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Public Service Accountability and Governance in Kenya Since Independence

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Abstract

Bad governance is a major contributor to poor service delivery in Africa. In Kenya, the level of accountability in the management of public affairs has consistently declined since independence. This is in spite of various legal instruments and watchdog institutions established to regulate and monitor the ethical conduct of public officials.

This paper argues that the pattern of consolidation of power embarked upon by Kenya's post-colonial rulers was a major underlying factor in the deterioration of ethical standards in the public service. The construction of patron-clientilist relations were quite pronounced in this regard. The same goes for the deliberate manipulation of ethnicity. The paper concludes by advocating the adoption of a number of measures in order to enhance accountability in the public service of Kenya.

Introduction

In Kenya, the level of accountability among public officials in the management of public affairs has consistently declined since independence. The rate of annual economic growth of the country has generally declined over the period. At the same time the efficient and effective delivery of public services to the ordinary citizen have continuously deteriorated. A combination of these two factors has resulted in widespread unemployment and poverty in the country.

Since independence, Kenya has formulated various legal instruments and established a number of watchdog institutions for regulating and monitoring the ethical behaviour of its public officials. Besides, in the early 1990s, domestic opposition groups assisted by the international community demanded and eventually achieved the restoration of competitive party politics or multi-partysm in the country. The reason the majority of Kenyans

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1027–0353

demanded Liberal democracy was due to the belief that good governance could only be guaranteed through the system.

However, despite the existence of a number of legal instruments and watchdogs institutions for regulating and monitoring the ethical standards of public officials, and the adoption of multipartysm, the management of public affairs and institutions by those who are entrusted with positions of authority in the country has not improved. For instance, according to Transparency International, since 1997, Kenya has remained among the top ten most corrupt countries in the world. During the period, the transparency index of the county has generally declined. Whereas in 2001 Kenya's transparency rating was 2.0, in 2002 it dropped to 1.9.

The continued deterioration of the level of accountability among public officials in the country shows that the adoption of multipartysm has not contributed to good governance. Given these facts, it is in order to raise the following pertinent questions: What have been the major causes of the lack of, or poor accountability among public official in the country? Why have the existing instruments and watchdog institutions for regulating and monitoring ethical standards of public officials failed to ensure accountability? What strategies need to be adopted in order to enhance accountability in governance among public officials?

In mid-2001, Kenya commenced a comprehensive review of its constitution. On December 27, 2002, Kenyans voted overwhelmingly to elect a new government to replace President Moi who ruled the country for 24 years. The new government of the National Rainbow Coalition (NARC) led by Mwai Kibaki campaigned on the platform of eradication of corruption. These developments provide an opportunity for the issue of accountability in governance in the country to be effectively addressed. This study intends to make a contribution toward this endeavour by inquiring into the questions raised above and make some recommendations to address the problem.

Accountability: The Concept and Theory

According to Dele Olowu (1993) "public accountability is the requirement that those who hold public trust should account for the use of the trust to citizen or their representatives". He further observes that "public accountability signifies the superiority of the public will over private interests and tries to ensure that the former is supreme in every activity and conduct of a public official". Similarly according to Mouftau Laleye (1993), "public accountability refers to sanctions and procedures by which public officials may be held to account for their actions".

From the two definitions, it can be observed that accountability refers to the notion that public officials should be held responsible for their actions while in office. But for public officials to be held responsible for their

actions while in positions of authority, there must be certain norms and values that they shall be required to observe. At the same time, there must be clear sanctions by which they can be punished in case they fail to adhere to those norms and values. Similarly there should be specific benefits public officials may be rewarded with when they adhere to the acceptable norms and values.

The required norms and values for regulating and monitoring unethical behavior of public officials comprise the written and unwritten codes of conduct. But whether written or unwritten, ethical codes of conduct for regulating accountability in the public service may be classified into four categories. The first category consists of personal self- imposed ethics. This category of ethical codes stem from personal beliefs and convictions on what is right and wrong way of conducting one self in respect of conducting public affairs. The second are the group of self-imposed ethics. This category of ethical codes are group-agreed right or wrong way which should be practiced by any member of the group (or profession) when serving society. The third category are the written ethical rules or conduct for public servants that are not enacted by the legislature, but do have administratively implemented sanction against offenders and machinery for imposing sanctions. They include civil servants codes of regulations, standing orders and standing instructions issued through circulars. The final category of ethical codes is of course the enacted statutes or Acts of the legislature or provision of a country's constitutions (Barlow 1993).

Again whether written or unwritten, ethical codes of conduct generally promote the values of impartiality, objectivity, integrity, efficiency, effectiveness and discipline of public servants when acting in the public interest in general and when exercising discretionary powers in particular (Rasheed 1993, 287). Thus, generally, ethical codes of conduct are aimed at checking "outright bribery and corruption; patronage; nepotism; embezzlement; influence peddling; use of one's position for self enrichment; bestowing of favours on relatives and friends; moonlighting; partiality; partisanships; absenteeism; late coming to work; abuse of public property; leaking and/or misuse of government information, all of which are currently widespread in a number of public service institutions in sub-Saharan Africa (Rasheed: 299).

To ensure that ethical codes of conduct for public servants actually work, they must be entrusted to specially established institutions that can implement or administer them effectively. Such institutions include the supervisory or managerial positions in the executive arm of government; the agents of law and order, for example, the police and prisons; quasi-legal agents, for example, and Ombudsman or an anti-corruption authority; the judiciary; the legislative; and other constitutionally established offices, for example, the Auditor-General.

Arising from its conceptualization, accountability is considered a key determinant of the state of governance. Thus, strict observation of accountability in the management of public affaires promotes good governance while the lack of it is the major course of bad governance (Polidano and Hulme, 1997) .

Governance, according to the United Nations Development Programme (UNDP) refers to "the exercise of political, economic and administrative authority in the management of a country's public affairs at all levels..... It incorporates the complex mechanisms, processes and institutions through which citizens and groups articulate their interests, mediate their differences and exercise their legal rights and obligations" (UNDP 1997.)

Goran Hyden (1999) finds this definition inadequate. This is because, from the definition, it is (a) "difficult to reign in what the concept really refers to, and (b) impossible to create a set of manageable measures. Given these "limitations", Hyden defines governance to mean "the conscious stewardship of regime structures (rules) with a view of regulating the public realm, i.e. the arena in which state and society actors operate and interact to make authoritative decisions... . It refers to the way a political system is constituted, the way fundamental values and norms are understood and acted upon at different levels in society".

However, despite his criticism, it is quite apparent that there are no major differences between Hyden's definition of governance and that of the UNDP. Indeed, from the two definitions it can safely be concluded that the concept of governance refers to authoritative management of public affairs, at all levels and in all sectors, by those who are entrusted with positions of leadership in society.

Governance can be good or bad; it is good when the governed can reap the positive benefits they expect from their government, but it is obviously bad when the opposite is the result. Towards the end of the 1980s, the international donor community together with the domestic opposition groups in a number of sub-Saharan African countries reached the conclusion that bad governance was the major cause of the inefficient and ineffective delivery of public services, and lack of development in the region. Bad governance was held to be characterised by an autocratic political system, abuse of human rights, corruption, and inefficient organisation and management of public institutions.

Thus, from the early 1990s, in order to improve the efficient and effective public services delivery and promote economic development, domestic opposition groups, supported by the international community in a number of sub-Saharan African countries began to demand good governance. The notion of good governance that these groups demanded was characterised by competitive party politics (or liberal democracy), accountability and

transparency in the management of public affairs, respect for human rights, privatization of non-performing public institutions, and organizational and structural reforms of the public service.

Given this notion of good governance, a number of scholars (Jabbra and Dwivedi 1989; Polidano and Hulme 1997), the international donor community, and even the domestic opposition groups in sub-Saharan African countries began to assume that multipartysm is equal to accountability, and accountability equals good governance, which in turn equals development. Although there is a lot of merit in these assumptions, it is not always true that democratisation is equal to accountability, and that accountability is in turn equal to good governance. Indeed, if this were the case then the situation is sub-Saharan African after over ten years since the restoration of multipartysm raises a serious problem. The problem is that either sub-Saharan African countries have so far failed to democratize, or that democratisation does not equal accountability, which in turn does not equal good governance. This is because since the re-introduction of multipartysm in the region, the evidence on the ground indicates that widespread abuse of public office by public officials is still largely the norm.

It is apparent that democratisation is not necessarily equal to accountability, and that accountability in turn does not equal good governance. According to Anyang Nyong'o (2002: 79), good governance "simply means good and competent management of public affairs, with or without encompassing all the major tenets of democracy". Thus, it is quite possible that an autocratic or undemocratic regime can generally promote good governance and thereby achieve rapid economic growth (and/or development) for a society. A number of scholars who subscribe to this view cite the cases of South East Asian Countries, namely Singapore, Hong Kong, Taiwan and South Korea, to prove their point. (Although lately the success stories of these countries have been questioned.)

Although it is possible for an undemocratic regime to promote good governance, it is almost impossible for a regime to be considered democratic when its leaders cannot be held accountable for their public actions by the governed. Moreover, any regime that is always accountable to the governed will as a matter of course promote good governance. Thus, the equation that is likely to hold in most of the cases is the one whereby democratisation equals accountability, and accountability equals good governance(Polidano and Hulme, ibid.)

Democratisation guarantees accountability and hence good governance to the extent that the process empowers institutions instead of personalities to govern. The process also empowers the citizens on the other hand to demand accountability from their governors on how they manage public institutions. In a number of Sub-Saharan African countries, it can correctly be stated that

the deterioration of efficient and effective public services delivery and decline of the economies began in earnest during the second decade of independence – in the early 1970s. But this period is also closely associated with the consolidation of one – party autocratic regimes and widespread military dictatorship in the majority of Sub-Saharan African countries.

In the case of Kenya, the consolidation of the autocratic state and the beginning of the decline of economic growth can be traced to the early 1970s. Although the decline of economic growth at the time was variously blamed on the rise of crude oil prices arising from the Middle East war of 1973, the deterioration in ethical standards among public officials in the management of public affairs also began to be a problem at the time. Thus, in order to comprehensively understand the problem of accountability in governance in Kenya we must begin by an analysis of the background of the country's political economy. It is within this conceptual and theoretical framework that we intend to address the issue.

The Political Economy of Public Service Accountability in Kenya Since Independence

The immediate post-colonial public service that the first Kenyan independent government inherited from the British was modeled according to the Westminister–Whitehall tradition (Hyden 1970). This was a public service that was guided by the professional ethics of impartiality, effectiveness and discipline in the management of public affairs. Its primary function was to implement government policies efficiently and effectively. And in undertaking this function, it was expected to be non-partisan.

This type of public service fitted appropriately in the immediate post-colonial political system that the country also adopted at independence. At independence, Kenya adopted a parliamentary system of government whereby the prime minister was the head of government; both the prime minister and his cabinet were answerable to parliament; the judiciary was independent; and the political process was based on competitive party politics involving more than one political party. Besides these arrangements, the constitution also comprehensively devolved state power into a three-tier system of government that comprised the central government at the national level, regional governments and local authorities at the local level.

However, despite its impressive ethical standards, the immediate post-colonial public service suffered from three major weaknesses. First, It was racially constituted; its top echelon was reserved almost exclusively for the white population; the middle grades were predominately occupied by the Asian community while the lower and subordinate position were left for Africans. Secondly, salaries and other benefits were similarly discriminatory; the white employees earned abnormally higher salaries and enjoyed

better benefits followed by the Asians, while Africans earned much lower salaries and were accorded generally poor benefits. Thirdly, due to its background as colonial machinery, the public service still emphasized the maintenance of law and order as its primary role even on the eve of independence. The independent government instead preferred a public service that would be more development oriented.

The first Kenyan independent government also inherited a relatively liberal economy for the British colonial system. This was an economy in which the prices for industrial and farm inputs on the one hand and consumer goods on the other were largely determined by the market forces of supply and demand. But as in the public service, the economy was dominated by the white population in the country; the white population controlled most of the industries and other commercial firms and also owned most of the commercial agricultural farms. Meanwhile the majority of Africans merely provided cheap labour on the white owned farms. Moreover a significant number of them lived as squatters on the white owned farms where they also provided cheap labour (Swainson 1980).

In an attempt to address the above mentioned anomalies in the public service and economy, the first independent government simply adopted the strategy of Africanisation or Kenyanisation. But the way in which the strategy was implemented eventually undermined accountability in the public service.

To begin with, when the Africanisation of the public service began immediately after independence, it assumed an ethnic, nepotic and patrimonial dimensions. Indeed the first Africans that were appointed into the key position that were vacated by the departing senior white colonial public servants were predominantly drawn from the members of the Kikuyu community (Anyang Nyong'o, 1989). But even within the Kikuyu community, the positions were given mainly to those who had close relations with those who controlled the state power. Although it may be true that the majority of those who were appointed into the key positions had some experience in the areas in which they were appointed, it was generally acknowledged that a significant number of them were not the most qualified to fill those positions at the time they were appointed.

Thus, from the very beginning, meritocracy as an objective principle for appointment and promotion in the public service began to be abused. It is only natural that when one is appointed into a high position in public service without due regard to merit, he or she is similarly likely to ignore meritocracy when appointing or recommending a junior officer for promotion. Given this fact, it can only be concluded that the wide-spread disregard for meritocracy as a key criterion in appointments and promotions that in the later years characterized the public service must have started when Africanisation began to be implemented.

The beginning of Africanisation also coincided with certain drastic changes in the country's political system. As mentioned earlier, at independence in 1963, Kenya adopted a multiparty, parliamentary and federal system of government. The two political parties that contested the independence general elections were the Kenya African National Union (KANU) and the Kenya African Democratic Union (KADU). KANU won the elections and Jomo Kenyatta became the first Prime Minister and head of government. But after just one year the KANU government decided to abandon the parliamentary and federal systems of government, and to replace them with the presidential and unitary systems respectively. At the same time, the KANU leaders also managed to frustrate and/or convince the leaders of the opposition party – KADU to dissolve their party and join the government. Thus, from December 1964 Kenya became a de-facto one party state. Meanwhile between 1964 – 1968 the government began a systematic amendment of the country's constitution. Almost all the constitutional amendments carried out during the period were aimed at transferring state powers from the other branches of government, namely the legislature and the judiciary to the executive, especially the presidency (Gerzel 1970).

The transformation of Kenya into a presidential and a unitary system of government under one political party, coupled with the systematic constitutional amendments between 1964 and 1968 resulted into the concentration of state powers in the executive, especially presidency. Most of the state powers concentrated in the executive were to be exercised by the senior officials of the central civil service and parastatal organisations. The consequence is that the senior members of the central civil service and parastatal organisations soon became more powerful than the members of the legislature and the judiciary. As such, from then onwards it became difficult for the legislature and the judiciary to control the civil service. In short, the Westminister – whitehall tradition upon which the Kenya's public service was based at independence simply disappeared.

It is apparent that the reason the KANU ruling elite Africanised the senior positions in the public service mainly with those who were related or close to them, and at the same time transferred most of the state power to the control of this category of public servants, was to ensure that state power was placed firmly in the hands of those who had direct loyalty to the person of the president and other individuals in ruling elite circles. The ultimate goal of this strategy was to establish a secure autocratic state. This goal was successfully achieved after the 1969 general elections.

However, the control and exercise of authoritative power alone by this category of public servants was not a guarantee that their direct loyalty to the person of the president and other members of the ruling elite would be sustained permanently. In order to ensure that the loyalty of this new crop

of public servants to the person of the president was guaranteed and the status-quo was maintained, it was necessary to also make them have a stake in the economy. The Africanisation of the economy provided the best opportunity for achieving this goal.

Thus, in 1970 the president appointed a commission to investigate the appropriate structure and remuneration of the public service. The Commission was headed by the then governor of Central Bank, Duncan Ndegwa. After undertaking its task, the Commission submitted its report to the president in May 1971. One of the Key recommendations that the Commission made was that public servants could hence forth be allowed to own private property and run businesses. This recommendation was a major departure from the known universal principle that does not allow professional public servants to own private property or engage in business. This is because by owning private property or engaging in business, a public servant is likely to abuse his public position.

True, The Ndegwa Commission Report gave very strict conditions under which a public servant could own a private property or run a business. The Report even recommended the establishment of the office of an Ombudsman that could investigate and monitor the performance of public servants. However, how the government was going to ensure that public servants did not abuse their positions in the process of trying to acquire private properties or run their own businesses became impossible, especially when the office of the Ombudsman also failed to be established. Be that as it may, permitting public servants to own private properties and run businesses obviously resulted into the widespread corruption and abuse of public office that have continued to plague the public service to date. For instance, in 1975 Habel Nyamu, the former principal of the Kenya Institute of Administration observed.

> Up to 1970 it was a necessary requirement that civil servants did not engage in trade or any other business. This requirement, which was inherited from the colonial government, seems to have been based on solid assumption such as that it was not possible for a civil servant to give of his very best if he was serving two masters, namely the public and his own material interests... . Since Ndegwa report broke this requirement and allowed civil servants to own any kind of property and take part in any kind of business, no one can stand up and argue that efficiency of individual civil servant who took uncontrolled advantage of this relaxation of tradition was not affected some what adversely (Nyamu, 1975).

Four years later, a presidential committee chaired by S.N. Waruhiu to investigate the state of the public service confirmed Nyamu's fears when it stated in its report:

> We have received overwhelming evidence to the effect that some public servants utilize government facilities in order to benefit themselves. Some are

> said to tender for government supplies and to see to it that their tenders are always successful. Others are said to be in the habit of accepting rewards for work that they are paid to do by the government. We have been told that most salesmen particularly in the field of the now popular turn-key projects offer reward to public servants who thus become obliged to see that decisions are made in favour of those who offer rewards. It has also been suggested that in the field of purchasing, commission are paid into bank accounts maintained by Public Servants abroad. Reward for work that the public servant is already paid to do and receiving bribes are acts of wanton corruption (Gok, 1980: Waruhiu Committee Report, 1980, 103.)

Nevertheless, this is the kind of public service that President Moi inherited when he took over power after Kenyatta's death in August 1978. Initially, when he assumed the presidency, president Moi promised that he would eradicate corruption and abuse of office in the public service (Kibwana et.al 1996). However, he soon discovered that eradicating the vices was easier said that done. In August 1982, just four years into his presidency and before he could consolidate himself in power, a section of the army staged a coup attempt against the president's leadership. The uprising was swiftly crushed, but after the coup attempt, it dawned on Moi that his immediate priority was to consolidate himself in power.

In order to consolidate himself in power, Moi resorted to the patron-client relations strategy that his predecessor, Jomo Kenyatta, had successfully used in the 1960s. As we have seen the strategy involved recruiting the key positions of the public service mostly from those who were either closely related to him personally or to his close confidants and turning a blind eye as they enrich themselves by abusing their public offices. However, in implementing this strategy, Moi lacked the overwhelming opportunities that Kenyatta enjoyed.

In the first place, unlike Kenyatta who hailed from a more populous community that was also endowed with a large number of public servants that had been inherited from the colonial period, President Moi hails from the minority Tugen community that had also largely lagged behind during the colonial period. Secondly, when Kenyatta took over power, he had at his disposal a lot of public resources, especially the former white owned farms, that he could dish out to public officials in key positions in order to buy their loyalty. In the case of Moi, when he came to power most of such public resources had generally dwindled (Barkan, 1992).

Given the circumstances, it meant that if Moi had to appoint those who were closely related to him into key positions in the public service, then he was bound to appoint people with lesser qualifications and experience than had been the case during Kenyatta's period. Secondly, if he had to continue to buy the loyalty of those he appointed into key positions in the public service, then he was bound to look for resources elsewhere. Moi solved the

dilemma by resorting to appointing people with much more inferior qualifications and experience mostly from his wider Kalenjin community, into the key positions of the public service. He also turned a blind eye to the widespread culture whereby public officials found it quite normal to use their public positions to allocate themselves government land, commercial plots and houses, and to acquire easy loans from government controlled financial institutions without appropriate collateral. All these practices generally undermined accountability in governance in the country.

Needless to say, the continued deterioration of accountability in governance led to the decline in the standard of provision of public services and economic growth. These in turn resulted in increased unemployment and general poverty in the country. In the late 1980s, tired of bad governance, domestic opposition groups, supported by the international community began to demand for the restoration of multipartysm in the country. The reason the domestic opposition groups and the international community demanded multipartysm was due to the belief that the restoration of the system was the surest way of democratising the state. By democratising the state it was possible to restore accountability in the management of public affairs. And by restoring accountability, good governance was bound to be achieved.

In December 1991 the government finally bowed to pressure to restore multipartysm in the country. And in December 1992, the first multiparty general elections were again held in the country since the Mini elections of 1966. However, since the restoration of multipartysm, it cannot be claimed that the levels of accountability in the management of public affairs have improved in the country. Widespread corruption and abuse of public office are still common. For instance, recently, the National Social Security Fund (NSSF) – a public institution lost Kshs 256 million shillings to a collapsing commercial bank in a clear case of corruption and abuse of office.

The failure of Kenya to restore the high level of accountability similar to the one it boasted of immediately after independence despite the restoration of multipartysm more than a decade ago, shows that either the kind of multipartysm adopted has failed to democratise the country, or that democratisation is not a *sine-qua non* for accountability in governance. It is quite apparent that the former is the case.

In December 1991 when President Moi finally bowed to persure to restore multipartysm, only Section 2 (A) of the Constitutions that disallowed the system was amended. All the other provisions of the Constitution upon which the existing autocratic state had been based were left intact. Given the circumstances, it is difficult to comprehend how the practice of miltipartysm alone was expected to democratise the state without enabling constitutional provisions. Immediately after the 1992 general elections, opposition groups

in the country recognised this anomaly and began to demand for the comprehensive review of the country's Constitution to allow for a more democratic society. Again the ruling elite resisted these demands. Eventually in early 2001 the government bowed to pressure and allowed the start of the review of the Constitution. Since mid-2001, Kenya's Constitution has been under a comprehensive review process. Thus, it is anticipated that it is only after the successful review of the country's constitution that the genuine democratisation process of the state can effectively begin. It is only then that we can be certain that democratisation is truly a pre-requisite for accountability in the management of public affairs.

The State of Public Accountability in Kenya Since Independence: A Brief Anatomy

Arguably, the most authoritative sources from which one can obtain evidence on the state of public accountability in Kenya are Public Account Committee and Public Investment Committee reports, the Controller and Auditor General reports, the Hansard, court proceeding, and other authoritative studies on the subject. However, due to logistical problems and the lack of adequate resources, we were unable to consult all the mentioned sources. Nevertheless, we did manage to consult the Controller and Auditor General reports and other authoritative studies on the subject.

Generally, it is acknowledged that almost virtually all the unethical practices such as bribery and corruption, patronage, reposition, embezzlement, influence peddling, the use of ones position for self-enrichment, bestowing of favours on relatives and friends, moonlighting, late coming to work, abuse of public property, and the leakage and/or misuse of government information that constitute the lack of accountability in governance currently characterise the country's public service. Furthermore, during the last five years, the respected and authoritative Transparency International has consistently placed Kenya among the top ten most corrupt countries in the world that it has studied each year, during the period.

Thus, there is really no debate as to whether Kenya suffers from the lack of/or low level of accountability in the management of public affairs. Given the problem, the critical questions should be: What are the causes of the low level of accountability in the country? Why has it become impossible or so difficult to inculcate or enforce accountability in the management of public affairs in the country? And how can the high levels of accountability be inculcated or enforced among public officials in the country?

It is quit clear that since independence, the level of public accountability in Kenya has consistently deteriorated. To begin with, the last colonial Controller and Auditor General's Report for the financial year 1962/63 did not show any misuse of public funds. But immediately after independence

the misuse of public funds began to be noticed. For instance, in his report for the year 1963/64, one year after the country had attained its independence, the Controller and Auditor General (C&AG), noted a decline in the accounting standards which in turn had resulted into the deterioration in financial control. He also reported many instances of petty frauds, thefts and evasion of the regulations.

In the Report for 1965/66 financial year the C&AG again reported several cases of fraud, irregularities and theft. More specifically the Report noted that whereas in 1963 there had been 188 cases of theft by government servants involving £10,160, in the first eleven months of 1966 alone, there were 356 cases involving £34,720. Besides, these cases of theft by government servants, the Report also named several government ministries that had excess expenditure above the amounts they had been permitted to spend by parliament. The ministries and government departments that fell into this category were State House, Ministry of Defense, Ministry of Education, Voice of Kenya, Ministry of Home Affairs, and Ministry of Housing and Social Services.

In the Report for 1966/67 financial year, the C&AG again reported the continued existence of cases of theft by government servants. His only consolation this time around was that the cases had not increased above the number reported in the previous year. However, in this Report, the C&AG noted the emergence of a new culture of misuse of public funds. In this case, the C&AG reported that the Ministry of Lands and Settlement had spent K£ 20 on official entertainment above the approved allocation of K£100. (One K£ is equivalent of 20 Kenya shillings.) The expenditure included K£ 94 spent on two parties held at the Minister's residence and another K£13 spent by the Director of Survey without the prior approval of the Accounting Officer. At the same time, the C&AG reported that the Ministry had sold to the Minister, the Ministry's official car for a sum of K£ 450 after being in the road for less than 24 months. According to the C & AG the amount for which the vehicle was sold represented a depreciation rate of K& 920.

In the Report for the 1967/68 financial year, the C&AG noted that the number of government ministries and departments involved in excess expenditure continued to grow. However, the most important revelation in the report was the extravagant use of public funds involving the Ministry of Foreign Affairs. In this case, the C&AG reported that the Ministry had been involved in the extravagant purchase of furniture for its embassies and official residences abroad. In one instance eleven sofa sets, one of which cost Kshs 11,142-85, were purchased for an embassy; in another, carpets costing Kshs 45,367-40 were bought for four apartments, while Kshs 20,535-70 was spent in furnishing an officer's house. Besides these, the Ministry made further purchases valued at Kshs104, 126-20 without authority of the Central Tender Board.

In the Report for the 1968/69 financial year, the C & AG again deplored the continued increase in the cases of misuse of public funds. He observed that the position regarding the control of expenditure had deteriorated considerably. During the financial year the number of government ministries and departments that had over-spent their votes increased from 11 to 12 compared to the situation in the 1967/68 financial year. And the total excess amount that was spent without the authorization of parliament was K£ 1,093,165-12-59 compared to K£ 136,827-7-59 during the previous year.

The misuse of public funds continued during the 1969/70 financial year. According to the C &AG's Report for that year, although the number of government ministries and departments that over-spent their authorised votes remained the same as the previous year – 12 – the total excess amount spent increased significantly. During the 1969/70 financial year, the total sum spent without the authority of parliament was Kshs 1,159,212-0-56 compared to K& 1,093,165-12-59 that was spent in the 1968/69 financial year.

During the 1970/71 financial year, the number of government ministries and departments that were involved in excess expenditure increased significantly. According to the C & AG's Report for that year, there were eighteen (18) excess votes compared with twelve (12) in the previous year. More significantly, the total amount spent in excess of that authorised by parliament was more than double that for the previous year. In fact the excess votes rose from K£ 1,159,21-0-56 during the 1969/70 financial year to K£ 2,645,598-07-67 in 1970/71. Another revelation made by C & AG's Rreport from the same year was that of cases whereby accounting officers were involved in the purchase of stores without seeking authority from the Central Tender Board. For instance, in that year alone," a total of approximately K£ 40,442 was spent on the purchase of various items of store without authority from the Central Tender Board (CTB). At the Ministry of Health, officials bought a motor vehicle at a cost of Kshs 25,750 without authority of the Treasury and without tendering for the purchase with CTB.

During the 1971/72 financial year several government ministries and departments continued with the over expenditure of their votes. This time the total amount in excess votes increased to Kshs 4,510,524 from K& 2,645,598-07-67 in the previous year. In addition to this kind of misuse of public funds, the Report also highlighted several causes of irregularities and extravagance by various ministries especially in the purchase of stores. For instance, the Report noted that in the Ministry of Foreign Affairs "an amount of Kshs 642,857.15 was paid to an individual in respect of the purchase of a plot at one mission but only a sum of Kshs 378,571.45 was receipted leaving a balance of Kshs.264,285.70 unaccounted for. Another payment of Kshs.571,428.55 was also made in respect of the purchase of the Ambassador's residence at the mission but only a receipt for 457,142.85

was issued". A balance of Kshs.114,285.70 could not be accounted for. In the same Ministry, thirteen carpets were purchased at a cost of Kshs 126,000 for six officer's residence in a mission. Curtains were also purchased for the residence of one officer in the same mission at a cost of Kshs 3,632.20. These expenditures were considered excessive. In the Ministry of Health, stores, drugs and equipment worth Kshs. 4,558,651.30 were purchased without the authority of the CTB. Some of the items were purchased from the non-government contracted supplies who charged high prices. The same Ministry also spent a sum of Kshs.54,300 on purchase of three non-standardized vehicles without authority.

The 1973/74 C&AG Report also highlighted several cases of misuse of public funds, negligence and abuse of office. For instance, it revealed that a Mercedes Benz vehicle costing Kshs8,850 was bought for a head of department without authority and without provision having been made in the estimates for the purchase. It also revealed a case whereby a sum of Kshs.380,11.05 was still owing from various officers in respect of salary advances. Some of this money dated back to 1967/68 financial year. At the same time the report revealed that in the Ministry of Agriculture, due to lack of control over collection of revenue, an officer in-charge of an agricultural research station was able to misappropriate a total of Kshs.13,399.10 by collecting money from sub-collectors without issuing any form of receipts. These adverse reports about misuse of public funds, fraud and theft by servants by the C&AG continued throughout the 1970s.

The situation did not improve in the 1980s. To begin with, the C&AG's Report for 1980/81 financial year revealed that in the year the government vehicle check unit reported 89 cases of misuse of government vehicles. At the same time in the Ministry of Health items worth Kshs 177,44 that were bought during 1977/78 financial year were still lying at the Central Medical Stores due to the fact that they had been found defective and of inferior quality and therefore could not be issued to hospitals.

During the 1982/83 financial year, the C&AG's Report revealed that export compensation to the tune of Kshs 76,742 was paid in respect of goods that were not eligible for such compensation. The Report further revealed that payments of export compensation amounting to Kshs.1,211,518.55 were made to six firms that did not comply with the local manufactures export compensation regulations. The C&AG also observed that the lack of effective financial control at the national assembly continued during the financial year.

In the report for the 1986/87 financial year, the C&AG observed that the expenditure control which had shown an improvement during the 1985/86 deteriorated during the year under review. The C&AG also revealed that the accounting standards, especially for the year had remarkably deteriorated. For instance, in some cases, the accounts were prepared hurriedly and without

due care, to beat the deadline for their submission. Consequently, they were found to contain numerous glaring errors such that, "the appropriation accounts were submitted unsigned and without the footnotes explaining material differences between the estimates and actual expenditure".

Although the above cited cases do not specifically identify public officials that were responsible for such gross misuse of public funds, they do illustrate the extent of deterioration of public accountability in the country. According to the country's constitution, no public officer or institution is permitted to spend public funds without the authority of parliament. Yet from the cases cited, it became quite normal for various government ministries and departments to spend public fund without the approval of parliament. To make matters worse, parliament too, year-in-year-out religiously approved government budgets despite the lack accountability of how the previously approved funds were spent.

It is apparent that by the end of 1980s, due to the failure of parliament to act on the repetitive misuse of public fund by the various government ministries and departments, public officials found it normal to misuse public funds with impunity. This is because in the 1990 the levels of misuse of public funds increased to alarming proportions. For example, in the 1995/96 financial year, various government ministries and departments incurred excess expenditure to the tune of K£ 45,504,506 without the authority of parliament. This figure did not take into account the bill amounting to Kshs 181,994, 683 that was incurred by various ministries in the previous year and was carried forward to the following financial year. The C&AG observed that had the bills been paid in the 1995/96 financial year and charged to the respective votes, the excess expenditure of K& 175,667,691 would have been incurred in that year alone without the authority of parliament.

But besides the above-mentioned excess expenditure, the same report for 1995/96 reported a legion of cases of irregular transactions. To sample a few cases: (a) payment of US$46,800,000 equivalent to K£ 123,228,256-04-00 at the ruling rate of exchange was made to an Aircraft manufacturing firm for purchase of a Jet Aircraft and then illegally charged for payment to the Consolidated fund in complete disregard of section 99 and 100 of the constitution. (b) Expenditure of K£ 133,987,464-14-10 relating to the construction of Eldoret International Airport was illegally charged directly on the consolidated fund in contravention of section 99 and 100 of the constitution. (c) Payments totaling K£ 133,987,465-14-10 were made on behalf of the Office of the President and illegally charged directly on the consolidated fund in complete disregard of the constitutional requirements (d) the government spent a total of K£ 29,737,633-14-00 to procure and install computers and other related stationery and spare parts that it eventually

received little or no value from the expenditure. (e) In January 1996, 1,430 used motor vehicles valued at approximately K£ 17,664,250 were gazetted for sale by public auction. However, on the date of auction, 1,178 units with an estimated reserve value of K£ 14,576,500 could neither be physically verified nor could their whereabouts be explained.

From the above account, it is quite clear that the level of public accountability in Kenya continues to deteriorate. This is despite the liberalization of the political process and the expansion of the civil society. Given the circumstances, what then are the causes of low public accountability in the country?

The Causes of Deterioration in Public Accountability in Kenya

A number of scholars writing on ethics and accountability have advanced various reasons to explain the causes of the deterioration of ethical standards and accountability in African public services (Rasheed and Olowu; UNDESA 2001). However, in the case of Kenya the deterioration of public service accountability may be attributed to the following factors:- (a) The autocratic or patron-client relations political process (b) the involvement of public servants in private business (c) Poor terms and conditions of service. (d) Deterioration of professionalism in the public service (e) Ethnicity and nepotism.

Autocracy or the Politics of Patron-clientilism

One of the key characteristics of an autocratic system of government is personalized rule. The political leader often governs with little respect for the principles, regulations and laws that guide state institutions. He or she often rules by decrees and those who are supposed to implement these decrees also often do so without regard for the principles, regulations and laws that govern the operations of the institutions they manage.

An autocratic system is also usually characterized by the patron – client relation political process. This is a political process in which the political leader (in this case, the president) recruits his/her close confidants who normally represent different constituencies (ethnic or racial communities and regions) and place them into key political , administrative and judicial positions. Since the close confidants owe their appointments into the key positions to the leader, their loyalties are also direct to the leader. In order to maintain the loyalty of his/her close confidants, (in this case the clients) the leader regularly extends to them certain favours. The favours are usually in the forms of financial rewards or other materials resources. Similarly, in order for the close confidants who are appointed into the key public positions to maintain their position, they have to ensure that the support of their respective constituencies to the president is sustained. In order to sustain

this support the president's close confidants too have to recruit their own close confidants (or clients) whose duties are to regularly drum-up support for the president on behalf of their patrons at the local levels. These categories of clients are similarly extended favours by their respective patrons. The favours are also in the form of financial rewards or other materials resources. In both cases, the rewards are usually obtained through corrupt practices or abuse of public office. Thus, an autocratic state cannot function in an atmosphere where there is no corruption and where institutions are run on the basis of well defined principles, regulations and laws.

As explained above, the establishment and consolidation of an autocratic regime in Kenya began in earnest in December 1964. It involved the abandonment of mulipartysm, and federalism, and the systematic amendment of the constitution to concentrate more powers in the presidency. Between 1964 and 1969, there ensued a stiff struggle between the two factions of the ruling elite – one that opposed the establishment of the autocratic state and the other that promoted it (Oginga Odinga 1967). The faction that supported autocracy triumphed towards the end of 1969. From 1970 onwards Kenyatta had managed to successfully establish and consolidate his powers in Kenya's autocratic state. Kenayatta arguably presided over an efficient and effective autocratic regime which he eventually bequeathed to Moi in August 1987. Moi managed the same state, although not with similar talents and sophistication as Kenyatta, up to December 30, 2002.

The autocratic state that Kenyatta established and consolidated, and Moi sustained resulted in the creation of a category of public servants that is overwhelmingly impervious to good ethical standards. It is public knowledge that it was this category of public servants that benefited from the Africanisation of the economy by dishing to themselves the former white owned farms, purchasing controlling shares in the national commercial firms, and unfairly advancing themselves easy loans from government controlled financial institutions. Similarly, it is the same category of public servants that fuelled the widespread corruption under Moi's regime. Thus, there is no doubt that autocracy and its patron-client relations tendencies have been the major causes of the deterioration of public accountability in Kenya.

The Involvement in Private Business by Public Servants

The second factor that has also greatly contributed to the deterioration of public accountability in Kenya is the involvement in private business by public servants. The factor is closely related to the first one.

The permission to own private property and run business of any kind was first recommended by the Ndegwa Commission in its report of 1971. The Commission had been appointed by President Kenyatta to look into the structure and remuneration of civil servants in the country.

Making its recommendations, the Ndegwa report listed strict conditions under which it could be possible for a public servant to own private property and run a business. The report stated: "We consider that all those who serve the Republic –

(i) should give it their undivided loyalty whenever and wherever it has a claim on their services;
(ii) should not subordinate their duties to their private interest nor put themselves in a position where there is conflict between their duty to the state and their private interests;
(iii) should not outside their official duties be associated with any financial or other activities in circumstances where there could be suspicion that their official position or official information available to them was being turned to their private gain or that of their associates;
(iv) should not engage in any occupation or business which might prejudice their status as member of a public service or bring any such service into disrepute; and finally,
(v) should at all times maintain the professional and ethical standards which the nation expects of them in transacting government business with efficiency, integrity and impartiality.

The Ndegwa Commission Report then concluded:

> So long as the above principles are observed and subject to the provisio which follows there ought in theory be no objection to the ownership of property or involvement in business by members of the public service to a part where their wealth is augmented perhaps substantially by such activities (Ndegwa Commission Report 1971, 13–14)

Further in the report, the Ndegwa Commission also recommended the establishment of the office of an Ombudsman whose primary function was to investigate complaints against public servants and monitor their performance.

Although this particular recommendation by the Ndegwa commission together with that one on the establishment of the office of an Ombudsman were among the ones that the government never officially approved for implementation (Nyamu 1975), after the release of the report public servants began to acquire private properties and run businesses of various kinds in large numbers. The government did not take any action to stop them from doing so despite the fact that it had never approved of the recommendation in the first place.

But in acquiring private properties and running businesses public servants did not care to adhere to the condition that had been spelt out by the Ndegwa Commission. Indeed for the Ndegwa Commission to have expected that public servants would abide by the conditions they meted was to have expected too much. This is because according to Nyamu (1975):

> Human beings are basically selfish and are more able to look after their own interests than those of other people. Civil servants should not be encouraged to spend any public time and equipment looking after their natural interests during official hours.

Involvement in private business by public servants coincided with the period when the Africanisation of the economy was still going on. Given the circumstances, a number of public servants in key positions took advantage of the programme to Africanise various businesses and properties to themselves. In the process, acquiring private property and running businesses of any kind became the norm in the civil service. There is absolutely no doubt that the involvement in private businesses by public servants has resulted in widespread corruption and abuse of office (Waruhiu Committee Report, 1980: 103)

Deterioration of Professionalism in the Pubic Service

The third factor that is responsible for the deterioration of public accountability in the country is the decline of professional standards in the public service. As mentioned earlier, the Kenyan public service that was inherited from the British was modeled according to the Whitehall tradition. The tradition included the following key principles. Firstly, civil service job is a career, that is permanent and pensionable. Secondly, appointments and promotions are based on relevant qualification and experience. Thirdly, once employed one expected to rise in the ranks through promotions so long as one possess the required qualification and experience. Fourth, a permanent secretary is literally permanent as the term stipulate.

However in the Kenya's public service these principles began to be ignored with impunity, especially from the early 1980s when president Moi began to consolidate himself in power. From the early 1980s, it became quite frequent to shuffle permanent secretaries and other senior civil servants from organizations to organizations without due regard to their suitability for the positions. It also became common for President Moi to recruit permanent secretaries and other senior public servants from outside the mainstream public service, including the private sector.

Frequent shuffling of senior civil servants and bringing in people from outside the mainstream public service to fill key position grossly undermined the morale of civil servants who had worked diligently, marking time with the hope that one day they would rise to the top. Having been de-motivated, a number of public servants found it justified to use their positions while they still occupied them, to enrich themselves. This involved the abuse of office since one was no longer sure when he or she would be shuffled to another assignment or be dismissed from the public service altogether.

Poor Terms and Conditions of Public Service

The fourth group of factors that are similarly blamed for the decline of the standard of public accountability are the poor terms and conditions under which the country's public servants work. The key elements of the public service terms and conditions of employment are salaries, allowances and other benefits such as health and housing.

It is widely acknowledged that Kenyan public servants are at no time paid a living wage. Employees in the private sector, some with inferior qualifications are usually paid much better. This fact was and still is claimed to be the main reason for higher efficiency and productivity in the private sector.

There has been a lot of debate on what would represent a fair pay to public servants. Some scholars have even observed that to claim that poor terms and conditions of employment are among the causes of low standards of accountability is to stretch the argument too far (Wamalwa 1993: 44). Others have argued that public service is a calling; it is not a place where people should expect to enrich themselves (Nyamu, 1975).

In 1967, a commission chaired by H. Millar-Craig was appointed by President Kenyatta to review the salaries of public servants. The Millar-Craig Commission considered three main criteria that were presented to them by various groups of public servants. The first criteria was called the 'fair' or 'living wage'. According to this guideline which appealed mainly to the low-paid public servants, it was argued that the government should always pay all of its employees a wage sufficient to provide an acceptable minimum standard of living. The second criteria presented was the "market wage". According to this guideline which appealed mainly to professionals and technicians, it was represented that government should pay its employees according to their market value. The third criteria was called "equity of income distribution". This criteria had two aspects. In the first case it argued that there should be an equitable distribution of income between the rural non-wage-earning population and wage-earners. Second, it argued that within the wage sector, the "gap" between increase of those on the bottom of the skill ladder and those at the top, should not be "too great".

After analyzing each of the criteria presented to them, the Millar-Craig Commission observed that the three wage policy criteria were obviously in conflict with one another. The Commission thus concluded that the only realistic approach that the government can use to arrive at an appropriate wage for public servants is to determine the amount that it can spare from its GNP without undermining its development goals and provision of essential services. Otherwise the government may end up paying for non-productive activities.

From the above analysis, it is clear that determining sufficient wage for public servants in a country like Kenya can be quite a difficult task. Indeed,

there appears to be too key factors which undermine wage earnings by public servants in Kenya. The first factor is the extended family syndrome. The second is the high social status syndrome; the extravagant or materialistic social status that the kith and kin expect from their relatives who are public servants. If the two factors were absent then the wages paid to public servant and which are regularly reviewed would well just be adequate. However, given the extended family factor and the kind of social status that the society expects from a public servant, the public servant is often forced to look for other sources of income to satisfy the social pressure. The other sources of income are normally likely to be private business or abuse of office.

Ethnicity and Nepotism

Ethnicity (or tribalism) involves a common consciousness of being one in relation to the other groups. Nepotism involves the use of friendship or blood relations criteria to distribute or dispense public services.

As mentioned earlier, at the start of the Africnisation of key positions in the public service, the ruling elite in the Kenyatta regime used ethnicity and nepotism as the main criteria to appoint people into these position. Similarly, when president Moi decided to consolidate himself in power he too resorted to ethnicity and nepotism as the criteria for appointing his close confidants to the key positions in the public service. When one is appointed into position of authority in the public service on the basis of ethnicity and nepotism, it becomes almost impossible for such a person to see anything wrong in also using the same criteria to distribute public resources or dispense public services to the public.

Factors that Undermine the Promotion of Public Accountability in Kenya

Due to widespread corruption, abuse of office and the general deterioration of other ethical standards in the country, one is likely to assume that there is no control mechanism that could be used to enforce accountability. Yet this is not the case. Kenya has many legal and quasi-legal instruments and other watchdog institution specifically formulated and designed for controlling public service ethics. Despite this fact, public accountability constantly deteriorate as we have seen.

Some of the legal and quasi-legal instrument and watchdog institutions for controlling public service ethics in the country are codes of regulations for public servants, the Public Service Commission Act, Cap 185, the Penal Code, Cap 63, the Prevention of Corruption Act Cap 65, Election Offences Act, Cap 66, Exchequer and Audit Act, Cap 412, Financial Regulation, the Public Account Committee, Public Investment Committee, the Inspector of State Corporation, the Monitoring Unit and the Public Anti-Corruption Unit.

Besides these institutions, there is also the Judiciary. Thus, the lack of legal instruments and institutions cannot be the excuse for the deterioration of public accountability in the country.

There are a number of factors that undermine the control of public service ethics in Kenya. These are (a) The ineffectiveness of watchdog institutions, (b) Outdated codes of Regulations (c) Poor dissemination of Codes of Regulations (d) the lack of National Code of Ethics (e) Lack of anti-corruption Authority (f) Selective application of sanctions (g) Lack of incentives for good performance (h) Lack of political will. (i) Lack of effective supervision of public servants.

The Ineffectiveness of Watchdog of Institutions

Basically, the watchdog institutions charged with the responsibilities of controlling public service ethics in Kenya are Parliament, Police, Anti-Corruption Unit, Monitoring Unit and the Judiciary. However, all these institutions have proved generally ineffective in controlling public service ethics in the country.

To begin with, parliament is supposed to control public service ethics through its two key committees, namely, the Public Accounts Committee (PAC) and the Public Investment Committee (PIC). The procedure followed by the two committees is as follows:

Once the offices of the Controller and Auditor-General and that of the Inspector of Corporations have completed auditing government ministries and parastatals organizations respectively, they hand over their reports to PAC and PIC respectively. The two committees are supposed to conduct their investigations on the irregularities reported and recommend appropriate action to parliament. Parliament on receiving the report from PAC and PIC debate them and resolve on the cause of action to take. In the circumstances, parliament may even order the arrest and prosecution of a public officer that is considered to have abused his office. But as we have shown above, the evidence in the misuse of public office by public servants have been so glaring since 1963, yet to date there are no known cases whereby parliament has taken action to order the arrest and prosecution of officers responsible. Instead, parliament has year after year approved government budgets quite faithfully. This weakness by parliament simply encourages public officers to continue misusing public resources with impunity.

Secondly, the responsibility of the judiciary is to administer justice. In this respect it is expected to punish public officials who indulge in corrupt practices or abuse their offices. However, the judiciary in Kenya has not been able to undertake this responsibility effectively; its capacity is undermined by corruption, inefficiency and the general lack of adequate physical facilities and other amenities.

In January 1998 the Chief Justice appointed a committee chaired by Justice Richard Otiento Kwach, to investigate the state of administration of justice in Kenya. In its Report the Committee confirmed that there existed corruption among court officials in the country. It also confirmed that the administration of justice in Kenya is generally inefficient due to the lack of adequate physical facilities and other amenities. It revealed:

> Broadly speaking there are two forms of corruption: (i) "Petty or 'survival' practiced by those who may be grossly under paid. (2) 'Grand' practiced by high public officials who exercise discretionary powers. Representation received by the committee indicate that there exist both forms of corruption in the Judiciary, taking various patterns, generally to prevent the cause of justice (Republic of Kenya 1998, 9–10).

Given this kind of weakness, the Judiciary cannot effectively promote pubic accountability in the country.

Thirdly, the role of the Kenya Police Anti-corruption Unit and the Monitoring Unit are to investigate corrupt practices and cases of abuse of office by public servants and to prosecute those who are involved in the practices. The Monitoring Unit is based in the office of the President. However, the two organisations lack independence as they are not established by a constitutional Act. Due to this fact, they are often influenced by other authorities that are superior to them. Besides, the police in Kenya is generally known to be corrupt. Given the circumstances, the two units cannot effectively control public accountability in the country.

Outdated Codes of Regulations

The original code of regulations for civil servants was prepared during the colonial period. The current version in use was revised in 1992 – ten years ago. However, it is not when it was revised that is the problem. The issue is that certain rules of conduct in the code of regulations do not enhance public service ethics, but instead undermine them. For instance, Section G 15 (I) of the Code of Regulation state:

> Presents from public personage which cannot be refused without giving offence will be handed over to the government, unless the government's prior permission has been obtained by an officer to retain the present. Application for permission to retain a present should be made to the Permanent Secretary/Director of Personnel Management with details of the present together with its estimated value.

It is not clear why a public servant should accept a gift from the public at all, especially during the cause of his/her duties. The public already pays the public servant wages for his/her services. However, when a public servant hands over a gift received from the public to the government what is the government expected to do with the gift? In short, it does not make

sense for a government to accept gifts from its citizens to dispense services for which they have paid through the authorized taxes. This kind of regulation does not enhance public accountability at all.

Poor Dissemination of the Contents of Code of Regulations

It is common knowledge that the contents of the Code of Regulations for civil servants are not effectively disseminated to civil servants. Often civil servants discover that they have breached sections of the Code of Regulations when addressed a discipline letter. If civil servants are not aware of the rules of conduct they are expected to obey. How would they adhere to these rules? At a meeting organized by the United Nations Department for Economic and Social Affairs (UNDESA) in Nairobi, in September 2002, on public ethics, an Integrity Officer from the government acknowledged this weakness and informed the gathering that his office had started addressing the problem of effective dissemination of the contents of Code of Regulations.

The Lack of a National Code of Ethics

Currently, only civil servants have a code of regulations to control their conduct. Other public officials including politicians are not guided by any code of ethics in the course of their public duty. In the absence of such a code of ethics, it is almost impossible to control the ethical standards of public officials. In the past, attempts have been made to formulate and approve a national code of ethics for all public officials in the country, but attempts have always failed.

The Absence or Weakness of an Anti-corruption Authority

Currently, the only anti-corruption institution in the country is the Police Anti-corruption Unit. The Unit operates under the Police act. As such it is not an independent body that is constitutionally established. As we have seen, due to this fact it lacks the independence necessary for it to perform it task effectively. There is a need for an independent Anti-Corruption Authority or the office of an Ombudsman that can undertake its function without direction or influence from any quarters, including the president of the country. There have been two attempts to establish such anti-corruption authority without success.

Selective Application of Sanctions

In order to enhance public service ethics among public servants, there must be certain sanctions to be meted against a public servant who fails to obey

the codes of ethics or break the relevant laws. Such sanctions must be applied impartially and uniformly to all public servants. But when they are applied selectively, then they are likely to have no effect.

For instance, in early 2002, the Minister for Water and the Permanent Secretary in the Ministry of Works were arrested separately and charged with corrupt dealings. While their cases were still going on in court the President decided to terminate the services of the Permanent Secretary, but failed to take any action against his Minister. Later both were acquitted; but the Permanent Secretary was never reinstated in his employment. This was a clear case of selective application of sanctions. Any public servant who followed this case is left to wonder whether it is worth it to uphold public service ethics at all. This is because one is likely to be penalized anyway in case he or she does not enjoy the favour of the appointing or supervising officer.

The Lack of Incentives for Good Performance

Whereas it is important to apply sanctions uniformly and impartially against all public servants who break the codes of ethics, it also pays to extend incentives to the good performers. Incentives need not necessarily be material benefits or cash rewards; a letter of commendation, or a free holiday with pay could also suffice. In Kenya, good performers are never rewarded with incentives to boost their morale so that they could be encouraged to maintain their good conduct. When public servants realise that it does not really pay to be a good and disciplined worker, then they would have no motivation to maintain their good record.

Lack of Effective Supervision of Public Servants

Public servants in Kenya are managed and supervised by the Public Service Commission (PSC) and Directorate of Personnel Management (DPM) for civil servants; Teachers Service Commission (TSC) for teachers; Judicial Service Commission (JSC) for the members of Judiciary. The employees of various parastatal organization and local authorities are supervised independently by those institutions.

The ways in which the PSC, TSC, and JSC are structured and staffed vis-à-vis their respective total employees are such that they cannot provide effective supervision to their workers. For instance, the TSC caters for about 240,000 teachers country-wide while the PSC is responsible for about 160,000 civil servants. The two organizations are highly centralized, with their offices based in Nairobi, the capital City. Any of the officers with a discipline case will have their cases forwarded to the two bodies respectively. Due to the insufficient number of staff in the organizations, and their heavy

workload, several disciplinary cases submitted to the two organizations from different parts of the country take too long to be finalized. In the end the officer may be reinstated without any penalties.

In its report, the Waruhiu Committee revealed:

> We have received evidence which show that Public Service Commission delays decisions on promotion and disciplinary cases and that such delays affect individual Civil Servants detrimentally. We have been informed that the period between interdiction and the final decision by the Public Service Commission may last for a year or even two years. Many heads of departments have complained that even after such long delays, the officers so interdicted are subsequently reinstated on purely technical grounds.... We are convinced that when a person is reinstated on a technicality, the working relation between him and his head of department become strained.

The Lack of Political Will

For all the above to be achieved, there must be political will in the leadership of the country to set targets on public accountability and strive to achieve them. In Kenya, the conduct of political leadership have shown clearly that there is more of lip service rather than commitment to promote public accountability in the country. For instance, the failure for the country to have a good constitutional order, enact the crimes bill and establish an anti-corruption authority, as well as formulate the national code of ethics during the Moi regime could appropriately be attributed to the opposition by President Moi personally. With that type of conduct, it would be expecting too much for the general public servants to maintain public accountability in the management of public affairs.

Towards the Enhancement of Public Accountability in Kenya

Arising from the above analysis, it may be in order to make certain suggestions on how public accountability in Kenya could be enhanced.

Abolition of Involvement in Private Business by Public Servants

As observed earlier, there is no doubt, that permitting public servants to own private property and run businesses has undermined their ethical standards. The revised codes of regulations (1992) for civil servants permits public servants to own private property and run business under the conditions that had been spelt out by the Ndegwa Commission in its 1971 report.

No matter the conditions under which the government is prepared to allow public servants to own private property and run business, it cannot prevent the inherent conflict of interest and high temptations among public

servants to abuse their offices. It is our view, therefore, that owning private property and running any kind of business by public servants should be outlawed. One cannot serve two masters. As such any public servants who wish to own private property and run a business should simply be asked to resign from the service.

Restoration of Professionalism in the Public Service

As mentioned earlier, public service is a professional career. Those who join it should be made confident that if they uphold the principles, norms, and values of the profession then they are likely to advance to the highest limits of their capabilities. Thus, we propose that all the unprofessional tendencies such as ethnicity and nepotism in appointments and promotions, lack of security of tenure and appointment of non-career public servants into key positions in the public service should be stopped. This would discourage public servants who are tempted to abuse their public offices due to frustrations not to do so.

Improvement of Terms and Conditions of Service for Public Servants

It may continue to prove difficult for the government to pay its employees competitive salaries and wages that are closely or equally comparable to those offered by the private sector and international non-governmental organizations for a long time. This is due to the constant pressure on the government not to allocate too much percentage of its GNP to recurrent expenditure as compared to development.

However, it is important for the government to offer terms and conditions of service to its employees that can enable them to enjoy a decent life, especially when public servants abandon ownership of private property and running of businesses. One way by which the government can achieve this goal without at the same time allocating too much of its GNP to payment of salaries and wages, is to reduce the current size of its work force so as to have the number of workers it can pay decently. The government could also adopt a wage policy whereby the more productive workers are rewarded better than the unproductive ones. The other way is for the government to eradicate the common wastage of public resources such as, water, electricity, telephones, stationery that is currently so rampant in the public service. The savings accruing from the efficient management of the public resources could be used to improve the pay and benefit packages for civil servant.

Strengthening of Watchdog Institutions

The watchdog institutions such as Parliament, the Judiciary and Police should be strengthened to undertake their roles effectively. For example,

Parliament should take the lead in the supervision of the government's performance. It is scandalous for parliament to regularly approve public spending to a government that lacks the principle of expenditure control. Moreover, the parliamentary watchdog institutions such as PAC, PIC should be empowered to prosecute public servants that are involved in the misuse of public funds. But the monitoring of public accountability in the country should not be left to the public or government institutions *per se*. The civil society organizations and the media should also be encouraged to take an active role in the task.

Constant Revision and Effective Dissemination of Codes of Regulations

Codes of regulations for the public servants are only effective when they are relevant, and when their contents are aggressively disseminated to those concerned. Thus we proposed that current codes of regulations for public servants should be updated. The provisions such as those found in certain parts of Section G of the Code of Regulations for civil servants mentioned above should be removed, as they are out-dated. Attempts should also be made to disseminate the contents of the codes of regulations to all the newly recruited public servants, especially during their induction into the service.

The Formulation and Implementation of a National Code of Ethics

Although certain sections of the public service have codes of regulations that guide their conduct, currently there is no uniform national code of ethics for all public officials. Besides, the existing codes of regulations for certain sections of public servants are grossly inadequate. Thus, there is an urgent need to formulate a comprehensive national code of ethics for all public officials, including politicians in the country. The formulated code of ethics should reflect the country's national goals and aspirations. But the national codes of ethics should be practicable and enforceable, otherwise it could end up not contributing to the enhancement of public accountability.

The Establishment of an Anti-corruption Body

Although there are a number of watchdog institutions in the country for controlling public accountability, as we have seen none of these are independent and effective enough to undertake the task. The countries where anti-corruption bodies or the office of an Ombudsman have functioned effectively are those in which the organization is made completely independent from the authority and direction from any quarters in the course of conduct of its duties. This is the kind of an anti-corruption authority that Kenya needs. It should be

well staffed with competent personnel and it should be provided sufficient resources to enable it perform its function efficiently and effectively.

Uniform Application of Sanction and Extension Incentives

Sanctions which are spelt out for punishing public servants who abuse their public offices can only be effective if they are uniformly and objectively applied. At the same time, extending incentive rewards to good workers is also another effective way of promoting public accountability in the public service. Thus, we propose that the widespread selective application of sanctions that is often driven by ethnicity and nepotism in the country should be stopped. Meanwhile, good workers who uphold public accountability should be encouraged by introducing a programme whereby such workers can be honoured annually.

Effective Supervision of Pubic Servants

As mentioned above, the current organizational arrangements for the management and supervision of public servants in the country is inefficient and ineffective. The highly centralized PSC, TSC and JSC are unable to effectively manage and supervise public servants. These bodies should be decentralized and staffed sufficiently to manage and supervise public servants effectively.

Public Ethics as Part of the National Education Curriculum

Public servants are part of Society. If the general ethical standards of a society are poor, then it would be foolhardy to expect a clean and disciplined public service from such a society. In order to create a good and disciplined public service, efforts must be made to inculcate good ethics in the youths from among whom future public officials are recruited. The process of inculcating good ethics into the youth is called socialization – formal and informal. That the promotion of good ethics in the country should be made a part of the national education programme; good ethics should be taught in schools from the lowest to the highest levels.

The Democratisation of Society

Ultimately, public accountability in Kenya will most likely be achieved through vigorous democratisation of the state. So long as autocracy and its patron-client relations tendencies remain the cornerstone of our political system, it will certainly be impossible to achieve public accountability in the management of public affairs in the country. Democracy ensures that institutions are managed according to principles, rules and laws by which they are established. The system also empowers the citizens to demand accountability from their public officials regularly. Thus, we propose that the on going democratisation process in Kenya should be invigorated.

Concluding Remarks

The widespread lack of public accountability in governance in Kenya certainly undermines provision of public services and economic development. The origins of this serious anomaly in our governance can be traced to the rise of the autocratic regime in the country in the early 1960s. The anomaly is still fuelled by the autocratic tendencies that have persisted in the country even after the restoration of multi-partysm. It is only through a vigorous democratisation process that public accountability in governance can be restored in the country. Thus, it is upon Kenyans to constantly demand accountability from their governments.

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