

Restructuring the Provincial Administration: An Insider's View



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Obuya Bagaka



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Abstract

Although critics of the Provincial Administration argue rightly that it has been corrupt, repressive and unaccountable, the 2010 Kenyan constitution has accorded it a deserved but not necessarily desirable level of recognition. Under the new constitution, the Provincial Administration will play complex and indispensable administrative roles than ever before. It will coordinate inter-ministerial duties, manage the relationship between the national and county governments, and monitor the implementation of national policies and utilisation of funds. However, it must focus on service provision, downward accountability, and advance public interest rather than self or regime interests, stay above inter- and intra-governmental conflicts, to remain relevant.

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The SID Constitution Working Paper Series

In 2010, on the cusp of Kenya's new constitutional dispensation, the Society for International Development (SID) embarked on a project called *'Thinking, Talking and Informing Kenya's Democratic Change Framework'*. Broadly stated, the objective of the project was both historical and contemporary: that is, to reflect on Kenyans struggles for a democratic order through a book project, and to examine the significance of a new constitutional order and its legal and policy imperatives, through a Working Paper Series.

Consequently, SID commissioned research on some of the chapters or aspects of the new constitution that require further policy and legislative intervention, culminating in ten Working Papers. These papers, mostly by Kenyan academics, are intended to help shape public discussions on the constitution and to build a stock of scholarly work on this subject.

These papers seek to contextualize some of the key changes brought about by the new constitutional order, if only to underscore the significance of the promulgation of the new constitution on August 27, 2010. The papers also seek to explore some policy, legislative and institutional reforms that may be necessary for Kenya's transition to a democratic order.

The Working Papers explore the extent to which the new constitution deconstructs the Kenyan post-colonial state: how it re-calibrates the balance of power amongst branches of government and reforms government's bureaucracy; redraws the nature of state-individual relations, state-economy relations, and state-society relations; and deconstructs the use of coercive arms of the government. Lastly, the papers examine some of the limitations of the new constitution and the challenges of constitutionalism.

In the first set of papers, **Dr Joshua Kivuva**, **Prof. Ben Sihanya** and **Dr. Obuya Bagaka**, separately examines how the new constitution has re-ordered nature of Kenya's post-colonial state, especially how it has deconstructed the logic of state power and rule, deconstructed the 'Imperial Presidency', and how it may re-constitute the notorious arm of post-independent Kenya's authoritarian rule: the provincial administration.

The next set of papers in this series, by **Dr. Othieno Nyanjom** and **Mr. Njeru Kirira**, separately looks at the administrative and fiscal consequences of Kenya's shift from a unitary-state to a quasi-federal state system. Whereas Dr. Nyanjom examines the anticipated administrative and development planning imperatives of devolving power; Mr. Kirira examines the anticipated revenue and expenditure concerns, which may arise in a state with two-tier levels of government. Both discussions take place within the context of a presidential system of government that the new constitution embraces.

The paper by **Dr. Musambayi Katumanga** examines the logic of security service provision in post-colonial Kenya. Dr. Katumanga argues that Kenya needs to shift the logic of security from regime-centred to citizen-centred security service provision. However, despite several attempts in the recent past, there are still several challenges and limitations which Kenya must redress. The new constitution offers some room for instituting a citizen-centric security reforms.

The paper by **Prof. Paul Syagga** examines the vexed question of public land and historical land injustices. It explores what public land is, its significance and how to redress the contention around its ownership or use. Similarly, the paper examines what constitutes historical land injustices and how to redress these injustices, drawing lessons from the experiences of

other states in Africa that have attempted to redress similar historical land and justice questions.

The papers by **Dr. Adams Oloo**, **Mr. Kipkemai arap Kirui** and **Mr. Kipchumba Murkomen**, separately examines how the new constitution has reconfigured representation and legislative processes. Whereas Dr. Oloo examines the nature of the Kenya's electoral systems, new provisions on representations and its limitations; arap Kirui and Murkomen look at the re-emergence of a bicameral house system and the challenges of legislation and superintending the executive.

If the other nine papers examine the structural changes wrought by the new constitution; the tenth paper, by **Mr. Steve Ouma**, examines the challenges and limitations of liberal constitutional order, especially the tensions between civic citizenship and cultural citizenship from an individual stand point. Perhaps Mr Ouma's paper underscores the possibility of a self-defined identity, the dangers of re-creating ethno-political identities based on old colonial border of the Native Reserves - the current 47 counties and the challenges of redressing social exclusion and the contemporary legacies of Kenya's ethno-centric politics.

The interpretation of the constitution is contested; so will be its implementation. We hope that this Working Paper Series will illuminate and inform

the public and academic discussions on Kenya's new social contract in a manner that secures the aspiration of the Kenyan people.

SID would like to sincerely thank all those who have made the publication of these papers possible, especially those who participated in the research conceptualization meeting and peer-reviewed the papers such as: **Dr. Godwin Murunga**, **Prof. Korwa Adar**, **Ms. Wanjiru Gikonyo**, **Dr. Joshua Kivuva**, **Dr. Richard Bosire**, **Dr. Tom Odhiambo**, **Ms. Miriam Omolo** and **Dr. Mutuma Ruteere**, for their invaluable input.

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Working Papers Series Coordinators

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Acronyms

CA	County Administrator
CDF	Constituencies Development Fund
CEC	County Executive Committee
CGAs	Central Government Administrators
DA	District Assembly
DCE	District Chief Executive
GoK	Government of Kenya
GoU	Government of Uganda
KANU	Kenya African National Union
MLGRD	Ministry of Local Government and Rural Development
MoLG	National Resistance Movement
MPs	Members of Parliament
NARC	National Rainbow Coalition
PA	Provincial Administration
RCC	Regional Coordinating Councils
RDC	Resident District Commissioner
RDC	Ministry of Local Government
TI – Kenya	Transparency International Kenya

“It is getting harder to run a constitution than to frame one.”

Woodrow Wilson, 1887.

1.0 Introduction

On August 27th 2010, a new Kenya was born following the promulgation of a new Constitution which among other things devolves political, fiscal and administrative powers from the central government to the county governments. Unlike other countries like Uganda, Ghana, Columbia, and Argentina where the three types of decentralization occurred in leaps and sequentially (Kauzya, 2007; Falleti, 2005; Crawford, 2004), the Kenyan case is peculiar in the sense that all the three types of decentralization have occurred at once – ‘a big-bang’.

Some of the key objectives of decentralization as spelt out in Article 174 include: “to promote democratic and accountable exercise of power; to give powers of self-governance to the people and enhance the participation of the people in the exercise of the powers of the state in making decisions affecting them; and to facilitate the decentralization of state organs, their functions and services from the capital of Kenya” (Government of Kenya (GOK), Constitution, 2010: 113).

Administratively, to actualize self-governance, Article 179 of the 2010 Constitution requires that all county executive authority and its exercise be vested in the

County Executive Committee (CEC) headed by an elected governor and his or her deputy. Functionally, county governments are empowered by Article 183: Clause 1 (a-d) to implement county legislation, manage and coordinate county administration and their departments including functions conferred to them by national legislation.

Operationally, Article 235 requires parliament to enact legislation to enable county governments to create county public service mechanisms, responsible for creating offices, recruiting, promoting and disciplining public servants within their jurisdictions (GOK, 2010). The 2010 Constitution therefore requires county governments to create their own bureaucracies to enable them to better serve their citizens. Broadly, these Articles and others seem to emphasize a downward accountability mechanism where people-elected officials run the local affairs of the devolved governments and are accountable to those who elect them.

Previously under the old constitution, coordination of central government policies and development programmes at the local level was done by the provincial administration (PA). As a department within the Office of the President, the PA not only supervised other central government ministries at the province and district levels but also coordinated their programmes and policies. As personal

representatives of the president at the local levels, the provincial administrators exercised upward accountability as they "served at the pleasure of the President" (Akech, 2010: 27).

Thus, provincial administrators followed orders of their master(s) without question even when those orders were detrimental to the public interest. This upward accountability mechanism was exploited by the executive to suppress those opposed to its policies and programmes. In the eye of an ordinary Kenyan, the history of the provincial administrators personifies repression, dictatorship, impunity and authoritarianism.

The spirit and letter of the 2010 Constitution therefore reverses this situation by bestowing the role of coordinating government programmes and policies to a CEC headed by the governor in two ways: first, for certain functions specified in the Fourth Schedule and second, for those functions to be delegated by the national government for execution. The transfer of executive powers from a central government bureaucrat to a locally elected governor was seen as a measure to inculcate a culture of accountability in the running of state affairs.

According to Mbai (2003) accountability refers to the notion that public officials should be held responsible for their actions while in office. Politically, accountability seeks to deal with problems of arbitrary exercise of power by those in positions of authority. The fear of arbitrary use of state power in Kenya is epitomized by the retention of the PA notwithstanding that it will be restructured.

Given that the functions vested in the CEC under the 2010 Constitution are a replica of the current functions performed by the PA, one raging debate has been the relevance of the PA in the new governing structure. Although paragraph 17 of the Sixth Schedule of the 2010 Constitution requires that

the PA be restructured within five years, just how this will be done and what role it will play under a devolved structure remains unclear.

This opaqueness is a subject of much controversy with proponents of the 2010 Constitution arguing that it should be restructured while protagonists argue that it should be scrapped altogether. Despite recent reforms aimed at revamping the image of this department from being an instrument of repression to a development-oriented department, the aloofness the PA attracts anchored in its operational history, is far from changed.

In churning out the future role of the PA officials as implied in the various sections of the 2010 Constitution, the intriguing question throughout this analysis is: to whom and in what ways will the PA officials be accountable? To public administration scholars, administrators are not only subject to answerable to their hierarchical (or intergovernmental political structures) superiors, they are also accountable to the community (Wilson 1887/1947; Wright, 1990).

This paper attempts to lay out the future role of the PA as implied in Chapters Eleven and Twelve of the 2010 Constitution. In an attempt to sketch the PA's future role, a historical institutional analysis will be undertaken here to understand its evolution, and operational history. Additionally, a comparative analysis of Uganda and Ghana will be undertaken to rethink the future of the PA.

The paper further highlights the capacity building that is needed for PA officials to aid them in enforcing central government policies while at the same time respecting the institutional integrity of county governments, towards enhancing intergovernmental relations between the two levels of government. The paper ends with suggestions on how to manage intergovernmental relations under a devolved system.

2.0 A Temporal View of the Provincial Administration

Political institutions, whether they exist in laws, norms, traditions, or practices that advance some societal values, are creatures of the very society that they seek to shape, influence, protect or control (Pearson, 2004). Although the PA has rightly been accused of being the face of repression, corruption and dictatorship, it must not be lost that it was a creature of the old Constitution that created an imperial presidency whose preoccupation was control and survival.

As Akech (2010:18) noted, “members of the provincial administration and the police...understood that it was sometimes in the interest of their personal survival to follow what they understood to be the direction or inclinations of... the president ...in their areas rather than to uphold the law”. That such *modus operandi* negated public accountability in the exercise of power and bred human rights violations, corruption and impunity is no surprise.

The PA was established by the colonial authorities as an instrument of the state whose activities included general representation of the authority of the executive at the local level, coordination of government activities in the field, and chairing a number of committees at the local level. During the colonial period, the PA was used to suppress any form of political opposition and thus maintenance of law and order became its major preoccupation (Oyugi, 1994:180).

After independence, President Kenyatta strengthened the provincial administration as a coercive institution, having killed a federal structure in order to gain firm control over any political threat to his government (Orvis, 2006). The consolidation of powers entrenched by Kenya's post-colonial rulers has been blamed for the deterioration of ethical standards in the public service (Mbai, 2003).

The PA was and still is a department within the Office of the President and forms an integral part of the central government bureaucracy. The PA system divided Kenya into eight administrative provinces: Nairobi, Central, Nyanza, Western, Rift Valley, Eastern, North Eastern and Coast. Each province was divided into districts, districts into divisions, and divisions into locations and sub-locations. Provincial commissioners headed provinces while district commissioners head districts. All were and are still presidential appointees (Republic of Kenya: Constitution, 2001). The 2010 Constitution has however phased out provinces.

As a department within the Office of the President, the PA was, and has on many occasions been used to enforce executive decisions.

As an enforcement arm of the executive's decisions, the PA has attracted love from those within the system and hatred from those opposed to it. For instance, as early as 1965, under the pretext of public safety and in accordance with the Public Order Act (Cap 56 Laws of Kenya), President Kenyatta issued a presidential directive to the PA to require all members of Parliament (MPs) to obtain permits before addressing any meetings, including those in their own constituencies. This directive put the PA in conflict with MPs who interpreted it as a move by the executive to control their political activities (Oyugi, 1994).

The Public Order Act (Cap. 56), a colonial inheritance, required that all public meetings be licensed by a district commissioner (Ndegwa, 1998). At the local level, application of this law was capricious and political. For instance, MPs who opposed the Kenya African National Union (KANU) government's policies had difficulties obtaining licenses. On many occasions, the PA issued licenses to vocal MPs

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only to embarrass them by holding parallel meetings (*barazas*) in their location as a ploy to denounce MPs development agenda (Throup, 1993).

Given the strict laws that existed for such *barazas* under the Chiefs Authority Act (Cap 128 Laws of Kenya) that legally compelled local residents to attend such an event, most local residents attended the *barazas* thus denying local MPs the audience of their constituents.¹ In the early 1970s, Nellis (1971:390) stated that licenses to hold public meetings were not only hard to obtain, but also could be cancelled by district commissioners (DCs) without prior notice at times. Until the late 1990s the

PA continued to demand that MPs obtain licenses before holding any political rally (Adar and Munyae, 2001). Indeed, current critics of the PA remember these episodes with anger.

Through other legislative measures, the PA was also empowered to organize and supervise electoral processes. These powers allowed the PA to restrict voter registration in some areas and also restrict the political activities of dissident MPs (Orvis, 2006; Throup, 1993).

Ndegwa (1998: 4) asserts that in the days leading to the 1992 elections, “of the twenty one meetings cancelled or denied, all but one were opposition party meetings”. The PA therefore, steadily accumulated resources with a corresponding erosion of powers and responsibilities for the elected officials.

From the 1960s through to the late 1990s, the PA therefore amassed sweeping authoritarian powers and was arguably more powerful than local elected members (MPs). The increasing assertiveness of the PA thus left the MPs with only one venue to vent their frustrations – Parliament. These frustrations

¹ *Baraza* is a Swahili word for village meeting called by the local leaders. Under the Chief's Act, it was mandatory for the local people in a community to attend such *barazas* whenever the local chief announced or called them.

were expressed as early as 1966 through the Local Government Review Committee, which made a passionate plea for the abolition of the PA. A majority of MPs considered the PA an “antiquated and colonial and contrary to the spirit of self government” (quoted in Oyugi, 1994: 182). However after the demise of President Kenyatta, President Daniel arap Moi went on to strengthen the PA's institutional structure.

3.0 The Provincial Administration and Resource Allocation - The *Harambee* Movement

Having constrained local political activities, the KANU regime recognized that coercive means alone would not legitimize its policies. Instead, it re-engineered the *Harambee* spirit to mobilize resources at the local level. Waiguru (2002) defines *Harambee* as a self-help movement that entails voluntary contributions in either cash or labour toward a common good. As a bottom-up development strategy, it enables people at the community and grassroots levels to participate in the planning and implementation of local development projects.

Harambee activities helped provide social services such as primary schools, secondary schools, health facilities, water projects, cattle dips, and churches, all of which would subsequently be “taken over by the government for operation and maintenance and as a means of providing basic needs to large segments of the rural population” (Chieni, 2008: 4). Politically, the *Harambee* movement served two goals. First, the Kenyatta regime popularized it as a development process through which local MPs provided resources to their constituents from their own pockets and contributions from rich patrons within the system (Orvis, 2006).

Secondly, *Harambees* were used to check and

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constrain independent political activities and the influence of regional power brokers from mobilizing resources and political support, independently from the current regime. It is in this respect that the Public Collections Act (Cap. 106, Laws of Kenya) was also selectively invoked by the PA to regulate *Harambee* activities and to check dissident MPs' from creating independent sources of power. The provisions of this Act created a requirement that a license be issued by the PA before *harambees* could be conducted or before any funds could be collected from the public. The PA arbitrarily and politically issued such licenses. For instance, MPs opposed to the KANU government's policies were frequently denied licenses to raise funds for development projects in their constituencies.

Instead, the government often supported and groomed political rivals against elected MPs perceived to be vocal, by initiating and conducting *Harambee* drives in such recalcitrant MPs' constituencies (Ndegwa, 1998; 2003). And, despite the selective application of the Public Collections Act (Cap. 106) by PA officials, in the general public's imagination, *Harambees* served as benchmarks for measuring the MP's performance at the constituency level. As constituency representatives, MPs were, and have always been seen as better placed to bring the "bacon home" in the form of securing funding for development projects such as health clinics, water projects or building schools (Osendo and Gachucha, 2003).

To be re-elected, poor MPs had to unquestioningly approve KANU's policies, to avoid denials or cancellations of *Harambee* permits, and in the hopes of attracting contributions from rich barons within the system (Throup, 1993). Poor MPs and/or those perceived as 'anti-establishment' often failed to be re-elected. Even rich MPs were vulnerable given the government's leverage over licenses for holding these events.

Therefore, whereas the *Harambee* movement is credited for building schools, health facilities, cattle dips, boreholes amongst other things, it soon became

corrupted. For instance, after the introduction of multiparty politics in 1992, *harambee* contributions were used as a vehicle for bribing voters. Mwangi (2008: 272-3) documents how in the two elections held in the 1980s, *Harambees* accounted for only 7 per cent of the decade's total funding for local development projects, whereas in the multiparty era of the 1990s, during the two elections held these funds accounted for over 60 per cent of total funding for local development projects.

In the period between October and December of 2002 before the December 2002 general election, a total of 140 *Harambees* were held, led by President Moi as the highest contributor. Other personalities in the top 50 list included MPs closely aligned to the head of state and a number of provincial and district commissioners, that is, the PA officials (TI – Kenya, 2003). In other words, *Harambees* had evolved from being a national rural self-help development strategy to being one that deployed the ethos of self-help for specific ruling party political ends. The success of the latter could not have been achieved without the active participation of the PA.

The other malady of the *Harambee* movement was that areas with influential politicians and leaders were able to conduct grand *Harambees* and raise more resources to put up many local development projects. Resource mobilization and allocation was therefore skewed. Areas with more resources, including organizational resources, and more economic and political elites, became more successful than areas less endowed with these resource advantages (Makhanu, 2008). Memories of the PA's role during the *Harambee* era are still fresh in its critics' minds and they fear that its retention may perpetuate past injustices.

To be re-elected, poor MPs had to unquestioningly approve KANU's policies, to avoid denials or cancellations of Harambee permits, and in the hopes of attracting contributions from rich barons within the system (Throup, 1993).

It is evident from the foregoing that the role of the PA in enforcing the executive's preferences greatly reduced elected officials' influence on policy decisions and resource distribution at the local level. The executive's dominance was punctured in 2002 with the triumph of the opposition party National Rainbow Coalition (NARC) over KANU in the December 2002 general election. And calls for the abolition of the PA did not die off, as local elected officials sought to minimize the policymaking role of the PA in local issues. With the creation of the Constituencies Development Fund (CDF) in 2003, the first round in the post-KANU era appeared to have gone to elected officials. The establishment of the CDF specifically addressed the issue of unbalanced resource allocations that had been exacerbated through the *Harambee* movement, whose routine political manipulation had continued to privilege the previous regime's sympathizers (GOK – CDF Act, 2003; and 2007).

Thus, it can be argued that the asymmetrical power relations between the PA and elected officials over the years is the primary motivation of those opposed to the PA's retention at the local level. While the PA's operational history deserves condemnation, to judge fairly its performance, we must not ignore the historical context of its origin, and the nature of the regimes it sought to protect. Given that the 2010 Constitution stresses the need for the public service to practice openness instead of secrecy; downward rather than upward accountability; and the advancement of the public good instead of self interest; the PA must change if it is to remain relevant.

4.0 The Current Role Of A Provincial Administrator

According to the 2007 Scheme of Service for field administrative officers within the PA machinery, their field duties include but are not limited to:

- Coordinating government business, public programmes and activities in the field
- Maintenance of law and order
- Mobilization of resources for community development
- Dissemination and interpretation of government policies
- Coordination of state and official functions
- Facilitation of counter-terrorism activities, peace building and conflict resolution
- Management of security agents in the field
- Promotion of statehood and nationhood
- Coordinating disaster management and emergency responses
- Acting on emerging policies
- Promotion of good governance (GOK – MSPS, 2007).

For the administrative officers based in ministries/ departments, in addition to playing most of the duties identified above, they were also engage in the following duties:

- Managing staff deployed across the country
- Implementing and following up on presidential directives
- Serving as inter-ministerial liaison
- Managing public resources and assets in their jurisdictions
- Responding to parliamentary business
- Formulating policy
- Promoting the image of government;
- giving feedback to the government on policies that need to be re-assessed (GOK – MSPS, 2007).

A review of the above duties and responsibilities performed by the various provincial administrators provides a glimpse of the future role of the PA. Notwithstanding that some of these roles stand in conflict with those of the CEC, they nonetheless form the basis for crafting an intergovernmental relationship between the central government and the county governments -- what is a now commonly referred to as intergovernmental relation.

5.0 Intergovernmental Relations

Intergovernmental relations refer to the complex quilt of overlapping and interlocking roles within different levels of government. These go deeper and are more involved than the more formal understanding of devolution (Peters, 2004). Intergovernmental relations also refer to a set of policies and mechanisms by which the interplay between different levels of government serving a common geographical area is managed (Shafritz, Russell, and Borick, 2007). Intergovernmental relations are more oriented toward administrative issues rather than political issues.

What the 2010 Constitution provides in Articles 176, 186 and 189 is a political structure. Yet underneath this constitutional structure is an administrative structure referred to as intergovernmental relations that is function-specific. Although those opposed to the retention of the PA see a minimalist role for the central government at the local level under a devolved system, the reality suggests that such a view would be misplaced. Practically, what emerges from the sketched compartmentalized structures created in the 2010 Constitution is an intergovernmental relations structure.

Under any devolved system, there are eternal questions concerning the structure of intergovernmental relations. Which level of government will have overall responsibility for what functions? When functions are shared between levels of government, how will each function be divided among national and county governments? Who should be responsible for local programmes funded by the central government – local officials or officials from the central government? Should the taxes needed to finance county governments be raised by the level of government that is to consume them or by a higher level of government which has achieved notable success with the collect of taxes? The 2010 Constitution is the best place to go for answers to these questions, notably Articles 176, 186, and 189-191 (Republic of Kenya – Constitution, 2010).

However, before sketching the intergovernmental structure implied in the cited Articles of the 2010 Constitution, a comparative analysis of experiences of Uganda and Ghana on the role of central government administrators at the local level will be useful in shedding light on the future role of the PA.

6.0 Comparative Analysis of Intergovernmental Relations and Service Delivery

6.1 Uganda

Uganda has been praised for having a very advanced decentralized governance mechanism that was adopted during the bush war of the National Resistance Movement (NRM). As the main decentralization unit, Uganda has 79 devolved district councils and under the district there are sub-counties and town councils. The district council is the supreme political authority with both legislative and executive powers. Administratively, local governments are responsible for delivery of most of the basic services including primary health, primary education, water and sanitation, feeder roads, agricultural production, trade and commerce, public administration, etc. (Mugabi, 2004).

As the main decentralization unit, Uganda has 79 devolved district councils and under the district there are sub-counties and town councils.

The central government of Uganda (GoU) is responsible for the following functions and services: defence, law and order, banks, land, mines, mineral and water resources, citizenship, foreign relations, taxation, national parks, national elections and national plans. In each district, a Resident District Commissioner (RDC) represents the president and the central government and his or her function is to coordinate the administration

of central government services (Okidi and Golooba, 2006).

Further, the RDC monitors and inspects government services and may sensitize the populace on government policies and programmes; advise the district chairperson (equivalent to our county governor) on national matters that may affect the district; draw attention of the Auditor General on the need for special audits; or the Inspector General of government on the need to investigate cases of mismanagement or abuse of office; and even any line ministry on any divergences from or non-compliance with government policies (Mugabi, 2004: 4).

In terms of managing intergovernmental relations, the ministry of Local Government (MoLG) is the lead government department responsible for spearheading decentralization. Rather than managing

and administering decentralization, the MoLG is mandated to mentor and support local government capacity building, supervise and inspect local governments, develop policy and coordinate services with line ministries (Kauzya, 2007). The technical organs of the district council are headed by the Town Clerk a central government appointee who supervises directors who head directorates in the district councils. Town Clerks are fully accountable to the District Councils.

The district councils were also given powers to establish or abolish offices in the public service of a district or urban council as well as hire and manage personnel and administer their own payroll (Mugabi, 2004). Uganda's decentralization policy introduced a separate personnel system for the management of local government staff and was meant to strengthen their capacity for effective service delivery.

Through the Local Government Act of 1997, district

service commissions were created with powers to appoint persons in the service of these local governments, and to take any disciplinary action (GoU, 1997). The district councils were also empowered to create new boundaries within their jurisdictions; appoint statutory commissions and boards for land (district land boards), procurement (district and urban tender boards); and to promote accountability (local government public accounts committees).

While decentralization has recorded improved governance and service delivery in Uganda, it has not been without its challenges. For instance, some central government ministries and bureaucrats have refused to decentralize their functions and the attendant financial resources for fear of losing influence (Kauzya, 2007). In addition, most all ministries have maintained an active hand in service delivery as well as policy formulation and guidance instead of delegating the former. It has been observed that successful implementation of decentralization hinges on the support and commitment of central government bureaucrats (Ayee, 1997). In Uganda this support appears to be lackadaisical. The experience here has shown the need for central government administrators to participate in the continual building of administrative structures at the local level.

6.2 Ghana

Like Kenya, the objectives of Ghana's decentralization policy include: the devolution of political and state power in order to promote participatory democracy; the devolution of administrative, development and implementation functions from the central government to district assemblies; and the promotion of accountability and transparency, among other objectives. Ghana's 1992 Constitution created a three-tier sub-national government – 10 regional coordinating councils, 110 district assemblies and 1300 urban, zonal, town area councils plus 16,000 unit committees. The district assembly (DA) is the unit of decentralization and is the highest political authority in the district with deliberative, legislative and executive powers (Crawford, 2004).

While decentralization has recorded improved governance and service delivery in Uganda, it has not been without its challenges. For instance, some central government ministries and bureaucrats have refused to decentralize their functions and the attendant financial resources for fear of losing influence (Kauzya, 2007).

DAs range in size from 54 to 130 members with 70 per cent elected by the people and 30 per cent appointed by the president in each district assembly. The ministry of Local Government and Rural Development (MLGRD) is responsible for the coordination of local government functions and links the centre, regional and sub-districts. The MLGRD also issues instructions and directives to other ministries, agencies and departments as relates to decentralization. Further, it monitors the decentralization process and the effectiveness of local government, advises government on local issues and approves DAs' by-laws (Ayee, 1997).

Apart from the coordinating role of the MLGRD, each DA has a central government appointee called the District Chief Executive (DCE) who is appointed by the president but approved by the DA, and who is in charge of the day-to-day administration of the district. Coordination and regulation of the DA's activities is done by the 10 regional coordinating councils (RCC), which are not elected bodies and do not have legislative powers. The RCC is chaired by a regional minister who is a presidential appointee (Crawford, 2004). The success of Ghana's decentralization operational structure is pegged on the understanding that line ministries could act to decongest their program execution activities and donate staff to provide technical and managerial support to the DAs.

Like Uganda, Ghana's main challenge to successful implementation of decentralization has been the reluctance of central government bureaucrats to relinquish some services and resources to the DAs. This reluctance is perhaps due to the lack of a legal mechanism that compels central government bureaucracy to transfer service provision functions to the DAs (Ayee, 1997).

Both Uganda's and Ghana's decentralization experiences demonstrate that coordination of government functions by the central government at the local level is key to effective implementation of decentralization. In both Uganda and Ghana,

the central government continues to have appointed district administrators as its eyes and ears at the District Councils and District Assemblies respectively. Like Kenya, both countries are unitary states. If these experiences are anything to go by, then one would expect the central government in Kenya to have its county-based administrators not only to execute its mandate but also to coordinate policies and programmes that spill over county boundaries.

7.0 Intergovernmental Relations in Kenya and the Role of Provincial Administrators

In Kenya, just like in other jurisdictions with devolved systems, intergovernmental relations are devolution in action: a complex network of day-to-day interrelationships between central and regional governments within a devolved system. It is the political, fiscal, programmatic and administrative processes by which a higher unit of government shares revenues and other resources with lower units of government (Shafritz, Russell, and Borick, 2007). These resources generally tend to be accompanied by conditions that lower units of governments must satisfy as a pre-requisite to receiving assistance. To monitor compliance, the PA-type of coordinating mechanism will be needed.

Some critics of the PA system and some who have not worked in government are unaware of the complicated nature of intergovernmental relations. Although the 2010 Constitution enumerates functions for both the national and county governments (47 geographically demarcated counties), implementing a constitution is more than simply dividing the work between the levels of government.

A number of issues such as education, health, terrorism, security, disaster management, and peace building have both national and local implications and are subject to the attentions of different levels of government. Under the 2010 Constitution national and county officials working on issues with mutual interest will need to examine how compatible they are with PAs. Like the Uganda situation where a Regional District Commissioner coordinates central government policies at the District Council and serves as the eyes and ears of the centre, in Kenya the PA will do the same while acting as the nexus between the national and county governments.

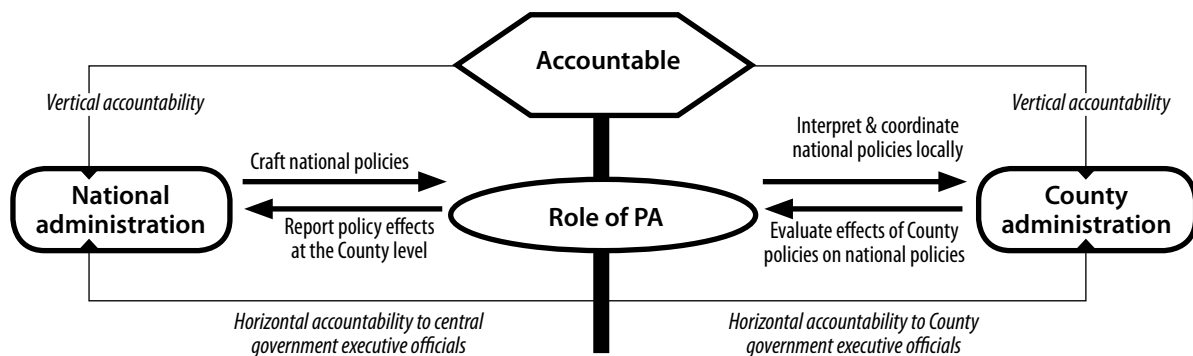
In their current role, provincial administrators serve as inter-ministerial liaisons in coordinating many of the services cited above. Under the new constitutional order, apart from serving as inter-ministerial liaisons, they could also serve as intergovernmental liaisons for purposes of promoting cooperation and coordination of central government programmes that promote local development needs and foster national unity. The PAs' broad experience as inter-ministerial liaisons may prove to be instrumental to future county governors who may not have much experience in running multi-sectoral departments of government.

Although the running of county departments may not overwhelm most governors, coordinating delegated central government functions and other inter-ministerial duties may prove difficult without the nexus that the PA readily provides. As the

experiences of Uganda and Ghana demonstrate, the slow implementation of the decentralization process has been due to the reluctance of central government bureaucrats to devolve their functions and resources to lower levels of government (Ayee, 1997). Therefore, the PA with the inter-ministerial liaison experience might be very helpful in supervising and coordinating the delegation of service provision functions to the county government as a way of countering resistance from the central government bureaucrats.

The devolution picture painted by critics of the PA system (especially as laid out in Chapters Eleven and Twelve of the 2010 Constitution) is that of a layered administrative structure, where it is imagined that county governments will operate on one level with their own administrative machinery, while the central government will run its own affairs. Indeed, under a dual-type devolved system (as envisaged by critics of the AP), the PA is unnecessary. However, this is deceptive: it would be naive to expect the 2010 Constitution to spell out a detailed intergovernmental relations structure for the day-to-day administrative environment (Peters, 2004). In reality, such dualism is impractical, confusing and at best unworkable. In fact, clause 1 of Article 189 clearly lays out a cooperative (marble-cake) structure between the central and county governments where collaboration and mutual assistance is stressed, to enhance administration and capacities. The PA will therefore be crucial in enhancing the implied cooperative administrative structure as shown in figure 1.

Figure 1: The future role of the provincial administration



The future role of the PA can be deduced from clause 3 of Article 186, which states that “a function or power not assigned by this 2010 Constitution or national legislation to a county is a function or power of the national government” (Republic of Kenya – Constitution, 2010: 119). Given that the central government administrators (CGAs) at the district level will continue to supervise central government employees, they will need to learn how to manage a “picket-fence” intergovernmental relationship. Picket-fence intergovernmental relationships refer to an administrative arrangement between employees from different levels of government working on a similar policy issue, for example education specialists, who find it necessary to work together to solve a common problem.

Although Article 186 may be prone to future contestation for its lack of specificity, it ideally strengthens the administrative arm of the central government on matters not assigned to county governments, however local those issues may be and unless the national assembly legislates otherwise. In the absence of such national legislation, the PAs will be vital in undertaking such matters on behalf of the central government.

As the links between the two levels of government are strengthened, CGAs will have dual accountabilities. They will be accountable to the national executive within the relevant ministries, as well as to the CECs under the chairpersonship of the county governors. With reference to elected governors, they will be influential political players at the local level and it will not be possible for their influence in the interests of their communities' welfare to be ignored.

The place and future role of the PA is further implied in Article 191 with regard to conflict of laws between the national and county governments. Clause 2 of this Article states that “National legislation prevails over county legislation if:

- a) The national legislation applies uniformly throughout Kenya
- b) The national legislation is aimed at preventing

unreasonable action by a county that-

- i. Is prejudicial to the economic, health or security interest of Kenya or any county; or
- ii. Impedes the implementation of national economic policy (Republic of Kenya – Constitution, 2010: 123).

Implementation and enforcement of this Article necessarily implies the presence of a CGA to serve as its ears and eyes just as the RDC does in Uganda. The duties of such an administrator as spelled in clause 3 (c) of Article 191 include:

- Ensuring that national security is not breached;
- Ensuring economic coherence, protection of markets and free movement of goods and labour across county boundaries;
- Protection of the environment and promotion of equal opportunity or equal access to government services.

Indeed, these duties are a replica of the current duties performed by any district commissioner cited above (GOK - MSPS, 2007). Viewed in this light, the adoption of the new 2010 Constitution does not obliterate the role of the PA, but rather makes it a little more complex and even more necessary.

Under the 2010 Constitution, PAs will have to learn how to navigate the complex intergovernmental relations between the national and county governments. As intergovernmental and inter-ministerial liaisons, the future CGAs will be instrumental in supervising the delegation and devolution of services from the central government bureaucracy to county governments' bureaucracies as required by law. If Ghana's experience is anything to go by, the ministry of Local Government alone may not be effective without central government county-level enforcement agents whom county governors

Under the Constitution (2010), PAs will have to learn how to navigate the complex intergovernmental relations between the national and county governments.

may also find them necessary in improving their county staff capacities.

Finally, the continuation of the PA is strategic for the defence, interpretation, implementation and enforcement of central government policies that cut across county boundaries, without compromising the institutional integrity of the county government. Given the potential influence of county governors, especially those from economically viable areas, the implementation and enforcement of central government policies and legislation will need to be smart to avoid antagonism with the county political class.

Conflicts between the donor (central government) and the recipient (the county governments) will always exist. While the donor government will endure the political burdens of raising revenue, the recipient government will take all the credit associated with service delivery.

Smart implementation of national policies and smart enforcement of national legislations will require the use of various grants at the disposal of central government to ensure compliance as outlined by the operational mechanism of the PA below. Smart implementation of national policies implies the use central government conditional and unconditional grants accompanied by non-mandatory conditions to

influence local policy decisions without appearing overbearing on local matters. It is management of picket-fence relations without arousing antagonism from the local political class while at the same time aiding the local administrative capacity.

8.0 Operational mechanism of the provincial administration under the new 2010 Constitution

Having outlined the administrative role of the provincial administration under a devolved system,

the oil of intergovernmental relations will be its fiscal structure which is referred to in Chapter 11 of the 2010 Constitution. Articles 203 and 204 outline an intergovernmental fiscal structure which is based on a mix of transfers and grants. Generally, grants are used to reduce problems created by economic fiscal disparity; to encourage programmes of special national merit; to reduce special problems associated with regional economic decline; and to induce governments toward management reforms as a condition for receiving aid (Mikesell, 1999). Beyond simply being a mechanism through which the central government can channel moneys to county governments given its stronger tax administrative capacity, grants have the added purpose of promoting intergovernmental relations.

As is the case in jurisdictions such as the United States of America, grants-in-aid are payments to lower units of government for specified purposes. They are usually subject to supervision and review by the granting government or agency in accordance to prescribed standards and requirements (Shafritz, Russell and Borick, 2007). From practice, lower jurisdictions that accept grants from higher levels of government, must also accept the strings or guidelines that come with them.

In terms of enhancing intergovernmental relations, grants can be used to fund purposes that are considered relevant at the national level. Where the central government will require the county government to file reports on the use of funds made available to them, the PA can play an important role in ensuring that national policies are complied with and enforced accordingly and uniformly. It must be noted that while execution of national policies may be done by (or delegated to) county government bureaucracies, monitoring for uniformity will need to be under the purview of a PA.

Conflicts between the donor (central government) and the recipient (the county governments) will always exist. While the donor government will endure the political burdens of raising revenue, the recipient

government will take all the credit associated with service delivery. Given that the recipient government does not have to raise money, the donor government will attempt to control the use of those resources at the local level to avoid mismanagement (Mikesell, 1999). Such attempts to control recipients may be viewed as a hindrance to service delivery given the unfamiliarity of the donor government to local conditions and preferences (Bagaka, 2009).

While the donor government will seek to ensure there is accountability, the recipient governments will view any control as a barrier to efficient and effective service delivery. Given this reality, one would expect the PA to be the eyes and ears of the Auditor General on matters relating to financial (mis) management as spelt in Article 299 (clause 4-6). The PA can provide the institutional mechanism to ensure that resources devoted for local development are accounted for and properly utilized as intended by the central government.

9.0 Conclusion

Kenya like any other country with a devolved system of government is currently being confronted with a constitutional question: How should competing claims of central and county governments be resolved? Looked at from a constitutional perspective, the organization of a devolved system is a political issue, while the practical organization and implementation of policy are administrative issues. For the latter to succeed, the PA must be structured as the nerve-centre for the coordination of issues between the central and county governments.

Whether we call them district officers or commissioners or district secretaries, the critical role played by these officials cannot simply be wished away. Perhaps to the surprise of many, the role of a PA under the 2010 Constitution has been enhanced, made complex and indeed become more necessary

than before. With regard to its enhancement, the PA must serve as the nexus between the national government and the county governments' political class and their bureaucracies. PA officials will not only need to enforce national legislations, but they will also be required to understand, interpret and inform the central government of the implications of county legislations on national development goals and vice versa.

As for the necessity of the PA under a new constitutional order, PA officials will be critical in creating an intergovernmental relations or management system where policy decisions that cross county boundaries are effectively coordinated and implemented. For example, policies and interventions on such issues as drug trafficking or security-related issues which transcend county boundaries, and which will require coordination between several counties. As inter-ministerial liaisons, CGAs will be instrumental in persuading central government ministries to delegate and devolve direct service provision functions to county government bureaucracies for execution.

With respect to the complexities in the changed role of PA officials, they will be required to understand the multiple levels of accountability (between the county level and at the national level). Recalcitrant PA officials who fail to acknowledge this reality will find themselves targets of the "N.I.M.B.Y." (Not in My Back Yard) slogan. They will be unwanted locally. Balancing between local expectations and national obligations will thus be a critical task for PA officials. Creating a rapport with county officials or good working relations with county officials will be the key to their success.

The way forward for the PA must be viewed in relation to the capacities of its administrators. As currently constituted, the PA is oriented toward a

The PA can provide the institutional mechanism to ensure that resources devoted for local development are accounted for and properly utilized as intended by the central government.

vertical, centralized and hierarchical system where orders from above appear to characterize much of their operations. Under a decentralized system such orientation, other than its hierarchical structure, may be misplaced and unworkable. As argued above, under the new constitutional order, PAs must learn to live and work in an environment where they are answerable to the central government, and the CEC under the leadership of the governor.

The potential for turbulence within such an environment will be determined by the scale that

local (county-level) and national interests conflict. Managing these conflicts will determine the success and speed with which devolution is implemented. A recalcitrant PA attitude towards local interests will necessarily ignite hatred from the county's political class. An overbearing central government presence will be misconstrued as intrusion on local matters and will be resisted. What will be required is a careful balancing act in this dual-accountability environment. To effectively function in this environment, the PA will need to enhance the capacity of its administrators in three key areas, above and beyond its routine trainings.

The PA will need to enhance the capacity of its administrators in the two areas of managing inter-governmental relations and fiscal management respectively, under the new devolved system. Understanding how a devolved government and the corresponding fiscal structure can operate in tandem is crucial to applying "smart power", without creating an overbearing central government presence. The PA must re-orient its officials towards the changed intergovernmental structures and management of affairs in a dual-layered administrative structure. As stated in the 2010 Constitution, both the national and county

governments will have their own bureaucracies. While national bureaucrats deployed to the local areas will largely deal with national policy issues, execution of either national or county level policies will be undertaken by the county bureaucrats. The use of county-level bureaucrats in implementing national policy will not only help transfer financial resources and improve the capacity of the county staff; it will also improve the working relationship between central and county governments' officials.

The PA will also need to reorient its officials towards the broader concept of devolution, and more specifically re-train them on the implications of the politics of devolution. As laid out in the 2010 Constitution, Kenya's politico-administrative system will comprise the national and county governments headed by politicians. At the county level, politicians such as governors will be accountable to their electorate and thus will not be controlled by the central government.

People-elected governors and especially those from richer jurisdictions tend to act autonomously and may perceive PA officials as intruders on their turf. To deal with such governors, the central government administrators will need to be astute and understand how county level legislations impact the broader national interests and proactively engage and educate county politicians about the effects of their legislations on the central government's development agenda.

Since the 2010 Constitution abolishes provinces, it is arguable that the provincial administrator referred to in most of this chapter may be commensurate with the office of the local district commissioner. Because counties will encompass a number of districts, the administrative restructuring of the PA for policy coordination purposes will need to create a County Administrator (CA) whose overall role will be to serve as the chief coordinator and liaison officer of central government business in a county.

The PA will also need to reorient its officials towards the broader concept of devolution, and more specifically re-train them on the implications of the politics of devolution.

Given the relative size of a county, district commissioners or district officers may continue to function as central government bureaucrats under the supervision of the CA, where their role could be to execute the central government's mandate at the local level. In accordance with Articles 175 and 189 of the 2010 Constitution on separation of powers and respect for institutional integrity of each level of government respectively, PA officials such as sub-chiefs and chiefs may either be absorbed by the county governments or relieved of their duties given that most of what they do largely falls within county jurisdictions.

Despite the often polarizing debates and criticism of the PA, the new Constitutional order provides the provincial administrator a deserved but not necessarily desirable level of visibility. The PA system of administration may become the nexus between the central and county governments and the coordinator of programmes that cut across county boundaries. As much as critics may castigate the PA as a colonial evil, under the 2010 Constitution the provincial administrator (by any other name) will be the necessary evil needed to ensure smooth running of central government policies and programmes at the local level.

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