

NEW CONSTITUTION | Transfer of functions from national government to depend on county preparedness

# Counties take governance closer to people



WILLIAM OERI / NATION

There have been conflicting views regarding whether councillors will lose their jobs, and the structure of county governments. Lead drafter of the chapter on devolution OTIENDE AMOLLO (pictured) talked to writer SAMWEL KUMBA.

## Q Who will pay employees at the county-run institutions?

All the people executing functions allocated to the county government will draw their salaries from the county government. These include schools, clinics and street-lighting projects, among others.

It is important to note that the salaries of these employees will be recommended by the salaries commission for standardisation. But the counties will have the authority to hire and fire.

## At what point will such employees stop drawing salaries from the national government?

The transfer of the functions from the national government to the county government will not be automatic. This will depend on their preparedness.

There is a three-year period when the assessment will be done and powers transferred. Before this happens, employees will continue to be paid by the national government.

However, there will be representatives of the national government at the county level who will remain employees of the national government.

## Are counties obliged to employ people from that particular county?

This Constitution insists that nobody can be discriminated against by virtue of where one comes from or tribe. If one went to a county seeking for a job and is qualified but denied an opportunity on the basis that one is not from that county, that can be challenged in court.

Besides, the counties will have to operate efficiently. If there is any that is not performing, the county government can be suspended. So it will be in the interest of the county to look for the best personnel even outside the county.

## With the new Constitution, what happens to the local authorities after the 2012 General Election?

First, I would like to make one thing very clear: Councillors are not going to be abandoned or to disappear. If anything, the job of the councillor has been made much more important than never before.

The role of the councillor is now defined.

We will have many more councillors because in the county assembly, at least one third must be of the opposite gender. Since most of those that will be elected are likely to be men, more women will be nominated to reach the one-third requirement.

## What about the municipal or town councils?

That is provided for in article 176(2) and schedule 6 section 18. Picture this: the old constitution did not mention provinces; these were created by an Act of Parliament. Nevertheless, the Government was able to create the Provincial Administration as sub-units for easy operations.

In the same way, although the Constitution gives the county as the lower unit, it does not stop counties creating lower units within it. This means the municipal and town council will continue to exist as sub-units of the county government.

What they can't do is exercise powers given to the county assembly. That does not stop members of a particular council from sitting and deliberating how to use their share of the county allocations.

Their reporting level will be to the county government, not a ministry.

## Is that anchored in the law?

Precisely. Article 177 provides for a councillor to be elected from each ward. These councillors will do at the county what MPs do at the national level. They will be in charge of the county assembly budget.

## What happens to mayors and town clerks?

Article 184 explains this. This contemplates that Parliament shall pass legislation to provide for the governance of urban areas and cities, which are run differently from the way rural counties are run.

Initially we had provided that in cities, instead of governors we have mayors. But the PSC changed that, so we provided for this article. But the legislation could easily say that when it comes to cities, the city governors will be called mayors.

This legislation will also articulate how governance of cities and major towns will be done. It is unlikely that we can have a mayor and a governor at the same county. Alternatively we can have a mayor govern-

ing only town centres.

## What about town clerks?

Town clerks have been very important persons as unelected representative of the Ministry of Local Government. But the linkage between the council and the ministry has been cut. If the governor does not perform, he or she will be impeached. The position of the clerks is therefore diminished.

But just like we have the Secretary to the Cabinet, the country can decide to employ a chief executive who will exercise administrative functions.

Still these people will not be as important as the current clerks and will not be answerable to the ministry but to the county executive.

## What are the powers of the county governments?

A. The county government exercise defined powers spell out in the Fourth Schedule of the Constitution. The national government exercise powers defined in the Fourth Schedule and any other powers that have not been given to the county government.

Both these governments are formatted on a presidential system.

Just like the President, the governor can be impeached by the county assembly. There is a county executive consisting of a minimum of three and a maximum of 30.

Reasons for devolution include bringing the government closer to the people and devolved resources as well as to decentralise the power to the various counties across the country.

## How will the county government relate with the national government?

The national government has powers allocated to it under Schedule Four but can exercise any other powers not allocated to the county assembly. Their relation is that there is no way the national government can come and purport to exercise powers given to the county government.

If they try that, the county government is authorised to resist. And if that continues, the matter can be referred to the

High Court. That is why the jurisdiction of the High Court includes determining disputes among county government or between the county government and the national government.

## How will county governments relate to the Provincial Administration?

That matter is clear, but it is often confused for historical reasons. The Provincial Administration will continue as part of the national government.

This means that everybody with the Provincial Administration are employees of the national government and they should not interfere with the powers of the county government.

The DC will no longer be chair of the district development committee and no longer controls money going down to the counties. Their powers are therefore much more reduced and can only exercise powers left for the national government.

That is why the schedule of transformation says that although the Provincial Administration shall continue to exist, it shall respect the developed structures.

## So there is no county council parallel with the county government?

That is absolutely outside the provisions of the new Constitution. Article 177 is clear that it is the people who are elected at the ward level who will become the County Assembly.

The County Assembly is the reference point with everything at the county. In fact, the senator can sit in the County Assembly to get a feeling of what is in the pipeline and represent to county better at the senate level.

## Between the Senator, Governor and Member of Parliament, who is senior?

That is a question most people like to ask, but it is because people are used to tyranny. There is this notion that somebody has to be the boss and that one should be able to see from the top who is superior to the other.

Unfortunately, none of these people is superior to the other. Each of them has a defined role, the governor within the county and therefore has no business in Nairobi, the Senator has specific role in Nairobi and in the county as the link while the MP has a defined role within Parliament for the whole nation.

This means each has a role to perform, failure to which one is removed. These people have no clear forum they can come together. The senator comes to the County Assembly to who he is not answerable, just to understand their thinking and better represent them.

The senator therefore has a right but not a duty to attend the County Assembly to concur with them at consultation level. The MP will not come in contact with the County Assembly, which they have no right to attend. The MP and senator can consult at national level legislation.

## INTERNATIONAL ANGLE

### America's is a complex system

In the US, a county is a local level of government below the state or federal territory.

Counties are in 48 of the 50 states; Louisiana is divided into parishes and Alaska into boroughs.

There are currently 3,143 counties and county-equivalents in the US. Independent cities, which are not part of a county, are different from consolidated city-counties, where a city and county are merged into one unified jurisdiction and is simultaneously a city and a county, having powers and responsibilities of both types of entities.

The average number of counties per state is 62.

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Lead drafter of the chapter on devolution in the new constitution, Mr Otiende Amollo