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NATIONAL TRENDS AND SCENARIOS ON GOVERNANCE – A GENDER PERSPECTIVE ON THE NAIROBI GUBERNATORIAL SEAT

Background

County governors are elected for a five-year term following a general election. A gubernatorial candidate must choose a running mate to be eligible to participate in a general election. The candidate with the highest number of votes is declared winner and the running mate automatically becomes Deputy Governor (DG). If the office of the Governor becomes vacant by resignation, mental or physical incapacity, removal or death, the DG takes over as Governor and s/he appoints her/his own DG. No by election can be done under this scenario.

However, a by election must be held in the event that both the offices of Governor and DG somehow fall vacant at the same time. In that case, the Speaker of the County Assembly acts as Governor for 60 days during which time the IEBC conducts a by election in which a new Governor and DG are elected. The new Governor and DG serve for the remainder of the term.

The Case of Nairobi

The county elected the last Governor and DG during the 2017 general elections but the DG resigned in February 2018, barely 6 months into the five-year term. It was expected that the Governor would appoint a DG immediately the office became vacant but he declined to do so, claiming that there was no constitutional timeline compelling him to replace his deputy.

By failing to appoint a DG, the then Governor did not comply with the spirit of the constitution which intends that there be continuity in the gubernatorial office under any and all circumstances. In January 2020, the Governor reluctantly named a DG but following some Court challenges, the proposed DG, a woman, was not vetted and approved by the County Assembly as required.

Meanwhile, the National Government re-centralized the bulk of county services with the acquiescence of the Governor. The national government created a parallel body, the Nairobi

Metropolitan Service to run control these services. Nairobi county remained without a DG until mid-December, 2020 when the Governor was impeached, leaving the county without both Governor and DG. The Speaker of the County Assembly took over as Acting Governor for 60 days pending a by election to usher in a new Governor and DG. The by election was scheduled for February, 2021.

Due to political expediencies, the national government changed position and no longer wanted a by election. It was decided that the person who had been proposed for the DG office be vetted and the by election was Cancelled. Other Court challenges contributed to the cancellation of the by election. Subsequently, the court cases challenging the DG who had been proposed in January 2020 were withdrawn and that very day she was sworn in as DG, paving the way for her to be a Governor.

This means that there will be no by election and that if elevated to be Governor, she can now choose her own DG of either gender. The intense city politics will have a great bearing on who she chooses as DG.

Conclusion and Scenarios

- There are no requirements that the Governor chooses a person of the opposite gender as running mate. The choice of running mate or DG (should the latter office fall vacant) is the prerogative of the gubernatorial candidate or the sitting Governor as the case may be.
- Currently there is a woman Deputy Governor with capacity and potential to become the governor and/or appoint a woman as a deputy governor. Following the unique circumstances that elevated her to the position of Governor, she may be constrained to freely choose a woman; not on the limitations of constitutional provisions but on the national and county politics of the day.
- As a de facto Governor, she can exploit this chance to work towards actualisation of the two thirds gender principle in appointive positions. National politics impacts Nairobi more than any other county as evidenced by the formation of Nairobi Metropolitan Service. The current Governor can appoint a woman as her DG provided, she can successfully manoeuvre through the myriad interest or benefit from political negotiations and/or effective lobbying and advocacy initiatives.
- In the unlikely event that the DG is not elevated to be Governor, Governor elections shall take place and most likely no woman will win. There will be no guarantee that the deputy will be a woman unless political negotiations and/or effective lobbying and advocacy successfully achieve that outcome.