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RESTRUCTURING THE
PARLIAMENTARY SERVICE

A PAPER PRESENTED TO THE
PARLIAMENTARY SERVICE COMMISSION

BY

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RESTRUCTURING THE PARLIAMENTARY SERVICE

INTRODUCTION

All institutions change in order to survive and to fulfill their designated functions. Whether these changes respond sufficiently to the challenges of the times or whether they are irrelevant spells the difference between life and the death of an institution.

The parliament of Kenya has undergone such changes. It started as the colonial legislative council on August 17, 1906 and culminated in the First Independence Parliament which sat from June 1963 to October 1969. The philosophy and the structure of the legislature changed drastically from an instrument of colonial rule and domination to a community forum where the representative of all the people of Kenya assembled to discuss what is to be done.

The 9th Parliament was elected at the height of the imperial presidency in Kenya. The voters were agitating for an end to presidential dictatorship. They were searching for the will of the new age based on a new political dispensation and order. Their popular aspirations were rooted in the promise of democracy, social justice and security for the self-realisation of their full potential as citizens, communities and nationalities.

In the general election, the people voted for a new President and Narc to usher in a regime change. They also elected the 9th Parliament from which the President would appoint the Cabinet. Both Parliament and the government were elected on the platform of reform to implement legislative outputs that would expedite political, economic and social change.

In the new dispensation, the President would not be a ruler or “mtawala”. The President would be the leader of the country presiding over national affairs. He would guide the country in the like of a radar and compass to a ship or plane. His role would be to harmonise diverse interests within the state towards the common good and to promote the image of the country outside in the international community.

The role of Parliament in the new political dispensation would also change. Parliament would not be a rubber stamp to legitimize the policies and actions of the President and the executive government. Neither would it just be a break to, nor a check on, the excesses of the President and the executive government. **Rather Parliament would be the motor and engine of democratic governance and the magnetic center that would continuously shape the new political and democratic order as a co-partner with the President and the executive government.**

Parliament would reclaim its central and critical role in the leadership of the state to actualize the realization of a new democratic and humanist dispensation advocating higher values of legal order, liberty, equality, political pluralism and popular sovereignty. For Parliament to play its proper role it must overhaul its philosophy and structure that infected and almost destroyed the institution under authoritarian presidential system of government.

Parliament does not govern. Parliamentary government does not mean government by Parliament. It means that the President and the executive government govern through Parliament. This creates a symbiotic relation between Parliament on the one hand and the President and the government on the other.

This symbiosis requires that each branch of government is distinct and ought to enjoy internal autonomy in carrying out its functions without interference from the other. This symbiosis is sometimes called the doctrine of separation of powers and it provides for checks and balances against abuse of power by any one branch of government. It also provides for cooperation of the branches of government and for the control of the President and the government by Parliament.

LEGAL FRAMEWORK

Chapter 3 Article 30 of the Constitution vests Parliament with the legislative power of the Republic. In its representation and oversight functions it supervises the operations of the government.

Article 45 provides for the establishment of the Parliamentary Service Commission and the Parliamentary Service. The Parliamentary Service Act and the Parliamentary Service Regulations implement the provisions of Article 45 of the Constitution.

Read together with the Powers and Privileges Act and the Standing Orders, these instruments provide the constitutional and legal basis for the autonomy of the National Assembly.

The Parliamentary Service Commission comprises the Speaker, the Leader of Government Business and the Official Leader of the Opposition as ex-officio members. There are seven backbench members appointed by the House in the proportion of four and three members representing parties that form the government and parties in opposition respectively.

The constitution vests the administration of the National Assembly in the House: the powers are exercised on behalf of the House by the Parliamentary Service Commission. This was a significant change. Prior

to the creation of the Commission, the administration of the House was vested in the Clerk who was appointed by the President. The Clerk could choose on whether or not to consult the Speaker. The speaker could choose to side with the clerk and with the President even when this was clearly against the House and the members. The members, particularly the backbench majority had no input in the policies that run the National Assembly.

The Parliamentary reforms which created the Commission and the Service delinked Parliament from the control of the President and removed the Clerk and the staff of the National Assembly from the Public Service Commission. The Commission became the ultimate authority which expresses the will of the House in respect of the budget for the National Assembly, its organization, services and staff. The constitution and the legal framework provided the first important step in the democratization of the House. All the members through the Commissioners are directly involved in the formulation of policies that run the National Assembly. Parliament must jealously guard this independence which was achieved after a long and protracted struggle.

THE PARLIAMENTARY SERVICE

The parliamentary staff are the lubricants of the parliamentary machine. The parliamentary service is the public service of the Commission. The

Commission appoints the staff and determines their terms and conditions of service including the exercise of supervision and discipline.

Section 3(1) of the Parliamentary Service Act States: “The service shall be an institution of exemplary administrative and technical competence”. Section 4 provides for parliamentary service values and Section 5 provides for the Code of Conduct. These provisions were intended to make parliamentary service an institution of administrative excellence setting high standards to the rest of the public service. It would remove negative tribalism, malicious and authoritarian management.

The Parliamentary Service Act and the Parliamentary Service Regulations are pieces of good legislation. The weaknesses in the performance of the staff must be traced, not in the absence of good policies and legislation but in the lack of the will of the Commission in implementing the law.

THE POLICY FRAMEWORK

The First and the Second Commissions have produced policy documents that have earned praise from other Parliaments and management consultants.

These documents are:

- (a) The Strategic Plan of the Parliament (2000 – 2012).

- (b) The International Consultants' Report on the Strategic Plan by Charles Winfrith, David Ogle and W.H. Remant.
- (c) Report of the Tribunal to review and make recommendations and the Terms and Conditions of Service for Members of Parliament and the staff employed in the Parliamentary Service (Cockar Report).
- (d) The Human Resource Strategy for Performance Improvement by VAS Consultants.
- (e) Commission papers.

Apart from the Commission papers which are restricted, the other documents are public documents and should be readily available to members and the staff of the National Assembly and the public who wish to understand the philosophical basis of parliamentary reforms.

All the policy documents call for change of ethos in the new parliamentary service to embrace market-oriented management theories that have been widely embraced by public sector managers. The Strategic Plan of the Parliament (2000 – 2012) outlined the mission of Parliament, the Commission and the Service and laid a strategy for policy implementation. The Commission invited international consultants to appraise the strategic plan and to recommend to the Commission a Plan of Action.

There is no lack of information on the way forward. What is lacking is the will to implement the recommendations contained in the policy documents.

In the restructured parliamentary service, the Clerk who is the Chief Executive Officer will be the leader of the parliamentary service and the Secretary to the Commission. In this twin role he must cast this vision to catch the horizon and delegate mundane management activities to his deputy, directors and managers. The senior deputy clerk and the managers should be of sufficient high caliber and be capable of becoming the Chief Executive Officer but have to defer to the CEO to produce and promote teamwork.

At the moment the parliamentary service remains highly hierarchical and monolithic with concentration of power in the Office of the Chief Executive. The proposal to create a Board of Management which would bring together the deputy clerks and the senior managers in a structured management forum have been frustrated. Even the attempt to appoint a high caliber secretariat in the office of the Clerk to enhance free flow of information and expedite implementation of policy have been frustrated and blocked over the last four years. These were commission decisions and it watched as a good policy was flouted with impunity.

The Commission should insist that each officer must take direct responsibility for their portfolios under the leadership of the Clerk but each must be accountable to the Commission for performance improvements in their directorates and departments. Each director and manager must be made to carry their own cross.

PERFORMANCE CONTRACT

The purpose of the reform of the parliamentary service is to achieve greater effectiveness and efficiency in the delivery of services to members, the House and Committees. Underperformance of the parliamentary service particularly when it is underwhelming is an unacceptable burden on the taxpayer.

Such unsatisfactory performance require changes to be introduced with a view to achieving better performance and greater administrative effectiveness and efficiency. Effective action should be taken to improve management. Such actions to improve management are called different names in different organizations: Budget control systems; Performance Evaluation; Balanced Scoreboard System; Result-based Management Systems; Performance Contract Systems.

The Commission should engage expert consultants to draft performance contracts to be signed by all officers in the parliamentary service to form

the basis of measuring the performance of the staff of the parliamentary service. The same consultants could be asked to review the Parliamentary Service Regulations to update them and to provide for retirement of those who fail to meet the terms of their performance contract after the Commission has given them all the opportunities to improve their performance. It is improper for Commissioners to complain about poor performance when it is within their power to change it for the better.

CONCLUSION

Parliament is the arena of representation for all the people in Kenya, majorities and minorities. It is the community forum where the representatives of the people meet to discuss what is to be done.

It is also the source of governmental power. The President, under the present constitution, is a member of Parliament. He appoints the Ministers from the members of Parliament. Parliament is at the very center of the wide net of institutions and processes which comprise politics and government. Nor can it be divorced from the larger polity in which it exists and by which it is influenced. Parliament cannot be at the center of society without altering that society.

The Commission has spearheaded parliamentary reforms which have addressed the administration of the House. It cannot achieve efficient administration of the House without efficient and effective public service. An effective and efficient administration for the National Assembly will support the members and free them to engage more meaningfully with issues close to the hearts of the public, highlighting and explaining the issues in a manner that the public understands.

If the 9th Parliament is to be effective, the public must regard it as relevant and topical. It must communicate and consult with the public in a continuous conversation. This is what will enhance the public perception of Parliament.

This presentation does not underestimate the changes that the Parliamentary Service Commission has initiated and implemented. But the Commission can act expeditiously and courageously in a manner that is compatible with the public expectation to maximize democratic governance and spur economic growth.



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