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ELEVENTH PARLIAMENT – FIRST SESSION

REPORT

OF THE COMMITTEE ON DELEGATED LEGISLATION

ON THE CONSTITUTIONALITY OF THE KENYA GAZETTE NOTICE NOS. 2885, 2886, 2887 AND 2888 PUBLISHED IN THE KENYA GAZETTE OF 1ST MARCH, 2013 BY THE SALARIES AND REMUNERATION COMMISSION

23RD MAY, 2013

PARLIAMENT OF KENYA

THE NATIONAL ASSEMBLY

SELECT COMMITTEE ON DELEGATED LEGISLATION

ATTENDANCE REGISTER- ADOPTION OF THE COMMITTEE REPORT

DATE: 23RD MAY, 2013

NO	NAME	SIGNATURE
1	HON. ABDIKADIR ORE AHMED	
2	Hon. Zainab Kaletye Chidzuga	
3	Hon. Nicholas Ngilkor Nixon	
4	Hon. Dr. Eseli Simiyu	
5	HON. JOHN M. WAIGANJO	
6	HON PAUL KOINANGE	
7	Hon. Rachael Amolo Amollo	
8	Hon Simba Arati	
9	Hon. Michael Kisoi Munya	
10	Hon. Vincent Musyoka	
11	HON JOSEPH GITARI	
12	HON. KABANDO WA KABANDO	
13	HON. CHARLES G. GIMOSE	
14	Hon Jacob Macharia	
15	HON ELISHA K. BUSIENEI	
16	PETER KALUMA	
17	Hon. Mohamed Abdi H.	
18	Daniel Maanzo M.P	

19	Hon. William Chepkwony	
20	Hon. Eng. S.R. Manga.	
21	HON SILAS K. TIREN	
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A.M. WASIKE
For: CLERK OF THE NATIONAL ASSEMBLY

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1.0 PREFACE

On behalf of the Members of the Select Committee on Delegated Legislation and pursuant to the provisions of Standing Order No. 199, it is my pleasure and duty to present to the House, the Committee's Report on the constitutionality of the Kenya Gazette notice nos. 2885, 2886, 2887 and 2888 published in the Kenya Gazette of 1st March, 2013 by the Salaries and Remuneration Commission (SRC).

Committee Membership

The Parliamentary Select Committee on Delegated Legislation was constituted on 21st May, 2013 comprising of the following Members:-

1. Hon. William Cheptumo, MP – **(Chairperson)**
2. Hon. Joseph Gitari, MP – **(Vice Chairperson)**
3. Hon. Kabando Wa Kabando, MP
4. Hon. Mohamed Aden Huka, MP
5. Hon. Ngikor Nicholas Nixon, MP
6. Hon. Michael Kisoi Manthi, MP
7. Hon. Ibrahim Abdi Saney, MP
8. Hon. Zainabu Chidzuga, MP
9. Hon. Ore Ahmed Abdikadir, MP
10. Hon. John Waiganjo, MP
11. Hon. Yusuf Hassan, MP
12. Hon. Jacob Macharia, MP
13. Hon. Paul Koinange, MP
14. Hon. George Theuri, MP
15. Hon. Silas Tiren, MP

16. Hon. Elisha Busienei, MP
17. Hon. Alfred Keter, MP
18. Hon. Sammy Mwaita, MP
19. Hon. Daniel Nanok, MP
20. Hon. Benard Shinali, MP
21. Hon. Shadrack Manga, MP
22. Hon. Charles Gimose, MP
23. Hon. (Eng.) Vincent Musau, MP
24. Hon. Richard Onyonka, MP
25. Hon. Rachael Ameso, MP
26. Hon. Simba Arati, MP
27. Hon. Daniel Maanzo, MP
28. Hon. (Dr) David Eseli, MP
29. Hon. Peter Kaluma, M.P

Committee's Mandate

The Committee on Delegated Legislation is one of the Select Committees established pursuant to provisions of *Standing Order No. 210* whose mandate is to consider in respect of any statutory instrument whether it:-

a. Is in accordance with the provision of the constitution, the Act pursuant to which it is made or other relevant written laws
b. Infringes on fundamental rights and freedoms of the public.
c. Contains a matter which in the option of the Committee should more properly be dealt with in an Act of the Parliament.
d. Contains imposition of Taxation
e. Directly or indirectly bars the jurisdiction of the court.

f. Gives retrospective effect to any of the provision in respect to which the Constitution of Act does not expressly give any such power

g. Involves expenditure from the consolidated fund or other public revenues

h. Is defective in its drafting or for any reason the form or part of the statutory instrument calls for any elucidation.

i. Appears to make some unusual or unexpected use of the power conferred by the constitution or the Act pursuant to which it is made.

j. Appears to have had unjustifiable delay in its publication or laying before Parliament.

k. Makes rights, liberties or obligations unduly dependent upon non-renewable decisions.

l. Makes rights, liberties or obligations unduly dependant insufficiently defined administrative power.

m. Inappropriately delegates legislative powers.

n. Imposes a fine, imprisonment or other penalty without express authority having been provided for, in the enabling legislation.

o. Appears for any reason to infringe on the rule of law.

p. Inadequately subjects the exercise of legislative power to parliamentary scrutiny; and

q. Accords to any other reason that the Committee considers fit to examine.

Standing Order No 210 (5) provides that if the committee:-

a. Resolves that the statutory instrument, be acceded to, the Clerk shall convey that resolutions to the relevant state department or the authority that published the statutory instrument.

b. Does not accede to the statutory instrument, the Committee may recommend to the House that the Assembly resolves that all or any part of the statutory instrument be annulled.

c. The Clerk shall submit the resolution under paragraph (5b) above to the relevant state department or the authority that published the statutory instrument.

Kenya Gazette Notice

On 2nd May 2013, a Petition was tabled before the House Pursuant to Standing Order No. 225 by Hon. Mithika Linturi, MP as a citizen of Kenya and Member of Parliament for Igembe Constituency in Meru County. The Petition was referred to the Select Committee on Delegated Legislation pursuant to Standing Order No. 227 for consideration.

The Committee noted that the Petition was premised on Kenya gazette notice nos. 2885, 2886, 2887 and 2888 that was published in the Kenya Gazette of 1st March, 2013 by the Salaries and Remuneration Commission. The Committee observed that the said Kenya Gazette Notices raised fundamental constitutional issues that required urgent consideration and resolution. The Committee therefore resolved to, first deal with the legality and/or constitutionality of the said Gazette Notices; and, thereafter to address itself to the matters raised in the aforesaid Petition. The Committee held four Sittings during which the Committee deliberated on the matters.

Acknowledgment

a. The Committee wishes to sincerely thank the Office of the Speaker and the Clerk of the National Assembly for the necessary support extended to it in the execution of its mandate;

b. The Chairperson of the Committee takes this opportunity to thank all Members of the Committee for their patience, sacrifice, endurance and hard work during the long sitting hours under tight schedules which enabled us to complete the tasks within the stipulated period;

c. The Committee wishes to record its appreciation for the services rendered by the staff of the National Assembly attached to the Committee. Their efforts made the work of the Committee and the production of this Report possible;

d. Finally, it is now my pleasant duty, on behalf of the Select Committee on Delegated Legislation, to recommend this report to the House pursuant to the provision of Standing Orders of the National Assembly. On behalf of the Committee, I request the House to adopt the report.

Thank you.

Signed .....

Hon. William Cheptum, MP
Chairperson
Committee on Delegated Legislation

Date 25th May 2015

2.0 KENYA GAZETTE NOTICE

On 2nd May 2013, a Petition was tabled before the House Pursuant to Standing Order No. 225 by Hon. Mithika Linturi, MP as a citizen of Kenya and Member of Parliament for Igembe Constituency in Meru County. The Petition was referred to the Select Committee on Delegated Legislation pursuant to Standing Order No. 227 for consideration.

The Committee noted that the Petition was premised on Kenya gazette notice no. 2885, 2886, 2887 and 2888 that was published in the Kenya gazette of 1st march, 2013 by the salaries and remuneration commission. The Committee observed that the said Kenya Gazette Notices raised constitutional issues that need urgent resolution. The Committee therefore resolved to first to deal with the constitutionality of the said Gazette Notices and thereafter address the matters raised in the aforesaid Petition.

3.0 COMMITTEE'S OBSERVATIONS

The Committee observed the following:-

3.1 Constitutional provisions regarding the Salaries and Remuneration Commission.

i. The Salaries and Remuneration Commission is established under Article 230(1) of the Constitution of Kenya, 2010, which states as that *"There is established the Salaries and Remuneration Commission."*

ii. Article 230(2) of the Constitution of Kenya, 2010 provides for the membership of the Salaries and Remuneration Commission thus:

"(2) The Salaries and Remuneration Commission consists of the following persons appointed by the President—

(a) a chairperson;

(b) one person each nominated by the following bodies from among persons who are not members or employees of those bodies—

(i) the Parliamentary Service Commission;

(ii) the Public Service Commission;

(iii) the Judicial Service Commission;

(iv) the Teachers Service Commission;

(v) the National Police Service Commission;

(vi) the Defence Council; and

(vii) the Senate, on behalf of the county governments;

(c) one person each nominated by—

(i) an umbrella body representing trade unions;

(ii) an umbrella body representing employers; and

(iii) a joint forum of professional bodies as provided by legislation;

(d) one person each nominated by—

(i) the Cabinet Secretary responsible for finance; and

(ii) the Attorney-General; and

(e) one person who has experience in the management of human resources in the public service, nominated by the Cabinet Secretary responsible for public service."

iii. Article 230(4) of the Constitution provides for the powers and functions of the Salaries and Remuneration Commission which are set out as follows:

"(4) The powers and functions of the Salaries and Remuneration Commission shall be to—

(a) set and regularly review the remuneration and benefits of all State officers; and

(b) advise the national and county governments on the remuneration and benefits of all other public officers."

iv. Article 230(5) of the Constitution provides that in performing its functions the Salaries and Remuneration Commission shall take into account the following principles-

"(a) the need to ensure that the total public compensation bill is fiscally sustainable;

(b) the need to ensure that the public services are able to attract and retain the skills required to execute their functions;

(c) the need to recognize productivity and performance; and

(d) transparency and fairness."

v. That under Article 260 of the Constitution of Kenya the office of Member of Parliament is defined as a State Office.

3.2 **Statutory provisions regarding the Salaries and Remuneration Commission**

i. Parliament did in 2011 enact *the Salaries and Remuneration Commission Act* to make further provision as to the functions and powers of the Salaries and Remuneration Commission, the qualifications and procedures for appointment of the chairperson and members of the Commission and for connected purposes.

ii. Section 12 of the said *Salaries and Remuneration Commission Act, 2011*, provides for principles, in addition to the principles set out under Article 230(5) of the Constitution, which should guide the Commission in its work. Section 12 of the Act provides as follows:

*"**12.** (1) In addition to the principles set under Article 230 (5) of the Constitution, the Commission shall also be guided by the principle of equal remuneration to persons for work of equal value.*

(2) Without prejudice to subsection (1), the Commission shall take into account the recommendations of previous commissions established to inquire into the matter of remuneration in the public service."

iii. Section 26 of the Salaries and Remuneration Act provides as follows:

***26.** (1) The Commission may make regulations generally for the better carrying into effect of any provisions of this Act.*

(2) The power to make Regulations shall be exercised only after a draft of the proposed Regulations has been approved by the National Assembly.

3.3 **Job Evaluation**

i. The Committee observed that in 2012, the Salaries and Remuneration Commission embarked on a job evaluation exercise assisted by the *World Bank* and a consultancy firm, *PricewaterhouseCoopers Ltd.*

ii. On 27th July, 2012 the Commission Secretary of the Salaries and Remuneration Commission wrote to the Clerk of the National Assembly/Secretary to the Parliamentary Service Commission and invited him to the job evaluation panel. In the letter the Salaries and Remuneration Commission informed the Parliamentary Service Commission the following:

iii. That the Salaries and Remuneration Commission (SRC) had engaged Pricewaterhouse Coopers Limited (PwC) to undertake a job evaluation. The results of the job evaluation and subsequent grading was used by SRC as a basis for grading the structures, developing compensation structures, setting and reviewing the remuneration and benefits for State Officers.

iv. The SRC requested the Parliamentary Service Commission to provide information on the organizational structure of Parliament.

v. SRC requested the Commission to nominate a senior and responsible officer to be part of the job evaluation panel.

vi. The Parliamentary Service Commission nominated the Principal Legal Counsel to be part of the job evaluation panel.

vii. The job evaluation tool used by PricewaterhouseCoopers Ltd is a tool designed for evaluating private sector jobs. The job profiling and evaluation questionnaire sought the following information:

(a) Personal information

(b) Purpose of the job (short description of why the job exists)

(c) Main responsibilities of the job.

(d) Experience and training.

(e) Process factor C: Problem solving.

(f) What communication/information does the job holder need to carry out in order to perform the job.

(g) Output factor F; Influence

viii. The job evaluation tool did not make any reference to the Constitution of Kenya, 2010, where all State Office positions are created. Indeed the job evaluation exercise sought the job descriptions of Members of Parliament yet the job descriptions for Members of Parliament are set out under Articles 94, 95 and 96 of the Constitution of Kenya.

ix. The job evaluation exercise failed to capture the fact that Members of Parliament are in the unique position of having two (2) work stations, one at Parliament in Nairobi and the other, in the constituency/County.

x. At the time of carrying out the job evaluation exercise the SRC had developed a draft structure for State Officer Remuneration where Members of Parliament were placed at level 5.

xi. That the Parliamentary Service Commission repeatedly wrote to the SRC informing it that the draft structure is unconstitutional. The Parliamentary Service Commission further repeatedly informed the SRC that the job evaluation was **wrong and unconstitutional** ***(see Annexes 2 to 6).***

xii. The Parliamentary Service Commission supplied the SRC with previous reports on the remuneration of Members of

Parliament, specifically the reports of the Tribunals to review the terms and conditions of service for Members of Parliament chaired by Justice (Rtd) A. M. Cockar of 2002 and Justice (Rtd) A. M. Akiwumi of 2009. This was to enable the SRC comply with section 12(2) of the Salaries and Remuneration Act.

xiii. The SRC however never responded to any of the issues raised by the Parliamentary Service Commission.

xiv. On 1st March 2013, the Salaries and Remuneration Commission purported to gazette the remuneration and benefit structure for State Officers in the Executive, Parliament, Constitutional Commissions and Independent Offices as well County Governments via gazette notices nos. 2885, 2886, 2887 and 2888 respectively.

4.0 UNCONSTITUTIONALITY OF GAZETTE NOTICE NOS. 2885, 2886, 2887 AND 2888 DATED 28TH FEBRUARY 2013 AND PUBLISHED IN THE KENYA GAZETTE OF 1st MARCH 2013 BY THE SALARIES AND REMUNERATION COMMISSION

The Committee noted that the remuneration structure and benefits of State Officers as published by the SRC was unconstitutional and unlawful for the following reasons: -

4.1 Unconstitutional ranking of State Offices

(a) The SRC placed Members of the National Assembly and Senate at positions 43 and 44, respectively, in the ranking order. Cabinet Secretaries are ranked at number 6 followed by the Chief of Defence Forces, Judges, Principal Secretaries, Director

General NSIS, Controller of Budget, Chairpersons of Constitutional Commissions among other State Officers.

(b) **Article 95(5) of the Constitution** ***of Kenya provides that "the National Assembly shall review the conduct in office of the President, the Deputy President and other State Officers and initiates the process of removing them from their office; and exercises oversight of Stage organs."***

(c) **Article 152** of the Constitution provides that the National Assembly may dismiss a Cabinet Secretary by a resolution supported by a majority of Members.

(d) **Article 254** of the Constitution further provides that each Constitutional Commission and independent office shall submit a yearly report to Parliament and that the Senate or National Assembly may, at any time, require a Commission or holder of an Independent Office to submit a report on a particular matter.

(e) It is a Constitutional requirement that the National Assembly approves the nomination of most State Officers prior to their appointment. The National Assembly then oversees their work both from a financial and administrative perspective and initiates the process of removing them from office.

(f) In effect, the National Assembly plays the role of a supervisor to these State offices and superintends the state offices to secure that they always comply with the law in the execution of their functions.

(g) In principle it is improper and unreasonable for the remuneration of the State Office of Member of Parliament to be

set below those of state offices that are essentially subordinate to it and subject to its approval process and supervision. This is not good human resource practice because it shall undermine the Constitutional role of oversight by Parliament and complicate the interaction between the National Assembly and the State offices that it is under a constitutional duty to superintend as the expression of the sovereignty of the people.

(h) There is also need to ensure parity of treatment in respect of remuneration payable to the principal decision making organs of the three arms of Government. The Cabinet is the principal decision making organ of the executive. The Supreme Court, the Court of Appeal and the High Court sit at the apex of the Judiciary. The office of Member of Parliament is only second to those of the Speaker and the Deputy Speaker in the Legislature.

To open up such a large disparity in remuneration between the decision making organs of the three arms of government clearly has the effect of disadvantaging one arm to the advantage of the other arms. The Salaries and Remuneration Commission needs to ensure parity of remuneration between the three arms so as to avoid financial discrimination against persons serving in a particular arm of Government.

(i) The situation is even graver at the devolved government level where the Speaker of a County Assembly is proposed to earn almost a quarter of what the governor earns and yet county assemblies are equally bestowed with the heavy responsibilities of legislating, appropriating and oversighting county revenue and expenditure and undertaking general oversight over

governance at the devolved level. Similarly, a member of a County Assembly needs to check and oversee the County Executive which includes the Governor and therefore the disparity in remuneration between the two positions should not be as wide as proposed. Likewise, a member of a County Assembly needs to check and oversee the County Executive which includes the Governor and the disparity in remuneration between the County Assembly member and the Governor should be minimal.

(j) If this imbalance is not addressed, the country runs the risk of losing all the gains made in the attainment of a sustainable and effective parliamentary democracy where the legislature is able to operate and discharge its functions effectively and independently without bowing to the financial whims of the Executive. The Salaries and Remuneration Commission should not be blind to this risk.

(k) The 9th and 10th Parliaments have been noted for the vibrancy with which they checked the Executive as well as the quality, number and creativity of legislation passed. This is attributable to the caliber of Kenyans who vied and become Members of Parliament. This is in turn attributable to the improved remuneration of Members of Parliament following amendments to the *National Assembly Remuneration Act;* to improve the remuneration of Members. If the remuneration of Members of Parliament is made less favourable than was applicable to the 10th Parliament, the country shall not be able to attract as individuals of high professional caliber and integrity to vie for

the office of Member of Parliament with e consequential deterioration in the quality of *oversight, legislation* and *representation*. This shall be in violation of **Article 230(5)(b)** which requires that the remuneration for State Office be such that it should be able to attract and retain the skills required to execute its mandate.

(l) Members of the 11th Parliament were not given the opportunity to participate in the job evaluation exercise which would have confirmed that the Members of Parliament are highly educated; even though this is not a constitutional requirement.

4.2 **Unconstitutional Job Evaluation**

(a) The remuneration structure proposed by SRC places Members of Parliament at positions 43 and 44 in the ranking order. One of the factors taken into account in arriving at this ranking is the relatively low academic requirements for one to become a Member of Parliament. Education accounted for 20% of the job evaluation marks scored. While educational qualifications may be relevant in evaluating appointive positions such as Judges and Cabinet Secretaries, they are not relevant when it comes to *evaluating elective positions*.

(b) Academic requirements are relevant in appointive positions as they show the process of preparation that a person is required to undergo prior to becoming eligible to hold a certain position. For instance for a person to become a Chief Justice he/she is required to hold an undergraduate degree in law, a postgraduate diploma in law and be admitted as an Advocate of the High Court. He/she further needs to have practiced law for a period of

at least fifteen years. This is set out at Article 166(3) of the Constitution. The same does not apply to Members of Parliament.

(c) Articles 1(1) & (2) of the Constitution of Kenya, 2010, state that ***"All sovereign power belongs to the people of Kenya and shall be exercised only in accordance with this Constitution. The people may exercise their sovereign power either directly or through their democratically elected representatives."***

The process by which a person becomes a Member of Parliament is a democratic election; a process that is far more rigorous than that of appointive positions. A candidate must convince the electorate that he/she understands their needs and aspirations and can best articulate the same in Parliament as their representative. This requires high intelligence and compassion; well beyond mere academic qualifications.

The whole of Chapter Seven (7) of the Constitution is dedicated to dealing with the election of Members of Parliament. Indeed, under Article 94(2) of the Constitution, **Parliament manifests the diversity of the nation, represents the will of the people and exercises their sovereignty. The tool used by the SRC with respect to Members of Parliament was wrong, inapplicable and therefore unconstitutional.**

(d) Using academic qualifications to rate Members of Parliament goes against the principles set out in the Constitution and has led to the absurd result where Members of Parliament are lowly rated. This is in spite of the fact that the Constitution itself at

Article 99 sets out qualifications for Members of Parliament. The proposed remuneration structure cannot allow Parliament to effectively discharge its constitutional mandate. The factors that the SRC was to consider in coming up with the remuneration for State Officers are set out in Article 230(5) of the Constitution and Section 12 of the Salaries and Remuneration Act. **However, the SRC in the purported job evaluation proceeded on the basis of irrelevant, extraneous and unconstitutional factors that are only applicable to the private sector and appointive positions.**

4.3 **Unfair Labour practices contrary to Article 41 of the Constitution**

Article 41(1) of the Constitution of Kenya, 2010, states that "***Every person has the right to fair labour practices.***"

What constitutes fair labour practices can be construed from **Article 14 of the Protection of Wages Convention, 1949** which states as follows:

"Where necessary, effective measures shall be taken to ensure that workers are informed, in an appropriate and easily understandable manner--

(a) before they enter employment and when any changes take place, of the conditions in respect of wages under which they are employed; and

(b) at the time of each payment of wages, of the particulars of their wages for the pay period concerned, in so far as such particulars may be subject to change."

Thus Members of Parliament should have been informed of the purported changes in the remuneration structure for the office of Member of Parliament **before** they commenced the process of vying for Parliament. SRC breached this constitutional principle as follows:

(a) The General Elections were held on **4th March 2013.** A public officer interested in vying for elective office is required by **section 43(5) of the Elections Act of 2011** to resign at least six (6) months before the date of election. This meant that public officers who vied for election resigned by September 2012. Similarly party nominations were initially slated for December 2012 but moved to January 2013. All this time the remuneration for a Member of Parliament was Kshs. 851,000/- as set out in the National Assembly Remuneration Act. This is the basis upon which Members of Parliament vied for elections.

(b) The SRC waited until **1st March 2013,** to publish the subject gazette notices. All persons who vied for elections knew all along that the remuneration for the office of Member of Parliament is Kshs. 851,000/-. It was therefore a violation of the principles set out in the Protection of Wages Convention for the SRC to purport to reduce the remuneration for Members of Parliament after they had undergone all the procedures necessary for them to be elected to the state office under the understanding that the remuneration is Kshs. 851,000/-. It is akin to obtaining the services of the affected state officers by fraud.

(c) SRC has exercised its powers in a manner that infringes on the legitimate and rightful expectations of Members of Parliament.

4.4 **Breach of International Labour Conventions**

The SRC has breached International labour laws and conventions by reducing the remuneration of the office of Member of Parliament without the consent of the office holders. The SRC is composed of representative from the Central Organization of Trade Unions, the Parliamentary Service Commission and the Senate. These three organizations have come out in strong opposition to the remuneration structure proposed by the SRC in the gazette notices under consideration. It is clear that the SRC does not have a unanimous position on the matter of remuneration for State Officers.

4.5 **Failure by the Salaries Remuneration Commission to Follow the Constitution and Relevant Laws.**

(a) **Existing laws**

Section 6 of the Sixth Schedule of the Constitution provides as follows:

"Except to the extent that this Constitution expressly provides to the contrary, all rights and obligation, however arising, of the Government or the Republic and subsisting immediately before the effective date shall continue as rights and obligations of the national government or the Republic under this Constitution."

Section 7 of the Sixth Schedule of the Constitution provides as follows:

"All law in force immediately before the effective date continues in force and shall be construed with the alterations, adaptations, qualifications and exceptions necessary to bring it into conformity with this Constitution."

The issue of the election date was determined by a three Judge bench of the High Court on 13th January 2012 in **High Court Constitutional Petition No. 65 of 2011 John Harun Mwau & Others –v- the Attorney General & others.** The High Court in this case also dealt with issues of the remuneration for Members of Parliament and held as follows:

"The terms and conditions of service of members of the National Assembly are governed by the ***National Assembly Remuneration Act (Cap 5). Section 2*** *of that Act provides;*

'2(1) The persons for the time being holding the several offices specified in the first column of Part 1 of the First schedule shall each receive salaries and allowances at the annual rates specified in relation to those offices in that schedule.'

In terms of the statute, Members of Parliament are paid salaries and allowances as long as they hold office. On dissolution or expiry of the term of parliament, their salary and allowances cease.

173. The ***Parliamentary Pensions Act (Cap 186)*** *provides for pension benefits for Members of Parliament. These benefits are calculated in accordance with the aggregate of all periods beginning or after the commencement of the Act during which one*

was or is a member of the National Assembly. A pension is payable when an MP has ceased to be a member of the National Assembly.

174. The two statutes governing the benefits of Members of Parliament are saved by ***sections 6*** *and* ***7*** *of the* ***Sixth Schedule*** *which preserve existing obligations of the state and preserve all existing laws subject to such alterations, qualifications an exception necessary to bring it into conformity with the Constitution.* ***Therefore, the Committee is of the view that terms of service of Members of Parliament are to be determined in accordance with existing legal provisions."***

Further, Article 116(3) of the Constitution contemplates that the remuneration of Members of Parliament has been and shall in future be through an Act of Parliament.

4.6 **Purported exercise of legislative power**

Article 94(1) of the Constitution of Kenya provides as follows:

"The legislative authority of the Republic is derived from the people and, at the national level, is vested in and exercised by Parliament."

The gazette notice by the SRC therefore purports to repeal two statutes, namely, *the National Assembly Remuneration Act* (Cap 5.) and *the Parliamentary Pensions Act (Cap 196) of the Laws of Kenya.* This is clearly unconstitutional and an attempt to usurp the role of Parliament. The gazette notice further goes against the ruling of the High Court in the above case.

There are Members of Parliament who are now in their second or subsequent terms. They are entitled to pension under the provisions of the Parliamentary Pensions Act. The gazette notice purports to do away with the pensions as set out in the Parliamentary Pensions Act. This is unconstitutional and in direct contravention of section 32 of the sixth schedule to the Constitution which states as follows:

"**Pensions, gratuities and other benefits**

The law applicable to pensions in respect of holders of constitutional offices under the former Constitution shall be either the law that was in force at the date on which those benefits were granted or any law in force at a later date that is not less favourable to the person."

There are several Members of the 11th Parliament who have been re-elected and they have a legitimate and rightful expectation that they would be entitled to be paid pension as provided for under the provisions of the Parliamentary Pensions Act. The gazette notice by the SRC purports to take away the pension entitlements and to replace it with a gratuity; contrary to the provisions of section 32 of the sixth schedule of the Constitution. Section 33 of the Sixth Schedule to the Constitution provides as follows:

"Succession of institutions, offices, assets and liabilities
An office or institution established under this Constitution is the legal successor of the corresponding office or institution, established under the former Constitution or by an Act of Parliament in force immediately before the effective date, whether known by the same or a new name."

The office of Member of Parliament under the new Constitution is the legal successor of the same office under the former Constitution. Accordingly, the suggestion that the 11th Parliament is new and that the terms of service of members of the 11th Parliament should be determined detached from those of previous Parliaments is unconstitutional. It is out rightly illegal and unconstitutional for the SRC to purport to reduce the remuneration of Members of Parliament.

Article 160(4) of the Constitution provides that the remuneration and benefits payable to a Judge shall not be varied to the disadvantage of that Judge, and the retirement benefits of a retired Judge shall not be varied to the disadvantage of the retired Judge during the lifetime of that retired Judge. Article 250(8) of the Constitution also provides that the remuneration and benefits payable to holders of Independent Offices and Constitutional Commissions shall not be varied to the disadvantage of the holder of the office. Also relevant is Article 41 of the Constitution providing for fair labour practices including the right not to reduce a person's salary to the persons disadvantage. These provisions are borrowed from International Conventions governing wages and terms of service.

It is therefore clear that the spirit of the Constitution is against the reduction of remuneration and benefits for any office.

4.7 Discrimination

Article 27 of the Constitution provides that there shall be equality and freedom from discrimination as follows:

27. (1) Every person is equal before the law and has the right to equal protection and equal benefit of the law.

(2) Equality includes the full and equal enjoyment of all rights and fundamental freedoms.

(3) Women and men have the right to equal treatment, including the right to equal opportunities in political, economic, cultural and social spheres.

(4) The State shall not discriminate directly or indirectly against any person on any ground, including race, sex, pregnancy, marital status, health status, ethnic or social origin, colour, age, disability, religion, conscience, belief, culture, dress, language or birth.

(5) A person shall not discriminate directly or indirectly against another person on any of the grounds specified or contemplated in clause (4).

The SRC has reduced the remuneration for the office of Member of Parliament while maintaining the remuneration for the Judiciary and other state offices, currently in office. **This is discrimination against the office of Member of Parliament; in flagrant violation of the provisions of Article 27 of the Constitution.**

4.8 **Failure to comply with section 26 of the Salaries and Remuneration.**

Section 26 of the Salaries and Remuneration Act provides that the SRC's power to make Regulations shall be exercised **only after a draft of the proposed Regulations has been approved by the**

National Assembly. This provision was introduced to the Salaries and Remuneration Act by section 59 of the Finance Act, 2012. Article 95(1) and (5) of the Constitution also vest in Parliament the legislative authority of the Republic.

The SRC has purported to make Regulations concerning the remuneration of Members of Parliament; and has purported to grant them the force of law, without obtaining prior approval of the National Assembly in accordance with the law. The actions by SRC are a usurpation of powers and a blatant violation of the Constitution and all laws governing the lawful exercise of the Commission's mandate. The actions are unconstitutional and sanction bad governance.

4.9 **Interference with the independence and internal workings of Parliament.**

Article 124(1) of the Constitution states as follows:

"Each House of Parliament may establish committee, and shall make Standing Orders for the orderly conduct of its proceedings, including the proceedings of its committees."

The gazette notice by the SRC provides that Members of Parliament who sit in Committees shall only be entitled to a sitting allowance for up to a maximum of four (4) sittings in a week. By dint of the above, SRC is in effect regulating the number of sittings a committee of Parliament may have, contrary to the provisions of Article 124(1) of the Constitution and in violation of the independence of Parliament. Therefore, SRC has clearly overstepped its constitutional mandate.

4.10 **Interference with the constitutional role of the Parliamentary Service Commission**

Under Articles 127(6)(a) & (e) of the Constitution, the Parliamentary Service Commission is *"responsible for providing services and facilities to ensure the efficient and effective functioning of Parliament"* and *"performing other functions necessary for the well-being of the members and staff of Parliament, or prescribed by national legislation."*

The gazette notice by the SRC purports to hinder the Parliamentary Service Commission from providing such services as transport, housing, gratuity, among others, to Members of Parliament as set out at Article 127 of the Constitution.

4.11 **Oversight role of the National Assembly and protection of the Constitution.**

Article 94(4) of the Constitution of Kenya provides that ***"Parliament shall protect this Constitution and promote the democratic governance of the Republic."***

Article 95(5)(a)& (b) of the Constitution of Kenya, 2010, provides as follows:

"(5) The National Assembly—

(a) reviews the conduct in office of the President, the Deputy President and other State officers and initiates the process of removing them from office; and

(b) exercises oversight of State organs."

The National Assembly should therefore review the conduct in office of the Commissioners in the SRC and exercise oversight over the

Commission following its failure to follow the constitution and the law in setting the remuneration for State Officers.

5.0 COMMITTEE'S RECOMMENDATIONS

The Select Committee on Delegated Legislation recommends to the House to adopt this report and in exercise of its oversight role under Article 95(a) & (b) of the Constitution resolves that:-

1) **The gazette notice numbers 2885, 2886, 2887 and 2888 dated 28th February 2013 and published by the Salaries and Remuneration Commission in the Kenya Gazette of 1st March 2013 is unconstitutional, unlawful, ultra vires and therefore null and void.**

2) **The National Assembly Remuneration Act (Cap 5) and the Parliamentary Pensions Act (Cap 196) of the Law of Kenya being in force shall continue to govern the remuneration of Members of Parliament.**

3) **The Salaries and Remuneration Commission and other Constitutional Commissions to strictly adhere to the Constitution and the law when executing their Constitutional mandates.**

4) **The National Assembly in the exercise of its powers under Article 95(5) of the Constitution to review the conduct, composition and functioning of the Salaries and Remuneration Commission as well as all other Constitutional Commissions and Independent Offices.**

0

APPENDIX (1)

(Minutes)

MINUTES OF THE FOURTH SITTING OF THE SELECT COMMITTEE ON DELEGATED LEGISLATION HELD ON THURSDAY 23RD MAY, 2013 IN COMMITTEE ROOM, FOURTH FLOOR, CONTINENTAL HOUSE, PARLIAMENT BUILDINGS AT 9:00 AM

PRESENT

Hon. William Cheptumo, M.P - Chairperson
Hon. Joseph Gitari, M.P - Vice Chairperson
Hon. John Waiganjo, M.P
Hon. Charles Gimose, M.P
Hon. Paul Koinange, M.P
Hon. Kabando Wa Kabando, M.P
Hon. Silas Tiren, M.P
Hon. Elisha Busienei, M.P
Hon. Eng. Shadrack Manga, M.P
Hon. Eng. Vincent Musau, M.P
Hon. Michael Kisoi Manthi, M.P
Hon. Rachael Ameso, M.P
Hon. Simba Arati, M.P
Hon. Zainab Chidzuga, M.P
Hon. Daniel Maanzo, M.P
Hon. Abdikadir O. Ahmed, M.P
Hon. Peter Kaluma, M.P
Hon. Jacob Macharia, M.P
Hon. Mohamed Aden Huka, M.P
Hon. Ngikor Nicholas Nixon, M.P
Hon. Dr.Eseli David, M.P

ABSENT WITH APOLOGY

Hon. Benard Shinali, M.P
Hon. Yusuf Hassan, M.P
Hon. George Theuri, M.P
Hon. Sammy Mwaita, M.P
Hon. Daniel Nanok, M.P
Hon. Alfred Keter, M.
Hon. Onyonka Richard, M.P
Hon. Ibrahim Abdi saney, M.P

NATIONAL ASSEMBLY

Mrs. Florence Atenyo-Abonyo	-	Director of Committee Services
Mr. Abenayo Wasike	-	Clerk Assistant I
Ms. Felista Karanja	-	Parliamentary Intern

MIN.NO. 14/2013 OPENING PRAYER

The meeting started with a word of prayer.

MIN. NO. 15/2013 CONFIRMATION OF THE MINUTES

Minutes of previous meetings were confirmed as follows;

(i) First Sitting held on Tuesday 21st May, 2013 were proposed by Hon. Daniel Maanzo, MP and seconded by Hon. Abdikadir Ore Ahmed, MP

(ii) Second Sitting held on Wednesday 22nd May, 2013 were proposed by Hon. (Eng.) Shadrack Manga, MP and seconded by Hon. Jacob Machaira, MP

(iii) Third Sitting held on Wednesday 22nd May, 2013 were proposed by Hon. Rachel Ameso, MP and seconded by Hon. Micahel Kisoi, MP.

MIN. NO. 16/2013 ADOPTION OF THE COMMITTEE REPORT

Members of the Committee unanimously adopted the Report on the Constitutionality of the Kenya Gazette Notice Nos 2885, 2886, 28887, and 2888 Published in the Kenya Gazette of 1st March, 2013 by the Salaries and Remuneration Commission.

MIN. NO. 17/2013 ADJOURNMENT

The meeting adjourned at Eleven O'clock

Signed.....

Chairperson

Date 23.05.2013

MINUTES OF THE THIRD SITTING OF THE SELECT COMMITTEE ON DELEGATED LEGISLATION HELD ON WEDNESDAY 22ND MAY, 2013 IN COMMITTEE ROOM, FOURTH FLOOR, CONTINENTAL HOUSE, PARLIAMENT BUILDINGS AT 3.00 P.M

PRESENT

Hon. William Cheptumo, M.P - Chairperson
Hon. Joseph Gitari, M.P - Vice Chairperson
Hon. John Waiganjo, M.P
Hon. Charles Gimose, M.P
Hon. Paul Koinange, M.P
Hon. Kabando Wa Kabando, M.P
Hon. Silas Tiren, M.P
Hon. Elisha Busienei, M.P
Hon. Alfred Keter, M.P
Hon. Shadrack Manga, M.P
Hon. Vincent Musau, M.P
Hon. Michael Kisoi Manthi, M.P
Hon. Rachael Ameso, M.P
Hon. Simba Arati, M.P
Hon. Ibrahim Abdi saney, M.P
Hon. Zainabu Chidzuga, M.P
Hon. Daniel Maanzo, M.P
Hon. Abdikadir O. Ahmed, M.P
Hon. Peter Kaluma, M.P
Hon. Onyonka Richard, M.P

ABSENT WITH APOLOGY

Hon. Benard Shinali, M.P
Hon. Dr.Eseli David, M.P
Hon. Yusuf Hassan, M.P
Hon. Jacob Macharia, M.P
Hon. George Theuri, M.P
Hon. Sammy Mwaita, M.P
Hon. Mohamed Aden Huka, M.P
Hon. Daniel Nanok, M.P
Hon. Nkigor Nicholas Nixon, M.P

NATIONAL ASSEMBLY

Mrs. Florence Atenyo-Abonyo	-	Director of Committee Services
Mr. Anthony Njoroge	-	Director, Litigation (NA)
Mr. Abenayo Wasike	-	Clerk Assistant I
Ms. Felista Karanja	-	Parliamentary Intern

MIN.NO. 11/2013 OPENING PRAYER

The meeting started with a word of prayer.

MIN. NO. 12/2013 REMARKS BY THE CHAIRMAN

The Committee deliberated and made the following recommendations:-

1) **The National Assembly adopts this report and resolves as follows in exercise of its oversight role under Article 95(a) & (b) of the Constitution:**

2) **The gazette notices numbers 2885, 2886, 2887 and 2888 dated 28th February 2013 and published by the Salaries and Remuneration Commission in the Kenya Gazette of 1st March 2013 is unconstitutional, unlawful, ultra vires and therefore null and void.**

3) **The National Assembly Remuneration Act (Cap 5) and the Parliamentary Pensions Act (Cap 196) of the Law of Kenya being in force shall continue to govern the remuneration of Members of Parliament.**

4) **The Salaries and Remuneration Commission and other Constitutional Commissions to strictly adhere to the Constitution and the law when executing their Constitutional mandates.**

The National Assembly in the exercise its powers under Article 95(5) of the Constitution to review the conduct, composition and functioning of the Salaries and Remuneration Commission as well as all other Constitutional Commissions and Independent Offices

MIN. NO. 13/2013 ADJOURNMENT

The meeting adjourned at 5.50 pm for the next sitting on Thursday 23rd May, 2013 at 9.00 a.m.

Signed.....

Chairperson

Date.....23/05/2013.....

MINUTES OF THE SECOND SITTING OF THE SELECT COMMITTEE ON DELEGATED LEGISLATION HELD ON WEDNESDAY 22ND MAY, 2013 IN COMMITTEE ROOM, FOURTH FLOOR, CONTINENTAL HOUSE, PARLIAMENT BUILDINGS AT 10.30 A.M

PRESENT

Hon. William Cheptumo, M.P - Chairperson
Hon. Joseph Gitari, M.P – Vice Chairperson
Hon. John Waiganjo, M.P
Hon. Jacob Macharia, M.P
Hon. Charles Gimose, M.P
Hon. Paul Koinange, M.P
Hon. Kabando Wa Kabando, M.P
Hon. Silas Tiren, M.P
Hon. Elisha Busienei, M.P
Hon. Alfred Keter, M.P
Hon. Sammy Mwaita, M.P
Hon. Vincent Musau, M.P
Hon. Onyonka Richard, M.P
Hon. Michael Kisoi Manthi, M.P
Hon. Rachael Ameso, M.P
Hon. Simba Arati, M.P
Hon. Ibrahim Abdi saney, M.P
Hon. Zainabu Chidzuga, M.P
Hon. Daniel Maanzo, M.P
Hon. Abdikadir O. Ahmed, M.P
Hon. Peter Kaluma, M.P
Hon. George Theuri, M.P

ABSENT WITH APOLOGY

Hon. Nkigor Nicholas Nixon, M.P
Hon. Yusuf Hassan, M.P
Hon. Daniel Nanok, M.P
Hon. Shadrack Manga, M.P
Hon. Mohamed Aden Huka, M.P
Hon. Benard Shinali, M.P
Hon. Dr. Eseli David, M.P

NATIONAL ASSEMBLY

Mrs. Florence Atenyo-Abonyo	-	Director of Committee Services
Mr. Anthony Njoroge	-	Director Litigation (NA
Mr. Abenayo Wasike	-	Clerk Assistant I
Ms. Felista Karanja	-	Parliamentary Intern

MIN.NO. 08/2013 OPENING PRAYER

The meeting started with a word of prayer.

MIN. NO. 09/2013 REMARKS BY THE CHAIRMAN

The Chairman thanked members for turning up for the meeting and drew their attention to the agenda of the day.

- The Chairman in his remarks informed Members that the Speaker has given the Committee leave to hold several meetings so as to be in a position to table the Report on time.

- Members adopted the Agenda and resolved to move expeditiously to consider the Gazette Notices as published by the Salaries and Remuneration Commission.

- Members resolved to formulate critical issues to guide the Committee in consideration of the petition.

- The Committee agreed that the Gazette notices referred to should be considered in terms of their legality in so far as the Constitution and other relevant laws are concerned.

- The Committee resolved to form a sub-committee to look into the Constitutionality of the Gazette notices.

- The sub-committee was also mandated to come up with a draft Report with observations for consideration at the next sitting at 3.00 pm.

The composition of the sub-Committee was:-

1. Hon. Peter Kaluma
2. Hon.Daniel Maanzo
3. Hon. Onyonka Richard
4. Hon.Rachael Ameso
5. Hon.Eng. Musyoki
6. Mr.Antony Njoroge – Director of Litigation, National Assembly

MIN.NO.10/2013 ADJOURNMENT

The meeting adjourned at 12.30 pm for the next sitting at 3.00 pm.

Signed.....

Chairperson

Date.....23.05.2013.....

MINUTES OF THE FIRST SITTING OF THE SELECT COMMITTEE ON DELEGATED LEGISLATION HELD ON TUESDAY 21ST MAY, 2013 IN COMMITTEE ROOM, FOURTH FLOOR, CONTINENTAL HOUSE, PARLIAMENT BUILDINGS AT 10.00 A.M

PRESENT

Hon. John Waiganjo, M.P
Hon. Joseph Gitari, M.P
Hon. Jacob Macharia, M.P
Hon. Charles Gimose, M.P
Hon. Paul Koinange, M.P
Hon. Kabando Wa Kabando, M.P
Hon. Silas Tiren, M.P
Hon. Elisha Busienei, M.P
Hon. William Cheptumo, M.P
Hon. Sammy Mwaita, M.P
Hon. Shadrack Manga, M.P
Hon. Vincent Musau, M.P
Hon. Rachael Ameso, M.P
Hon. Ibrahim Abdi saney, M.P
Hon. Daniel Maanzo, M.P
Hon. Abdikadir O. Ahmed, M.P
Hon. Simba Arati, M.P
Hon. Michael Kisoi Manthi, M.P

ABSENT WITH APOLOGY

Hon. George Theuri, M.P
Hon. Nkigor Nicholas Nixon, M.P
Hon. Mohamed Aden Huka, M.P
Hon. Alfred Keter, M.P
Hon. Yusuf Hassan, M.P
Hon. Zainabu Chidzuga, M.P
Hon.Dr.Eseli David, M.P
Hon. Daniel Nanok, M.P
Hon. Onyonka Richard, M.P
Hon. Benard Shinali, M.P

NATIONAL ASSEMBLY

Mrs. Florence Atenyo-Abonyo	-	Director of Committee Services
Mr. Abenayo Wasike	-	Clerk Assistant I
Ms. Felista Karanja	-	Parliamentary Intern

MIN.NO.01/2013 OPENING PRAYER

The meeting started with a word of prayer.

MIN. NO. 02/2013 REMARKS BY THE CLERK

The Director of Committee Services represented the Clerk of the National Assembly and briefed Members of the Committee on the Agenda of the meeting being Election of the Chairperson and the Vice-Chairperson.

She stated that the Members present constituted majority and thus conducted elections for the two positions.

MIN. NO. 03/2013 ELECTION OF CHAIRPERSON

Hon. Kabando Wa Kabando, M.P proposed Hon. William Cheptumo to be elected as Chairperson of the Committee and was seconded by Hon. Daniel Maanzo M.P.

There being no other Member to contest against Hon. William Cheptumo, MP, the Director of Committee services declared Hon. William Cheptumo as duly elected Chairperson of the Committee.

MIN.NO. 04/2013 ELECTION OF VICE-CHAIR PERSON

This position attracted two candidates namely, Hon. Charles Gimose and Hon. Patrick Gitari MP. Hon.Charles Gimose was proposed by Hon. Eng. Shadrack Manga and seconded by Hon. Kabando Wa Kabando.

Hon. Sammy Mwaita proposed Hon. Joseph Gitari MP to be elected as the Vice-Chairperson of the Select Committee and was seconded by Hon .Paul Bii.

Hon. Eng Shadrack Manga proposed Hon. Charles Gimose M.P and was seconded by the Hon. Kabando Wa Kabando, M.P.

Members voted by secret ballot and Hon. Patrick Gitari was duly elected as Vice-chairperson after getting nine (9) votes against eight (8) for Hon. Charles Gimose. The two thanked Members of the Committee for electing them in the respective positions and promised to work hard to fulfill the mandate of the Committee in upholding the rule of law as obtained in the mandate of the Committee and the Constitution.

MIN.NO. 05/2013 ANY OTHER BUSINESS-PETITION

The Secretariat informed the Committee that there is an urgent matter to be considered by the Committee. The matter is a petition by Hon. Mithika Linturi premised on the Kenya Gazette notice no.2885, 2886, 2887 and 2888.

Members agreed to give priority to the petition and thus make it top priority for the Committee in the next meeting.

MIN.NO. 06/2013 DATE OF NEXT MEETING

Members agreed to hold the next meeting on Wednesday 22nd May, 2013 at 10.30 a.m.

MIN.NO. 07/2013 ADJOURNMENT

There being no other business, the meeting adjourned at thirty minutes past twelve O'clock.

Signed.....

Chairperson

Date.....23.05.2013.....

APPENDIX (2) - Correspondence

Annex 1 – Kenya Gazette Notice of 1st March, 2013

Annex 2– Letter from the Speaker, National Assembly to SRC -22/2/2013

Annex 3 – Letter from the Speaker, National Assembly to SRC – 27/11/2013

Annex 4 – Parliamentary Service Commission Comments to on the SRC Draft Structure for State Officers' Remuneration – Nov, 2012

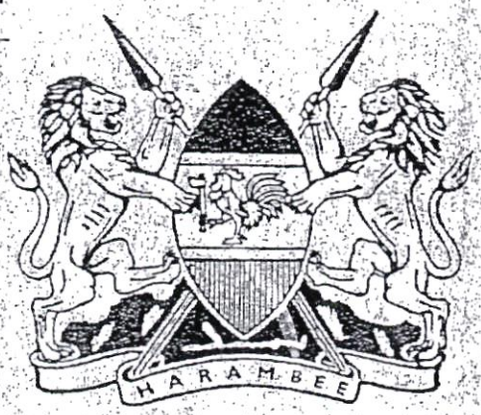
Annex 5 – letter from the Clerk, National Assembly to SRC – 10/10/2012

Annex 6 – Letter from SRC to the Clerk, National Assembly- 27/7/2012

Annex 7 – Parliamentary Service Commission Comments on the SRC Draft Structure for State Officers' Remuneration – June 2012

ANNEX - 1

SPECIAL ISSUE



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GAZETTE NOTICE NO. 2885

THE CONSTITUTION OF KENYA

REMUNERATION AND BENEFITS OF STATE OFFICERS IN THE EXECUTIVE

IN EXERCISE of the powers conferred by Article 230 (4) (*a*), the Salaries and Remuneration Commission has set the remuneration and benefits of State Officers in the Executive as follows:

REMUNERATION AND BENEFITS OF STATE OFFICERS IN THE EXECUTIVE

State Officer	*Gross Monthly Remuneration Package (KSh.)*
President of the Republic of Kenya	1,237,500 x 103,125 p.a. – 1,340,625 x 103,125 p.a. – 1,443,750 x 103,125 p.a. – 1,546,875 x 103,125 p.a. – 1,650,000
Deputy President	1,051,875 x 87,656 p.a. – 1,139,531 x 87,656 p.a. – 1,227,188 x 87,656 p.a. – 1,314,844 x 87,656 p.a. – 1,402,500
Cabinet Secretary Attorney-General Secretary to the Cabinet Chief of Defence Forces	792,000 x 66,000 p.a. – 858,000 x 66,000 p.a. – 924,000 x 66,000 p.a. – 990,000 x 66,000 p.a. – 1,056,000
Principal Secretary Vice-Chief of the Defence Forces Commander, Kenya Army Director-General (NIS) Inspector-General, National Police Service	655,875 x 54,656 p.a. – 701,531 x 54,656 p.a. – 765,188 x 54,656 p.a. – 819,844 x 54,656 p.a. – 874,500
Director of Public Prosecutions Commander, Kenya Air force Commander, Kenya Navy	640,681 x 30,509 p.a. – 671,190 x 30,509 p.a. – 701,698 x 30,509 p.a. – 732,207 x 30,509 p.a. – 762,715 x 30,509 p.a. – 793,224 x 30,509 p.a. – 823,732 x 30,509 p.a. – 854,241
Deputy Inspector-General, Kenya Police Service Deputy Inspector-General, Administration Police Service	532,500 x 25,357 p.a. – 557,857 x 25,357 p.a. – 583,214 x 25,357 p.a. – 608,571 x 25,357 p.a. – 633,929 x 25,357 p.a. – 659,286 x 25,357 p.a. – 684,643 x 25,357 p.a. – 710,000
Registrar of Political Parties	532,500 x 35,500 p.a. – 568,000 x 35,500 p.a. – 603,500 x 35,500 p.a. – 639,000 x 35,500 p.a. – 674,500 x 35,500 p.a. – 710,000

Notes:

(i) A serving State Officer whose remuneration and benefits were set for the position they are holding before the establishment of the Salaries and Remuneration Commission by the relevant authority as provided by law, where such remuneration is above the set remuneration herein shall retain such remuneration.

(ii) A serving State Officer whose remuneration and benefits were set for the position they are holding by the Salaries and Remuneration Commission on interim basis before this Gazette Notice, where the remuneration is above the set remuneration herein, shall retain such remuneration at fixed levels unless reviewed by the Salaries and Remuneration Commission.

(iii) New State Officers shall join at the minimum and those currently earning below the total gross minimum remuneration set herein, shall join the scale at the appropriate level.

(iv) State Officers whose current remuneration levels fall within the structure shall join the structure at the next immediate progression point.

(v) Unless otherwise specifically stated in this Gazette Notice, all allowances are herein consolidated and capped at forty per centum (40 per cent) of the set total gross remuneration.

(vi) All other allowances and benefits not specified in this Gazette Notice cease to be payable.

(vii) Additional benefits accruing to the President and the Deputy President shall be reviewed by the Salaries and Remuneration Commission from time to time.

(viii) The salary structure existing before this Gazette notice ceases to apply forthwith.

(a) Benefits

The following benefits shall apply to the State Officers serving in the Executive:

(i) Accommodation and Subsistence Allowance: Retain the existing rates pending review by the Salaries and Remuneration Commission.

(ii) Airtime: Retain the existing rates pending review by the Salaries and Remuneration Commission.

(iii) Security: To be provided as advised by the Inspector-General, National Police Service.

(iv) Official car: Chauffer driven official car or as reviewed by the Salaries and Remuneration Commission.

(v) Medical Scheme: The medical cover shall be provided per family for self, spouse and up to four children below twenty five years fully dependent on the State Officer as follows:

Inpatient	KSh. 10 million
Outpatient	KSh. 300,000
Maternity	KSh. 150,000
Dental	KSh. 75,000
Optical	KSh. 75,000

The State Officers in the Defence Forces shall retain the existing medical scheme arrangement.

(vi) Retirement Benefits.—A State Officer serving on Permanent and Pensionable terms shall join a contributory pension scheme and contribute at the rate of 7.5% of basic salary with the employer's contribution at the rate of 15% of basic salary.

A State Officer serving on fixed term shall serve on contract and be paid a service gratuity at the end of the term at the rate of 31% of annual basic pay for every year served.

(vii) *Group Life Assurance.*—Officers shall be covered for a value equivalent to three times annual basic salary.

(viii) *Work Injury Benefit (WIBA).*—Work Injury Benefits Act shall apply where applicable.

(ix) *Group Personal Accident.*—State Officers serving in the Executive shall be covered for a value equivalent to up to three times annual basic salary where applicable.

(x) Home, Utilities and Attendants.—The President and Deputy President shall be housed by the State and provided with all commensurate home utilities and attendants, subject to review by the Salaries and Remuneration Commission from time to time.

Effective date: 1st March, 2013.

Dated the 28th February, 2013

SARAH SEREM,
Chairperson, Salaries and Remuneration Commission.

GAZETTE NOTICE NO. 2886

THE CONSTITUTION OF KENYA

REMUNERATION AND BENEFITS FOR STATE OFFICERS IN PARLIAMENT

IN EXERCISE of the powers conferred by Article 230 (4) (*a*), the Salaries and Remuneration Commission has set the remuneration and benefits of State Officers in Parliament as follows:

REMUNERATION AND BENEFITS OF ALL STATE OFFICERS IN PARLIAMENT

State Officer	*Gross Monthly Remuneration Package (KSh.)*
Speaker of the National Assembly Speaker of the Senate	990,000 x 82,500 p.a. – 1,072,500 x 82,500 p.a. – 1,155,00 x 82,500 p.a. – 1,237,500 x 82,500 p.a. – 1,320,000
Deputy Speaker of the National Assembly Deputy Speaker of the Senate	792,000 x 66,000 p.a. – 858,000 x 66,000 p.a. – 924,000 x 66,000 p.a. – 990,000 x 66,000 p.a. – 1,056,000

State Officer	*Gross Monthly Remuneration Package (KSh.)*
Leader of Majority Party Leader of the Minority Party Chairpersons of Committees Members of Speakers Panel Chief Whips Minority Whips Member of the National Assembly Member of the Senate	532,500 x 44,375 p.a. – 576,875 x 44,375 p.a – 621,250 x 44,375 p.a. – 665,625 x 44,375 p.a. – 710,000

Notes:

1. Members of Parliament and all other Parliamentary State Officers shall join the remuneration structure at the minimum point and progress to the maximum over the term period.

2. Unless otherwise specifically stated in this Gazette Notice, all allowances have been consolidated and capped at forty per centum (40 per cent) of the set total gross remuneration package.

3. All other allowances and benefits not specified in this Gazette Notice cease to be payable.

(a) Special Parliamentary Duty Allowance:

Members of Parliament who have additional responsibilities as listed below shall be paid an additional allowance as may be apportioned by the Parliamentary Service Commission up to a maximum of KSh.150,000 per month.

(i) Leader of Majority Party;
(ii) Leader of the Minority Party;
(iii) Chairperson of Committees;
(iv) Members of Speakers Panel;
(v) Chief Whips; and
(vi) Minority Whips.

(b) Committee Sitting Allowances

Members of Parliament and Senate who serve in Committees shall be paid Committee Sitting Allowance as follows:

(i) Chairperson: KSh.10,000 per day of meeting (s) subject to a maximum of 4 days per week and a maximum of KSh.160,000 per month.

(ii) Vice-Chairperson: KSh. 8,000 per day of meeting (s) subject to a maximum of 4 days in a week and a maximum of KSh.128,000 per month.

(iii) Member: KSh. 5,000 per day of meeting (s) subject to a maximum of 4 days in a week and a maximum of KSh. 80,000 per month.

(c) Other Allowances and Benefits:

The following benefits shall apply to Parliamentary State Officers:

(i) *Accommodation and Subsistence Allowances.*—to be paid at existing rates pending review by the Salaries and Remuneration Commission.

(ii) *Security.*—To be provided as advised by the Inspector-General, National Police Service.

(iii) *Mileage Allowance.*—shall be paid to Members of Parliament per week of travel(s) up to a maximum of 52 weeks in one calendar year for the journeys between Nairobi and their Constituencies at AA rates or as reviewed by the Salaries and Remuneration Commission from time to time.

(iv) *Medical Scheme.*—Annual Medical cover shall be provided per family for self, spouse and up to four children below twenty five years, who are fully dependent on the Members of Parliament and all other Parliamentary State officers as follows:

Inpatient	KSh. 10 million
Outpatient	KSh. 300,000
Maternity	KSh. 150,000
Dental	KSh. 75,000
Optical	KSh. 75,000

(v) *Retirement Benefits.*—Gratuity scheme at the rate of 31% of annual basic pay, shall be paid at the end of the term and shall not be pensionable.

(vi) *Group Life Assurance.*—State Officers shall be covered for a value equivalent to three times their annual basic salary.

(vii) Work Injury Benefit (WIBA).—Work Injury Benefits Act shall apply.

(viii) Group Personal Accident.—Members of Parliament and other Parliamentary State officers shall be covered for a value equivalent to up to three times their annual basic salary.

(ix) *Home, Utilities and Attendants.*—Speakers of the Senate and National Assembly shall be housed by the State and provided with all commensurate home utilities and attendants subject to review by the Salaries and Remuneration Commission from time to time.

Effective date: 1st March, 2013.

Dated the 28th February, 2013.

SARAH SEREM,
Chairperson, Salaries and Remuneration Commission.

GAZETTE NOTICE NO. 2887

THE CONSTITUTION OF KENYA

REMUNERATION AND BENEFITS OF STATE OFFICERS IN THE CONSTITUTIONAL COMMISSIONS AND INDEPENDENT OFFICES

IN EXERCISE of the powers conferred by Article 230 (4) (a), the Salaries and Remuneration Commission has set the Remuneration and Benefits of State Officers in the Constitutional Commissions and Independent Offices as follows:

REMUNERATION AND BENEFITS OF STATE OFFICERS IN THE CONSTITUTIONAL COMMISSIONS AND INDEPENDENT OFFICES

State Officer	*Gross Monthly Remuneration Package (KSh.)*
Auditor General	792,000 x 37,714 p.a. – 829,714 x 37,714 p.a. – 867,429 x 37,714 p.a. – 905,143 x 37,714 p.a. – 942,857 x 37,714 p.a. – 980,571 x 37,714 p.a. – 1,018,286 x 37,714 p.a. – 1,056,000
Chairperson, Independent Electoral and Boundaries Commission Chairperson, Commission for the Implementation of the Constitution	792,000 x 52,800 p.a. – 844,800 x 52,800 p.a. – 897,600 x 52,800 p.a. – 950,400 x 52,800 p.a. – 1,003,200 x 52,800 p.a. – 1,056,000
Controller of Budget	655,875 x 31,232 p.a. – 687,107 x 31,232 p.a. – 718,339 x 31,232 p.a. – 749,571 x 31,232 p.a. – 780,804 x 31,232 p.a. – 812,036 x 31,232 p.a. – 843,268 x 31,232 p.a. – 874,500
Vice Chairperson, Independent Electoral and Boundaries Commission Vice Chairperson, Commission for the Implementation of the Constitution	655,875 x 43,725 p.a. – 699,600 x 43,725 p.a. – 743,325 x 43,725 p.a. – 787,050 x 43,725 p.a. – 830,775 x 43,725 p.a. – 874,500
Chairperson, all other Constitutional Commissions; Member, Independent Electoral and Boundaries Commission Member, Commission for the Implementation of the Constitution	640,681 x 42,712 p.a. – 683,393 x 42,712 p.a. – 726,105 x 42,712 p.a. – 768,817 x 42,712 p.a. – 811,529 x 42,712 p.a. – 854,241
Vice Chairperson, all other Constitutional Commissions Members, all other Constitutional Commissions	532,500 x 35,500 p.a. – 568,000 x 35,500 p.a. – 603,500 x 35,500 p.a. – 639,000 x 35,500 p.a. – 674,500 x 35,500 p.a. – 710,000
Secretary of Constitutional Commission	526,058 x 25,055 p.a. – 551,113 x 25,055 p.a. – 576,167 x 25,055 p.a. – 601,222 x 25,055 p.a. – 626,277 x 25,055 p.a. – 651,332 x 25,055 p.a. – 676,386 x 25,055 p.a. – 701,441

Notes

(i) New State Officers and those currently earning below the total gross minimum remuneration set herein, shall join the scale at the appropriate level.

(ii) A serving State Officer whose remuneration and benefits were set for the position they are holding before the establishment of the Salaries and Remuneration Commission by the relevant authority as provided by law, where such remuneration is above the set remuneration herein shall retain such remuneration.

(iii) A serving State Officer whose remuneration and benefits were set for the position they are holding by the Salaries and Remuneration Commission before this Gazette Notice, where the remuneration is above the remuneration set herein, shall retain such remuneration at fixed levels unless reviewed by the Salaries and Remuneration Commission.

(iv) State Officers whose current remuneration levels fall within the structure shall join the structure at the next immediate progression point.

(v) Unless otherwise specifically stated in this Gazette Notice, all allowances are herein consolidated and capped at forty per centum (40 per cent) of the set total gross remuneration.

(vi) All other allowances and benefits not specified in this Gazette Notice cease to be payable.

(vii) A part time State Officer shall, notwithstanding (vi) above, retain the existing remuneration level pending revision by Salaries and Remuneration Commission.

(viii) The salary structure existing before this Gazette notice ceases to apply forthwith.

(a) Duty Facilitation Benefits:

The following benefits shall apply to the State Officers in Constitutional Commissions and Independent Offices.

(i) *Airtime.*—Retain the existing rates and subsequently as reviewed by Salaries and Remuneration Commission.
(ii) *Security.*—To be provided as advised by the Inspector General, National Police Service.
(iii) *Official car.*—Chauffer driven official car; or as reviewed by the Salaries and Remuneration Commission.

(b) Other Benefits:

(i) *Medical Scheme.*—The State Officers in Constitutional Commissions and Independent Offices shall be entitled to full medical cover per family for themselves, spouse and up to four children below twenty five years and fully dependent on the State Officer as follows:

Inpatient	KSh. 10 million
Outpatient	KSh. 300,000
Maternity	KSh. 150,000
Dental	KSh. 75,000
Optical	KSh. 75,000

(ii) *Retirement Benefits.*—A State Officer serving on Permanent and Pensionable terms shall join a contributory pension scheme and contribute at the rate of 7.5% of basic salary with the employer's contribution at the rate of 15% of basic salary.

A State Officer serving on fixed term shall serve on contract and be paid a service gratuity at the end of the term at the rate of 31% of annual basic pay for every year served.

(iii) *Group Life Assurance.*—State Officers shall be covered for a value equivalent to three times their annual basic salary.

(iv) *Work Injury Benefit (WIBA).*—Work Injury Benefits Act shall apply.

(v) *Group Personal Accident.*—State Officers in Constitutional Commissions and Independent Offices shall be covered for a value equivalent to up to three times their annual basic salary.

Effective date 1st March, 2013.

Dated the 28th February, 2013.

SARAH SEREM,
Chairperson, Salaries and Remuneration Commission.

GAZETTE NOTICE NO. 2888

THE CONSTITUTION OF KENYA

REMUNERATION AND BENEFITS OF STATE OFFICERS SERVING IN THE COUNTY GOVERNMENT

IN EXERCISE of the powers conferred by Article 230 (4) (*a*), the Salaries and Remuneration Commission has set the remuneration and benefits of State Officers in the County Government as follows:

REMUNERATION AND BENEFITS OF STATE OFFICERS SERVING IN THE COUNTY GOVERNMENT

State Officer	*Gross Monthly Remuneration Package (KSh.)*
County Governor	640,681 x 53,390 p.a.– 694,071 x 53,390 p.a. – 747,461 x 53,390 p.a. – 800,851 x 53,390 p.a. – 854,241
Deputy County Governor	461,250 x 38,438 p.a.– 449,688 x 38,438 p.a. – 538,125 x 38,438 p.a.– 576,563 x 38,438 p.a. – 615,000
Speaker of the County Assembly Member of the Executive Committee	225,000 x 18,750 p.a.– 243,750 x 18,750 p.a.– 262,500 x 18,750 p.a.– 281,250 x 18,750 p.a. – 300,000
Member of the County Assembly	79,200 x 6,600 p.a.– 85,800 x 6,600 p.a.– 92,400 x 6,600 p.a.– 99,000 x 6,600 p.a. –105,600

Notes:

(i) A State Officer joining the Public Service at the County Government shall adopt the minimum entry point of the respective remuneration scales.

(ii) Unless otherwise specifically stated in this Gazette Notice, all allowances have been consolidated and capped at forty per centum (40 per cent) of the set total gross remuneration package.

(iii) All other allowances and benefits not specified in this Gazette Notice cease to be payable.

(*a*) *Additional Allowances and Benefits:*

The following additional allowances shall apply to State Officers serving in the County Government:

(i) Governor Allowance: To be paid at the rate of KSh. 80,000 per month

(ii) Deputy Governor Allowance: To be paid at the rate of KSh. 64,000 per month

(iii) County Assembly Committee Sitting Allowances: To be paid to a County Representative as follows:

1. Chairperson: KSh.5,000 per day of meeting(s) for a maximum of 4 days in a week subject to a maximum of KSh. 80,000 per month

2. Vice Chairperson: KSh. 4,000 per day of meeting(s) for a maximum of 4 days in a week subject to a maximum of KSh. 64,000 per month

3. Member: KSh. 3,000 per day of meeting(s) for a maximum of 4 days in a week subject to a maximum of KSh. 48,000 per month

(*b*) *Other Allowances and Benefits:*

The following allowances and benefits shall apply to the State Officers in the County Government as applicable:

(i) *Accommodation and Subsistence Allowances.*—To be paid at the existing rates applicable in the Public Service pending review by the Salaries and Remuneration Commission.

(ii) *Airtime.*—Airtime shall be provided as follows:

1.	Governor	KSh. 10,000 per month
2.	Deputy Governor	KSh. 7,500 per month
3.	County Assembly Speaker	KSh. 5,000 per month

(iii) Security: To be provided as advised by the Inspector General, National Police Service, where applicable.

(iv) Official car: Chauffer driven official car for Governor and Deputy Governor, or as may be reviewed by the Salaries and Remuneration Commission.

(v) Medical Scheme: Annual Medical cover shall be provided per family for self, spouse and up to four children below twenty five years, who are fully dependent on the County State Officer, as follows:

Governor:

Inpatient	KSh. 10 million
Outpatient	KSh. 300,000
Maternity	KSh. 150,000
Dental	KSh. 75,000
Optical	KSh. 75,000

Deputy Governor:

Inpatient	KSh. 5 million
Outpatient	KSh. 150,000
Maternity	KSh. 50,000
Dental	KSh. 25,000
Optical	KSh. 25,000

County Assembly Speaker, County Representative and County Executive Officer:

Inpatient	KSh. 1 million
Outpatient	KSh. 100,000
Maternity	KSh. 50,000
Dental	KSh. 20,000
Optical	KSh. 20,000

(vi) Retirement Benefits: A County State Officer shall serve on contract and be paid a service gratuity at the end of the term at the rate of 31% of annual basic pay for every year served.

(vii) Group Life Assurance: County State Officers shall be covered for a value equivalent to three times their annual basic salary.

(viii) Work Injury Benefit (WIBA): Work Injury Benefits Act shall apply.

(ix) Group Personal Accident: State Officers in County Government shall be covered for a value equivalent to up to three times their annual basic salary.

(x) Home, Utilities and Attendants: A County Governor shall be housed by the State and provided with all commensurate home utilities and home attendants, subject to review by Salaries and Remuneration Commission from time to time.

Effective date: 1st March, 2013.

Dated the 28th February, 2013.

SARAH SEREM,
Chairperson, Salaries and Remuneration Commission.

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ANNEX-2

REPUBLIC OF KENYA

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PLC/SRC/541/2012

Speaker's Chambers
National Assembly
Parliament Buildings
P. O. Box 41842 –00100
NAIROBI, Kenya

22nd February 2013

Mrs. Sarah J. C. Serem,,
Chairperson,
Salaries & Remuneration Commission,
NHIF Building, 13th Floor,
P. O. Box 43126-00100,
NAIROBI.

Dear Chairperson Sarah

PROPOSED REMUNERATION STRUCTURE FOR STATE OFFICERS IN KENYA.

The Parliamentary Service Commission met on 20th February 2013 and deliberated on the proposed remuneration structure for State Officers that the Salaries and Remuneration Commission released on 5th February 2013. Your Commission has invited comments and views on the proposed structure. Several issues arise from the proposed remuneration structure which the Parliamentary Service Commission wishes to raise.

It is noteworthy that the Parliamentary Service Commission did last year write several letters to your Commission explaining the structure and workings of Parliament with a view to enabling your Commission arrive at a structure that would enable Parliament effectively and efficiently discharge its constitutional mandate. I met with your Commission during the launch of the job evaluation exercise on 23rd August 2012 as well as on 6th November 2012 when your Commission visited Parliament together with its consultants,

PricewaterhouseCoopers Limited. We again met during the meeting held on 11th December 2012 with the Right Honourable Prime Minister at the Prime Minister's office. Your Commission also met with some Parliamentary Service Commissioners as well as other Parliamentary Office Holders on 29th October 2012 at Parliament buildings. During these meetings the position of the National Assembly with regard to remuneration of Members of Parliament was articulated. This position has not been reflected in the proposed remuneration structure. Please find attached copies of letters dated 6th June 2012 and 27th November 2012 that were delivered to the Salaries and Remuneration Commission but whose contents the proposed remuneration structure does not reflect with respect to Members of Parliament.

CONSTITUTIONAL STRUCTURE OF GOVERNMENT

The Parliamentary Service Commission has noted that the proposed remuneration structure places Members of Parliament at positions 43 and 44 respectively in the ranking order. Cabinet secretaries are ranked at number 6 followed by the Chief of Defence Forces, Judges, Principal Secretaries, Director General NSIS, Controller of Budget, Chairpersons of Constitutional Commissions among other State Officers. Article 95(5) of the Constitution of Kenya provides that *"the National Assembly shall review the conduct in office of the President, the Deputy President and other State Officers and initiate the process of removing them from their office; and exercises oversight of Stage organs."* Indeed Article 152 of the Constitution provides that the National Assembly may dismiss a Cabinet Secretary by a resolution supported by a majority of members. Article 254 of the Constitution further provides that each Constitutional Commission and independent office shall submit a yearly report to Parliament and that the Senate or National Assembly may, at any time, require a Commission or holder of an independent office to submit a report on a particular matter.

It is a Constitutional requirement that the National Assembly approves the nomination of most State Officers prior to their appointment. The National Assembly then oversees their work both from a financial and administrative perspective and may initiate the process of removing them from office. In effect, the National Assembly substantially plays the role of a supervisor to these State

offices. It does not therefore augur well for the structure of Government for supervisors to be rated and remunerated less than those they supervise. This is not good human resource practice. It shall undermine the Constitutional role of oversight by Parliament and complicate the interaction between the National Assembly and the State organs that it is under a constitutional duty to oversee.

There is also need to ensure parity of treatment in respect of remuneration payable to the supreme decision making organs of the three arms of Government. The Cabinet is the supreme decision making organ of the executive. The Supreme Court, the Court of Appeal or even the High Court can be argued to be the supreme decision making organs of the Judiciary. A House of Parliament is no doubt the decision making organ of the Legislature. To open up such a large disparity in remuneration between the decision making organs of the three arms of government clearly has the effect of disadvantaging one arm to the advantage of the other arms. The Salaries and Remuneration Commission needs to ensure parity of remuneration between the three arms so as to avoid financial discrimination against persons serving in a particular arm of Government.

The situation is even graver at the devolved government level where the Speaker of a county assembly is proposed to earn almost a quarter of what the governor earns and yet county assemblies are equally bestowed with the heavy responsibilities of legislating, appropriating and over sighting county revenue and expenditure and oversight over governance generally at the devolved level. Similarly, a member of a County Assembly needs to check and oversee the County Executive which includes the Governor and therefore the disparity in remuneration between the two positions should not be as great as proposed.-

If this imbalance is not addressed, the country runs the risk of losing all the gains made in the attainment of a sustainable and effective parliamentary democracy where the legislature is able to operate and discharge its functions effectively and independently without bowing to the financial whims of the executive. The Salaries and Remuneration commission should not be blind to this risk. Indeed the cost to the Kenyan tax payer can be higher than anticipated if we create a rogue and runaway executive/independent commissions which easily gloat over the

legislature owing to the remunerative imbalance. The history of our country has been very clear on this. Indeed, all the legislative and governance reforms have been achieved after the advent of the Parliamentary Service Commission.

The 9th and 10th Parliaments have been noted for the vibrancy with which they have checked the Executive as well as the quality, number and creativity of legislation passed. This is attributable to the caliber of Kenyans who vied and became Members of Parliament. This is in turn attributable to the improved remuneration of Members of Parliament following amendments to the National Assembly Remuneration Act to improve the remuneration of Members. As I informed you during the launch of the Job Evaluation exercise on 23rd August 2012, 51% of Members of the 10th Parliament have a first degree, 29% have a Masters degree and 6% have doctorate degrees. Four percent have a diploma while 10% have O level education certificates. If the remuneration of Members of Parliament is made less favourable than it currently is, the country shall not be able to attract as many persons of high caliber to vie for the position of Member of Parliament with the resultant deterioration in the quality of oversight, legislation and representation. Indeed this shall be in violation of Article 230(5)(b) which requires that the remuneration for a State Office be such that it shall be able to attract and retain the skills required to execute the responsibilities of the office.

JOB EVALUATION

As indicated earlier the Parliamentary Service Commission has noted that the proposed remuneration structure places Members of Parliament at positions 43 and 44 respectively in the ranking order. It would appear that one of the factors taken into account in arriving at this ranking is the relatively low academic requirements for one to become a Member of Parliament. While educational qualifications may be relevant in evaluating appointive positions such as Judges and Cabinet Secretaries, they are not relevant when it comes to evaluating elective positions.

Academic requirements are relevant in appointive positions as they show the process of preparation that a person is required to undergo prior to becoming eligible to hold a certain position. For instance for a person to become a Chief Justice he/she is required to have hold an undergraduate degree in law, a

postgraduate diploma in law and be admitted as an Advocate of the High Court. He/she further needs to have practiced law for a period of at least fifteen years. This is set out at Article 166(3) of the Constitution. The same does not apply to Members of Parliament. Articles 1(1) & (2) of the Constitution of Kenya, 2010, state that *"All sovereign power belongs to the people of Kenya and shall be exercised only in accordance with this Constitution. The people may exercise their sovereign power either directly or through their democratically elected representatives."* The process by which a person becomes a Member of Parliament is a democratic election, a process that is no less vigorous for candidates than acquiring academic qualifications. A candidate must convince the electorate that he/she understands their needs and aspirations and can articulate the same in Parliament. This requires intelligence and compassion. The whole of Chapter seven (7) of the Constitution is dedicated to dealing with the election of Members of Parliament. Indeed, under Article 94(2) of the Constitution, Parliament manifests the diversity of the nation, represents the will of the people and exercises their sovereignty. **The tool used by the Salaries and Remuneration Commission with respect to Members of Parliament is therefore wrong.**

Once you consider the above Constitutional provisions it should become clear that using academic qualifications to rate Members of Parliament goes against the principles set out in the Constitution and has led to the absurd result where Members of Parliament are lowly rated. This is in spite of the fact the Constitution itself at Article 99 sets out the threshold of qualifications for members of Parliament. It is therefore unfortunate to note that the proposed remuneration structure shall not allow Parliament to effectively discharge its constitutional mandate.

It is therefore the proposal by the Parliamentary Service Commission that your Commission reviews the proposed remuneration structure and places Members of Parliament above Cabinet Secretaries and just below the Speaker of the Senate, that is number six (6) on the ranking order. We also recommend that in order to comply with the spirit of Articles 108(4) and 117(2) of the Constitution, differentiation should be made between the holders of various Parliamentary offices as set out below:

1. Leader of the Majority Party.
2. Leader of the Minority Party.
3. Chairpersons of Committees.
4. Members of the Speakers Panel.
5. Chief Whips.
6. Minority Whips.
7. Ordinary Members of Parliament.

Articles 108(4) and 117(2) of the new Constitution provide for the leader of the majority party, leader of the minority party and chairpersons of committees. Kindly also provide for the remuneration of the **Chairperson and Vice Chairperson of the Parliamentary Service Commission** in a manner similar to that done for other Constitutional Commissions.

ALLOWANCES

Your Commission has proposed that allowances should not be more than 30% of the basic salary. What is the breakdown of this 30%? Does this also apply to Members of Parliament? You will note that one of the Constitutional duties of Members of Parliament is representation. They are required to travel regularly to Nairobi from their constituencies, some as far as Mandera. The car grant, transport and mileage allowances were designed to facilitate this and arrived at after extensive studies by various panels of experts, particularly the Cocker Tribunal which submitted its report on 5th November 2002. A copy of this report is attached hereto for your ease of reference. **Kindly clarify the allowances payable to Members of Parliament.**

If the car grant, mileage and transport allowances are not provided for, the Parliamentary Service Commission, in exercise of its powers under Article 127(6)(a) of the new Constitution, shall be forced to purchase 4 X 4 motor vehicles for all 418 Members of Parliament and employ drivers to facilitate the Members travel to and from their constituencies. This, in addition to fueling and maintaining the vehicles, shall end up being far more expensive for the exchequer than the allowances currently payable.

Finally, the Parliamentary Service Commission would appreciate a consultative meeting with the Salaries and Remuneration Commission prior to tabling the proposed remuneration before the National Assembly as provided for under section 26(2) of the Salaries and Remuneration Act.

Yours sincerely

HON. KENNETH MARENDE, E.G.H., ACIArb. M.P.,
SPEAKER OF THE NATIONAL ASSEMBLY/CHAIRMAN,
PARLIAMENTARY SERVICE COMMISSION.

ANNEX-3

REPUBLIC OF KENYA

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Speaker's Chambers
National Assembly
Parliament Buildings
P. O. Box 41842 –00100
NAIROBI, Kenya

27th November 2012

Mrs. Sarah J. C. Serem,
Chairperson,
Salaries and Remuneration Commission,
NHIF Building, 13th Floor,
P. O. Box 43126-00100,
NAIROBI.

Dear Chairperson Sarah

JOB EVALUATION OF STATE OFFICER POSITIONS

Please refer to the job evaluation of State Officer positions exercise that the Salaries and Remuneration Commission has been carrying out and find attached the following documents that shall be of assistance in evaluating State Officer positions in the legislature:

1. Comments of the Parliamentary Service Commission on the Salaries and Remuneration Commission draft Structure for State Officers' remuneration.
2. Job descriptions for Parliamentary Office Holders.
3. Job descriptions for Clerk of the Senate and Clerk of the National Assembly.
4. A copy of my earlier letter dated 6th June 2012 on draft structure of the Salaries and Remuneration Commission for State Officers' remuneration.
5. Report of the Tribunal to review the terms and conditions of service for Members of Parliament chaired by Justice A. M. Cockar, E.G.H., 2002.
6. Report of the Tribunal to review the terms and conditions of service for Members of Staff of the National Assembly chaired by Justice A. M. Cockar, E.G.H., 2002.
7. Report of the Tribunal appointed by the Parliamentary Service Commission to review and make recommendations on the terms and conditions of service for Members and Staff of the National Assembly chaired by Hon. (Rtd) Mr. Justice A. M. Akiwumi, 29th November, 2009.

8. Comments and recommendations by the Parliamentary Service Commission on the Tribunal appointed to review the terms and conditions of service for Members of the National Assembly presented to the Parliamentary Service Commission on 12th November 2009.

Yours

HON. KENNETH MARENDE, E.G.H., ACIArb. M.P.,
SPEAKER OF THE NATIONAL ASSEMBLY

ANNEX-4

Parliamentary Service Commission

COMMENTS OF THE PARLIAMENTARY SERVICE COMMISSION ON THE SALARIES AND REMUNERATION COMMISSION'S DRAFT STRUCTURE FOR STATE OFFICERS' REMUNERATION

NOVEMBER 2012

COMMENTS OF THE PARLIAMENTARY SERVICE COMMISSION ON THE SALARIES AND REMUNERATION COMMISSION'S DRAFT STRUCTURE FOR STATE OFFICERS' REMUNERATION

The Parliamentary Service Commission has studied the draft structure for State Officers' remuneration as advertised by the Salaries and Remuneration Commission in the local dailies on diverse days in May 2012 and has the following comments to make:

1. The placement of the Speakers of the National Assembly and Senate at level 2 is appropriate.

2. The placement of the Leader of Majority and Leader of Minority at level 3, being a level immediately below the Speakers is also appropriate. Placement of the Deputy Speakers of both Houses at this level is further appropriate.

3. The placement of Members of Parliament at level 5 is not appropriate. Members of Parliament should all be placed at Level 3 for purposes of salary and differentiated by way of allowances with respect to parliamentary responsibility.

4. It is important to note that the legislature, just like the Executive and Judiciary, has various office holders or parliamentary functionaries. The draft structure has not captured the following parliamentary office holders:

   (a) Chairpersons of Committees.
   (b) Vice-Chairpersons of Committees.
   (c) Chief Whip.
   (d) Opposition and other party whips.
   (e) Member of the Speakers Panel.

5. The equating of the Clerk of the National Assembly and Clerk to Senate to State offices at level 4 is appropriate. They are the administrative heads of the legislative arm of Government. In addition the Clerk of the National Assembly is the secretary to the Parliamentary Service Commission. It is however important to note that the offices of the two Clerks are offices in the Parliamentary Service as set out in Article 128 of the Constitution. They are not State offices. It is the role of the Parliamentary Service Commission to set the remuneration for holders of these two offices as well as other officers of the Parliamentary Service. It is proposed that the Salaries and Remuneration Commission continues to advice the Parliamentary Service Commission on the remuneration for the holders of the office of Clerk of a House of Parliament.

Please find below brief notes on the roles and responsibilities of the various parliamentary office holders:

(i) Leadership of the respective Houses of Parliament

Each House of Parliament shall have the following categories of Parliamentary Office-holders-

(a) Speaker of the House.
(b) Deputy Speaker.
(c) Leader of the Majority
(d) Leader of the Minority
(e) Chairpersons of Committees
(f) Vice-Chairpersons of Committees
(g) Chief Whip
(h) Opposition and other party whips
(i) Member of Speakers Panel
(j) Ordinary Member of Parliament.

There shall also be Parliamentary Service Commissioners as follows:

(i) The Speaker of the National Assembly who shall be the Chairman.
(ii) Seven members appointed by Parliament from among its members, some from the National Assembly and others from the Senate.
(iii) A vice Chairman elected by the Commission from among the seven members appointed by Parliament.

(iv) One man and one woman appointed by Parliament from among persons who are experienced in public affairs, but are not members of Parliament.

(a) Speaker of a House of Parliament

Article 106(a) of the Constitution of Kenya, 2010 provides that there shall be a Speaker for each House of Parliament who shall be elected by that House in accordance with the Standing Orders, from among persons who are qualified to be elected as members of Parliament but are not such members. A Speaker of a House of Parliament shall have the following duties and responsibilities:

(i) Article 107 of the Constitution provides that the Speaker of a House of Parliament shall preside over the sitting of that House. During a joint sitting of the Houses of Parliament, the Speaker of the National Assembly shall preside, assisted by the Speaker of the Senate.

(ii) The Speaker presides over all debates of the House and enforces the observance of the Constitution, the Standing Orders, the National Assembly (Powers and Privileges) Act, other laws of Kenya and the Speaker's Rules aimed at ensuring orderly debate in the House and preserving order within the precincts of Parliament. The laws to be observed include those relating to the budget process, reports by various constitutional bodies to Parliament and deadlines for carrying out various acts.

(iii) Administering the oath of affirmation or allegiance to new Members of Parliament and issuing, writs for vacant seats.

(iv) Protecting the rights of the minority Members while making sure that the majorities have their way.

(v) Selecting Members to speak during debates.

(vi) Organizing the business of the House as he is a member of the House Business Committee.

(vii) The Speaker of the National Assembly controls the administrative machinery of Parliament as the chairman of the Parliamentary Service Commission.

(viii) The Speaker is the spokesman for his/her respective House of Parliament and shall ensure that dignity of Parliament is upheld and its rights and privileges are not abused.

ix) The Speaker of the National Assembly represents Parliament to the outside world as the branch chairman of the Common-wealth Parliamentary Association (CPA) and Inter-Parliamentary Union (IPU).

x) In general, a Speaker is the final authority on all matters touching on the interpretation and application of the practice and procedure of Parliament at all

times. In presiding over the proceedings of the House, Mr. Speaker's decisions and the considered rulings he makes on matters brought to his attention constitute the 'case law' of parliament.

The Speaker is empowered under the Standing Orders to correct patent errors in a Bill after it has been passed by the House and to make such other changes in the Bill consequential on the amendments accepted by the House. It is useful to note the following comments on the office of Speaker as set out in "The Practice and Procedure of Parliament (with particular reference to the Lok Sabha)" by G. C. Malhotra, Metropolitan Books Co. PVT Ltd at pages 113 -114:

> "The all important conventional and ceremonial head of the Lok Sabha (National Assembly of India) is the Speaker. Within the walls of the House, his authority is supreme ... Though his powers and duties have been laid down in the Rules and, to some extent, in the Constitution, the Rules which he has to administer are of an elastic nature and in some matters he has to exercise his discretion. His duties are very arduous, and in their discharge he must be actuated by a sense of justice and fairness, uninfluenced by passion or prejudice. He has to impress the House generally with confidence in the soundness and impartiality of his judgments, with the conviction that he considers himself the conscience and guardian of the House. As the principal spokesman of the House, he represents its collective voice and is its solve representative to the outside world.
> Communications from the President are made through the Speaker. Similarly communications to the President are made through the Speaker... He also issues warrants to execute the orders of the House, where necessary."

(b) Deputy Speaker of a House of Parliament

Article 106(b) of the Constitution of Kenya, 2010 provides that there shall be a Deputy Speaker for each House of Parliament who shall be elected by that House in accordance with the Standing Orders, from among members of that House. A Deputy Speaker of a House of Parliament shall have the following duties and responsibilities:

(i) Article 107(b) of the Constitution provides that the Deputy Speaker of a House shall preside over the sitting of that House in the absence of the Speaker.

(ii) The Deputy Speaker, also referred to as the Chairperson of Committees is the Chairperson of the Liaison Committee and presides over Committees of the whole House.

(iii) Oversees the budget for Committees and ensures that Committees do not exceed their annual budget. The Deputy Speaker also approves changes to

the annual budget of individual Committees as well as travel abroad by Committees.

(iv) The Deputy Speaker deputizes the Speaker and assists in ensuring the dignity of the Parliament is upheld, it rights and privileges are not abused and generally assists in the interpretation and application of the practice and procedure of Parliament at all times.

G. C. Malhotra in "The Practice and Procedure of Parliament (with particular reference to the Lok Sabha)", Metropolitan Boo Co. PVT Ltd at pages 125 -126 comments on the office of Deputy Speaker as follows:

> "The Office of the Deputy Speaker has grown in importance and has come to acquire a more prominent position after the enforcement of the Constitution in 1950. Like the Speaker, the Deputy Speaker is elected by the Lok Sabha from among its members. He is not subordinate to the Speaker, but holds an independent position and is answerable to the House alone ... During the days of the Central Legislative Assembly, the House used to meet for only short periods and that too at long intervals. At present, the House sits for nearly seven months in a year and each sitting lasts for about seven hours. It is not practicable for the Speaker to be present in the House throughout a particular sitting. Every now and then, when he has to attend to his other duties, he has to vacate the Chair, and in his absence it is usually the Deputy Speaker who presides over the deliberations of the House. Further, the Deputy Speaker is expected to perform the duties of the office of the Speaker, whenever that office is vacant."

(c) Leader of the Majority

Article 108 of the Constitution provides that there shall be a leader of the majority party and a leader of the minority party. The leader of the majority party shall be the person who is the leader in the National Assembly of the largest party or coalition of parties. It is expected that the Standing Orders shall provide for similar positions in the Senate. It is expected that the leader of the Majority shall have the following roles and responsibilities:

(i) Be the leader of Government business in the House and the chief liaison person between the Executive and Parliament in facilitating the introduction of Government legislation and other Parliamentary business to the House.

(ii) Responsible for ensuring that the Government's legislative, budgetary and policy agenda in Parliament is passed.

(iii) Chairman of the House Business Committee and which is responsible for setting the business of the House.

(iv) Presenting a half hour statement to the House every Thursday afternoon setting out the Government's legislative agenda for the following week.

G. C. Malhotra in "The Practice and Procedure of Parliament (with particular reference to the Lok Sabha)", Metropolitan Boo Co. PVT Ltd at pages 138 -1140 comments on the office of Leader of the House, which is equivalent to Leader of the Majority as follows"

> "The Leader of the House is an important parliamentary functionary and exercises direct influence on the course of business. The whole policy of the Government, especially so far as it is expressed in the inner life of the House and in measures dealing with the course of its business, is concentrated in his person. The arrangement of Government business is the ultimate responsibility of the Leader of the House, though details are settled, subject to his control, by the Chief whip who is also vested with the portfolio of the Minister of Parliamentary Affairs .... The Leader of the House shapes the course and content of legislation inasmuch as his is often the final voice in deciding as to what amendments will be acceptable, what Private Members' Bill will receive the support of the Government, and whether a question should be left to a free vote. The Leader of the House may, therefore, be said to be perhaps the most influential figure in the entire legislative process."

(d) Leader of the Minority

(i) The Leader of the Minority shall be the leader of the opposition in Parliament and responsible for marshalling Members of the opposition in overseeing the legislation, budget and other Parliamentary business of the House.

G. C. Malhotra in "The Practice and Procedure of Parliament (with particular reference to the Lok Sabha)", Metropolitan Boo Co. PVT Ltd at pages 142 -143 comments on the office of Leader of the Opposition, which is equivalent to Leader of the Minority as follows"

> "In any system of Government there will always be a struggle for power ... The parliamentary system of government makes it obligatory for the opposing forces to struggle for power on the floor of the House by recognized parliamentary

methods. One of the biggest parliamentary achievements of the present century is that the role of the Opposition has been formally recognized and is given a due place in the parliamentary system. The Leader of the Opposition is thus an important person ... The Leader of the Opposition is the official spokesman of the minority or minorities and to that end he zealously watches any encroachment on their rights. His task, though not so difficult as that of the Prime Minister, is of sufficiently great public importance because he has to maintain a team – a "shadow Cabinet" – ready to take over the administration. In performing his duties and obligations, the Leader of the Opposition has to take into account not only what he is today but what he hopes to be tomorrow."

(e) Chairpersons of Parliamentary Committees

The draft structure for state officers' remuneration does not recognize the Chairs of Parliamentary committees. It is important to note that a great deal of Parliament's business shall be conducted in Committees. This includes scrutiny of Bills, the budgets of Ministries and State entities as well as vetting of appointment to the Cabinet and other constitutional offices. Chairpersons of Committees shall be responsible for:

(i) Presiding over all meetings of his/her Committee and enforcing the observance of the Constitution, Standing Orders and Speakers Rules aimed at preserving order during meetings of the Committee.
(ii) Liaising with the Clerk of the House and Committee Clerk on administrative matters of the Committee.
(iii) Preparation the Committee's annual work-plan, programme and agenda.
(iv) Presentation of the Committee's report to the House.
(v) Approval of witnesses to appear before the Committee.
(vi) Ensuring that the Committee's activities are in accordance with the budget of the Committee.

A Parliamentary Committee is a legislative sub-unit of Parliament that handles a specific duty, rather than the general duties of Parliament. Membership in a Parliamentary Committee enables members to develop specialized knowledge of the matters under their jurisdiction. As "little Parliaments," committees oversee and monitor on-going governmental operations, identify issues suitable for legislative review, gather and evaluate information, and recommend courses of action to their parent body, Parliament. Former President of the United States, Woodrow Wilson, once said, "... it is not far from

the truth to say that Congress in session is Congress on public exhibition, whilst Congress in its committee rooms is Congress at work." The same can be said of the Kenyan Parliament. Parliamentary Committees provide invaluable informational services to Parliament by investigating and reporting about specific Ministries/State organs and specialized subjects.

Cabinet Secretaries (Ministers) shall not be Members of Parliament. Chairpersons of Committees are therefore expected to play a greater role in the legislative and oversight business of the House in the 11th and subsequent Parliaments. Most of the business of Parliament shall be carried out in Committees. G. C. Malhotra in "The Practice and Procedure of Parliament (with particular reference to the Lok Sabha)", Metropolitan Boo Co. PVT Ltd at pages 130-131 comments on Chairpersons of Parliamentary Committees:

> "The Chairman has the duties and powers in respect of proceedings of the Committee more or less similar to those of the Speaker in respect of the proceedings and deliberations of the House ... He fixes the date and time for holding the sittings of the Committee. Any procedural matter arising at the sittings of the Committee is decided by the Chairman. If any doubt arises on any point of procedure or otherwise, the Chairman, may if he thinks fit refer the point to the Speaker whose decision is final ... Minutes of the sittings of a Committee are approved by the Chairman, and its report is signed by him on behalf of the Committee, before it is presented to the Speaker or the House. He has also the power to correct patent errors or matters of factual nature in the report before its presentations to the Speaker or the House. All communications between a Committee and the Speaker or the House are made by the Chairman of the Committee. He is, so to say, the spokesman or the mouthpiece of the Committee."

(f) Vice-Chairpersons of Committees

The Vice-Chairperson of a Committee shall chair all meeting of the Committee in the absence of the Chairperson and assist in handling the administrative matters of the committee.

(g) Chief Whip

The Chief Whip is responsible for:

(i) Ensuring that Members of the majority party attend to House business (both at Committee and in the House) particularly when there is contentious business to be transacted with a view to ensuring that Government business is passed.

(ii) Selecting Members of Parliament in the Government side to serve on various Parliamentary Committees.

(iii) Enforcing party discipline among Members of Parliament in the Government side and "de-whipping" errant Members.

Opposition and other party whips

(i) Ensuring that Members of the minority party attend to House business (both at Committee and in the House) particularly when there is contentious business to be transacted with a view to ensuring that minority view is heard and even successful in voting.

(ii) Selecting Members of Parliament in the opposition to serve on various Parliamentary Committees.

(iii) Enforcing party discipline among Members of Parliament in the opposition side and "de-whipping" errant Members.

G. C. Malhotra in "The Practice and Procedure of Parliament (with particular reference to the Lok Sabha)", Metropolitan Boo Co. PVT Ltd at pages 144-147 has the following to say about whips:

> "In a legislative body, not only the fate of a particular measure under consideration, but the very life of the Council of Ministers itself may depend upon the result of a single division. When the division bell rings, about three and a half minutes are given to the members to rush into the Chamber from the lobbies, library and annexe, yet the government or any party cannot take it for granted that its followers would always be present in sufficient numbers in the precincts of the House at the time of a division. The duty of keeping the members of a party on hand accordingly devolves upon the whips.
>
> In the parliamentary form of government, a party has its own internal organization inside Parliament and is served by a number of officials known as the whips, chosen from members of the party itself. In fact, the efficient and smooth working of parliamentary democracy depends to a very large extent on the whips of the party in power or parties in opposition...

During sessions, the Whips of different parties send to their supporters periodic notices, also sometimes called "whips", warning them when important divisions are expected, telling them the hour when a vote will probably take place, and requesting them to be in attendance at that time. The importance of the division is indicated by underscoring the notice by a number of lines.

The whips have to know their men. This involves a close contact with all members and knowledge of their interests, special attitudes, qualities and potentialities. The whips take these aspects into account while sending the list of speakers to the chair in the interest of quality of debate and deliberation or suggesting names of members of their parties for nomination on parliamentary committees. They keep members supplied with information about the business of the House and enforce party discipline...

And it through the whips that members of a party come to know about their leader's views and the plans into which the leader thinks it necessary or expedient to initiate them. The whips are the active agents within the parties, a channel of communication whereby one party negotiates with another concerning topics for debates or conduct of business in the House.

It has been aptly said that the Whips are not only shock-absorbers, but also indicators of the party; they are not only advisers to the leader, but also the binding force in the party; they are not only barometers of the different regions and opinions but also the counselors of members."

(h) Member of Speakers Panel

The Standing Orders provide that at the commencement of every session, or from time to time as necessity may arise, the Speaker shall, with the approval of the House, nominate four Members who shall be known respectively as the First, Second, Third and Fourth Chairperson of Committees and who shall exercise the all the powers vested in the Chairperson of Committees including the powers of the Deputy Speaker. These four Members constitute the Speaker's panel.

Members of the Speaker's panel assist the Speaker and Deputy Speaker in presiding over debates of the House and enforcing the observance of the constitution, Standing Orders, and Speaker's Rules.

G. C. Malhotra in "The Practice and Procedure of Parliament (with particular reference to the Lok Sabha)", Metropolitan Boo Co. PVT Ltd at pages 127 -128 comments on the Panel of Chairmen as follows:

> "In the absence of the Speaker and the Deputy Speaker, one of the Chairmen presides over the House when so requested by the Speaker or in his absence the Deputy Speaker. There is always need for some other persons who can act in the Chair, off and on, as the Speaker and the Deputy Speaker between them may not be able to take the entire load of presiding throughout the duration of the sitting each day. They may require some relief and time to attend to other work outside the House.
>
> After taking into consideration the engagements for the day of the Speaker and Deputy Speaker and also ascertaining the convenience of members of the Panel of Chairman, a roster is prepared each day indicating the hours during which the Speaker, the Deputy Speaker and individual members of the Panel of Chairmen are to preside. Depending upon developments and the nature f business before the House, suitable changes can be made in the roster at short notice...
>
> Any member of the Panel of Chairmen, when presiding over a sitting of the House, has the same powers as the Speaker when so presiding. The rulings of a Chairman are not subject to any criticism nor open to any debate or appeal. In order, that there is an authoritative ruling, a Chairman often reserves major issues for decision by the Speaker. A reference to the Chairman's conduct while in the Chair amounts to contempt of the House, and therefore, he is shown all respect as the Presiding Officer of the House.
>
> A Chairman is free to participate fully in all discussions in the House and to take active part in the issues, including controversial issues before the House. He attends meetings of his party and is sometimes an active member of his party."

Parliamentary Service Commissioner

In addition to being a Member of Parliament, a Parliamentary Service Commissioner is responsible for overseeing the administrative arm of Parliament. This includes the responsibility for:

(a) constituting and abolishing offices in the parliamentary service;

(i) Exercising the legislative authority of the Republic;
(ii) Representing the will of the people and exercising their sovereignty.
(iii) Considering and passing amendments to the Constitution and county boundaries as provided for in the constitution;
(iv) Protecting the constitution and promoting the democratic governance of the Republic.
(v) Parliamentary diplomacy which involves meeting Members of Parliament and other senior officials from other countries with a view to enhaneing Kenya's image, trade ties and general diplomatic relations.

Members of the National Assembly have the following additional roles to play:

(i) Representing the people of the constituency and special interests in the National Assembly;
(ii) Deliberating on and resolving issues of concern to the people;
(iii) Enacting national legislation.
(iv) Appropriating funds for expenditure by the national government and determining allocation of national revenue between the levels of government;
(v) Exercising oversight over national revenue and its expenditure;
(vi) Reviewing the conduct in office of the President, Deputy President and other State Officers and initiating the process of removing them from office.
(vii) Exercising oversight over state organs.
(viii) Approving declarations of war and extensions of states of emergency.

Members of the Senate have the following additional roles to play:

(i) Representing the counties and serving to protect the interests of the counties and their governments.
(ii) Participating in the law-making function of Parliament by considering, debating and approving Bills concerning counties.
(iii) Determining the allocation of national revenue among counties.
(iv) Participating in the oversight of State officers by considering and determining any resolution to remove the President or Deputy President.

It is important to note that the above responsibilities as listed do not go to the root of the actual activities Members must undertake in order to fulfill their constitutional mandate. Members read volumes of material that are placed before them. This include Bills and research on the Bills, budget policy statements, estimates and research material on the same, committee reports and supporting documents, submissions form Ministries, petitions and other related material. Members further spend long hours at both formal and informal party meetings arriving at party positions on various issues of national importance. Extensive negotiations are also held in order to arrive at a consensus on various parliamentary matters and ensure the legislative and other agenda of the House proceeds.

In terms of reporting structure as set out under the constitution, Article 95(5) provides that the National Assembly shall review the conduct in office of the President and Deputy President and exercise oversight of State organs. The National Assembly, through its Departmental Committees, summons all the persons listed in level 4 of your draft structure for State Officers' remuneration to appear before it and answer queries as to their performance. Article 254 provides that each constitutional commission and independent office shall, as soon as practicable after the end of each financial year, submit a report to the President and to Parliament. At any time, the President, the National Assembly or the Senate may require a commission or holder of an independent office to submit a report on a particular issue. The office of Auditor General, for instance, plays a role akin to that of the secretariat of the Public Accounts Committee of Parliament. William McKay and Charles W. Johnson put it well at page 300 of their book "Parliament and Congress: Representation and Scrutiny in the Twenty-First Century" stating as follows:

> "The Public Accounts Committee is charged with the examination of the appropriation accounts and such other accounts as the Committee thinks fit. The work of the Committee centres on the reports of the National Audit office, and the Controller and Auditor General attends all their hearings. The witnesses are normally the principal officials of the department under scrutiny, who bear personal responsibility for the effectiveness of the systems intended to deliver financial probity. A Committee hearing will usually be the last scene in a long drama of National Audit office investigation into some aspect of the financial affairs of the department, so that by the time of the hearing the ground will be clear, allowing Members to concentrate on the salient (or from the departmental

point of view, sensitive) issues. The number of Committee reports is greater by some number than those made by any other committee, and their recommendations more likely to be accepted in full than is the case for other committees."

National Assembly Member vis-à-vis Senator

A member of the National Assembly and a member of the Senate play slightly different roles. A member of the National Assembly has responsibilities that a Senator does not such as the budget making process for the national government, oversight over expenditure of the national budget, vetting of State appointees and enacting national legislation. The Senator on the other hand represents a large constituency both in size and population as a county is larger than a constituency.

The Commission has considered the above and related factors when considering the remuneration of a Senator vis-à-vis a National Assembly member. The actual role and responsibilities of the Senate and Senators shall be properly realized once the Senate is in place and several years have elapsed in order to enable an informed retrospection of the Senate's role. The Commission therefore recommends that for the time-being the remuneration of a Senator and that of a member of the National Assembly, all being Members of Parliament, should be pegged at the same amount.

PROPOSAL FOR THE STRUCTURE FOR STATE OFFICERS' REMUNERATON

The Parliamentary Service Commission proposes that all Members of Parliament be placed at Level 3. Thus all Members of Parliament should receive the same salary. The various parliamentary office holders should then be distinguished by way of a parliamentary responsibility allowance as well as other allowances and benefits. This has been the practice in the past and is a common practice in many Parliaments.

CONCLUSION

The Parliamentary Service Commission proposes as follows:

1. The placement of the Speakers of the National Assembly and Senate at level 2 is appropriate. This should therefore remain as it is.

2. The placement of the Leader of Majority and Leader of Minority at level 3, being a level immediately below the Speakers is also appropriate. Placement of the Deputy Speakers of both Houses at this level is further appropriate.

3. The placement of Members of Parliament at level 5 is not appropriate. All Members of Parliament should be placed at Level 3. Various parliamentary office holders should then be distinguished by way of a parliamentary responsibility allowance as well as other allowances and benefits. The Structure for State Officers' remuneration should capture, in addition to the Leader of the Majority, Leader of the Minority and Deputy Speakers of both Houses, the following parliamentary office holders, all of whom should be placed at Level 3 as Members of Parliament:

(a) Chairpersons of Committees.
(b) Vice-Chair of the Parliamentary Service Commission.
(c) Parliamentary Service Commissioners.
(d) Member of Speakers Panel.
(e) Chief Whip.
(f) Vice-Chairpersons of Committees.
(g) Opposition and other party whips.
(h) Member of Parliament.

5. The offices of Clerk of the National Assembly and Clerk to Senate should be removed from the Structure for State Officers' remuneration as these are not State Offices but offices within the Parliamentary Service.

The Parliamentary Service Commission is however of the opinion that the placement of these two offices at a rank equivalent to Level 4 is appropriate.

HON. KENNETH MARENDE, E.G.H., ACIArb. M.P.,
SPEAKER OF THE NATIONAL ASSEMBLY/
CHAIRMAN, PARLIAMENTARY SERVICE COMMISSION.

ANNEX-5

REPUBLIC OF KENYA

Telegraphic Address
'Bunge', Nairobi
Telephone 2221291
Fax: 2243694
E-mail: clerk@parliament.go.ke
When replying please quote
PLC/SRC/341/2012

Clerk's Chambers
National Assembly
Parliament Buildings
P. O. Box 41842 –00100
NAIROBI, Kenya

10th October, 2012

Mrs. G. A. Otieno MBS,
Commission Secretary,
Salaries & Remuneration Commission,
NHIF Building, 13th Floor,
P. O. Box 43126-00100,
NAIROBI.

Dear

CONFIRMATION OF DEFINED STATE OFFICES AND POSITIONS CREATED IN THE CONSTITUTION OF KENYA, 2010.

Please refer to your letter ref: SRC/CONST.1/VOL.I dated 5th October 2012 in which you seek a confirmation that no State Officer position in the Legislature has been omitted from your list.

Please note that the classification provided has categorized state/public officers in the Legislature together with those in the Devolved Government. The Legislature is defined in chapter eight of the Constitution of Kenya, 2010. Article 93 establishes the Parliament of Kenya which is defined as consisting of the National Assembly and the Senate. The Devolved Government is established at chapter eleven of the Constitution of Kenya, 2010, and consists of a county government for each county. A county government shall comprise of a county assembly and a county executive.

Accordingly, the following shall be the State Officers in the Legislature:

SENATE

1. Speaker of the Senate.
2. Deputy Speaker of the Senate.
3. Leader of the Majority Party, Senate.

4. Leader of the Minority Party, Senate.
5. Members of the Speakers Panel, Senate.
6. Chairpersons of Committees, Senate.
7. Chief Whip, Senate.
8. Opposition and other party whips, Senate.
9. Senators.

NATIONAL ASSEMBY

1. Speaker of the National Assembly.
2. Deputy Speaker of the National Assembly.
3. Leader of the Majority Party, National Assembly.
4. Leader of the Minority Party, National Assembly.
5. Members of the Speakers Panel, National Assembly.
6. Chairpersons of Committees, National Assembly.
7. Chief Whip, National Assembly.
8. Opposition and other party whips, National Assembly.
9. Members of the National Assembly.

PARLIAMENTARY SERVICE COMMISSION

The offices of Clerk of the Senate and Clerk of the National Assembly are established by Article 128 of the Constitution. The offices of the Clerks and offices of members of the staff of the Clerks shall be offices in the Parliamentary Service. The offices of the Clerk of the Senate and of the National Assembly are not defined as State Offices under Article 260 of the Constitution. As such they are public offices.

DEVOLVED GOVERNMENT

The following shall be the State Officers in the Devolved Government:

1. County Governors.
2. Speaker of a County Assembly.
3. Deputy County Governors.
4. Member of a County Assembly.
5. Member of a County Executive Committee.

The Constitution does not provide for a Deputy Speaker of a County Assembly but provides that in the absence of the Speaker, a sitting of the County Assembly shall be presided over by another member of the assembly elected by the assembly.

Yours

PATRICK G. GICHOHI C.B.S,
CLERK OF THE NATIONAL ASSEMBLY

(3) URGENT

ANNEX-6

SALARIES AND REMUNERATION COMMISSION

Telegrams: "PERSONNEL", Nairobi
Telephone: Nairobi 2710095
Fax: 2710051
When replying please quote

NHIF Building, 13th Floor
P.O. Box 43126 - 00100
NAIROBI

Ref. No: SRC/ADM 10/VOL.I

27th July, 2012

Mr. Patrick G. Gichohi, CBS.,
Clerk to the National Assembly/Secretary
Parliamentary Service Commission
NAIROBI

P.L.C.
Job attend personally & note the date overleaf
(11) Respond. C&P 31/7/12

Dear Mr. Gichohi,

INVITATION TO THE JOB EVALUATION PANEL

The Salaries and Remuneration Commission (herein referred to as the "Commission" or "the SRC") was established by Article 230 of the 2010 Constitution of Kenya with the mandate of setting and regularly reviewing the remuneration and benefits of all state officers and to advise the national and county governments on the remuneration and benefits of all other public officers. In carrying out its mandate, the Commission has to take into account the principles of fiscal sustainability of the public compensation bill, attraction and retention of requisite skills for service delivery, productivity and performance, transparency and fairness and equity.

In line with its mandate, the Commission has engaged PricewaterhouseCoopers Limited ("PwC") to undertake a job evaluation. The results of the job evaluation and subsequent grading will be used by the SRC as a basis for grading the structures, developing compensation structures and setting and reviewing the remuneration and benefits for State Officers.

Job evaluation is the process of ascertaining the relative internal size of each job in relation to other jobs in an organisation. Size is used to indicate the relative significance or importance of a job to an organisation. Size can be measured by comparing the incidence of agreed factors in a job such as knowledge/skills required, level of responsibility, level of decision making and impact on end results, with the incidence of the same factors in other jobs. Job evaluation is concerned with the demands and conditions of the job and **not** with the personal qualities of the individual occupying the job. The job evaluation process involves analysing and describing jobs followed by ranking and grading of the jobs.

The primary purpose of this job evaluation is to determine the comparable worth of the jobs and to produce a rationalised, harmonised, defensible and equitable job grading structure. It will provide a rational basis for the determination and management of internal relativities between jobs. The information collected in job evaluation can also be used for organisation design, human resource planning, training, continuous improvement and to support change programmes designed to develop a high performance culture. The use of factors related to skill and competence means that job evaluation can encourage the acquisition of additional skills or improvement of levels of competence.

In order to ensure skills transfer and capacity building, the PwC team will train a Job Evaluation Panel ("JEP"), consisting of representatives from across various Public Service Offices in the

process of job evaluation. The training will include in-depth instruction on the use and analysis of all tools to be used in this exercise.

The Parliamentary Service Commission has a number of positions that were either created by the Constitution or have been defined as State Offices. Consequently, to ensure accurate understanding of the positions, you are required to nominate a senior and responsible officer to be part of this Job Evaluation Panel. It is expected that after the training, the officer will be in a position to work with PwC to validate the results of the job evaluation and grading and will be able to carry out job evaluation exercises in the future. The officer will be required to attend the training and to provide the PwC team with the necessary support before; during and after the training as requested. In addition, you are required to provide the following information pertaining your organization:-

i. The current organization structure, clearly showing the position levels and reporting structures of the positions;
ii. Current objective, quality controlled and validated job descriptions and profiles including key performance indicators for all the positions;
iii. Current HR policies and procedures documents including manuals for job evaluation and grading for state offices;
iv. Career guidelines and the schemes of service for the positions in the structure;
v. Any recent relevant HR Consultancy report;
vi. Copies of previous consultancy work which might impact on the recommendations of the current assignment; and
vii. Any other relevant material/information.

Together with the SRC Project Implementation Team, the PwC is currently in the process of developing the training schedules. The identified officer will be informed of the schedule in good time, so that the officer can plan to attend. You should therefore submit the name of the officer nominated to reach this office not later than 1st August, 2012.

This training is being coordinated by the Commission Secretary who will be available to answer any questions that you may have on this assignment. You or the officer should feel free to contact her and raise any queries on the exercise.

Thank you in advance for your cooperation.

Yours sincerely,

G. A. Otieno (Mrs.) MBS.,
COMMISSION SECRETARY

ANNEX - 2

Parliamentary Service Commission

COMMENTS OF THE PARLIAMENTARY SERVICE COMMISSION ON THE SALARIES AND REMUNERATION COMMISSION'S DRAFT STRUCTURE FOR STATE OFFICERS' REMUNERATION

JUNE 2012

COMMENTS OF THE PARLIAMENTARY SERVICE COMMISSION ON THE SALARIES AND REMUNERATION COMMISSION'S DRAFT STRUCTURE FOR STATE OFFICERS' REMUNERATION

The Parliamentary Service Commission has studied the draft structure for State Officers' remuneration as advertised by the Salaries and Remuneration Commission in the local dailies on diverse days in May 2012 and has the following comments to make:

1. The placement of the Speakers of the National Assembly and Senate at level 2 is appropriate.

2. The placement of the Leader of Majority and Leader of Minority at level 3, being a level immediately below the Speakers is also appropriate. Placement of the Deputy Speakers of both Houses at this level is further appropriate.

3. The placement of Members of Parliament at level 5 is **not** appropriate. Members of Parliament should all be placed at Level 3 for purposes of salary and differentiated by way of allowances with respect to parliamentary responsibility.

4. It is important to note that the legislature, just like the Executive and Judiciary, has various office holders or parliamentary functionaries. The draft structure has not captured the following parliamentary office holders:

   (a) Chairpersons of Committees.
   (b) Vice-Chairpersons of Committees.
   (c) Chief Whip.
   (d) Opposition and other party whips.
   (e) Member of the Speakers Panel.

5. The equating of the Clerk of the National Assembly and Clerk to Senate to State offices at level 4 is appropriate. They are the administrative heads of the legislative arm of Government. In addition the Clerk of the National Assembly is the secretary to the Parliamentary Service Commission. It is however important to note that the offices of the two Clerks are offices in the Parliamentary Service as set out in Article 128 of the Constitution. They are not State offices. It is the role of the Parliamentary Service Commission to set the remuneration for holders of these two offices as well as other officers of the Parliamentary Service. It is proposed that the Salaries and Remuneration Commission continues to advice the Parliamentary Service Commission on the remuneration for the holders of the office of Clerk of a House of Parliament.

Please find below brief notes on the roles and responsibilities of the various parliamentary office holders:

(i) **Leadership of the respective Houses of Parliament**

Each House of Parliament shall have the following categories of Parliamentary Office-holders-

(a) Speaker of the House.
(b) Deputy Speaker.
(c) Leader of the Majority
(d) Leader of the Minority
(e) Chairpersons of Committees
(f) Vice-Chairpersons of Committees
(g) Chief Whip
(h) Opposition and other party whips
(i) Member of Speakers Panel
(j) Ordinary Member of Parliament.

There shall also be Parliamentary Service Commissioners as follows:

(i) The Speaker of the National Assembly who shall be the Chairman.
(ii) Seven members appointed by Parliament from among its members, some from the National Assembly and others from the Senate.
(iii) A vice Chairman elected by the Commission from among the seven members appointed by Parliament.

(iv) One man and one woman appointed by Parliament from among persons who are experienced in public affairs, but are not members of Parliament.

(a) Speaker of a House of Parliament

Article 106(a) of the Constitution of Kenya, 2010 provides that there shall be a Speaker for each House of Parliament who shall be elected by that House in accordance with the Standing Orders, from among persons who are qualified to be elected as members of Parliament but are not such members. A Speaker of a House of Parliament shall have the following duties and responsibilities:

(i) Article 107 of the Constitution provides that the Speaker of a House of Parliament shall preside over the sitting of that House. During a joint sitting of the Houses of Parliament, the Speaker of the National Assembly shall preside, assisted by the Speaker of the Senate.

(ii) The Speaker presides over all debates of the House and enforces the observance of the Constitution, the Standing Orders, the National Assembly (Powers and Privileges) Act, other laws of Kenya and the Speaker's Rules aimed at ensuring orderly debate in the House and preserving order within the precincts of Parliament. The laws to be observed include those relating to the budget process, reports by various constitutional bodies to Parliament and deadlines for carrying out various acts.

(iii) Administering the oath of affirmation or allegiance to new Members of Parliament and issuing, writs for vacant seats.

(iv) Protecting the rights of the minority Members while making sure that the majorities have their way.

(v) Selecting Members to speak during debates.

(vi) Organizing the business of the House as he is a member of the House Business Committee.

(vii) The Speaker of the National Assembly controls the administrative machinery of Parliament as the chairman of the Parliamentary Service Commission.

(viii) The Speaker is the spokesman for his/her respective House of Parliament and shall ensure that dignity of Parliament is upheld and its rights and privileges are not abused.

(ix) The Speaker of the National Assembly represents Parliament to the outside world as the branch chairman of the Common-wealth Parliamentary Association (CPA) and Inter-Parliamentary Union (IPU).

(x) In general, a Speaker is the final authority on all matters touching on the interpretation and application of the practice and procedure of Parliament at all

times. In presiding over the proceedings of the House, Mr. Speaker's decisions and the considered rulings he makes on matters brought to his attention constitute the 'case law' of parliament.

The Speaker is empowered under the Standing Orders to correct patent errors in a Bill after it has been passed by the House and to make such other changes in the Bill consequential on the amendments accepted by the House. It is useful to note the following comments on the office of Speaker as set out in "The Practice and Procedure of Parliament (with particular reference to the Lok Sabha)" by G. C. Malhotra, Metropolitan Books Co. PVT Ltd at pages 113 -114:

> "The all important conventional and ceremonial head of the Lok Sabha (National Assembly of India) is the Speaker. Within the walls of the House, his authority is supreme ... Though his powers and duties have been laid down in the Rules and, to some extent, in the Constitution, the Rules which he has to administer are of an elastic nature and in some matters he has to exercise his discretion. His duties are very arduous, and in their discharge he must be actuated by a sense of justice and fairness, uninfluenced by passion or prejudice. He has to impress the House generally with confidence in the soundness and impartiality of his judgments, with the conviction that he considers himself the conscience and guardian of the House. As the principal spokesman of the House, he represents its collective voice and is its solve representative to the outside world.
> Communications from the President are made through the Speaker...Similarly communications to the President are made through the Speaker... He also issues warrants to execute the orders of the House, where necessary."

(b) Deputy Speaker of a House of Parliament

Article 106(b) of the Constitution of Kenya, 2010 provides that there shall be a Deputy Speaker for each House of Parliament who shall be elected by that House in accordance with the Standing Orders, from among members of that House. A Deputy Speaker of a House of Parliament shall have the following duties and responsibilities:

(i) Article 107(b) of the Constitution provides that the Deputy Speaker of a House shall preside over the sitting of that House in the absence of the Speaker.

(ii) The Deputy Speaker, also referred to as the Chairperson of Committees is the Chairperson of the Liaison Committee and presides over Committees of the whole House.

(iii) Oversees the budget for Committees and ensures that Committees do not exceed their annual budget. The Deputy Speaker also approves changes to

the annual budget of individual Committees as well as travel abroad by Committees.

(iv) The Deputy Speaker deputizes the Speaker and assists in ensuring the dignity of the Parliament is upheld, it rights and privileges are not abused and generally assists in the interpretation and application of the practice and procedure of Parliament at all times.

G. C. Malhotra in "The Practice and Procedure of Parliament (with particular reference to the Lok Sabha)", Metropolitan Boo Co. PVT Ltd at pages 125 -126 comments on the office of Deputy Speaker as follows:

> "The Office of the Deputy Speaker has grown in importance and has come to acquire a more prominent position after the enforcement of the Constitution in 1950. Like the Speaker, the Deputy Speaker is elected by the Lok Sabha from among its members. He is not subordinate to the Speaker, but holds an independent position and is answerable to the House alone ... During the days of the Central Legislative Assembly, the House used to meet for only short periods and that too at long intervals. At present, the House sits for nearly seven months in a year and each sitting lasts for about seven hours. It is not practicable for the Speaker to be present in the House throughout a particular sitting. Every now and then, when he has to attend to his other duties, he has to vacate the Chair, and in his absence it is usually the Deputy Speaker who presides over the deliberations of the House. Further, the Deputy Speaker is expected to perform the duties of the office of the Speaker, whenever that office is vacant."

(c) Leader of the Majority

Article 108 of the Constitution provides that there shall be a leader of the majority party and a leader of the minority party. The leader of the majority party shall be the person who is the leader in the National Assembly of the largest party or coalition of parties. It is expected that the Standing Orders shall provide for similar positions in the Senate. It is expected that the leader of the Majority shall have the following roles and responsibilities:

(i) Be the leader of Government business in the House and the chief liaison person between the Executive and Parliament in facilitating the introduction of Government legislation and other Parliamentary business to the House.

(ii) Responsible for ensuring that the Government's legislative, budgetary and policy agenda in Parliament is passed.

(iii) Chairman of the House Business Committee and which is responsible for setting the business of the House.

(iv) Presenting a half hour statement to the House every Thursday afternoon setting out the Government's legislative agenda for the following week.

G. C. Malhotra in "The Practice and Procedure of Parliament (with particular reference to the Lok Sabha)", Metropolitan Boo Co. PVT Ltd at pages 138 -1140 comments on the office of Leader of the House, which is equivalent to Leader of the Majority as follows"

> "The Leader of the House is an important parliamentary functionary and exercises direct influence on the course of business. The whole policy of the Government, especially so far as it is expressed in the inner life of the House and in measures dealing with the course of its business, is concentrated in his person. The arrangement of Government business is the ultimate responsibility of the Leader of the House, though details are settled, subject to his control, by the Chief whip who is also vested with the portfolio of the Minister of Parliamentary Affairs ... The Leader of the House shapes the course and content of legislation inasmuch as his is often the final voice in deciding as to what amendments will be acceptable, what Private Members' Bill will receive the support of the Government, and whether a question should be left to a free vote. The Leader of the House may, therefore, be said to be perhaps the most influential figure in the entire legislative process."

(d) **Leader of the Minority**

(i) The Leader of the Minority shall be the leader of the opposition in Parliament and responsible for marshalling Members of the opposition in overseeing the legislation, budget and other Parliamentary business of the House.

G. C. Malhotra in "The Practice and Procedure of Parliament (with particular reference to the Lok Sabha)", Metropolitan Boo Co. PVT Ltd at pages 142 -143 comments on the office of Leader of the Opposition, which is equivalent to Leader of the Minority as follows"

> "In any system of Government there will always be a struggle for power ... The parliamentary system of government makes it obligatory for the opposing forces to struggle for power on the floor of the House by recognized parliamentary

methods. One of the biggest parliamentary achievements of the present century is that the role of the Opposition has been formally recognized and is given a due place in the parliamentary system. The Leader of the Opposition is thus an important person ... The Leader of the Opposition is the official spokesman of the minority or minorities and to that end he zealously watches any encroachment on their rights. His task, though not so difficult as that of the Prime Minister, is of sufficiently great public importance because he has to maintain a team – a "shadow Cabinet" – ready to take over the administration. In performing his duties and obligations, the Leader of the Opposition has to take into account not only what he is today but what he hopes to be tomorrow."

(e) Chairpersons of Parliamentary Committees

The draft structure for state officers' remuneration does not recognize the Chairs of Parliamentary committees. It is important to note that a great deal of Parliament's business shall be conducted in Committees. This includes scrutiny of Bills, the budgets of Ministries and State entities as well as vetting of appointment to the Cabinet and other constitutional offices. Chairpersons of Committees shall be responsible for:

(i) Presiding over all meetings of his/her Committee and enforcing the observance of the Constitution, Standing Orders and Speakers Rules aimed at preserving order during meetings of the Committee.
(ii) Liaising with the Clerk of the House and Committee Clerk on administrative matters of the Committee.
(iii) Preparation the Committee's annual work-plan, programme and agenda.
(iv) Presentation of the Committee's report to the House.
(v) Approval of witnesses to appeâr before the Committee.
(vi) Ensuring that the Committee's activities are in accordance with the budget of the Committee.

A Parliamentary Committee is a legislative sub-unit of Parliament that handles a specific duty, rather than the general duties of Parliament. Membership in a Parliamentary Committee enables members to develop specialized knowledge of the matters under their jurisdiction. As "little Parliaments," committees oversee and monitor on-going governmental operations, identify issues suitable for legislative review, gather and evaluate information, and recommend courses of action to their parent body, Parliament. Former President of the United States, Woodrow Wilson, once said, "... it is not far from

the truth to say that Congress in session is Congress on public exhibition, whilst Congress in its committee rooms is Congress at work." The same can be said of the Kenyan Parliament. Parliamentary Committees provide invaluable informational services to Parliament by investigating and reporting about specific Ministries/State organs and specialized subjects.

Cabinet Secretaries (Ministers) shall not be Members of Parliament. Chairpersons of Committees are therefore expected to play a greater role in the legislative and oversight business of the House in the 11th and subsequent Parliaments. Most of the business of Parliament shall be carried out in Committees. G. C. Malhotra in "The Practice and Procedure of Parliament (with particular reference to the Lok Sabha)", Metropolitan Boo Co. PVT Ltd at pages 130-131 comments on Chairpersons of Parliamentary Committees:

> "The Chairman has the duties and powers in respect of proceedings of the Committee more or less similar to those of the Speaker in respect of the proceedings and deliberations of the House ... He fixes the date and time for holding the sittings of the Committee. Any procedural matter arising at the sittings of the Committee is decided by the Chairman. If any doubt arises on any point of procedure or otherwise, the Chairman, may if he thinks fit refer the point to the Speaker whose decision is final ... Minutes of the sittings of a Committee are approved by the Chairman, and its report is signed by him on behalf of the Committee, before it is presented to the Speaker or the House. He has also the power to correct patent errors or matters of factual nature in the report before its presentations to the Speaker or the House. All communications between a Committee and the Speaker or the House are made by the Chairman of the Committee. He is, so to say, the spokesman or the mouthpiece of the Committee."

(f) Vice-Chairpersons of Committees

The Vice-Chairperson of a Committee shall chair all meeting of the Committee in the absence of the Chairperson and assist in handling the administrative matters of the committee.

(g) Chief Whip

The Chief Whip is responsible for:

(i) Ensuring that Members of the majority party attend to House business (both at Committee and in the House) particularly when there is contentious business to be transacted with a view to ensuring that Government business is passed.

(ii) Selecting Members of Parliament in the Government side to serve on various Parliamentary Committees.

(iii) Enforcing party discipline among Members of Parliament in the Government side and "de-whipping" errant Members.

Opposition and other party whips

(i) Ensuring that Members of the minority party attend to House business (both at Committee and in the House) particularly when there is contentious business to be transacted with a view to ensuring that minority view is heard and even successful in voting.

(ii) Selecting Members of Parliament in the opposition to serve on various Parliamentary Committees.

(iii) Enforcing party discipline among Members of Parliament in the opposition side and "de-whipping" errant Members.

G. C. Malhotra in "The Practice and Procedure of Parliament (with particular reference to the Lok Sabha)", Metropolitan Boo Co. PVT Ltd at pages 144-147 has the following to say about whips:

> "In a legislative body, not only the fate of a particular measure under consideration, but the very life of the Council of Ministers itself may depend upon the result of a single division. When the division bell rings, about three and a half minutes are given to the members to rush into the Chamber from the lobbies, library and annexe, yet the government or any party cannot take it for granted that its followers would always be present in sufficient numbers in the precincts of the House at the time of a division. The duty of keeping the members of a party on hand accordingly devolves upon the whips.
>
> In the parliamentary form of government, a party has its own internal organization inside Parliament and is served by a number of officials known as the whips, chosen from members of the party itself. In fact, the efficient and smooth working of parliamentary democracy depends to a very large extent on the whips of the party in power or parties in opposition...

G. C. Malhotra in "The Practice and Procedure of Parliament (with particular reference to the Lok Sabha)", Metropolitan Boo Co. PVT Ltd at pages 127 -128 comments on the Panel of Chairmen as follows:

> "In the absence of the Speaker and the Deputy Speaker, one of the Chairmen presides over the House when so requested by the Speaker or in his absence the Deputy Speaker. There is always need for some other persons who can act in the Chair, off and on, as the Speaker and the Deputy Speaker between them may not be able to take the entire load of presiding throughout the duration of the sitting each day. They may require some relief and time to attend to other work outside the House.
>
> After taking into consideration the engagements for the day of the Speaker and Deputy Speaker and also ascertaining the convenience of members of the Panel of Chairman, a roster is prepared each day indicating the hours during which the Speaker, the Deputy Speaker and individual members of the Panel of Chairmen are to preside. Depending upon developments and the nature f business before the House, suitable changes can be made in the roster at short notice...
>
> Any member of the Panel of Chairmen, when presiding over a sitting of the House, has the same powers as the Speaker when so presiding. The rulings of a Chairman are not subject to any criticism nor open to any debate or appeal. In order, that there is an authoritative ruling, a Chairman often reserves major issues for decision by the Speaker. A reference to the Chairman's conduct while in the Chair amounts to contempt of the House, and therefore, he is shown all respect as the Presiding Officer of the House.
>
> A Chairman is free to participate fully in all discussions in the House and to take active part in the issues, including controversial issues before the House. He attends meetings of his party and is sometimes an active member of his party."

(i) Parliamentary Service Commissioner

In addition to being a Member of Parliament, a Parliamentary Service Commissioner is responsible for overseeing the administrative arm of Parliament. This includes the responsibility for:

(a) constituting and abolishing offices in the parliamentary service;

During sessions, the Whips of different parties send to their supporters periodic notices, also sometimes called "whips", warning them when important divisions are expected, telling them the hour when a vote will probably take place, and requesting them to be in attendance at that time. The importance of the division is indicated by underscoring the notice by a number of lines.

The whips have to know their men. This involves a close contact with all members and knowledge of their interests, special attitudes, qualities and potentialities. The whips take these aspects into account while sending the list of speakers to the chair in the interest of quality of debate and deliberation or suggesting names of members of their parties for nomination on parliamentary committees. They keep members supplied with information about the business of the House and enforce party discipline...

And it through the whips that members of a party come to know about their leader's views and the plans into which the leader thinks it necessary or expedient to initiate them. The whips are the active agents within the parties, a channel of communication whereby one party negotiates with another concerning topics for debates or conduct of business in the House.

It has been aptly said that the Whips are not only shock-absorbers, but also indicators of the party; they are not only advisers to the leader, but also the binding force in the party; they are not only barometers of the different regions and opinions but also the counselors of members."

(h) Member of Speakers Panel

The Standing Orders provide that at the commencement of every session, or from time to time as necessity may arise, the Speaker shall, with the approval of the House, nominate four Members who shall be known respectively as the First, Second, Third and Fourth Chairperson of Committees and who shall exercise the all the powers vested in the Chairperson of Committees including the powers of the Deputy Speaker. These four Members constitute the Speaker's panel.

Members of the Speaker's panel assist the Speaker and Deputy Speaker in presiding over debates of the House and enforcing the observance of the constitution, Standing Orders, and Speaker's Rules.

(b) appointing persons to hold or act in the offices of the Service (including the power to confirm appointments) and to exercise disciplinary control over persons holding or acting in those offices (including the power to remove those persons from office);

(c) providing such services and facilities as are necessary to ensure efficient and effective functioning of the Assembly;

(d) directing and supervising the administration of the services and facilities provided by, and exercise budgetary control over, the Service;

(i) causing to be prepared and laid before the National Assembly in each financial year estimates of expenditure (which shall be a charge on the Consolidated Fund) of the parliamentary service for the next following financial year;

(ii) causing to be audited and a report thereon laid before the Assembly at least once every year, the accounts of the Commission;

(f) to provide security staff to maintain proper security for members of the Assembly and for the services and facilities within the precincts of the Assembly;

(g) to determine the terms and conditions of service of persons holding or acting in the offices of the Service;

(h) from time to time as necessity arises, to appoint an independent body to review and make recommendations on the salaries and allowances of the members of the Assembly;

(i) to initiate, co-ordinate and harmonise policies and strategies relating to the development of the Service;

(j) to undertake, singly or jointly with other relevant authorities and organisations, such programmes as will promote the ideals of parliamentary democracy in Kenya;

(k) to do such other things including review of parliamentary powers and privileges as may be necessary for the well-being of the members and staff of the National Assembly and to exercise such other functions as may be prescribed by or under an Act of Parliament.

(j) Ordinary Member of Parliament.

A Member of Parliament exercises his constitutional responsibilities as Member of Parliament in the House, in Parliamentary Committees and countrywide. A Member in the new Constitution has the following duties and responsibilities:

(i) Exercising the legislative authority of the Republic;
(ii) Representing the will of the people and exercising their sovereignty.
(iii) Considering and passing amendments to the Constitution and county boundaries as provided for in the constitution;
(iv) Protecting the constitution and promoting the democratic governance of the Republic.
(v) Parliamentary diplomacy which involves meeting Members of Parliament and other senior officials from other countries with a view to enhancing Kenya's image, trade ties and general diplomatic relations.

Members of the National Assembly have the following additional roles to play:

(i) Representing the people of the constituency and special interests in the National Assembly;
(ii) Deliberating on and resolving issues of concern to the people;
(iii) Enacting national legislation.
(iv) Appropriating funds for expenditure by the national government and determining allocation of national revenue between the levels of government;
(v) Exercising oversight over national revenue and its expenditure;
(vi) Reviewing the conduct in office of the President, Deputy President and other State Officers and initiating the process of removing them from office.
(vii) Exercising oversight over state organs.
(viii) Approving declarations of war and extensions of states of emergency.

Members of the Senate have the following additional roles to play:

(i) Representing the counties and serving to protect the interests of the counties and their governments.
(ii) Participating in the law-making function of Parliament by considering, debating and approving Bills concerning counties.
(iii) Determining the allocation of national revenue among counties.
(iv) Participating in the oversight of State officers by considering and determining any resolution to remove the President or Deputy President.

It is important to note that the above responsibilities as listed do not go to the root of the actual activities Members must undertake in order to fulfill their constitutional mandate. Members read volumes of material that are placed before them. This include Bills and research on the Bills, budget policy statements, estimates and research material on the same, committee reports and supporting documents, submissions form Ministries, petitions and other related material. Members further spend long hours at both formal and informal party meetings arriving at party positions on various issues of national importance. Extensive negotiations are also held in order to arrive at a consensus on various parliamentary matters and ensure the legislative and other agenda of the House proceeds.

In terms of reporting structure as set out under the constitution, Article 95(5) provides that the National Assembly shall review the conduct in office of the President and Deputy President and exercise oversight of State organs. The National Assembly, through its Departmental Committees, summons all the persons listed in level 4 of your draft structure for State Officers' remuneration to appear before it and answer queries as to their performance. Article 254 provides that each constitutional commission and independent office shall, as soon as practicable after the end of each financial year, submit a report to the President and to Parliament. At any time, the President, the National Assembly or the Senate may require a commission or holder of an independent office to submit a report on a particular issue. The office of Auditor General, for instance, plays a role akin to that of the secretariat of the Public Accounts Committee of Parliament. William McKay and Charles W. Johnson put it well at page 300 of their book "Parliament and Congress: Representation and Scrutiny in the Twenty-First Century" stating as follows:

> "The Public Accounts Committee is charged with the examination of the appropriation accounts and such other accounts as the Committee thinks fit. The work of the Committee centres on the reports of the National Audit office, and the Controller and Auditor General attends all their hearings. The witnesses are normally the principal officials of the department under scrutiny, who bear personal responsibility for the effectiveness of the systems intended to deliver financial probity. A Committee hearing will usually be the last scene in a long drama of National Audit office investigation into some aspect of the financial affairs of the department, so that by the time of the hearing the ground will be clear, allowing Members to concentrate on the salient (or from the departmental

point of view, sensitive) issues. The number of Committee reports is greater by some number than those made by any other committee, and their recommendations more likely to be accepted in full than is the case for other committees."

National Assembly Member vis-à-vis Senator

A member of the National Assembly and a member of the Senate play slightly different roles. A member of the National Assembly has responsibilities that a Senator does not such as the budget making process for the national government, oversight over expenditure of the national budget, vetting of State appointees and enacting national legislation. The Senator on the other hand represents a large constituency both in size and population as a county is larger than a constituency.

The Commission has considered the above and related factors when considering the remuneration of a Senator vis-à-vis a National Assembly member. The actual role and responsibilities of the Senate and Senators shall be properly realized once the Senate is in place and several years have elapsed in order to enable an informed retrospection of the Senate's role. The Commission therefore recommends that for the time-being the remuneration of a Senator and that of a member of the National Assembly, all being Members of Parliament, should be pegged at the same amount.

PROPOSAL FOR THE STRUCTURE FOR STATE OFFICERS' REMUNERATON

The Parliamentary Service Commission proposes that all Members of Parliament be placed at **Level 3**. Thus all Members of Parliament should receive the same salary. The various parliamentary office holders should then be distinguished by way of a parliamentary responsibility allowance as well as other allowances and benefits. This has been the practice in the past and is a common practice in many Parliaments.

CONCLUSION

The Parliamentary Service Commission proposes as follows:

1. The placement of the Speakers of the National Assembly and Senate at level 2 is appropriate. This should therefore remain as it is.

2. The placement of the Leader of Majority and Leader of Minority at level 3, being a level immediately below the Speakers is also appropriate. Placement of the Deputy Speakers of both Houses at this level is further appropriate.

3. The placement of Members of Parliament at level 5 is not appropriate. All Members of Parliament should be placed at Level 3. Various parliamentary office holders should then be distinguished by way of a parliamentary responsibility allowance as well as other allowances and benefits. The Structure for State Officers' remuneration should capture, in addition to the Leader of the Majority, Leader of the Minority and Deputy Speakers of both Houses, the following parliamentary office holders, all of whom should be placed at Level 3 as Members of Parliament:

   (a) Chairpersons of Committees.
   (b) Vice-Chair of the Parliamentary Service Commission.
   (c) Parliamentary Service Commissioners.
   (d) Member of Speakers Panel.
   (e) Chief Whip
   (f) Vice-Chairpersons of Committees.
   (g) Opposition and other party whips.
   (h) Member of Parliament.

5. The offices of Clerk of the National Assembly and Clerk to Senate should be removed from the Structure for State Officers' remuneration as these are not State Offices but offices within the Parliamentary Service.

   The Parliamentary Service Commission is however of the opinion that the placement of these two offices at a rank equivalent to Level 4 is appropriate.

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