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**RESTRUCTURING THE**  
**PARLIAMENTARY SERVICE**

**A PAPER PRESENTED TO THE**  
**PARLIAMENTARY SERVICE COMMISSION**

**BY**

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# **RESTRUCTURING THE PARLIAMENTARY SERVICE**

## **INTRODUCTION**

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

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

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

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

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

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

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

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

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

## **LEGAL FRAMEWORK**

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

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

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

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

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

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

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

### **THE PARLIAMENTARY SERVICE**

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

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

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

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

### **THE POLICY FRAMEWORK**

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

These documents are:

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