Dr Elijah Achoch, Kenya and Public Office

**A. Attitudes: Formal and informal, elite and public understandings of public office**

i. How do people - both members of the elite and ordinary people - in Kenya understand the nature of public office and its responsibilities?

ii. How do those in public office understand their responsibilities? To what extent is the traditional distinction between *administrative*and *pol itical*office tenable or useful?

The public sector in Kenya has hitherto been faced with the challenge of poor and declining performance, which inhibits realization of sustainable economic growth. The Public sector performance had consistently fallen below expectations due to: Excessive regulations and controls; Frequent political interference; Poor leadership and management; Outright mismanagement; Bloated staff establishments; Multiplicity of principals and non-performing employees. In addition to regressing economic growth, the decline in Public Service performance had resulted to poor performance, poor service delivery, degeneration of infrastructure and severe brain drain.

In order to move the implementation of the Civil Service Reform Programme forward, the Kenya Government developed and launched the Strategy for Performance Improvement in the Public Service in 2001. The Strategy sought to increase productivity and improve service delivery. It outlined the actions that were necessary to imbed long lasting and sustainable change in the way public services are offered. Underpinning this strategy was the Results Based Management (RBM) approach, which made it necessary to adjust operations to respond to predetermined objectives, outputs and results.

The adoption of this approach therefore demanded a paradigm shift in the way public institutions were to be managed. This called for a transformation from a passive, inward-looking bureaucracy to one, which is pro-active, outward looking and results oriented and one that seeks ‘customer satisfaction’ and ‘value for money’. Consequently, the Ministries’/Departments were required to develop strategic plans, which reflected their objectives derived from the National Development Plans, the Poverty Reduction Strategy Papers and based on the Medium Term Expenditure Framework (MTEF), Sectoral Priorities and Millennium Development Goals (Strategy for Performance Improvement in the Public Service 2002).

iii. Where do expectations of political office come from? What is the history of attitudes to political and administrative office, what is the legacy of the colonial era, and how far are attitudes to and expectations of public office rooted in current social divisions?

After independence in 1963, Kenya adopted a strong centralized state and developmental ideology that required the state to play a crucial role in the economic development of the country. The state intervened directly in the economy through a variety of means to promote growth of new industries and reduce the dislocations which had been occasioned by the shifts arising out of the independence transition. From the stand point of economic policymaking, the most significant political factor in the years after independence was the concentration of decision making in the central government and in particular in the Office of the President. A series of laws and constitutional amendments in the 60s increased the powers of the president in relation to the cabinet, judiciary, civil service, local government and civil society organizations. The president further expanded his political powers through the control of institutions inherited from the colonial regime that could be used for political patronage and provided a source of economic rents for ministers and other political supporters Backed by a strong nationalist coalition emerging from victory; first over colonial forces and subsequently from elections, the post colonial regime enjoyed legitimacy and popular support .The mantle of national heroes bestowed on the ruling class impelled them to maintain avenues of political participation in order to maintain legitimacy. Such a status also made it easier for them to do so in a manner that suited their own interests. What emerged therefore was a strong patrimonial system, where loyalty was rewarded more than merit and allegiance more than performance.

One of the most critical aspects of the colonial legacy in Kenya may not therefore be simply the transfer of institutions as is often argued, but their nature. The colonial leadership bequeathed a system designed to provide government with monopoly of coercive sanctions and resources that could be used not only to maintain law and order, but also to repress opponents (perceived and real) and ultimately to discourage any type of dissent .It was the authoritarian nature of the institutions and laws, and the ends to which they were used, rather than the mere fact of their transfer which helps explain how subsequent regimes used such state organs to sustain themselves in power. One such institution inherited from colonial system was the provincial administration. From colonial period, when the system of provincial administration was crafted, the overriding interests were those of the ruling elites, with the interests of the people sacrificed in lieu of elites’ control of state power through a tightly controlled administrative structure.

After independence, the provincial administration became a symbol of power and authority of the Presidency .The existing capacity of the provincial administration enabled the executive to act without consulting the legislature, thereby replicating the direct control of the colonial Governor. With such arrangements in place, it was the administrative officer, rather than the party official who became the major link between the government and the people in the country at large .It was such unchecked institutional capability, backed by the class alliance cemented by patronage appointments that bound together the ‘pact of domination’ This in turn created a powerful system that was able to maintain its dominance and legitimacy in successive regimes after independence.

**B. Institutions, Codes and Training**

There is a need to identify and review the regulatory apparatus for public office in Kenya – how far are codes of conduct, scrutiny bodies, checks and balances, etc, useful and appropriate? What are their areas of strength and weakness? In addition, are public servants and politicians inducted and trained in a way commensurate to Kenya's current challenges and existing history? What motivates public officials and how far does the regulatory apparatus and the systems of remuneration match people’s aspirations and expectations?

The current Code of Regulations for the Public serrvice was last reviewed in 2006. Since then there have been fundamental changes both in the structure of the Public Service and the management of the Human Resource. These changes include the promulgation of the Constitution on 27th August 2010 and reforms in various aspects of Public Service Management. The changes necessitated a review and harmonization of the Code of Regulations. In doing so, the Code has been renamed Human Resource Policies and Procedures Manual for the Public Service. The Manual provide guidelines in the management and development of human resource capacity towards the achievement of various national goals and objectives. t incorporates provisions of the Constitution, Labor Laws and other Legislation that govern various aspects of industrial relations in the Public Service. The Manual is also anchored on other policies and guidelines governing the management of the Public Service. It provides the basis for human resource policies and regulations in the wider Public Service. It is important to note that these policies are not exhaustive of all the rules and regulations governing Public Servants in their day to day activities. They should therefore, be read alongside other relevant Statutes, where applicable, for better interpretation and application. The policies apply to the National Government and other Government Agencies and are updated from time to time to reflect policy changes affecting human resource management and development in the Service. The regulations however, are used as the minimum norms and standards for human resource practice in the Public Service.

County Public Services may benchmark on the policies for their operations.

**C. What are the prospects for change?**

To what extent can we identify areas of the public service that offer examples of integrity, and how far is it possible to construct codes of conduct that can inform training and induction which may in turn influence public attitudes to the service? The assumption behind the project is that any such codes would need to be sensitive to the expectations and aspirations of ordinary Kenyans rather than being something that can be copied from elsewhere. Is this assumption realistic and appropriate?

**BACKGROUND**

The Commission on Administrative Justice was established vide the Commission on Administrative Justice Act 2011(hereafter referred to as the Act) pursuant to Article 59 (4) of the Constitution and has the powers and status of a Commission within the meaning of Chapter 15 of the Constitution. The Commission is a successor to the Public Complaints Standing Committee.

**MANDATE**

The mandate of the Commission can be summarized in nine (9) broad categories;

1. Quasi-judicial mandate to deal with maladministration.
2. Ensuring compliance with leadership, integrity and ethics requirements.
3. Litigation and quasi- judicial functions.
4. Reporting Obligation.
5. Training of Government Ministries Departments and agencies.
6. Resolution of inter-governmental conflicts.
7. Provision of advisory opinions and recommendations
8. Promotion of Constitutionalism and Human Rights advocacy and;
9. Resolution of public complaints in the Performance contracting cycle

**FUNCTIONS**

The Commission performs the following functions:-

1. Investigates any conduct in state affairs, or any act or omission in public administration in any sphere of government, that is alleged or suspected to be prejudicial or improper or to result in any impropriety or prejudice.
2. Investigates complaints of abuse of power, unfair treatment, manifest injustice or unlawful, oppressive, unfair or unresponsive official conduct.
3. To report on complaints investigated and take remedial action.
4. Inquire into allegations of maladministration, delay, administrative injustice, discourtesy, incompetence, misbehavior, inefficiency or ineptitude within the public service.
5. Facilitate the setting up of, and build complaint handling capacity in, the sector of public service, public offices and state organs.
6. Work with different public institutions to promote alternative dispute resolution methods in the resolution of complaints relating to public administration.
7. Recommend compensation or other appropriate remedies against persons or bodies to which the Act applies.
8. Provide advisory opinions or proposals on improvement of public administration, including review of legislation, codes of conduct, processes and procedures.
9. Publish periodic reports on the state of administrative justice in Kenya.
10. Promote public awareness of policies and administrative procedures on matters relating to administrative justice.
11. Take appropriate steps, in conjunction with other State organs and Commissions responsible for the protection and promotion of human rights, to facilitate promotion and protection of the fundamental rights and freedoms of the individual in public administration.
12. Work with the Kenya National Commission on Human rights to ensure efficiency, effectiveness and complementarily in respective activities and to establish mechanisms for referrals and collaboration.

**RESPONSIBILITY**

The Primary responsibility of the Commission on Administrative Justice is the traditional role of the “Office of The Ombudsman” as known in many countries.  This office checks maladministration on the part of public Officers, and deals with instances where such Officers unreasonably delay in action; show discourtesy or misconduct; incompetent or inept and generally fail to adhere to the Constitutional principles that all sovereign authority of the state draws from the people, and that all Public Officers to whom that sovereign power is delegated must treat the people with respect, and must be efficient, responsive and impartial and in accordance with Articles 73 & 232 of the Constitution.

In the context of the right to fair administrative action, Article 47 of the Constitution specifically recognizes the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair.  The Commission on Administrative Justice is the primary custodian of that right.

Further, the Commission on Administrative Justice, in collaboration with sister commissions and organs, will be the organ to ensure compliance with the Ethics and integrity requirements in chapter six of the Constitution, and the tenets of Public Service in Chapter Thirteen of the Constitution.

In undertaking the foregoing, the Commission looks into the conduct of all Public Officers, within National and County government, and thus the need to decentralize its offices and services to the County level for easy access by the Public and more effective carrying out of its mandate.

**Powers**

In the performance of its functions under the Constitution and the CAJ Act 2011, the Commission has the following powers.

1. May conduct investigations on its own initiative or on a complaint made by a member of the public;
2. Power to conduct conciliation mediation and negotiation;
3. Power to issue a summons to a witness to assist for the purposes of investigations [A.252(3)(a)] as read with (A.59);
4. Power to sue or be sued in own name ;
5. Power to acquire, hold, charge or dispose of movable and immovable property ;
6. Issue Summons, and require that statements be given under oath;
7. Adjudicate on matters relating to Administrative Justice;
8. Obtain relevant information from any person or government authorities and to compel production of such information;
9. Seek and obtain court orders to do searches and seizure of documents;
10. To interview any person in relation to matters of administrative justice;
11. To conduct Hearings and to compel attendance and provision of answers as appropriate;
12. Full powers of a court to issue Summons, subpoenas, compel production of  documents, administer interrogatories (questions) and to compel disclosure of any relevant information held by any person;
13. The commissions’ powers to investigate shall not be limited by any law to the effect that the action in question is final or cannot be appealed, challenged, reviewed, or called into question.

Best Regards

**Dr.Elijah Achoch**