

TOWARDS AN ETHICAL PUBLIC SERVICE

A publication by:
Evelyn Maureen Adhiambo

A PAPER FOR PRESENTATION DURING THE LONDON CONFERENCE
ON PUBLIC OFFICE AND INTEGRITY

JUNE, 2018

Contents

1.0	Historical background of Kenya’s public service on matters Ethics.....	3
2.0	Legislative framework and Mandate of the Public Service Commission	5
2.1	Challenges in public sector reform on matters ethics and integrity	6
2.2	Promoting Public Service Integrity in Kenya	7
3.0	Conclusion	8

1.0 Historical background of Kenya's public service on matters Ethics

The evolution of Kenya's public service from pre-independence to date in relation to matters ethics and integrity forms a firm base and helps in identifying the main factors that have influenced the effectiveness of the public service.

The 1970 "Ndegwa Commission" constituted to investigate appropriate structure and remuneration of the civil service, noted that there was a serious shortage of qualified professionals which thus compromised the quality of public services. The key highlights of their recommendations was to allow public officials to own property and run businesses and the creation of an office of the ombudsman. The recommendation allowing public officials to own property and run business was accepted by the Government in sessional paper 5/1974, while the later was not. The failure to create the office of the ombudsman who could be an impartial investigative agency led to conflicts of interests and compromised service delivery. A committee constituted in 1979 chaired by S. Waruhiu to establish why the recommendations by the Ndegwa commission had not yielded positive gains in the civil service. The findings by the committee revealed that standards in the of professional ethics in the civil service where low and acts of corruption rife. The committee recommended the need to introduce aspects of recognition of top achievers, assigning monitoring role for managers, utilization of scarce resources and manpower through proper planning abolition of the Teachers Service Commission and enhancement of remuneration for judges and magistrates to disengage them from engaging in private business.

The three-phased civil service reform programme launched by the government in 1993 was meant to enhance public service efficiency and productivity with the expectation to facilitate equitable wealth distribution necessary for poverty

alleviation and create enabling environment for investment and private sector growth.

The greatest milestone in matters public office integrity was institutionalized in 2003 during the era of the NARC Government. During this period, the government enacted various pieces of legislation including the Anti-Corruption and Economic Crimes Act 2003, and the Public Officer Ethics Act, 2003 and the Persons with Disabilities Act 2003. The Anti-Corruption and Economic Crimes Act established the Kenya Anti-Corruption Commission a body charged with investigating corruption and recommending prosecution.

The Public Officer Ethics Act, 2003 on the other hand provided for a general Code of Conduct for public officers, which declared the Public Service Commission as the responsible Commission for the public officers as stipulated in the law. The Act, introduced the requirement for financial disclosures, (initial, every two years and final declaration upon retirement. The Commission was further are given powers under the Act to take disciplinary action against public officers who breach the Code and the Act. Although there existed codes of conduct for appointed public officers issued by responsible Commissions under the Public Officer Ethics Act for a long time those elected have operated without a Code. The Leadership and Integrity Act, 2012 sought to guide all the public officials who were either elected, nominated or appointed. Further, the government adopted the results based management in the public service with the main objective of improving public service performance and service delivery.

The establishment of the office of the public complaints standing committee (Ombudsman) was meant to inquire into allegations of misuse of office, corruption, unethical conduct breach of integrity, maladministration, delay, injustice,

discourtesy, inattention and ineptitude. With the passage of the Constitution in 2010, the Commission on Administrative Justice took over the functions of this Committee and of the Kenya National Commission on Human Rights (KNCHR). In concluding it is worthy to note that many of the reforms the Commissions and Committees proposed are now provided for in the Constitution under Article 10 (on National Values and Principles of Governance), the Bill of Rights, Chapter Six (Leadership and Integrity), Chapter 10 on the Judiciary specifically Article 160 on judicial independence, Chapter 13 on the public service and Chapter 15 on commissions and independent offices.

2.0 Legislative framework and Mandate of the Public Service Commission

The Public Service Commission is established under Article 233 of the Constitution of Kenya, 2010. The mandate of the Commission entails the provision of competent human resource, promotion of good governance and ensuring efficiency and effectiveness in provision of quality services in the public service. This mandate is spelt out in Articles 234, 155(3)(a), 158(2), (3) and (4), 171(2), 230(2)(b) and 236 of the Constitution. In implementing the mandate, the Commission is guided by the values and principles in articles 10 and 232 of the Constitution.

In the establishment of a professional, ethical and principle based public service, the Commission is guided by the Constitution, relevant legislation and policy documents as issued by the executive arm of the government from time to time. Further, the Commission reports to the President and Parliament on the extent to which these values and principles are complied with in the public service.

2.1 Challenges in public sector reform on matters ethics and integrity

Ethical conduct and integrity in the public sector has been in existence since post-independence Kenya. However, quite recently the public service has endeavoured to ensure that the public service is guided by rules of ethical conduct especially on matters touching on conflict of interest, financial interests that conflict with agency functions and outside interests especially matters touching on friends and family, accepting compensation from an outside source in undertaking official duty, disclosure of official agency information to unauthorized persons for personal gain and use of agency equipment to carry out personal activities. On matters integrity, there is a grey area on to what extent a public official when faced with a dilemma will do the right thing more so if the stakes are high. This is evidenced by the culture of politicizing corruption and integrity issues especially by the political class who in turn use their populace as a smokescreen giving an impression that “our community” is being targeted. There has also been public apathy in the fight against corruption and therefore, there is need to create awareness and rally support in the fight and an indifferent religious/ civil society sector on matters relates to corruption has let the vice thrive. Further, lenient sentences meted by the courts have made it easy for corrupt officials to seek bail or have the courts issue “favourable” sentences or court fines, without considering magnitude of the matter at hand.

2.2 Promoting Public Service Integrity in Kenya

Kenya's public service falls under the Executive arm of the government. The Constitution of Kenya, 2010 defines public office as an office in the national government, county government or the public service, whose remuneration and benefits of the office are payable directly from the Consolidated Fund or directly out of money provided by Parliament (Legislature).

Further, public service means a collectively of all individuals, other than State officers, performing a function within a State organ, and a public officer means a person other than a state officer who holds a public office. State officers on the other hand are persons holding a state office, which includes but not limited to the presidency, cabinet secretaries, members of parliament, judges and magistrates, member of a commission and holder of an independent office, attorney general among others.

In promoting public office integrity, both state and public officers are guided by rules of ethical conduct and values as espoused in the Kenyan Constitution. The strengthening of key institutions through legislation and release of executive orders by the Presidency and Codes of Conduct by the Public Service Commission has endeavoured to ensure that the public service is governed by the rule of law, professionalism and ethical conduct.

In promoting integrity and ethical conduct in the public service, The Public Officer Ethics Act, 2003 guides all public servants on standards of ethical conduct and provides for declaration of assets and liabilities (initial, two-year and final) and provides for codes of conduct in the dealership among themselves and the public. The Leadership and Integrity Act, 2012 provides code of conduct for state officers

and the requirement for self-declaration to seek clearance/verification for appointments to public office at to some extent the private sector.

3.0 Conclusion

In as much as the government has in place legislative and institutional mechanism to fight corruption, there is need to inculcate a culture of national values which can be done through the education system, religious forums, identifying role models (by recognizing and awarding public officials who exemplify high ethical standards). As a country, the need for a national campaign to mobilize the public in the war against corruption and not engaging in any corrupt dealings especially with public officials and finally, making corrupt activities a serious economic crime and ensuring harsh penalties are vested on those who engage in corruption or repossession of their properties, this will act as a deterrent for corrupt individuals.

References

Statues

1. Ethics and Anti-Corruption Commission Act, 2011
2. Public Service Commission Act, 2017
3. The Constitution of Kenya, 2010
4. The Public Officer Ethics Act, 2003
5. The Leadership and Integrity Act, 2012
6. The Anti-Corruption and Economic Crimes Act, 2003

Reports

7. Waruhiu Committee Report
8. Ndegwa Report, 1973