

# Enhancing Implementation of Performance Contracting In the Public Sector under Devolved County Governments of Kenya

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**Abstract-** The use of performance contracts has been acclaimed as an effective and promising means of improving the performance of public enterprises as well as government departments. The debate in the public sector has been more complex than just increasing the effectiveness of strategic management systems and narrowing the gap between ambitious strategies and annual planning. The Kenyan government acknowledges that over the years there has been poor performance in the public sector, especially in the management of public resources which has hindered the realization of sustainable economic growth. To improve performance, the government has continued to undertake a number of reform measures. The seminar explained the role of county government, the performance contracting, challenges being faced by counties in implementation of performance contract and suggested solution towards effective implementation of performance contract in the counties.

**Index Terms-** Performance, Performance contracting, Expectation, Devolution

## I. INTRODUCTION

The performance contracting system in Kenya, has contributed to remarkable improvement in public service delivery since its inception in 2004. The system is credited for changing the attitudes of public officers by focusing them on results and citizen service rather than emphasis on processes. The public sector is the entity that is entrusted with the delivery of goods and services by, and, for the government at the national, regional or local levels (Mansour, 2008).

Uequivocally, the public sector in modern politico-administrative settings is merited to be characterized in many ways. Peters (2006) identifies that it can be described in terms of the types of public policies that organizations in the public sector deliver for citizens (for example, the Welfare State), by the degree of democratic control exercised over those policy choices, or any number of other political and administrative variables. In an increasingly turbulent environment, the public sector lately has been experiencing a bumpy journey as its tasks seem overwhelming and beyond human capacity to perform satisfactorily (Caiden, 2007).

Public sector monopolies in developing countries are often associated with inefficiencies and inability to meet rapidly

growing demand. Studies estimate the annual losses from inefficiencies and unsustainable pricing policies to be nearly equal to the annual investment in infrastructure (Araral, 2008). As a result, the contribution of the traditional public sector is largely questioned, suggesting the need for a major overhaul. Public sector reform (PSR) in both developed and developing countries has now become a routine matter of public policy – reform is almost continuous if not always successful (Pal and Ireland, 2009). Over the past three decades, governments across the world have made efforts to improve the efficiency and quality of public services and its cost-effective delivery to citizens. These efforts have involved restructuring, an increased use of technology to offset staff cutbacks, the introduction and enforcement of service standards for employees and managers, an increase in managerial discretion, the contracting out of service delivery, and the adoption of flexible staffing practices (Foley, 2008).

Introduction of New Public Management (NPM) models in Africa was influenced by challenges emanating by African countries trying to maintain a macro-economic stability, lowering inflation, reducing scope and cost of government and cutting deficit spending by deregulating public enterprises and ensuring they run as private sector business (World Bank, 1989). Obong'o (2009) uses the term NPM widely to label changes occurring in the conduct of the public sector business in 'managerialism'. The concept has incorporated application and adoption of private sector management systems and techniques into public services and reassessing which services should be privatized. It shifts emphasis from traditional public administration to public management and entrepreneurship (Economic Commission for Africa, 2003).

The force behind NPM reform wave is that greater cost efficiency will be realized when public service becomes more market oriented. Consequently most developing countries have implemented reforms that involve adoption of multiplicity of measures intended to improve service delivery (Kiragu and Mutahaba, 2005).

Mulgan (2008) examined PSR in New Zealand and found that the reforms focused mostly on public accountability through the specification of outputs, clarity of contractual agreements, and division of government departments into smaller agencies. The study concluded that while one of the key objectives of the reforms was to improve public service delivery, it failed to give members of the public a greater right to complain about

government services, and did not encourage managers to answer directly to the public.

Borghi and Berkel (2007) investigated individualization trend as a component of PSR in the provision of social services in the UK, The Netherlands, and Finland. It was revealed that in The Netherlands there were decentralization and privatization in the area of social services as a means of reducing welfare state dependency and promotes labor-market participation. While the privatization of services were expected to result in increased effectiveness and efficiency, lower prices, and higher quality of services and more responsive service providers, it reduced rather than increase the room for client choices. In the UK it was observed that individualization of service provision was aimed at stimulating providers to offer services that are tailored to individual needs and circumstances, especially in the areas of social security and welfare-to-work related services and such aims are for the most part, being realized. In Finland, the study found decentralization of responsibilities in policies aimed at vulnerable groups, and an integration of the service provision of social welfare and employment administrations.

On the issue of e-government, Kudo (2008) examined the role of e-government in PSR in Italy and Japan. The study uncovered that the use of e-government initiative in Italian taxation system and procurement processes enabled financial rationalization as well as transparency. It also led to better accountability and transparency in the public sector, improved communication and management among local governments, and more transparency and efficiency in interaction between the public and private sectors. In Japan the use if ICT helped to ensure better sharing of information between the central and local governments. However, the problem with e-government in Japan was the lack of legislation especially on privacy of information.

In the area of Civil Service reform, Coggburn (2000) studied the impact of state personnel deregulation on the economy and efficiency of state human resource operations, and on the proportions of state's workforce occupied by part-time workers, and found that many states have moved to deregulate their personnel systems to a significant degree. Kellough and Selden (2003) reported considerable variation in state implementation of six aspects of personnel reform: decentralization of personnel authority, contracting out of personnel management functions, reductions in the number of job classes of titles, implementation of broad banding, and implementation of labor-management partnerships and the use of strategic workforce planning.

PSR is particularly relevant for Central Asian countries that were part of the Soviet bloc (Kazakhstan et al., 2010) and experiencing political, social and economic transitions. The issues of good governance and public service delivery have thus become the fundamental concerns of Central Asian governments. After the dissolution from the Soviet Union, these republics faced three different issues of transition: economic shock, transformation to market-based economy and political transition (Saneret et al., 2008). PSR initiatives in Kazakhstan are progressing in the midst of hazy political climate, where the Nazerbaev regime consolidates its control by redistributing the spoils of political office among the loyal clients and beneficiaries who control the pro-presidential parties (Dave, 2005). As a

result, in Kazakhstan, like other Central Asian countries, political opposition struggles to exist; rulers practice varying degrees of authoritarianism and rely on networks of patronage, clans and corruption that constitute important pillars of governance (Fritz, 2007).

Performance measurement is often taken to be crucial to the delivery of improved services as part of New Public Management. Emphasis on performance management for delivery of results is undoubtedly influenced by the basic assumption of performance management which lies in its professed ability to unite the attention of institution members on a common objective and galvanize them towards the attainment of this objective (Balogun, 2003).

According to GoK (2007), a performance contract is a management tool for measuring negotiated performance targets. It is a freely negotiated performance agreement between the government, acting as the owner of public agency on one hand, and the management of the agency on the other hand. The performance contract specifies the mutual performance obligations, intentions and the responsibilities of the two parties. Similarly, it also addresses economic/social and other tasks to be discharged for economic or other gain. It organizes and defines tasks so that management could perform them systematically, purposefully and with reasonable probability of achievement. Since inception of devolved government, two major changes have been effected by the coming into force of the new constitution; the first is a change to a presidential system, hence signing of contracts between the Excellency and cabinet secretaries, as a contractual commitment to deliver on the economic agenda that will ensure that the economy grows by double digits – in order to create jobs for the youth and improve the quality of life of the Kenyans. The second major change is the shift from a unitary state to a devolved system of government, which marks a fundamental shift in the way the performance management accountability with regard to functions that were previously undertaken by national government and are now within the ambit of county governments.

The objectives of the seminar were: to show the importance of performance contracting in the public sector, to educate on the implementing challenges of performance contracting in the Public sector and to explore the strategies for enhancing implementation of performance contracting in Public sector.

## II. LITERATURE REVIEW

### 2.1 Definition of Performance Contracting

Lane (1987) defines a contract as a binding agreement between two or more parties for performing, or refraining from performing some specified act(s) in exchange for lawful consideration. On the other hand, The American Heritage Dictionary (2009) defines performance as the results of activities of an organization or investment over a given period of time. Performance contracting as part of strategic management is, therefore, defined as a binding agreement between two or more parties for performing, or refrains from performing some specified act (s) over a specified period of time. It is a branch of management control systems which provide information that is intended for managers in performing their jobs and to assist

organizations in developing and maintaining viable patterns of behaviour (CAPAM, 2005).

As part of performance management, performance contracting is a central element of new public management, which is a global movement reflecting liberation management and market-driven management. Liberation management means that public sector managers are relieved from a plethora of cumbersome and unnecessary rules and regulations which usually hinders quick decision making in the organization (Gianakis, 2002).

## 2.2 Origin of Performance Contracting

The term performance contracting can be traced from France in the late 1960's and other countries including India, Pakistan and Korea (OECD, 1997). Prior to this period the business environment was rather stable and therefore strategic planning was entrusted in the hands of the top management of the organization. This practice was counter-productive as managers who were implementers of the strategic plans were not involved at the formulation stage.

Aosa (2000) supports this view when he argues in his study that due to increased environmental turbulence in the early 1970's, especially 1973 top executives were forced to recast the way they looked at their business for survival. They redefined performance management as a proactive management tool for achieving business goals and objectives, through a structured and continual process of motivating, measuring and rewarding individual and team performance. Earlier, management tools for example the Carrot-and-Stick policies and behaviour which were common in the 19<sup>th</sup> Century Industrial Age had become increasingly irrelevant to modern management practices and therefore, this called for more flexible and adaptability in strategic planning, forcing managers responsible for implementing strategies be involved in all stages of strategy formulation (Barclays Africa, 1997).

However, Steiner (1983) speculates that many of the strategic planning systems failed to link planning and resource allocation and did not place emphasis on strategy implementation. He further observes that the existing systems failed to reward managers and employees for strategic thinking, creativity and innovation. This led to disenchantment with strategic planning and thus forcing managers to believe that it was of little or no value to the organization. Despite of these problems practitioners and academics like Porter (1983) came in support of strategic planning by placing emphasis on strategy implementation.

### 2.2.1 Key Changes of performance contract under devolved system

According to GoK (2013), under the devolved system, the ministry of devolution as made various modification to the performance contract. First, there is included a peer review element, that will ensure that Cabinet Secretaries support each other in achieving our collective responsibility as a Cabinet because of the realization that the success of government is as good as the weakest link. Hence Cabinet Secretaries must work together at sharpening each other in the achievement of our collective responsibility. Secondly, the performance contracting has moved from ranking of ministries, that was based on sectoral assessment to a within ministry assessment. This involves

establishing a baseline measure, against which a ministry will strive to improve hence, creating a dynamic incentive within the respective ministry for continuous improvement. Thirdly, two critical performance indicators on tracking "Youth and Women Empowerment", and "Ease of Doing Business" were introduced.

The other major departure from past practice is that, due to the implementation of the devolved system of government, there will be no performance contracts between the county governments and the national government, as was the case before, when the defunct local authorities signed performance contracts with the central government. However, county governments should be aware of the requirements of the County Governments Act(Article 47 and Article 113) that requires county governments to design performance management plans for evaluating the performance of county public service and implementation of county plans (GoK, 2013).

## 2.3 Purpose of Performance Contracting

Performance contracting constitutes a range of management instruments used to define responsibilities and expectations between parties to achieve mutually agreed results. It is a useful tool for articulating clearer definitions of objectives and supporting innovative management, monitor and control methods and at the same time imparting managerial and operational autonomy to public service managers. An organization's purpose defines the ways in which it relates to its environment. If this purpose is fulfilled, the organization will survive and prosper (Luo and Peng, 1999).

The main purpose of the performance contracting according to Armstrong and Baron (2004) is to ensure delivery of quality service to the public in a transparent manner for the survival of the organization. Hope (2001) points out that performance contracts specify the mutual performance obligations, intentions and the responsibilities which a government requires public officials or management of public agencies or ministries to meet over a stated period of time. As part of the performance orientation in government, the common purposes of performance contracting are to clarify the objectives of service organizations and their relationship with government, and facilitate performance evaluation based on results instead of conformity with bureaucratic rules and regulations which have killed thinking, innovation and creativity in the public sector (Hittet et al., 1999).

## 2.4 Devolved Function in the Counties

County Governments are responsible for: county legislation outlined in article 185 of the Constitution of Kenya, executive functions outlined in article 183, functions outlined in the fourth schedule of the constitution of Kenya, functions transferred from the national government through article 187 of the constitution of Kenya, functions agreed upon with other counties under article 189 (2) of the Constitution of Kenya, and establishment and staffing of a public service under article 235 of the Constitution of Kenya, County Governments (Act, 2012).

### 2.4.1 Transition to Devolved Government

The Constitution of Kenya, 2010 in the Fourth Schedule assigns functions between the national and county governments, (IEA, 2013). The constitution assigns the task of service delivery in key sectors like water, health and agriculture among others to county governments, with the national government's role in some of the sectors being that of policy formulation. The Sixth

Schedule Part 4 Article 15 of the constitution provides for the phased transfer of functions assigned to county governments three years after the election of county assemblies. The first phase of the transfers involved the identification of roles to be performed by the national and county governments, while the second phase entails overseeing the transfer of functions from the national to the county governments IEA.

## **2.5 Challenges of devolved Functions**

The long awaited county governments were established after the March 4 general election. This period marked a new era of devolved government in Kenya, which Kenyans have very high expectations of. Responding to the said expectations is likely to be one of the greatest challenges that those elected and appointed to county positions will face. There are a number of functions devolved under the new constitution, but challenges have arisen with a number of key functions as cited below.

### **2.5.1 National Security**

Akaranga (2008) posits that, under the new Constitution, security is the sole mandate of the National Government placed under the Inspector General of Police. At the county level, County Commissioners are responsible of coordinating security management, national Government functions and delivery of services, facilitate conflict management and peace-building, and mobilize national government agencies for national events and programmes. Counties also collaborate with the citizens and foreign nationals' management service in the identification of persons for registration and also manage and maintain administrative boundaries, security roads and airstrips.

### **2.5.2 Health Services**

Since independence in 1963, centralization has been at the core of Kenyan governance, with power concentrated in the capital. As a result, Kenya has been marked by spatial inequalities during this period of time; it is against this backdrop that healthcare devolution is taking place. Article 174 of the Kenya Constitution clearly articulates the rationale behind devolution as, among other reasons, self-governance, economic development and equitable sharing of national and local resources (Moy, 2005).

Key challenges in the health sector include: Public officers in the devolved health services contend that appropriate and suitable arrangements have not been made for them to transfer their services to the county governments and have made their demands, which they wish to be met before they transfer their services (Mulgan, 2008). No modalities have been made or agreed upon for their transfer to the county public service and no suitable arrangements seem to exist in the public domain to facilitate this. The result is that the health workers are in the employment of the national government under the Public Service Commission but their services are transferred to and deliverable in the counties.

### **2.5.3 Water Sector**

Water services in Kenya are at an important and exciting crossroad. Devolution of the water services function has assigned responsibility for water provision to democratically elect county governments that now face the challenge of being responsive to the needs of their electorates and to honor the constitutional obligation to progressively provide water services to all people. The role of national government will change to policy development, sector oversight and support. Key challenges in

Water sector include: Significant institutional reform required (amalgamation of existing water boards into one); WSB staff may fear redundancy and/or resist change and while it would meet constitutional requirements if the Board's role is confined to national public works, it still leaves the assignment of other functions unresolved. Understanding and addressing the challenges identified in this note can smoothen the transition process thereby ensuring that services continue to be delivered and access extended while policy and institutional reforms are designed and implemented (Dave, 2005).

## **2.6 Benefits of Performance Contracting**

Moy (2005) in his final report to the Office of Financial Management which summarized the results of their literature search and state survey on the best practices and trends in performance contracting in a number of state and local agencies in Washington D.C. indicates that the use of performance contracts and the accompanying increase of operational autonomy had induced some developments in the internal structures of the agencies under study. The implementation of performance based contracting ranges from state-wide, agency wide, to only within specific agency divisions or programs and that its impacts in each state agency varied, but including increased accountability for service delivery and deliverables and increased partnership between the contractor community and the state agency. States agencies had defined performance as deliverables, outputs, outcomes, and effectiveness and efficiency, among others.

With respect to changes in customer relations, new interfaces and instruments are installed, resulting in increased client-orientedness. Most state corporations and government ministries in Kenya, for instance, now have functional customer care and public relations offices. These offices have acted as valuable instruments for introducing a client focus. However, the functioning of these offices is hampered, in some cases, by the insufficiency of financial and human resources (Akaranga, 2008). The success may also bring with it some challenges. The winners expect to be rewarded, over and above the normal pay. However, the initial rounds of performance contracting took place before the finalization and approval of reward and sanction system. It was not just the high performers who did expect to be rewarded; the public also expected the bad performers to be punished.

When this does not happen it may demoralize the high performers but also cast aspersions on the rationale and motivation for the whole exercise. On a broader note it is important to view a performance contract as part and parcel of a wider performance management system, but not as a standalone operating outside the established human resource regulations. The successful introduction is partly attributed to the political goodwill and leadership which in this case has been provided by the highest office in the land, the presidency. The enthusiasm and commitment of the Permanent Secretary, Secretary to the Cabinet and Head of the Public Service has also significantly contributed to this success (Obongo, 2009).

Bologun (2013) concludes that, the independent ad-hoc committees has brought into the process a high degree of autonomy from the management of public service, in addition to infusing credibility, objectivity and professionalism into the entire exercise. The strategy has also been implemented in an

inclusive and interactive manner such that there have been very limited cases of organizations claiming unfair evaluation or being denied an opportunity for expression of opinions and ideas.

### **2.7 Implementation challenge of Performance Contract in the Counties**

Whereas the general public and even some high ranking public servants may very much welcome the idea of performance contracting and measuring performance, it might not be readily accepted by everybody. Especially those who might feel exposed (negatively in terms of poor performance) by the outcomes. In other cases resistance may come in the grading structure, those who feel that no grading system can even out the effects of lumping big and small ministries together. In the state corporations similar sentiments can be expressed that it is unfair to grade state corporations operating in different sectors of the economy together (Akaranga, 2008).

Despite the application of composite score, which allows for comparisons of different ministries and state corporations, some ministries and even state corporations would still prefer to be grouped and ranked differently citing their uniqueness emerging from their areas of service delivery (industry), size in terms of turnover, number of employees and even their mandate. Change management is not easily accepted hence there are eminent challenges in the implementation of performance contract at county level (Moy, 2005).

A number of challenges identified include organizational structure, leadership and management styles, rigid organizational culture and lack of effective performance management. There is need that the organizational structure should be restructured to facilitate quick decision making and subsequent faster response than is currently experiencing, also some managers at county level have not been enthusiastic enough in implementing the PC and coming up with strategies to counter the challenges that face the ministry. The success may also bring with it some challenges. The winners expect to be rewarded, over and above the normal pay (Monsour, 2008). However, the initial rounds of performance contracting took place before the finalization and approval of reward and sanction system. It was not just the high performers who did expect to be rewarded; the public also expected the bad performers to be punished. When this does not happen it may demoralize the high performers but also cast aspersions on the rationale and motivation for the whole exercise. On a broader note it is important to view a performance contract as part and parcel of a wider performance management system, but not as a stand-alone operating outside the established human resource regulations.

## **III. SUMMARY, CONCLUSIONS AND RECOMMENDATIONS**

### **3.1 Summary**

In order to increase the reliability and validity of performance measurements, various approaches are recommended such as multiple raters, combination of objective and subjective criteria, and so on. For instance, Bobko and Collela (1999) suggest that performance standards are external to the individual and for evaluative purpose and that it is different from individual goals as a person's internal aim. They proposed the importance of the employee reaction and acceptance of performance standards.

Similarly, Huber et al., (1999) suggested that performance standards should be clear and specific in order for raters to evaluate performance accurately using such standards. They however observed that the major concern was the kind of rating scales increase rating accuracy to be used. They suggested various rating scales among them behavioral anchored rating scale (BARS), behavioral observation scales, and other similar scales were proposed to increase the rating accuracy.

### **3.2 Conclusion**

In conclusion performance contracting as an implementing tool in strategic planning is of great importance under the new public administration. There is, however, need for a good definition of outputs and solid performance measures which will be able to promote organization internal performance through a well customer-oriented ability of employees to further promote the organization external performance. This requires a well-defined training program for the public servants to support implementation of performance contracting. On the other hand, there is need to study both the public servants' perceptions on the role of performance contracting in improving service delivery to the end users and also the impact of the performance contracting on service delivery to the populace. This will confirm whether the objectives of implementing performance contracting are being achieved in the public sector.

The following issues also need to be addressed; stability and availability of resources is vital for the success of performance contracting and therefore the top leadership must ensure that necessary resources are available at all time; the political top leadership must respect the operational autonomy of the contracted organizations/ministries; knowledge of strategic planning, its development and monitoring capacities among the staff is central to success of performance contracting and the management support and their technical knowledge is vital; contract management should be accompanied by performance-oriented change in the public service structure and management culture. Culture that empowers staff to embrace and manage change is necessary. Management instruments, focusing on performance and cost in the field of human resources and financial management should be developed in an integrated manner.

### **3.3 Recommendation**

There is need for a good definition of outputs and solid performance measures. This requires a well-defined training program for the public servants to support implementation. A solid legal framework, which sets out the basic premises and the status of the contract, may avoid ad hoc and fragmented solutions. Stability of resources enhances the motivating effect of the contract. When resources are not available or availed late, the staff involved gets frustrated.

The political top must respect the operational autonomy of the contracted organizations/ministries. Knowledge of strategic planning, development of work plans and monitoring capacities among the staff is central to the success of PC and the management support and their technical knowledge is crucial. Contract management should be accompanied by performance-oriented change in the public service structure and management culture. Culture that empowers staff to embrace and manage change is necessary. Management instruments, focusing on performance and cost in the field of human resources and

financial management should be developed in an integrated manner. Other instruments of control such as quality service charters and regulations concerning transparency and accountability must complement performance contracting. PC tends to emphasize competition among staff to meet their targets. Competition if not well-controlled may bring conflicts with values hence interfere with organization culture. Performance contracting is not a substitute for poor management. PC will only succeed where best management practices are practiced. Top management key competencies and participatory approach to decision making is crucial.

There should be regular overall evaluations and audits of benefits and drawbacks of the implemented contract in order to learn from experiences. Differences in implementing contexts may provide different learning experiences. The early years of implementing PC are difficult both for the staff and management. A degree of tolerance from the management may sustain the momentum. Mistakes are likely to be made but what is critical is drawing lessons for innovations and creativity for future performance improvements. The government need to invest more resource in enlighten of the following key forces of driving the change in the public sector especially under devolved government structure: changing the attitudes to the role of government in the economy, in that the government is in the business of ensuring that the environment is viable for better service provision and creation of conducive environment for investors. The process of micro-economic reform, since the adoption of the new constitution and Kenya being an agricultural economy, the government introduced policy to drive the economy to middle income status and introduction of funds as incentive like women fund, youth fund and UWEZO fund among many. Changing community and business expectation and especially by revival of new tourist destination, new commerce body to sell Kenya to different destination so as to ensure Kenya is a competitive global partner and increase in provision of jobs to our youth. The other change is the impact of technology; the government has created Konza City. County governments have initiated similar technology cites. This is to ensure that the future of economic growth is linked to technology development and hence the public sector is in the first line to utilize the technology in its operations.

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