The Committees Manual and the Procedures & Practice Manual Undergo Comprehensive Review

In a proactive and collaborative endeavor of the Society's commitment to equipping County Assemblies with the tools and resources necessary to thrive in an ever-changing legislative landscape , the Society has embarked on a review of the Procedure and Practice, as well as the Committees Manual.

Over the past three months, the dedicated Procedure and Practice Technical Committee has diligently convened, employing a hybrid approach that combines in-person and virtual meetings. The Committee's tireless efforts have brought the review of the Committees Manual to its final stages.

As it stands, the Committees Manual is in draft form, awaiting the crucial last phase of revision and validation ensuring that it accurately mirrors the contemporary needs and trends within County Assemblies.

The Utilization of Doctrine of Separation of Powers by County Assemblies in Kenya

By Elvis Werunga

Separation of powers is a political doctrine or theory that promotes liberty and independence of the arms of government.

The term "trias politica" is a Latin term that means: separation of powers or checks and balances. The doctrine was invented by Charles- Louis de Secondant, Baron de La Brede et de Montesquieu, an 18th Century French Social and political philosopher.

It is a political rather than a legal philosophy that supports the idea that Legislative, Executive and Judicial powers of government are vested and exercised by separate bodies. Separation of powers is normally understood as a constitutional principle that classifies government into three autonomous arms responsible for performing distinct functions. The autonomous arms include: The Legislative, Executive and Judicial powers. The model postulates that the Legislative power creates laws, the Executive power enforces laws and the Judicial power interprets laws.

Therefore, all legislative powers granted shall be vested in and exercised by the Legislature/ Parliament or a County Assembly in case of devolved governments. The granted legislative powers include and are not limited to:

- Enacting a law
- Over sighting the implementation of a law
- Adjudicating disputes on the basis of a law and;
- Administering a lawful decision.

Separation of powers requires that each arm of government is independent in order to safeguard citizens' liberties and guard against abuse of power. It is worth noting that at the Devolved Governments we have two arms; the County Assembly and the County Executive headed by the Hon Speaker and His Excellency, the Governor respectively. Each entity performs its own functions and the individuals working within each entity should not concurrently work in another entity. The sole objective of the principle is to prevent any individual or a group of individuals from accumulating excessive power to interfere with operations of another arm.

Separation of Powers envisages four cardinal responsibilities of the arms of government that include:

- The Legislature being responsible for enacting laws and appropriating money necessary for the operations of government;
- The Executive being responsible for implementing and administering public policy, enacted by the legislature
- The Judiciary being responsible for interpreting the Constitution and laws and applying their interpretation to controversies that emanate thereof and'
- That the individuals working within each arm should not concurrently work in another arm of government. It is through this doctrine that the Constitution grants autonomy and distinct responsibilities to the two arms of government in the quest of fostering checks and balances and preventing the concentration of power in any one arm of government.

There are various forms of separation of powers that County Assemblies as the legislative organ at the County can make use of while discharging the statutory mandate.

These include:

(i) Legislative Oversight which is a fundamental check and balance over the executive and its Organs, well anchored in the Supreme law of the land (Constitution).

(ii) Legislative Immunity in the form of protection of speech and debate and also prevents or limits arrests during the legislative session. This freedom not only makes legislators express their views on the topical issue at hand freely but also ensure effectiveness in the delivery of their mandate.

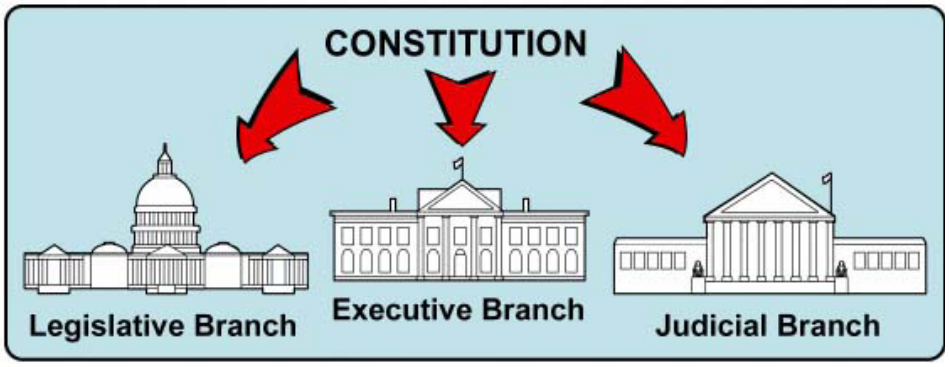
(iii) Delegation of legislative powers to the executive arm; this is realized especially when the sole mandate of making laws has been realized and require members of the County Executive Committee responsible for the portfolio in whose implementation of the law lies, to make regulations that will strengthen and operationalize the said law.

(iv) Impeachments or votes of no confidence which grants County Assemblies the ability to oversee official government conduct and remove executive public officers from their position and the Speaker of a legislature as well.

(v) County and Inter-County Comparts. Counties which are independent and self-governing entities responsible for the execution of devolved functions and make relevant laws incidental to their operations. Inter Counties can make their own collaborations and agreements to provide critical services that are devolved such as water and sanitation bodies.

(vi) Executive veto powers granted by the Constitution to the Chief Officer of the Executive (Governor). Through these veto powers, Governors being the Head of County Governments can question the approval of certain approved laws by declining to assent and revert back those laws to County Assemblies with Memoranda. Further, they are mandated to direct and align the operations of the County Governments through communiques known as Executive Orders.

(vii) Amendments to laws in cases where Statues and Judicial Rulings are in conflict. Whenever there is a conflict in the interpretation of the law by the Judiciary, such conflicts will be resolved through amendments to the law in conflict with the aim of either repealing or addition of clauses for correctness and clarity.



While separation of powers is critical to the functioning of any government; no democratic system exists with absolute separation of powers or an absolute lack of separation of powers. Government powers and responsibilities intentionally overlap, as a result, there is an inherent measure of competition and conflict among the arms especially where power resides.

It is based on the above statement that as distinct arms of county governments; the county Assemblies need to execute their tripartite mandate cautiously lest their powers are muzzled by the executive by the virtue of having the control of the Treasury. Equally, the executive needs to act within the confines of the law lest their decisions are vetoed by the Assembly.

It is imperative that as County Assemblies, their committees are well facilitated with pre-requisite financial resources that can help them oversight and execute their plans without necessarily having to request the county executive to finance their activities because in doing so they will be surrendering their autonomy. To overcome such enticements from the County Executive; the County Assemblies need to be autonomous by having their own budgets and access to their funds without seeking the consent of the County Executive through the County Treasury in order to facilitate its committees in their execution of critical activities as captured in their work plans. The Public Finance Management Act, 2012 needs to be amended to give County Assemblies full financial autonomy in order to realize this.

Further, in the quest of advancing the doctrine and ensure checks and balances are realized, there is need for continuous capacity building of the Members of County Assemblies with a view of aiding them have a better understanding of their roles and not feel that they are an extension of the County Executive.

Finally, it should also be noted that while implementing the programmes of the County Governments, the County Executive may incorporate the County Assembly through cooperation and consultation especially in the launch of flagship projects.

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