

ISSN 2312-9492 (Online), ISSN 2414-8970 (Print)



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Vol. 5, Iss. 4, pp 1631 - 1640, November 4, 2018. www.strategicjournals.com, @Strategic Journals

FACTORS AFFECTING LEGISLATIVE OVERSIGHT IN COUNTY GOVERNANCE: A CASE OF KWALE COUNTY ASSEMBLY, KENYA

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Accepted: November 3, 2018

ABSTRACT

The overall objective of this study was to evaluate the factors affecting legislative oversight in county governance: a case study of Kwale County assembly in Kenya. The study concluded that vote buying, clannism, ethnic based mobilization for electoral campaigns, elections rigging and electoral violence, dependent on political god-fathers for campaign financing, failure by citizens to link legislator oversight roles to elections and failure by citizens and political parties to consider candidates' commitment to oversight during elections weakens legislative oversight. Equally, the study concluded that although most had adequate knowledge and skills on legislative oversight and that there existed appropriate institutional mechanisms and resources at the County assembly to support MCAs in their legislative oversight role, the lack of a sense of duty among MCAs, lack of personal values and conviction for oversight, the absence public pressure and public support to MCAs oversight role and widespread vote buying practice in kwale weakened political will for legislative oversight. In view of these conclusions, the study recommended the following. That the County Assembly should strengthen the operations of the county assembly implementation committee to guarantee implementation of oversight recommendations. Secondly, civil society should strengthen their engagement with the county assembly and demand accountability to ensure that MCAs use their constitutional powers for furtherance of public interest and not for the personal benefit of MCAs. Thirdly, the study recommended that mechanisms be put in place so that political parties account to the public on the role they play in supporting their legislators to effectively oversight the county executive so that party cohesion is used to strengthen legislative oversight. Finally, the study recommended that the IEBC should formulate an implement electoral reforms aimed at ensuring that electoral processes are credible, free, fair and have a positive effect on oversight. This, coupled with a robust civic education program for citizens on the importance of their civic duty to collectively support MCAs in their legislative oversight role would help generate public pressure on MCAs to demand accountability from the executive hence make legislative oversight a key agenda in county governance for both MCAs and citizens.

Key Words: Legislative Oversight, Vote Buying, Clannism, Ethnic Mobilization, Rigging, Electoral Violence

INTRODUCTION

There are myriad arguments for and against the need for governments in society. However, there is general consensus that the prosperity of democratic existence necessitates the governance government. On the same vein, there has been an increase in the need for accountability by government institutions and the government officials to ensure that public officials do not misuse their discretionary powers (Morgenstern& Manzetti, 2007). It is not surprising therefore that USA adopted the principle of separation of powers between the executive, the legislature and the judiciary to allow for checks and balances between them.

Kwale County covers an area of 8270.2 Km² though 62 Km2 of this area is under water. It is located in the South-eastern corner of Kenya, lying between Latitudes 30 3'and 40 45'south and Longitudes 380 31'and 390 31' East. It borders Taita Taveta County to the North West, Kilifi County to the North East, Taita Taveta and Kilifi to the North, Mombasa County and Indian Ocean to the East and United Republic of Tanzania to the South (KCG, 2013). Kwale County is governed in accordance with the new system of governance ushered in through the CoK 2010 which created one national government and 47 county governments in order to create spaces for the citizenry to exercise self-governance (Article 6, CoK 2010). The system of devolution entrenched in chapter eleven of the CoK 2010 seeks to achieve among other objectives: the enhancement of checks and balances in public affairs management through separation of powers promotion but also to promote democratic and accountable exercise of power (Article 174, CoK2010). The CoK 2010 introduced major reforms that gave birth to legislative frameworks that significantly created and empowered legislatures at county levels to oversight the executive.

Kwale County Government is made up of a county assembly (legislature) and a county executive in accordance with Article 176 of the CoK 2010. The

executive is headed by a governor and a deputy governor who are jointly directly elected by citizens. The governor forms government whose apex decision making body is the County Executive Committee (CEC). The County Executive Committee is responsible for managing the county government, it supervises implementation of county government programs and service delivery processes and are required to regularly provide comprehensive reports to the county assembly (Article 183, CoK 2010) and (Section 36, County Governments Act, 2012). The governor appoints CEC members, (the equivalent of ministers) from outside the legislature to ensure that the county Assembly is independent. Article 35 of the CoK 2010 guarantees right of access to information, hence making it mandatory for the executive to give information required by the county legislature for oversight.

On the other hand, the county assembly has a constitutional mandate to represent the people, legislate, and exercise oversight over the executive and its organs (CoK 185). The legislative oversight contemplated in article 185 of the CoK 2010 seeks to achieve greater transparency, accountability, reduced corruption and responsive service delivery in the counties (TI, 2013). The CoK 2010 gives Members of the County Assembly (MCAs) wide ranging powers to enable them exercise oversight. They have powers to originate legislation, including legislation on oversight matters. On instances where the governor declines to sign a bill passed by the county assembly into law, the county assembly has constitutional powers to override the governor's veto through two thirds majority vote in the house. MCA powers to impeach the governor and the deputy governor but interestingly, the governor and deputy governor don not have powers to dissolve the county assembly (Sections 8 and 9; CGA 2012). The governor's appointments for CECs, Chief Officers and Public Service Board Members must be reviewed by the county assembly. The county assembly approves the county annual budget and monitors its utilization and

management across all county government departments (Section 17, CGA 2012). To enable county legislators to monitor budget utilization and management by county departments, the Section 17 of the CGA2012 confers upon MCAs the powers to summon and censure members of the County Executive Committee, Chief Officers as well as members of the County Public Service Board. The county assembly's powers to summon public officials and other witnesses are equivalent to those of the high court, these enable them to summon any person to appear before it for the purpose of giving evidence or providing information, to enforce attendance of witnesses and to examine them under oath or to compel the production of documents (Article 125, CoK 2010). A county assembly oversight committee can therefore prefer sanctions against officials who fail to appear during oversight committee hearings. The County Assembly in Kwale also reinforced these powers and immunities by enacting comprehensive standing orders that guide the assembly's operations. Article 35 of the CoK, 2010 entrenches the right of access to information to any citizen but also to the county assembly. MCAs enjoy freedom of speech while debating issues in the county assembly or in committees, they are protected from any civil or criminal proceedings in relation to utterances made during debates, petitions, motions or any other proceedings of the county assembly (Article 117, CoK 2010). These freedoms, privileges and power of MCAs are further reinforced in the Kwale County Standing Orders (2017).

Legislative oversight in counties is exercised through motions, debates during plenary, county assembly sectoral committees and questions among other legislative oversight methods. According to Kwale County Standing Orders (2017), select committees have powers to investigate all matters pertaining to a department including the department's budget implementation processes, policy evaluation, assessing the level of success of a department in achieving its strategic objectives, making reports and

giving recommendations to the county assembly. The Accounts Committee (PAC) Public statements and accounts detailing public expenditure and public investments for all departments in order to assess whether these were managed in accordance with the law. The PAC also receives and discusses the Auditor General's report and makes recommendations to the house for debate. Armed with all these powers, county legislators should be able unearth, expose and punish malpractices, executive abuses and violations of the law.

Citizens are wondering why legislative oversight has not led to accountability in county governance, why recommendations of county assembly oversight committees are not being implemented by the executive; why legislative oversight continues to coexist with corruption and wastage of public resources in county governments(Cheeseman, Lynch, & Willis, 2016); and why the county legislature is not effective in holding the county executive to account in Kwale County. This study focused on factors affecting legislative oversight in county governance sought to shade more light on these issues so as to get a deeper understanding of the state of legislative oversight in county governance in Kenya.

LITERATURE REVIEW

Agency Theory

This theory was proposed by two scholars: Stephen Ross and Barry Mitnick in 1973. While Stephen Ross proposed and developed the economic dimension of the principal agency theory; Mitnick advanced the institutional dimension of the principal agency theory. This study adopts Barry Mitnick's principal agent theory because it has direct application on how public institutions operate. Agents are institutions or individuals who act or decide on behalf of other entities or other individuals (the principals). Principals are the power holders who exert authority over the agents.

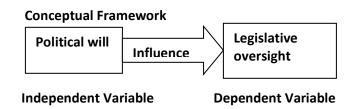
Rational Choice theory

Originally structured to facilitate a deeper understanding economic behaviour, the origin of rational choice theory can be traced to the work of Cesare Beccaria in the late 18th century. Over time, this theory has been used to explain social and political behaviour. Later, political scientists like Anthony Downs in 1957; Duncan Black in 1958, William H. Riker in 1962; and James Buchanan and Gordon Tullock in 1962 popularised the use of this theory in politics. The rational behaviour in this theory refers to behaviour that is predictable, sensible, goal-oriented, evaluative and consistent over time an across varying choice situations. This theory posits that social behaviour is the sum total of the behavior of individual actors. Each individual actor makes their own individual choice.

The theory of Political Will

The theory of political will was coined by Carmen Malena in 2009 in her book titled From political won't to political willto explain how political will for participatory governance can be created among leaders but has direct implications on how political will for legislative oversight can be created among individual legislators. The main idea in this theory is that political will hinges on two critical principles of intentionality and context dependency as argued by Kosgaard (2009) because both are needed to

operationalize the idea of action expected as a result of political will. Political will is the sum total of political want, political must and political can. The intensions which are expected to be the foundation for the desired action are anchored on political want and political must.



RESULTS

Effects of political will on legislative oversight

The study in this section presented findings on the effects of political will on legislative oversight in Kwale County. Political will among county legislators is instrumental if legislative oversight is to be exercised well in county governance. For MCAs to effectively put to use the various available oversight tools and mechanisms they must first be willing and capable of holding the executive to account, otherwise oversight becomes a pipe dream. Table 1 below was a summary of the findings on the different factors that shape a county legislator's political will and how these factors finally affect legislative oversight in Kwale County.

Table 1: Results for effects of political will on legislative oversight

Statement	Strongly Agree (%)	Agree (%)	Disagree (%)	Strongly Disagree (%)
MCAs have personal values that internally motivates them as individual MCAs to exercise legislative oversight	20	10	40	30
Exercising legislative oversight is one of the key initial drivers that motivate leaders to join politics as MCAs.	17	20	43	20
There is adequate public support from citizens and civil society organisations for MCAs to exercise legislative oversight over the county executive	20	16	34	30
The ease of access to public resources is one of the motivations for contesting elections as a county legislator	20	55	16	9

PW5. Legislative oversight work can actually damage an MCA's political career rather than improve it	58	22	10	10
MCAs have a sense of duty and therefore feel obliged to exercise legislative oversight over the county executive	22	12	54	12
MCAs intentions to exercise oversight are not mere wishes, in fact they are backed by practical strategies for holding the executive to account	14	16	28	42
PW8. Monitoring government leads to prestige for the MCAs	28	12	42	18
PW9. There is reasonable public pressure on MCAs to exercise legislative oversight over the county executive	12	18	40	30
MCAs have adequate knowledge and skills on legislative oversight and they believe that they can successfully pursue oversight matters confidently and successfully.	27	40	20	13
There exists appropriate mechanisms and resources to support MCAs in their legislative oversight role.	33	45	14	8
PW12. MCAs believe that the external political environment and contexts favour legislative oversight, so they trust that legislative oversight actions will lead to desired oversight outcomes.	34	8	52	6
PW13. Most voters expect bribes and personal material benefits from aspirants in order to vote for them	62	22	6	10
PW14. Executive-controlled patronage funds are important in supporting an MCA during elections	16	28	34	22

Recognizing the centrality of personal values in shaping one's willingness to pursue accountability matters, the study sought to establish the extent to which persona values motivate legislators to exercise oversight. While 30% of the respondents (20% strongly agreed; 10% agreed) agreed that MCAs have personal values that internally motivate them as individual MCAs to exercise legislative oversight, 70% of the respondents (40% disagreed; 30% strongly disagreed) disagreed. The respondents did not believe that MCAs in Kwale have values that gave them a reason to hold the executive to account which points to weak political will for oversight. At the same time, overall, 63% of the respondents disagreed that exercising legislative oversight was one of the key initial drivers that motivated leaders to join politics as MCAs with only 37% of the respondents agreeing that exercising oversight was one of the initial drivers that motivated leaders to join politics as MCAs.

In an attempt to further assess the practicability for MCAs to engage in oversight work, 80% of the respondents (58% strongly agree; 22% agree) agreed that legislative oversight work can actually damage an MCA's political career rather than improve it with only 20% of the respondents disagreeing. These findings with regards to the practicability of oversight work in Kwale were supported by the finding that only 40% of the respondents agreed that monitoring government leads to prestige for the MCAs while a whole 60% of the respondents (42% disagree; 18% strongly disagree) disagreed because the felt that the political

and civic context in Kwale did was such that the oversight role did not have political and electoral returns for the legislator. These findings contributed to the lack of intention on the part of MCAs to demand accountability from the executive which yields very weak political will — a trend which negatively affects oversight and perpetuates civic apathy in the citizenry.

75% of the respondents (20% strongly while 55% agree) that the ease of access to public resources is one of the motivations for contesting elections as a county legislator while a paltry 25% disagree (16% disagree while 9% strongly disagree). If easy access to public resources is one of the factors that incentivizes leaders to participate in elections to become MCAs, then it will have a negative influence on their willingness to demand accountability from the executive when elected. Citizens therefore need to be extra careful not to elect leaders whose main objective is to amass wealth from public coffers instead of playing their oversight role.

76% of the respondents (54% disagree; 12% strongly disagree) disagree that MCAs have a sense of duty and therefore feel obliged to exercise legislative oversight over the county executive. Only 34% of the respondents (22% strongly agree; 12% agree) agree that MCAs feel obliged to exercise oversight because they have a sense of duty. Without a sense of duty, county legislators will have a weak political will to demand accountability from the executive hence negatively affect legislative oversight. Probably the lack of a sense of duty is explained by the fact that there is no adequate public support from citizens and civil society organisations for MCAs to exercise legislative oversight over the county executive. Actually, only 36% of the respondents agreed that there is public support for MCAs to demand accountability from the executive; 64% of the respondents disagreed because they felt that MCAs lack support from the public on their oversight role.

The above findings were consistent with the finding that county legislators' intentions to exercise

oversight are not backed by practical strategies to effectively hold the executive to account – 70% of the respondents support this view while 30% of the respondents feel that legislators' intentions to exercise oversight are backed by practical strategies. Without tangible strategies for muddling through the mucky water of oversight, it is unlikely that intentions to oversight will be translated to actual oversight actions with tangible oversight results.

Political will can depend on among other factors: knowledge and skills on oversight processes, pressure on the MCA to exercise oversight and the existence of mechanisms and resources to support MCAs in their oversight roles. Now, overall, 67% of the respondents (27% strongly agreed; 40% agreed) agreed that MCAs have adequate knowledge and skills on legislative oversight and they believe that they can successfully pursue oversight matters confidently and successfully while 33% of the respondents (20% disagreed; 13% strongly disagreed) disagreed. This could be explained by the fact that the county assembly conducted many training sessions for MCAs on the roles hence equipping them with the necessary knowledge and skills.

On a positive note, the study established that there exists appropriate mechanisms and resources to support MCAs in their legislative oversight role with 78% of the respondents (33% strongly agree; 45% agree) agreeing while 22% disagreed (14% disagree; 8% strongly disagreed). With the right knowledge and skills for oversight coupled with the existence of the requisite mechanisms and resources for oversight, oversight seems to be getting a boost in Kwale.

However, the study found that only 42% of the respondents (34% strongly agree; 8% agree) agreed that MCAs believe that the external political environment and contexts favour legislative oversight and that they trust that legislative oversight actions will lead to desired oversight outcomes; while 58% of the respondents (52% disagreed; 6% strongly

disagreed) disagreed because electoral politics in Kwale are still based on patronage and clientelism where the electorate expects direct personal benefits from elected leaders instead of improved service delivery hence further weakening legislative oversight.

84% of the respondents agreed that most voters expect bribes and personal material benefits from aspirants in order to vote for them with 62% strongly agreeing while 22% agreed to this statement. Only 16% of the respondents disagreed with this statement because they felt that electoral politics in Kwale is not driven by vote buying and transactional benefits from candidates to voters. This level of awareness of vote buying and patronage is very high and paints a picture high prevalence of electoral politics that weaken the willingness of the MCAs to engage in oversight work because they are know that oversight work is not what will make them to be reelected.

On a positive note, the dependence of executive-controlled patronage by MCAs was found to be not so strong. Actually, only 44% of the respondents (16% strongly agreed; 28% agreed) agreed that executive-controlled patronage funds are important in supporting an MCA during elections. 34% of the respondents disagreed that executive-controlled patronage funds are important in supporting an MCA during elections while 22% strongly disagreed bringing the overall percentage of those who disagreed to 56%. Low dependence on executive controlled patronage resources for campaign financing promotes oversight as legislators are free from the bondage of executive control and can therefore hold the executive to account.

But was there pressure on the county legislators to demand accountability from the executive? The study found that there is a lack of pressure on the MCAs from the public to demand accountability from the executive. Only 30% of the respondents (12% strongly agreed; 18% agreed) agreed that there is reasonable public pressure on MCAs from the public to exercise legislative oversight over the county executive. On the

other hand, 70% of the respondents (40% disagreed; 30% strongly disagreed) disagreed that there is reasonable public pressure on MCAs to hold the executive to account.

Summary of the Findings

The study revealed that political will affects legislative oversight in county governance. The existence of political will among legislators to oversight the executive strengthens legislative oversight. The study found that MCAs in Kwale lacked personal values that would otherwise incentivize them to demand accountability from the executive. Oversight is not a key driver that propels leaders to join politics. Legislative oversight work can actually damage an MCA's political career rather than improve it; in fact, monitoring the executive does not lead to prestige for the MCAs. While there is very little public pressure on MCAs to exercise legislative oversight over the county executive; support from citizens and civil society in their oversight role is also very weak.

Much as the study revealed that MCAs had adequate knowledge and skills on legislative oversight and that there exists appropriate mechanisms and resources to support MCAs in their legislative oversight role; the study unfortunately also revealed that MCAs do not have a sense of duty that would otherwise have made them feel obliged to oversight the executive. In fact, one of the motivations for contesting elections as a county legislator is the ease of access to public resources. In this environment where the study shows most voters expect bribes and personal material benefits from aspirants in order to vote for them, MCAs are not convinced that the socio-political context in Kwale favours legislative oversight and as a result, it becomes very difficult to build political will for oversight in Kwale.

CONCLUSIONS

This study proved that legislative oversight in Kwale County was affected by constitutional powers of the county legislature, political party cohesion, electoral prosses and political will by county legislators to exercise oversight. The following conclusions were made about the factors affecting legislative oversight in Kwale County:

- enable them exercise legislative oversight in counties. The culture of checks and balances is gradually taking root in Kwale County. Much as the county assembly has utilized its oversight powers to review executive appointments, amend budgets, and to sanction senior county government officials, there are concerns that MCAs are not prompt in oversighting the executive, that the rate of implementation of county assembly oversight recommendations by the executive is unsatisfactory and that MCAs use their oversight role for personal gain.
- Party cohesion for the ruling party was weak. Cohesion for the opposition coalition is strong. Much as parties in Kwale do not significantly reward their legislators, the threat punishments/sanctions for defying the party on oversight matters influences the way legislators vote on oversight matters. Th central role played by political parties in legislators career growth coupled with the absence of protection mechanisms for MCAs against partisan pressures strengthens party cohesion hence weakening legislative oversight in county governance in Kwale.
- Contextual factors like vote buying, clannism, based mobilization ethnic for electoral campaigns, elections rigging and electoral violence, dependent mon political god-fathers for campaign financing, failure by citizens to link legislator oversight roles to elections and failure by political parties to consider a candidate's commitment to oversight while picking them as nominated MCAs weaken legislative oversight in county governance.
- While political will was promoted by the fact that MCAs in Kwale had adequate knowledge and

skills on legislative oversight and that there exists institutional mechanisms appropriate resources at the county assembly to support MCAs in their legislative oversight role, there are many odds that weaken political will. County legislators do not have a sense of duty that would otherwise have made them feel obliged to oversight the executive. Lack of personal values and conviction for oversight, lack of public pressure and public support to MCAs oversight role, the widespread expectation for vote buying practice, MCAs desire to access public resources by virtue of their positions and a generally nonsupportive socio-political context in Kwale weakens political will for legislative oversight.

RECOMMENDATIONS

After carefully considering the findings and conclusions, this study recommended the following:

- The county assembly should strengthen the operations of the county assembly implementation committee which is charged with the responsibility of monitoring implementation of county assembly oversight resolutions by the county to ensure that oversight recommendations are implemented to the latter.
- Civil society in Kwale should also take up their rightful role of holding the county assembly to account to ensure that the assembly's constitutional powers of oversight are used not for the personal benefit of MCAs but for the benefit of public and in furtherance of public interest.
- The study recommended that political parties, being publicly funded institutions through public coffers should be accountable not only to their members but also to the general public on the role they play in advancing public interest in relation to legislative oversight. This will ensure that party cohesion in the county assembly is used as a tool for promoting legislative oversight

- instead of using cohesion to advance narrow partisan interests.
- The study recommended that formulation and implementation of electoral reforms including reforms in campaign financing to decisively deal with electoral malpractices so as to realize credible, free and fair electoral process that can function as accountability platforms for holding MCAs to account on their oversight role. This coupled with voter education on the role of citizens in electoral governance and electoral justice will go a long way in revolutionizing electoral processes hence improv their effect on legislative oversight.
- Robust civic education for citizens on the importance of their civic duty to collectively

support MCAs in their legislative oversight role as well collectively generate public pressure on MCAs to demand accountability from the executive so as to make legislative oversight a key agenda in county governance for both MCAs and citizens.

Recommendations for areas of further research

This study on factors affecting legislative oversight was conducted in Kwale county only. Given the cultural, economic, social and political differences across the 47 counties in Kenya, the researcher recommends that other studies be conducted in other counties to assess the challenges that county assemblies face in legislative oversight processes in county governance.

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