.

The benefits and challenges accruing from governance and ethics in counties in Kenya are further illustrated in several research studies. Kyalo et al. (2017) researched on the impacts of devolution in service delivery in Kitui County Government (KCG) in Eastern Kenya. The empirical study revealed that the KCG funded key community priorities such as access to clean water, education, health facilities and rural roads. However, despite these gains, the allocation of contracts through the procurement process was not equitably done and did not meet the legal threshold of 30% quota for women, youth and persons living with disabilities. Furthermore, the public participation was inadequate as forums held were not sufficiently publicized. The KCG was also not transparent in utilization of public resources and hardly held accountability meetings with the residents on the projects funded as well as the entire County expenditure.

While Kenya has had its fair share of challenges in implementing devolution under the new constitution there are some successes that have been achieved. For instance, Makueni County managed to develop a policy for public participation (Department of Devolution, County Administration, Public Service and Youth, 2020). In addition, Muthoka (2021), notes that the county government provided residents with year round medical cover in public institution at a subsidized cost of five hundred shillings per household. The county has also been at the fore front in showcasing value addition in agricultural value chains as well as support of manufacturing to create employment opportunities. However, despite establishing the public participation policy, recent research indicates that the residents of Makueni County were largely unaware of their democratic rights for participation in the policy making process (Muthoka & Waswa, 2021). Furthermore, financial, physical resource, human resource and technological limitations were cited as hindering citizen participation in policy making process.

4. ENHANCING GOOD GOVERNANCE AND ETHICS IN COUNTIES IN KENYA

4.1. Ethical Leadership and Ethical Culture

Ethical leadership enables institutions to create a positive ethical culture of trust, transparency, respect and justice for others (Lawton & Páez, 2015). Additionally, it involves fostering and supporting positive values as well as modelling appropriate ethical behaviors in the workplace. This can be developed through adopting an ethical organizational culture. Christiansen and Chandan (2017) posit that organizational culture comprises mutual attitudes, beliefs and customs established over time. Conceptual literature appraised indicated that organizational culture significantly influences organizational performance (Warrick, 2017). Moreover, it guides the enactment of the various laws and policies that guide ethical conduct, underpinned by institutional code of ethics, accountability, and effective communication.

Accountability is therefore a critical pillar of good governance and ethical leadership. It not only emanates from an individual public officer conduct, in the case of public administration, but also in organizational systems on processes. Aleksovskaja et al. (2019) define accountability as ability to accept responsibility and its impacts on individual's decision making capabilities and resultant behaviour. The practice of accountability is critical to the success and growth of institutions (Han & Hong, 2019). To develop accountability, county governments should embrace a culture of adhering ethical code of conduct, adhering to values and laid down laws and policies in the existing legal instruments. Accountability promotes sustainable development and good governance.

Additionally, Androniceanu (2021) posits that transparency is an essential basic principle of good governance used as a means to hold public officials accountable. According to Kiambati (2020) low levels of transparency in county governments in Kenya has been proven to result to poor service delivery. Transparency is therefore paramount in enhancing performance of counties. Furthermore, it is a vital aspect of good governance, and enables the citizens to hold public officials accountable. According to Rutherford and Wightman (2021), transparency is used to ensure that governments are open and willing to be scrutinized. It also promotes accountability by allowing citizens access information about their governments and monitor its performance.

4.2. Separation of Powers for Efficient Oversight

The principle of separation of power implies division of government responsibilities and having each arm of government work independently from the other while coexisting harmoniously. According to Amuhaya et al., (2018), separation of powers is essential to enhance accountability and transparency, as all stakeholders have information on the development initiatives. To facilitate this, citizen participation should be encouraged as it increases receptivity of the policies developed. It is also essential to have fair appointments at the county government to ensure that a culture of transparency is instilled.

Further, oversight of the county governments in Kenya is envisaged to be done by Members of County Assemblies (MCAs) to foster transparency and equitable distribution of public resources (Mutisya et al., 2017). They derive their authority from the County Government Act, 2012 (Kenya Law, 2020). Indeed, if well exercised, this can provide opportunities for good governance and ethical leadership unlocking new opportunities, fostering trust and confidence among citizens and other

stakeholders. Muthoka and Waswa (2021), concur and assert that separation of power promotes accountability and internal democracy in the leadership of the county governments enhancing social and economic development. However, this vital role is sometimes hindered by political party affiliations, rendering the oversight to be largely ineffective owing to conflict of interest (Mutisya et al., 2017). This challenge therefore requires to be sufficiently addressed for the counties to realize the intended benefits of effective oversight.

4.3. Strengthening Civic Education

Implementing civic education among citizens is essential in enhancing good governance as it promotes responsible citizenship. It is essential in equipping citizens with vital knowledge on the political, culture and democratic ideals that improve their effectiveness to function as proactive citizens as well as actively participate in governance (Nyakundi, 2021; Feitosa, 2020; Khalid & Thompson, 2019; Munyao, 2019). Civic education also enlightens citizens on their rights to hold their elected leaders accountable and ensure that they have access to quality, effective and efficient services at the county levels. The Ministry of Devolution and Planning, and Transition Authority (2016), and the County Government Act, 2012 Part X defines the establishment of a national design and framework for civic education, including content of the curriculum. The institutions mandated to facilitate civic education include: Office of the Attorney General, County Governments and Transition Authority Ministry of Devolution and Planning, and Department of Justice. None state actors also play a critical role in civic education.

One of the mandate of the elected leaders at county level is civic education (Kenya Law, 2020). While elected leaders at the national level remained largely inaccessible to residents, are report by Transparency International (TI) Kenya revealed that Members of County Assembly (MCAs) were the most contacted leaders in the county due to their proximity to the people (Transparency International [TI] Kenya, 2020; TI-Kenya, 2019). Civic education thus increases the ability of the electorate to access and interact with their leaders, thus making it easy to hold them accountable. It also promote ethical leadership and good governance.

4.4. Enhancing Public Participation

The constitution of Kenya 2010 placed citizen participation as an integral part of governance. In particular, Article 1 that states that sovereign power belongs to the people and Article 10 (2) (a) and the Fourth Schedule Part 2 (14) of the Constitution of Kenya and is stipulated as a function of the County Government (Department of Devolution, County Administration, Public Service and Youth, 2020; Ministry of devolution and Planning, and Transition Authority, 2016). Sections 87 to 92 and 115 of the County Governments Act, 2012 indicate the principles of public participation and the essence of facilitating public participation in the work of the County government.

In an inquiry on the status of public participation in Kenya, the Intergovernmental Relations Technical Committee (n.d) recommended that that a culture of civic engagement should be encouraged by both levels of government through civic education. The report underscored the importance of having norms and standards for effective public participation. It further suggested the capacity for public participation should be developed. The low levels of public participation was noted to accrue from an expectation of payment for members of public. Another impediment cited was lack of budget transparency and complex documents that are not translated into popular versions which can be well understood by the community. Importantly, the report noted that for effective public participation to be mainstreamed, institutionalized, developed and sustained, there is need to invest time and resources to operationalize public participation. The report also recommended more civic education on public participation. Therefore, while the requisite legal framework and guidelines exist, more effort and resources is required to implement public participation as envisaged in the Constitution of Kenya 2010.

5. CONCLUSION

Ethics is intricately linked to good governance. Ethical conduct is therefore an antecedent of good governance, and is crucial to the success of devolution in Kenya. The citizens expect ethical conduct from government officials, including the county executive. Transparency and accountability therefore need to be enhanced through practicing ethical leadership and adopting an ethical culture. Moreover,

citizen participation is crucial in enhancing good governance through holding the county government accountable. Drawing from the existing legal frameworks, counties are also expected to develop an institutional policies to facilitate and implement civic education, as has been done in Makueni County. Moreover, counties should strive to ensure that the citizens are facilitated to fully participate in governance process. It is also important to address the hindrances to separation of powers and oversight of county government by the members of the county assembly, such as conflict of interest accruing from political party affiliation.

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