

Transparency and Accountability in Kenya: A Review of the Institutional Framework for Public Service Delivery

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Abstract

Ethics and integrity that presuppose honesty and openness are integral components of any undertaking to ensure efficiency in the utilization of resources and effectiveness in service delivery. This requires a minimum threshold of transparency and accountability in the conduct of public affair. For this to occur, a measure of moral standing among individuals and institutions must exist to check on their excesses and more so when these act in contradistinction to their calling. The foregoing is expected to arrest such vices as corruption, enshrine appropriate work ethics and prevent other underhand deals that disadvantage the public with regard to service delivery. Corruption, which is deep-rooted in Kenya, has largely been blamed for scaling down domestic saving and investment and the misallocation of inventive talent. While in the last few decades transparency and accountability have been catchwords in the Public Service of Kenya, this is yet to completely tame corruption therein. In response to the foregoing, the government of the Republic of Kenya while acknowledging that corruption is serious development bottleneck, has come up with several control mechanisms to fight it. The foregoing is the institutional framework that is expected to provide the necessary guidelines on the conduct of government business as well as check against individuals and institutions that act otherwise. This is a review paper whose gist is to appraise and analyze the existing institutional framework for transparency and accountability with particular emphasis on the Public Service of Kenya. It henceforth points out the challenges inherent in implementing the institutional framework and suggests the legal-policy reforms as panacea to augment transparency and accountability in public service.

Key words: Accountability, corruption, ethics, integrity, public service, transparency

Background to Transparency and Accountability in Kenya

The struggle for independence before 1960s in Kenya and the eventual self-rule in 1963 was geared towards democratic transition from colonialism and into *uhuru* (internal self-rule). It was expected to entrench democracy, accountability in governance, respect for human rights and other positive values of governance in the country. Indeed, it was expected that the newly created institutions of the presidency, premiership, judiciary, legislature and other public sector bureaucracies deemed as the pillars of western democracies would ensure maximum accountability and transparency in public service (Wanyande, Omosa & Ludeki, 2007). This never came to be as expected though, given that the independent government inherited colonial structures intact and manipulated them to their advantage (Kanyinga & Njoka, 2002; Mwenzwa & Bunei, 2012). To legalize the malpractices, independent constitution was mutilated through politically expedient amendments that consolidated more and more powers on the presidency to the disadvantage of other governance institutions. The foregoing apparently sow the seeds of discord and resistance mounted largely by citizen organizations and the civil society.

Consequential from the foregoing, there emerged court poets and political support hawkers, which in effect threw to irrelevance the idea of transparency and accountability in Kenya. The result was a system of governance whose accountability was wanting as democratic institutions were dwarfed by informal networks that emerged and seeming became the governance archetype. Indeed, Wanyande, Omosa & Ludeki (2007) have summarized the accountability and transparency challenges that faced the independent government thus,

Governmental representation and accountability, respect for rules and ethics, just distribution of resources for prosperity and moderation of social and political relations including conflict resolution.

(ibid, 2007:2)

Indeed, corruption in the public service during the post-colonial era became so endemic that it attracted a lot of academic theorizing and important strained relations between the government and the donor community to the deterioration of public service (Wanyande, Omosa & Ludeki, 2007; Kibwana, Wanjala & Owiti, 1996; Kidombo, 2006; Mwenzwa, 2013). It became a serious

bottleneck to development and with the World Bank/International Monetary Fund (IMF) engineered Structural Adjustment Programmes (SAPs) of the early 1980s; public service delivery nose-dived for the worse. Part of the problem was the Big Man syndrome in the name of the president, whose word including *roadside declarations* became law on the spot. It is this unilateral decision-making that worked to blur the work of democratic institutions of governance such as the Judiciary and the National Assembly that would have checked the excesses of the executive arm of the government.

The foregoing dictatorship on the part of the ruling elite substantially squeezed the governance playground to its limits, almost throwing to irrelevance the idea of participatory democracy. At the same time, transparency and accountability as governance archetypes were reduced to political rhetoric and mere paperwork as assertiveness and whistle blowing was met with dire consequences including detention without trial. It would seem that Kenya was actually getting to a situation, although not like Amin Dada's Uganda in the 1970s, but reminiscent of the George Orwell's the *Animal Farm* (Orwell, 1945; Sembuya, 2009).

The *Animal Farm* that Kenya became was justified and entrenched by the executive through appointment regional political friends into core government departments like the Judiciary, Central Bank of Kenya, Kenya Revenue Authority, the military and the police. A coterie of powerful individuals became Kenya's *Board of Governors*, and manipulated power to the exclusion of the majority, while extending undeserved favors to themselves and close friends. It was a real bourgeoisie exploiting the proletariat and the latter protesting the excesses of the former in a Marxian conflict framework (Abrahams, 1982).

For example, public procurement a major avenue for corruption and deterioration of public service was shrouded in secrecy in which case official could tender for services in their respective departments and eventually award themselves the tenders through their proxies (Cooksey, Mullei & Mwabu, 2000). The foregoing radicalized the marginalized majority and the clamor for legislative reforms eventually led to the introduction of multi-party in the early 1990s. This paved the way for piecemeal citizen participation although mega corruption and related

malpractices remained, but metamorphosed. On their part, transparency and accountability remained largely peripheral as governance ideals during which mega corruption scandals like Goldenberg and Anglo-Leasing were executed by largely the ruling politico-economic elite

However, the foregoing issues still persist and continue to affect the social fabric leading to undesirable civic engagement including negative ethnicity and violence (Barasa, 2013). The climax was perhaps the 2007/2008 post-election violence that so more than one thousand people dead and many more displaced and dispossessed of their property (Mwenzwa, 2013). It is the basis over which the current president of the Republic of Kenya and his deputy have been arraigned at the International Criminal Court at The Hague, Netherlands accused of *crimes against humanity* in the context of the Rome Statute. This clearly demonstrates the convoluted nature and results of corruption involving political and economic dealing with the casualty being public service delivery. Although these have not effectively dealt with malpractices that negatively affect sound public service provision, their critical role in scaling them down cannot be gainsaid. There are however structures that should be in place for sound transparency and accountability to take root, which we now turn into.

It is to be noted that transparency and accountability are matters of ethics that require a minimum threshold of behavioral transformation among individuals, institutions and organizations in terms of how they run their affairs. The foregoing transformation, if it has to take root sustainably must be enforced through legislation and monitored periodically to gauge conformity in line with set ethical principles whether in public or the private sector. In Kenya, the foregoing is anchored and echoed in every public service administration document including development plans, policies, regulations and legislation alike. It is perhaps the Kenya Vision 2030 (Republic of Kenya, 2007) that captures the foregoing most vividly. In this case, the Kenyan vision for public service is to have *a citizen-focused and result-oriented public service* (Republic of Kenya, 2007:24). It is on the basis of this vision that several initiatives in Kenya have been put in place to revitalize public service delivery particularly through legislation and policy directions.

Prerequisites to Transparency and Accountability

Kenya recognizes that an effective public service is a prerequisite to socio-economic development of the country as envisaged in the Kenya Vision 2030 (Republic of Kenya, 2007; 2008). As a result of this realization many measures have been instituted to revamp the public service and ensure effective and efficient public service delivery that is accountable to the public. One way of ensuring the foregoing is to mainstream the public need and satisfaction in the development of policies and guidelines through incorporating them in governance structures to ensure their active participation. Active involvement in development planning and related decision-making therefore acts as an important ingredient to transparency and accountability as it also inculcates ownership among the citizenry. Mainstreaming public needs, interests and satisfaction though ought to be based on a sound and participatory assessment of the same.

Information dissemination, its accessibility and understanding also act as an important avenue to reinforce transparency and accountability. It is on the basis of appropriate information that people make informed decisions to advance human welfare. This information should be provided to the public service human resource as well as the members of the public in order to ensure that actions from either side are based on grounded ethical standards and information. However, the top-down mentality among some government technocrats has largely worked to deny the citizenry the chance to interrogate and internalize government plans and their implementation, which has been a serious setback against transparency and accountability. However, with the enactment of the Constitution of Kenya, 2010 and several enabling legislation, it is expected that transparency and accountability will be improved substantially. Nevertheless, legislation on its own may not necessarily ensure transparency and accountability in the absence of related functional structures and firm political drive.

It is a prerequisite of effective service delivery to continually improve the skills of the public service human resource through performance-focused training and re-training in order to orient it to quality service delivery. Continuous training aimed at skills improvement must be seen as a precursor to improved and sustainable performance which in turn is expected to institutionalize ethics in public service delivery, therefore acting as a key pillar of transparency and

accountability. Indeed, skills-based training should be institutionalized in public service and such training carried out by competent authorities with strict requirements regarding implementation, monitoring and evaluation of the skills imparted. Short of such training, public service delivery is expected to nose-dive and by extension transparency and accountability ideals.

Leadership, the process of social influence in which one person is able to enlist the aid and support of others in the accomplishment of a common task remains a key pillar for transparency and accountability particularly in public service. As the ultimately way to enlist people's support, it contributes to openness that is necessary for the masses to spotlight public service and ensure active involvement of all stakeholders. A democratic leadership ensures the development of ideals that work to ensure transparency and accountability and by extension the provision of quality public service in line with set standards. For this reason therefore, sound, transparent and impartial leadership becomes an important prerequisite to the institutionalization of transparency and accountability, not only in the public sector, but also across the board. In the absence of such leadership, the resultant environment breeds impunity and related unprofessional conduct that work to impede the institutionalization of transparent and accountable institutions. In such a case, public service deteriorates with human welfare moving from worse to worst.

A key prerequisite of revitalizing transparency and accountability and transparency in public service and related to leadership is adherence to the rule of law. The Kenya Vision 2030 in this regard is the *adherence to the rule of law applicable to modern, market-based economy in a human rights-respecting state* (Republic of Kenya, 2007: 132). Within the rule of law, state officials and agent as well as individuals and private entities are accountable to clearly defined and evenly applied laws. In addition, the process by which the laws are enacted, administered and enforced provides equity to all while at the same time justice is delivered by a competent and representative authority. It is the rule of law and its adherence that can ensure transparency and accountability especially when its letter and spirit are implemented in the midst of a firm political will.

Peace building and conflict management remain key indicators of development the world over given their ability to make the environment conducive for constructive civic engagement and nation building. It is through engagement that democratic institutions of governance merge to invigorate transparency and accountability. Indeed, the absence of peace is a recipe for civil strife and negative civic engagement, which overshadows transparent and accountable institutions of governance. Related to the foregoing is the institutional framework, yet another important precondition for enhancing transparency and accountability, given its role in enforcing public service delivery regulations. Although the institutional framework when left alone remains a bulldog, its deterrence and guiding role in public service delivery cannot be overstated.

Institutional Framework for Transparency and Accountability in Kenya

The institutional framework for transparency and accountability in the Public Service of Kenya consists of the Constitution of Kenya, 2010, laws, policies and attendant guidelines with regard to the conduct of public business. The general aim is to cushion the public against malpractices especially by public officials in cahoots with individuals and institutions in the private sector. Such malpractice especially corruption have the potential to divert resources meant for the public good and into use that is generally sectarian in nature. Chapter Six of the Constitution of Kenya on Leadership and Integrity obligates public officers to make objective and impartial decisions with unqualified integrity and honesty in order to bring honor and pride in the offices held. In a nutshell, the Constitution of Kenya, 2010, creates many institutions for enforcing transparency and accountability in the Public Service of Kenya as discussed in the succeeding paragraphs. In general, the Public Service Commission of Kenya, it would seem is the engine on which public service revolves in the context of human resource management.

The constitution creates the Public Service Commission to see to it that the institutional framework is implemented within the rank and file of the public service. This is a constitutional entity established by Article 233(1) of the Constitution of Kenya, 2010 with the responsibility of among others, to ensure high standards of professional ethics, efficient, effective and economic use of resources and accountability for administrative acts. Others responsibilities include transparency in the provision to the public of timely, accurate information, good governance,

integrity, transparency and accountability. Nonetheless, the commission has also delegated this role to other public institutions and departments.

In order to ensure adherence to the public service regulations and requirements, the Parliament of Kenya enacted the Public Officer Ethics Act of 2003, Anti-Corruption and Economic Crimes Act of 2003, the Public Procurement and Disposal Act of 2005 and the Leadership and Integrity Act of 2012 among other laws. The most important regulation with regard to public service management is the Civil Service Code of Regulations of 2006 (Republic of Kenya, 2006). This Code of Regulations provides the behavioral standards for all public servants during and after their service while safeguarding them from unfair labor practices. In particular, it expressly forbids public servants from engaging in businesses that may bring disrepute to the offices that they hold and the government in general. For example, in its preamble, the Code of Regulations avers that,

... public servants will be guided and inspired by a shared vision, that the Public Service will be an efficiently performing institution; committed to serving the Public with integrity and utmost courtesy and giving value to the tax payers' money.

(Republic of Kenya, 2006, preamble)

At Section G, on Rules of Conduct, the Code of Regulations points out the regulations governing the conduct of public servants that are to be found in the Public Service Commission and the Public Officer Ethics Acts. It also clearly states that,

...each civil servant occupies a special position within the Civil Service and ought to be proud of that position and ensure that his conduct both in public and in private life does not bring the Service into disrepute. It is, therefore, imperative that every civil servant adheres to these rules of conduct, and such other rules which may be promulgated from time to time.

(Republic of Kenya, 2006: 64)

On its part, the Public Officer Ethics Act (Cap. 183 of the Laws of Kenya) of 2003 (Rev. 2009) while defining a public officer provides for the general code of conduct and ethics for public officers. Under Section 2, the act defines a public officer as *anyone employee or member including of the government or its department, in service or undertaking any activities within a public institution set up for the administration of public finances*. In particular, the act requires that the members of the public and fellow officers alike are treated professionally and within the law. In the service to the public and in matters to do with human rights of people, the Act makes reference to Chapter Five of the Constitution of Kenya on the Bill of Rights as the standard on which adherence to human rights should be based. Such adherence to the rule of law is expected to facilitate the development of high moral ideals with regard to transparency and accountability in public service.

The Anti-Corruption and Economic Crimes Act (Cap. 65) of 2003 Rev. 2009) establishes the Ethics and Anti-Corruption Commission which among other is assigned the role of investigating any matter that constitutes economic crimes or any conduct liable to allow or encourage commission of economic crimes. Other functions include assisting law enforcement agencies to investigate economic crimes and providing advice to parties that may be involved in the prevention of economic crimes and institute civil proceedings against any person for the recovery of such property or for compensation and to recover public property that has been determined to have been acquired corruptly. The deterrence measures provided for by this Act are expected to dissuade public servants from engaging in practices that constitute economic crimes and hence uphold high moral values.

To reinforce the foregoing Act among others, the National Assembly enacted the Public Procurement and Disposal Act of 2005 (Cap. 412c) (Rev. 2010) to guide the process of public procurement in order to minimize underhand deals between public officials and parties within the private sector. The purpose of this Act was to establish procedures for procurement and the disposal of unserviceable, obsolete or surplus stores and equipment by public entities to achieve a number of objectives. These objectives include maximization of economy and efficiency, promotion of competition and fairness to each competitor and the integrity and fairness of

procurement procedures. Other objectives are increasing public confidence in the procurement procedures and facilitating the promotion of local industry and economic development. Most important as far as this paper is concerned, the Act aims to revitalize transparency and accountability in public procurement procedures. The foregoing is expected to be achieved through among others, open and therefore competitive tendering of public goods, stores and services.

The foregoing acts of parliament are apparently amalgamated into the Leadership and Integrity Act of 2012, which aims to put into force and hence actualize Chapter Six of the Constitution of Kenya on Leadership and Integrity. The Act is meant to ensure that public officers respect the values, principles and requirements of the Constitution as set out in various legislative provisions. Section 13 of the Act spells out the ethical and moral requirements for public officers as they dispense public services. Public officers are required to demonstrate honesty of public affairs subjects to the Public Officer Ethics Act, 2003.

In particular, public officers are required not to engage in activities that amount to abuse of office, not to misuse public funds or falsify documents in order to defeat justice. Other requirements include respect for the Bill of Rights as envisaged in Chapter 5 of the Constitution and to desist from committing criminal acts as defined by the Penal Code or any other legislation. In summary, public officers are expected by the Act to internalize and practice the principles governing the conduct of state officers under Article 75 of the Constitution.

Despite the elaborate institutional framework, ethics and integrity are issues of great concern in the Public Service of Kenya as corruption and related malpractices still persist. For example, the Kenya Anti-Corruption Commission (2010) reports that corruption has substantially compromised public service delivery in the health sector as health care fraud, conflict of interest and other practices take root. On its part, the police is believed to be the most corrupt in Kenya, followed by Members of parliament and local government in that order (Afrobarometer, 2005). In its 2012 Corruption Perception Index Report, Transparency International ranks Kenya among the ten most corrupt out of the 176 countries scored countries (Transparency International, 2012)

Best Practices for Transparency and Accountability

That transparency and accountability are of paramount importance in the running of both public and private affairs is obvious. Its impact is widely felt in society and is best captured by Breuning (2005) thus,

Corruption is a leading cause of human suffering. Funds destined for
Famine relief and water purification disappear into secret bank accounts
Bribes provoke lapses in the regulation of hazardous materials, airport
security, food safety, and road safety. Corruption makes it impossible to sustain
the infrastructure required by a modern economy. In the end, it raises prices
and lowers service for everyone

(Ibid, 2005: 3)

To counter corruption in Kenya and ensure quality services to the public, Kidombo (2006) proposes that we require a minimum threshold of determination, honesty, high degrees of conviction and courage that it can be done away with. This is what we turn into as we highlight some of the best practices to ensure transparency and accountability in public service delivery.

Breuning (2005: 2) avers that *ignoring corruption means ignoring the damage it does* such as wastage of inventive talent, lost investment opportunities, compromised ethical conduct among officers and most important as far as this paper is concerned less that optimal provision of public services. The foregoing can neither be better said nor can its implications be gainsaid. That actions and inactions by government officers and private individuals have negatively affected public service delivery is not subject for debate. Indeed, the laws, regulations and policies in operation in the country for transparency and accountability are corruptly circumvented leading to wastage and loss of public resources. What is the panacea out of this?

It is crystal clear from the foregoing expose that the institutional framework for transparency and accountability in Kenya is elaborate enough to inculcate the necessary ethical behavior in the

private and public sector. This is expected to substantially tame the seemingly runaway corruption and related malpractices. Nonetheless, there is apparently wobbly political will to the same effect given that many of the malpractices that negatively affect public service delivery are perpetrated by public officers. To tame corruption and ensure transparency and accountability in the public service therefore, political commitment and a will are not optional. These are expected to inject the necessary ethical conduct among public officers particularly at the top level management and then cascade this to the lowest hierarchy of the public service. The foregoing is also expected to be replicated in the private sector.

Related to the foregoing is the institutionalization of democratic ideals within the Kenya population. This is more so given that dictatorial regimes are known to be highly corrupt in which transparency and accountability are thrown out of the window. In such cases, human rights abuses and related malpractices are the norm and public service delivery becomes the overall casualty. It is therefore important to strengthen and materially and morally support institutions that ensure accountability and transparency including the judiciary, parliament, county assemblies and investigative organs of the government. This though as argued elsewhere requires political will and commitment in deed. Short of the foregoing, gains towards transparency and accountability in public service becomes effectively cancelled out with service delivery getting a major beating.

Many countries in the world have been seen to tame corruption and related malpractices to level where their impacts can be said to be substantially inconsequential to public service delivery. How can Kenya learn from such countries? What lessons does Kenyans have to learn from such countries? What anti-corruption strategies are in place in these countries? The starting point in this case would be to carry out benchmarking for best practices in developed and rapidly developing economies on the measures they have instituted to tame corruption and institutionalize transparency and accountability in public service delivery. It is through such data that strategies can be implemented to enhance transparency and accountability in public service delivery.

Some recently introduced practices in the public service are yet to be institutionalized in Kenya including performance contracting. Although this has been seen to work well where officers have set targets to achieve within agreed upon timelines, it is yet to be cascaded to the lowest levels of public service. For example, in many public universities performance contracting is yet to be implemented among heads of academic department even though education is an important service by the Government of the Republic of Kenya. Indeed, it is surprising that even though department in universities have work plans, these are yet to translated into performance contract targets. Even where faculties have performance contracts, evaluation is rarely done, which in essence affects public service delivery in the education sector. It is expected that cascading the idea to the lowest cadre of the public service will substantially improve public service delivery and in the process institutionalize transparency and accountability ideals.

Many government activities, programmes and projects are still planned and implemented using the discredited top-down approach. As such, although the institutional framework is clear on participation of all stakeholders, this has been more rhetoric than actual leading to implementation of activities that do not go along with the needs of the intended beneficiaries. This alienates many would-be beneficiaries who henceforth become passive leading to less than optimum participation and by extension benefits. As a counter measure, it is important that where participation of the would-be beneficiaries is implied, monitoring to this effect should be carried out and bottlenecks to it done away with. In particular, strategies should be put in place such that the voices and opinions of the poor, marginalized, disadvantaged and the vulnerable are not peripheral. This is expected to ensure transparency and accountability in public service delivery given the scrutiny subjected to public officers by the masses.

Corruption and unethical conduct with regard to public service delivery are so deeply embedded in the Kenyan society such that continuous research is highly recommended. Indeed, bearing in mind its consequences, it is important that a training and research institute is set up to study and continuously research on the menace. Such should be a compulsory training for public servants as an induction into the public service. Related to the foregoing is training on patriotism right from early childhood and into working life. This is intended to instill the necessary ethical

behavior for public service delivery, not just for those in public service but also in the ranks of the private sector.

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