



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

Chairman:
The Hon. (Rtd.) Mr. Justice A. M. Akiwumi

Presented to:
The Hon. Kenneth O. Marende, E.G.H., M.P.
Speaker of the National Assembly of Kenya
Thursday, 12th November, 2009

Volume I

VOLUME ONE
TABLE OF CONTENTS

| | Page |
|---|------|
| LETTER OF TRANSMITTAL | vii |
| ACKNOWLEDGEMENT | xi |
| | |
| CHAPTER 1: INTRODUCTION | 1 |
| | |
| CHAPTER 2: REVIEW OF THE TERMS AND CONDITIONS OF SERVICE OF MEMBERS OF PARLIAMENT | 16 |
| Conduct and Discipline | 17 |
| Grievances | 18 |
| Medical Cover | 18 |
| Group Personal Accident Cover | 19 |
| Life Cover | 20 |
| Death of a Member of Parliament | 20 |
| Maternity/Paternity Leave | 20 |
| Incapacity/Infirmity | 21 |
| | |
| CHAPTER 3: REVIEW OF THE FACILITIES AND AMENITIES WITHIN THE PRECINCTS OF THE NATIONAL ASSEMBLY AND IN THE CONSTITUENCIES AND RECOMMENDATIONS ON THE TRAINING AND EXTERNAL EXPOSURE FOR MEMBERS OF PARLIAMENT | 22 |
| The Parliament | 22 |
| The Parliamentary Service and the Parliamentary Service Commission | 23 |
| The National Assembly and Constituency Office Staff | 23 |
| Parliament Buildings | 24 |
| Library Services | 25 |
| Dining Hall | 25 |
| Members of Parliament Offices at the Continental House and the County Hall | 25 |
| Information, Communication Technology | 25 |
| Research Unit | 26 |
| Constituency Offices | 26 |
| Parliamentary Service Commission Strategic Plan for 2008-2018 | 27 |
| Constituency Development Fund | 28 |
| Training and External Exposure for Members of Parliament | 31 |
| | |
| CHAPTER 4: REVIEW OF THE SALARIES, ALLOWANCES AND BENEFITS PAYABLE TO THE PRIME MINISTER, VICE PRESIDENT, THE SPEAKER, THE DEPUTY PRIME MINISTER, THE DEPUTY SPEAKER, MINISTER, LEADER OF THE OFFICIAL OPPOSITION, PARLIAMENTARY SERVICE COMMISSIONER, GOVERNMENT CHIEF WHIP, ASSISTANT MINISTER, DEPUTY GOVERNMENT CHIEF WHIP, OPPOSITION WHIPS, MEMBER OF SPEAKERS PANEL, OTHER RECOGNIZED WHIPS, CHAIRMAN OF DEPARTMENTAL OR SELECT COMMITTEE, MEMBER OF DEPARTMENTAL OR SELECT COMMITTEE, MEMBER OF PARLIAMENT, AND ANY OTHER POSITION OF | |

| | |
|--|-----------|
| RESPONSIBILITY HELD BY A MEMBER OF PARLIAMENT AND RECOMMENDATIONS HEREON..... | 34 |
| Role of a Member of Parliament | 36 |
| Parliament's Role as one of the three arms of Government | 37 |
| Prevailing Economic Situation | 38 |
| Kenya's Economic Situation | 40 |
| Foreign Exchange Reserves | 41 |
| Members of Parliament - Social Responsibility | 44 |
| Performance of Members of Parliament..... | 45 |
| House Attendance and Quorum in Parliament | 48 |
| Independent Review of Terms & Conditions of Service of Members of Parliament | 50 |
| Proposed Emoluments for Members of Parliament | 52 |
| House Allowance | 52 |
| Transport Allowance | 52 |
| Mileage Allowance | 53 |
| Car Maintenance Allowance | 53 |
| Sitting Allowances | 53 |
| Severance Allowance | 54 |
| Entertainment Allowance | 55 |
| Other Pertinent Issues | 56 |
| Loss of Sitting Allowance by Female Members of Parliament on Maternity Leave | 56 |
| Members of Parliament - Mortgage Scheme | 57 |

| | |
|---|-----------|
| CHAPTER 5: REVIEW OF THE RETIREMENT BENEFITS PAYABLE TO THE PRIME MINISTER, VICE PRESIDENT, THE SPEAKER, THE DEPUTY PRIME MINISTER, THE DEPUTY SPEAKER, MINISTER, LEADER OF THE OFFICIAL OPPOSITION, PARLIAMENTARY SERVICE COMMISSIONER, GOVERNMENT CHIEF WHIP, ASSISTANT MINISTER, DEPUTY GOVERNMENT CHIEF WHIP, OPPOSITION WHIPS, MEMBER OF SPEAKER PANEL, OTHER RECOGNIZED WHIPS, CHAIRMAN OF DEPARTMENTAL OR SELECT COMMITTEE, MEMBER OF DEPARTMENTAL OR SELECT COMMITTEE, MEMBER OF PARLIAMENT, AND ANY OTHER POSITION OF RESPONSIBILITY HELD BY A MEMBER OF PARLIAMENT AND RECOMMENDATIONS THEREON | 58 |
| Retirement Benefits of Members of Parliament | 58 |
| Retirement Package for the Prime Minister and Vice President | 60 |
| Retirement Benefits of the Spouses of the Prime Minister and Vice President | 61 |
| Speaker's Retirement Package | 62 |
| Living Pension for Former Parliamentarians | 65 |
| Benefits for the Spouse of a Living President | 66 |

CHAPTER 6: REVIEW OF THE LEVEL OF TAXATION ON THE SALARIES AND ALLOWANCES OF MEMBERS OF PARLIAMENT AND RECOMMENDATIONS THEREON AND BENEFITS OF MEMBERS OF PARLIAMENT.....67

Historical Background67

Public Hearings and Memoranda68

Implications of Taxation72

The Timing of Taxation.....72

Recommendations82

ANNEXES:.....84

- ANNEX "A"
- ANNEX "B"
- ANNEX "C"
- ANNEX "D"
- ANNEX "E"
- ANNEX "F"
- ANNEX "G"
- ANNEX "H"
- ANNEX "I"
- ANNEX "J"
- ANNEX "K"
- ANNEX "L"

LETTER OF TRANSMITTAL

The Hon. Kenneth O. Marende, E.G.H, M.P.,
Speaker of the National Assembly and
Chairman of the Parliamentary Service Commission,
Speaker's Chambers,
Parliament Building,
Parliament Road,
NAIROBI.

Hon. Mr. Speaker,

In exercise of the powers conferred by Section 23 of the Parliamentary Service Commission Act, you, as Chairman of the Commission, first appointed the persons set out in Gazette Notice No. 698 dated 23rd January, 2009, and published in the Special Issue of the Kenya Gazette Vol.CXI-No.9 also dated 23rd January, 2009, Annex "A", to be members of the Tribunal to Review the Terms and Conditions of Service of Members and Employees of the National Assembly. They were:

Akilano Akiwumi (Justice) (Rtd.) – Chairman
Karau Stephen (Dr.)
Kivuti Connie (Mrs.)
Oloo Aringo Peter
Maneno Betty (Mrs.)
Namasake Jason
Rashid Abdullahi Hussein
Dabalén Dominic
Chirchir Joseph
Nyaundi Kenneth – (Joint Secretary)
Irungu Muthoni Sara – (Joint Secretary)

Subsequently, by Gazette Notice No. 1394 dated 17th February, 2009, and published in the Kenya Gazette of 20th February, 2009, Vol.CXI-No.16, Annex "B", you revoked the appointment of *Oloo Aringo Peter* and *Rashid Abdullahi Hussein* as Members of the Tribunal. You replaced them respectively, in Gazette Notice No. 1387 dated 17th February, 2009, and published in the Special Issue of the Kenya Gazette Vol.CXI-No.15 also dated 17th February, 2009, Annex "C", with *Farah Hussein Abdi* and *Asiyo Phoebe* as Members of the Tribunal. You also by Gazette Notices Nos. 1740 and 1741 both dated 20th February, 2009, published in the Special Issue of the Kenya Gazette Vol.CXI-No.17 of 23rd February, 2009, Annex "D", respectively, revoked the appointment of *Nyaundi Kenneth* as Joint Secretary of the Tribunal and replaced him as such, with *Odongo Patrick Lutta*. What is worth noting about the diversity of the composition of the Members of the Tribunal and which reflects its comprehensiveness, is that apart from the Chairman of the Tribunal, the other eight Members of the Tribunal, are from each of the eight provinces of Kenya. The Members of the Tribunal as amended, are as follows:

Akilano Akiwumi (Justice) (Rtd.) – Chairman
Karau Stephen (Dr.)
Kivuti Connie (Mrs.)
Farah Hussein Abdi
Maneno Betty (Mrs.)
Namasake Jason

Asiyo Phoebe (Mrs)
Dabalen Dominic
Chirchir Joseph
Irungu Muthoni Sarah – (Joint Secretary)
Odongo Patrick Lutta – (Joint Secretary)

The Terms of Reference of the Tribunal, are set out in Gazette Notice No. 699 of 23rd January, 2009, and published in the Special Issue of the Kenya Gazette Vol.CXI-No.9 also dated 23rd January, 2009, Annex "E". This Gazette Notice also required the Tribunal to start its work immediately and to submit its Report within three months from the date of the first appointment of the Members of the Tribunal, namely, 23rd January, 2009. As you well know, the Tribunal was unable to commence working immediately from that date and consequently, to submit its Report within three months, thereafter. We could not, however, begin our review process until 6th March, 2009, and our public hearings as from 18th March, 2009 when we were finally, provided by the Parliamentary Service Commission, with necessary and required secretarial and recording facilities as well as official work premises. It also became apparent that we would not be able to complete our complicated assignment within three months from 23rd January, 2009. Indeed, as Chairman of the Parliamentary Service Commission, you admitted on 10th March, 2009, at the swearing in ceremony of Odongo Patrick Lutta, as Joint Secretary to the Tribunal, that it would take us four, and not three months, to successfully, discharge our assignment.

The provision in Gazette Notice No. 699 of 23rd January, 2009, that the Tribunal should submit its Report within three months from the date of appointment, namely, 23rd of January, 2009, was, consequently, by Gazette Notice No. 4562 dated 5th May, 2009, and published in the Kenya Gazette of 8th May, 2009, Annex "F", amended to extend the time when the Tribunal should submit its Report, from three to four and a half months, namely, by 6th June, 2009. This did not, however, take into account, the fact that though the Tribunal was appointed on 23rd January, 2009, it could not commence its work until 6th March, 2009. The Tribunal, therefore, sought a further extension of the time for the submission of its Report, which was extended to 31st August, 2009, by Gazette Notice No. 6670 dated 25th June, 2009, and published in the Special Issue of the Kenya Gazette Vol.CXI-No.58 dated 26th June, 2009, Annex "G". Due to the complexity and magnitude of the work of the Tribunal, the submission of its Report was extended to 15th October, 2009, and subsequently, by the Parliamentary Service Commission to 29th October, 2009.

We have carried out and completed our task within the time at our disposal, after hearing oral presentations from the 295 presenters listed in Annex "H", of whom, 11 are Members of the National Assembly, and after considering written presentations from the 70 presenters listed in Annex "I", of whom, 7 are Members of the National Assembly. To achieve this, we received oral as well written presentations in Nairobi, Kakamega in the Western Province, Kisumu in the Nyanza Province, Eldoret and Nakuru in the Rift Valley Province, Nyeri in the Central Province, Embu in the Eastern Province, Garissa in the North Eastern Province and Mombasa in the Coast Province


Eighteen Members of the National Assembly made written and oral presentations and four other Members of the National Assembly listed in Annex "J", completed and submitted questionnaires.

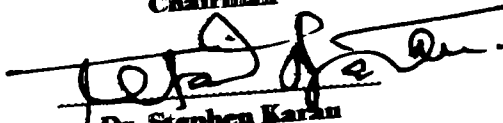
Initially, the Tribunal intended to hear public presentations only in the 8 Provincial Headquarters. It, however, became apparent that the high cost of local travel and accommodation expenses, may have contributed to the inability of some of the presenters to appear before the Tribunal. To ameliorate the effect of this difficulty, presentations were also heard at the following additional places namely, Turkana, Bungoma, Isiolo, Kuria and Mandera.

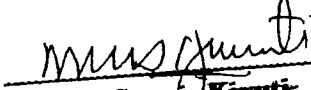
Our foreign visits to Uganda and South Africa where we held discussions with the Speaker of Parliament of Uganda and officials of both Parliaments as well as those dealing with the terms and conditions of service of the members and staff of Parliament in those countries, were most valuable.

We now have the honour, Hon. Mr. Speaker, to submit our Report to you and to thank you for the trust that you have bestowed on us.

We are,


The Hon. (Rtd.) Mr. Justice A. M. Akiwumi
Chairman


Dr. Stephen Karau
Member


Mrs. Constance Kivuti
Member


Mr. Hussein Abdi Farah
Member


Mrs. Betty Maneno
Member


Mr. Jason Namasake
Member


Mrs. Phoebe M Asiyo
Member


Mr. Dominic Dabalen
Member


Mr. Joseph Chirchir
Member

ACKNOWLEDGEMENT

We would like to express our gratitude to all those who through their oral and written presentations and submitted completed questionnaires, have assisted the Tribunal in the accomplishment of its assignment. This could not have been achieved without also, the crucial assistance of those who facilitated the presentations made to us in all the provinces of Kenya and elsewhere, possible, through the provision of physical and technical facilities as well as the advance dissemination of the purposes of our visits. Those who played important roles in this regard, are the Parliamentary Service Commission, the Office of the President and the Provincial Administration, as well as the Kenya High Commissioners and their staff in Uganda and South Africa.

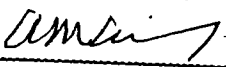
We must express our appreciation of the contribution of the Joint Secretaries of the Tribunal, Irungu Muthoni Sara and Odongo Patrick Lutta, in the work of the Tribunal. Also deserving of our gratitude for his most commendable role in our proceedings, is the Parliamentary Hansard Senior Technical Assistant, Rodgers Munyoki Kilungya, for the preparation of the voluminous verbatim report of our proceedings which we found extremely useful in the preparation of our Report.

The writing of the Report was indeed, the most difficult and exacting part of our task. This we could not have achieved without the dedicated work of our Secretaries - Ms Mary Gakobo and Mrs Joyce Mageto, the Special Assistant to the Chairman - Stephen Nganga Ngugi, our Security Officer - Police Inspector Robert Muriithi Stephen, our Research Assistant - Michael Mkala Maghanga, our Librarian - Miss Judy Muthiani and our Administrative and Co-ordination Officer - James Muema Katoni.

The Tribunal appreciates the report submitted for its consideration, in respect of the salaries, allowances and grading of the employees of the National Assembly, prepared by the Technical Team composed of Mr. J.T. Gechaga - Deputy Director - Ministry of State for Public Service, Mr. David Kanji - Senior Assistant Director - Ministry of State for Public Service and Mrs. Grace A. Ogembo - Principal Economist - Ministry of State for Public Service attached to Permanent Public Service Remuneration Review Board.

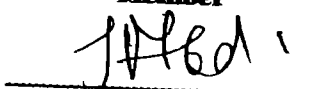
We would finally, like to thank the Clerk of the National Assembly, Mr. Patrick Gichohi, and the Legal Counsel of the National Assembly, Anthony Njoroge Esq., for the valuable assistance which they gave us in the discharge of our Terms of Reference.

We are,


The Hon. (Rtd.) Mr. Justice A. M. Akiwumi
Chairman


Dr. Stephen Karau
Member


Mrs. Connie Kivuti
Member


Mr. Hussein Abdi Farah
Member


Mrs. Betty Maneno
Member


Mr. Jason Namasake
Member


Mrs. Phoebe M Asiyo
Member


Mr. Dominic Dabalén
Member


Mr. Joseph Chirchir
Member

CHAPTER 1

INTRODUCTION

1. The role of the Tribunal, as already shown in its Terms of Reference, is to review and make recommendations. This role, seems to be beyond the ambit of Section 23 of the Parliamentary Service Act under which the Tribunal was appointed, and which provides that:

“(1) The Commission shall, from time to time, appoint an independent body of experts to review the terms and conditions of service of members and employees of the National Assembly.

“(2) The Commission shall upon receipt of the report of experts appointed under sub section (1), transmit the report together with its comments thereon, if any, to the National Assembly.”.

2. The Parliamentary Service Commission (PSC) did not appoint the Tribunal under the more instructive but limited legislation namely, sub section (5)(h) of Section 45 B of the Constitution, since it relates only to Members of the National Assembly, but which provides, however, that the PSC shall have the following more wider and meaningful power:

“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;”.

Whilst this provision provides for both the review and the making of recommendations, the law under which the Tribunal was appointed, provides only for a review process. However, the Tribunal will abide by its Term of Reference.

3. As regards the Terms of Reference of the Tribunal, paragraph (e) thereof, was, by Gazette Notice No. 8439 dated 31st July, 2009, and published in the Kenya Gazette of 14th August, 2009, deleted by the PSC, and now stands as follows:
 - (a) Review the terms and conditions of service of Members of Parliament;
 - (b) Review the facilities available for the use of Members of Parliament within the precincts of the National Assembly and in their constituencies;
 - (c) Review the salaries, allowances and benefits including retirement benefits payable to:
 - (i) The Prime Minister;
 - (ii) The Vice President;
 - (iii) The Speaker;
 - (iv) The Deputy Prime Minister;
 - (v) The Deputy Speaker;
 - (vi) Minister;
 - (vii) The Leader of the Official Opposition;
 - (viii) Parliamentary Service Commissioner;

- (ix) Government Chief Whip;
- (x) Assistant Minister;
- (xi) Deputy Government Chief Whip;
- (xii) Opposition Whips;
- (xiii) Member of Speaker's Panel;
- (xiv) Other recognized Whips;
- (xv) Chairman of Departmental or Select Committee;
- (xvi) Member of Departmental or Select Committee;
- (xvii) Member of Parliament;
- (xviii) Any other position of responsibility held by a Member of Parliament;
- (d) review the level of taxation on the salaries and allowances of Members of Parliament;
- (e) review the salaries, allowances and grading for employees of the National Assembly;
- (f) make recommendations on-
 - (i) the terms and conditions of service for Members of the National Assembly, including their salaries, allowances, benefits (including retirement benefits), training and international exposure, the facilities and amenities necessary for their use both within the precincts of Parliament, in their constituencies and any other relevant place;
 - (ii) the level of taxation on the salaries, allowances and benefits of Members of Parliament;
 - (iii) the terms and conditions of service for employees of the National Assembly including their salaries, allowances, benefits, grading, scheme of service, continuous professional development and training, the facilities and amenities available for their use.

4. There are certain paragraphs of these Terms of Reference that should be treated together and not separately, as set out therein. Paragraph (b) provides for the review of the facilities available for the use of Members of Parliament within the precincts of the National Assembly and in their constituencies, and part of paragraph (f)i separately, provides for the making of recommendations on the same issue, as well as on the training and international exposure of Members of Parliament. The same situation applies in relation to: the review of the remuneration and benefits of the Members of the National Assembly, and the recommendations thereon, as contained separately, in paragraph (c) and part of paragraph (f) i; the review of the level of taxation on the remuneration of the Members of the National Assembly, and the recommendations thereon, as contained separately, in paragraphs (d) and (f) ii; and the review of the salaries, allowances and grading for the employees of the National Assembly, and the recommendations thereon, as contained separately, in paragraphs (e) and (f) iii. It will therefore, be most inappropriate to deal with the affected paragraphs separately. Paragraph (b) and the affected part of paragraph (f) i; paragraph (c) and the affected part of paragraph (f) i; paragraphs (d) and (f) ii; and paragraphs (e) and (f) iii, will be dealt with together.
5. The Deputy Speaker of the National Assembly and the Vice Chairman of the PSC both made verbal presentations to the Tribunal. The Speaker of the National Assembly,

however, in compliance with previous procedure, did not make a verbal presentation but submitted two written presentations to the Tribunal.

6. In his initial presentation to the Tribunal, which he said he was making on behalf of the PSC, its Vice-Chairman, in answer to a clarification sought by the Chairman of the Tribunal, made the following relevant introductory statement:

“Thank you, your Lordship, I think it has become a tradition that once in a while the terms and conditions of service of Members of Parliament and members of staff of the Commission are reviewed as evidenced by the Cockar Commission. We want to maintain that tradition. Secondly, the fact that there was hue and cry in the country about the taxation of Members of Parliament, which I think in my opinion, was wrongly conceived, necessitated the Commission to put in place an independent tribunal of people of integrity and professionalism to look into this matter. It is wrongly conceived that Members of Parliament do not pay taxes, which they do pay. Every Member of Parliament pays tax on the salaries that they get. The only taxes that we do not pay, as MPs, is in regard to allowances. So, we thought it is important that we have a Commission to look at all these things to the satisfaction of the Kenyan people and Members of Parliament. We are one and the same. We cannot divorce each other. We must co-exist. I think that is the reason we set up the Tribunal to look into these matters.”

7. With respect to the Speaker, Vice-President, Prime Minister, Deputy Speaker, the Vice-Chairman and other members of the PSC, and the Deputy Prime Ministers, among others, he went on to state that:

“I want to suggest – and this is the wish of the Commission – that you kindly review the remuneration of the Speaker, Vice-President, Prime Minister, Deputy Speaker, Vice-Chairman of the PSC and Commissioners so that they get what they deserve. Currently, for example, the Prime Minister is not remunerated the way he should because we have not reviewed that. Our suggestion is that the Vice-President, Prime Minister and Speaker of the National Assembly do get the same remuneration. This is because, for example, the Speaker heads the third arm of Government. Being the head of the Legislature, we feel that the three of them should be at par. It is our recommendation that we do so, but that is subject to your independent review.

Mr Chairman, Sir, we also want to recommend that the Deputy Speaker, Vice-Chairman of the PSC and Deputy Prime Ministers be also at par.

*...
Mr. Chairman, Sir, we have also made recommendations on all the other office holders including the Leader of Official Opposition, the Government Chief Whip, Assistant Minister, Deputy Government Chief Whip, Opposition Whip, Members of the Speakers Panel and other recognized Chairpersons of*

Departmental or Select Committees, Members of Departmental and Select Committees and Members of Parliament.

We have all these things written down and we shall submit a copy to you later so that it can assist you when writing your recommendations.

The justification for pay for Members of Parliament is that the last review of the terms and conditions for Members of Parliament and staff was in 2002. By then the economy was starting to recover and the key economic variables such as inflation were slowly getting under control. In that time, the Government was so optimistic that it was to achieve an overall annual target of less than 5 per cent inflation. This was reflected in the economic recovery strategy released in 2003. Inflation erodes the economic power of employees and prolonged high inflation rate leads to employees joining the poorer masses or choosing to survive. Indeed, the last two years have been difficult as inflation rate increased to even above 20 per cent meaning that the annual increment for the employees of Parliament which has an average of 5 per cent was way below the inflation rates. However, as has been argued before, salary increases misses the point if they are only adjusted to compensate for the erosion caused by inflation. Therefore, there has been a steady increase in the cost of basic goods and services such as food, transport, communication, education, medical and so on, not only to the staff of Parliament but all Kenyans. The cost of fuel, wear and tear, and spares for all vehicles has gone up. That needs to be compensated if people have to perform their roles and be functional... I think it is important, and I said here, that it is only MPs who do not have a yearly increment. May be that is another thing you should look into ...”.

8. The Vice-Chairman of the PSC also went on to state in respect of the taxation of the remuneration of the Members of the National Assembly, that:

“Secondly, it is important to note and appreciate the fact that the very establishment of this Tribunal is in itself an indication and a clear signal of the emergent responsiveness of the current Parliamentary Service Commission to the itching concerns of the increasing alert of the Kenyan citizenry. We do understand that there is much concern about this issue of taxation and the Commission was very responsive by putting in place the Tribunal to look into these affairs...I do not object to that. However, the only objection that I have is when we came in we were given a contract in that package. Like I said, it is against the rules of natural justice to reduce midway any package that you have given to your employee. If you must tax and it is good that we have to tax since we must set this precedence for taxation for everybody, then we must at least adjust in such a way that your employee is not disadvantaged because as I said, you cannot just come midway and say I am now reducing what you are getting.”.

9. Furthermore, the Speaker in his letter of the 11th September, 2009, to the Chairman of the Tribunal, contained the following relevant written presentation:

“Lately, it is important to note that at the time the current Members of Parliament offered themselves for election, the remuneration of Members of Parliament was already clearly set out. The Members therefore reasonably expected to receive a certain amount of remuneration for their services. It has therefore been argued with justification, that it would not be fair to make any recommendation that would result in the reduction of the amount of remuneration payable to Members of Parliament. It is trite law of service contracts that an employer cannot arbitrarily take away a benefit conferred on an employee. I recommend that should the Tribunal feel inclined to subject Members’ allowances to taxation, it compensates the latter by a commensurate salary/allowance increase. The tax measures should otherwise take effect from the next Parliament...”

10. Although two Cabinet Ministers had in their presentations to the Tribunal, expressed the view that the remuneration of the Members of the National Assembly as compared with that of similar parliamentarians elsewhere, is more than adequate, they were also of the view, that any proposed adjustment of the remuneration of the Members of the National Assembly, should apply to future Members of the National Assembly. They also stated that the current world wide economic recession, is a matter that should be taken into account in reviewing the remuneration of the Members and Staff of the National Assembly, and if at all, their remuneration is to be increased, this should not be implemented until the prevailing global economic recession had improved.

11. As asserted by the Secretary to the Cabinet and Head of the Public Service in his written presentation to the Tribunal:

“The projected economic growth as the Government launched the Vision 2030 for the period 2008-2012 was on average 10% p.a. The current trend of events e.g the drought, the recession among others has however, shown that this may not well be achieved. This has necessitated subsequent revision of economic growth projections. It is therefore, evident that the growth of the economy will not be able to sustain additional increases in remuneration levels.”

He further, stated that as regards the Members of the National Assembly, the Government position was therefore, that:

“...all Remuneration paid to Members of Parliament, that is, salaries, allowances and other benefits including retirement benefits be retained at their current levels.”,

and as regards the Staff of the National Assembly, that:

“...the salaries of Parliamentary Service staff be retained at the current levels.”

12. During the debate in Parliament concerning the increment of the remuneration of Constitutional Office Holders which was achieved, a Member of the National Assembly made the following remarks as set out in the Hensard Report of June 25, 2009, about the remuneration of the Members of the National Assembly:

“Ms. Odhiambo: Mr. Temporary Deputy Chairman, Sir, I think I had said this earlier and I would like to repeat that I am not opposed to the increase of salaries but the timing is just wrong. The country is crying! That is why my understanding is that the Tribunal that was formed to review the salaries of Hon. Members can even review them downwards! They are not only going to review our salaries upwards! That is why they are seeking views from the public. I would hope and urge my senior, the Attorney General – I am not opposed because I know he deserves a pay rise and so do the judges who are working tirelessly, but the timing is just absolutely wrong!”.

13. The Speaker’s second written presentation on the issue of the level of taxation of the salaries and allowances of the Members of the National Assembly, as contained in his letter of 11th September, 2009, was considered by the Tribunal. It is acceptable, as contained in the Speaker’s letter, that the public outcry for Members of the National Assembly to pay taxes on their allowances, is one of the issues that the Tribunal should consider. However, this is not so clearly set out in the relative parts of the Terms of Reference of the Tribunal, namely, paragraphs (d) and (f) ii thereof.

Paragraph (d) which is in the following terms:

“to review the level of taxation on the salaries and allowances of Members of Parliament;”,

cannot be said to relate to the question whether the allowances payable to the Members of the National Assembly which are exempt by law, from taxation, should be taxed. As the paragraph stands, it may, refer to existing legally taxable remuneration and in any case, if at all, the level of taxation is to be reviewed, it is only the Kenya Revenue Authority which can legally, perform such an undertaking. If the intention was whether the non taxable allowances of the Members of the National Assembly, should be taxed or not, that could have been clearly stated, which was not done. The Commissioner of Support Services of the Kenya Revenue Authority who led the officials of the Kenya Revenue Authority, that made presentations before the Tribunal, was also clearly, of the view, that paragraph (d) of the Terms of Reference of the Tribunal as it stands, does not refer to the issue whether the Members of the National Assembly should pay taxes on their allowances which are legally exempted from taxation.

14. Furthermore, to be asked in paragraph (f) ii of the Terms of Reference of the Tribunal, to make recommendations not only, on the reviewed level of the taxation on the salaries and allowances of the Members of the National Assembly, but also, to make recommendations on their unspecified benefits which the Tribunal had not been asked to review, is inappropriate so far as such benefits are concerned. However, since many presentations were made to the Tribunal that the allowances of the Members of the National Assembly should be taxed, the Tribunal will consider this matter in its Report.

15. An important matter that arose during the consideration of the issue whether the allowances of the Members of the National Assembly should be taxed, is whether in the first place, the Kshs.366,000/= monthly allowance, paid to them as "reimbursement of vehicle costs by mileage", with effect from 1st July, 2005, had been legally approved as prescribed by the relevant legislation, namely, the National Assembly Remuneration Act. The relevant part of this Act, is Section 4(1) thereof, which provides as follows:

"Without prejudice to Section 2 and in addition thereto, every Member of the National Assembly of the category specified in the first column of the Second Schedule shall receive the allowances specified in relation to him in the second column of that Schedule."

In this regard, the applicable category of the Member of the National Assembly as set out in the first column of the Second Schedule is:

"Every Member of the National Assembly other than the Speaker, the Deputy Speaker, the Vice-President, other Ministers, and Assistant Ministers.", and

the relevant allowance involved is, as set out in the second column of the Second Schedule, to be:

"C. Transport allowance in any other circumstances approved by the Treasury."

16. The Treasury only **recommended** and did not **approve** the payment of this allowance. The National Assembly, however, took this recommendation as an approval, and went ahead to pay it.

17. The Vice-Chairman of the PSC, was, when questioned, not categorical on whether the Tribunal was also to review the terms and conditions of service of former Members of the National Assembly, and promised a clarification which was subsequently contained in the letter dated 12th June, 2009, from the Speaker of the National Assembly to the Chairman of the Tribunal, Annex "K", to the effect that since the PSC was not empowered to deal:

"with the overall welfare of former Members of Parliament",

it could not by extension:

"legally task the Tribunal to make recommendations as to the overall welfare of these former members of Parliament."

For this reason, though officials of the Former Members of The National Assembly Association, and other persons, made presentations to the Tribunal in which they complained about the minimal remuneration and pension of former Members of the National Assembly, the Tribunal will only, make comments and suggestions on this matter.

18. It is desirable before dealing with the direct issues as set out in the Terms of Reference of the Tribunal, to deal with other related important background matters that were raised in the presentations made to the Tribunal. These include: as already referred to, that the Members of the National Assembly should pay tax on their allowances which are three times as much as their taxed salaries; that it would be more acceptable if the

remuneration of the Members of the National Assembly is determined by an independent body rather than the Members of the National Assembly themselves; what the level of the remuneration of the Prime Minister in the present Coalition Government, should be; why the Tribunal was established; the expenditures of Members of the National Assembly in their constituencies; and the management and effectiveness of the Constituencies Development Fund.

19. That the Members of the National Assembly should pay taxes on the “huge allowances enjoyed by them”, was the common protestation presented to the Tribunal in its sittings in all the provinces. Many of these presenters were, however, not aware of the fact that though the Members of the National Assembly pay taxes on their salaries, the allowances enjoyed by them, were by law, exempt from taxation. Presently, Section 5 of The National Assembly Remuneration Act, which came into effect on 1st October, 1975, provides that:

“All allowances paid under this Act shall be exempt from income tax notwithstanding the provisions of any other written law relating to income tax.”

20. A similar provision exists in Section 5 of The Constitutional Offices (Remuneration) Act in respect of allowances paid among others, to the Attorney General, the Chief Justice and other Judges, the Controller and Auditor General and Members of the Public Service Commission. The Finance Bill, 2008, which sought through clauses 43 and 47 thereof, to make the allowances payable under these Acts subject to income tax, was published on 12th June, 2008. However, when the Bill was being debated in Parliament on 25th November, 2008, the Bill, for unclear reasons, was amended without any objection from the Minister who had presented it, by the deletion of clauses 43 and 47 of the Bill which had provided for the deletion of Section 5 of both the National Assembly Remuneration Act and The Constitutional Offices (Remuneration) Act.
21. However, according to the public, the striking issue concerning the non taxation of the allowances of the Members of the National Assembly, is the huge amount of their non taxable allowances in comparison with their rather minimal taxable salaries. Their untaxed monthly allowances amount to Kshs. 651,000/= whilst the taxable monthly salary, is only Kshs. 200,000/=. It has been suggested that in order to cure this discrepancy, allowances should be reduced and the salaries increased and taxed so as to leave the take home remuneration, all together similar in amount, of the present untaxed allowances and the taxed salaries. If this were to happen, it may defeat the purpose and objective of the proposal that the allowances of the Members of the National Assembly, should be taxed, and may also, amount to a doubtful proposition. This matter will, however, be dealt with more comprehensively in Chapters Four and Six of this Report.
22. As several of those who made presentations before the Tribunal asserted, the independence of the Tribunal would be more reflected and respected if all its members are not appointed by the PSC which consists of eleven persons who are all Members of the National Assembly, and who cannot be said not to have a personal and impartial interest in the determination of their terms and conditions of service. The same reasoning applies to the Members of the National Assembly to whom the report of the Tribunal shall be submitted by the PSC, for action. But it must be emphasised that notwithstanding these propositions, the Tribunal, which as provided by Section 23 of

the Parliamentary Service Act, consists of an "independent body of experts", will conduct, and has conducted its responsibilities, fearlessly and independently.

23. However, concerning the possible non impartial role of the PSC, that Commission of the Ninth Parliament, authorised, notwithstanding the withdrawal of the required amendment to the National Assembly Remuneration Act, the payment of allegedly, illegal allowances to Members of the National Assembly who were Parliamentary Office Holders. As stated in the letter of 15th July, 2009, from the Speaker to the Chairman of the Tribunal, Annex "L", these payments were stopped a few months later. It must, however, be pointed out that the Speaker of the Ninth Parliament, had boldly and exemplarily, refused to accept such an allowance. The Minister of Finance of the Tenth Parliament, had on his part, returned the allowance paid to him.
24. There are twelve civil cases pending in court in which the Kenya Anti-Corruption Commission has sued some current and former Members of the Ninth Parliament for the refund of allowances received by them allegedly through the use of their office to "improperly enrich themselves".
25. However, in defence of the role of the National Assembly in the determination of the remunerations of its Members, the Vice-Chairman of the PSC, in his presentation before the Tribunal, made the following strongly, worded defence:

"Mr. Chairman, Sir, as representatives of the people, Members must maintain a certain level of independence to oversee and scrutinize the Executive. Their independence, therefore, can only be guaranteed when their terms and conditions of service are attractive enough. That is very important because if we make our Members of Parliament poor and cannot afford even to travel to their constituency, and have an independent mind where they can be manipulated, then we cannot have a democratic Parliament which can serve this country. In my opinion, we have a very independent Parliament as evidenced by what has been happening. We are able to say no to the President where we think it is not right. We are able to say no to the Prime Minister or to both. This has happened in this Parliament when we said no to some things that we thought were not right. That can only happen when we have economic independence. If one does not have economic independence he is vulnerable. I do not think that Kenyans want to see their lawmakers being manipulated or looking for ways of making money like doing business as opposed to concentrating in Parliamentary agenda.

Hon. Members are the executives of their constituency and they deserve a better treatment and comfort. They cannot be subjected to indignity and a life of hand to mouth. They must favourably be compared to the Chief Executive Officers (CEOs) of private companies or corporations because they are CEOs in their own constituencies. They have been elected. I was shocked to hear someone ridiculing Hon. Members that they are not honourable. We do call ourselves honourable because you have given us that mandate and it is a heavy responsibility which we must carry. We are not

saying that we are angels but we are saying that once you give us that right to be Hon. Members, you must respect us. Do not ridicule us. We call ourselves honourable Members because you gave us that title. We want to do the work but we cannot do it if you want to make us beg and be manipulated. It is important that the people of Kenya get to understand that.”.

26. He further went on to remark:

“ ... Take for example this is the Tenth Parliament, if we set up a Tribunal to look into the salaries and recommendations of MPs, that recommendation does not come into effect during the life of that Parliament because you cannot make it for yourself. It will have to be effected in the coming Parliament meaning they are not beneficiaries. So, really the issue of being accused that you have made it for yourself does not arise because take for example the Cockar recommendations, they never affected that particular Parliament. They affected the Ninth Parliament. That was done in the eight parliament and it never came into effect during the Eight Parliament. So whatever recommendations are made never came into effect for that particular Parliament, except may be for the office bearers like the Prime Minister as we have said should be paid for what he is doing. However, for the MPs to recommend for an increase of their salaries, it does not affect them at that time and during the following Parliament. Infact, most of them may not benefit since they may not come back. Like in this Parliament, we have 70 percent new MPs. So, the issue does not arise because it does not affect the current Parliament.”.

27. It is apt at this stage, to also refer briefly, to the recent allowance system scandal in England wherein, several members of the House of Commons were paid allowances for dubious claims under a self regulatory system. A large number of the Members of the House of Commons, as exposed in May 2009, by The Daily Telegraph newspaper of England, had been engaged in the systematic milking of the expenses system in order to improve their own financial wellbeing. Some of the dubious and questionable claims made by Members of the House of Commons and which gave rise to widespread public anger, include the following: second home allowances where they have no second home or are living with relatives; the improvement cost of a constituency house after resignation as a parliamentarian; office expenses for a family owned house even though it was more than 330 miles from the constituency; the cost of the spectacles of an employed wife and the cost of employing an accountant to fill in a self-assessment tax form; and claims for already paid mortgages. The exposure had revealed how the system of claims, which relies on honourable members policing themselves, was open to abuse.

28. In his statement on this issue, the Prime Minister of England made the following relevant remarks:

“Now the vast majority of MPs I know do an excellent job. They are in public service not for what they can get, but for what they can give.

Yet the issue of expenses is casting a cloud over the whole of Parliament. So MPs need to have the humility to recognise that the country has lost confidence in the current system. To restore our faith in Parliament, and the good that it can do on the public's behalf, we must commit to tightening up the system of allowances, urgently.

Every MP I know wants to live by the rules, but for too long some of these rules have been insufficiently clear. So we need to make the rules clearer, and we also need to save money. So I am announcing today urgent proposals to make our system of MP's allowances and expenses simpler and less generous. Sir Christopher Kelly and the Committee on Standards in Public Life are continuing to carry out an independent review into the system so we can make permanent changes. But I believe we have to act urgently with interim proposals to restore people's confidence that MPs are there to serve the public and not serve themselves. And I want a vote to take place to overhaul the current system...".

29. Subsequent to these remarks, steps have been taken through the enactment of the Parliamentary Standards Act, to create an independent watchdog to police the allowances of the members of the House of Commons, rather than the House itself, and to make false allowance claims, a criminal offence punishable by one year's imprisonment. The PSC may consider the possibility of relative remedial action being taken. The position of the Speaker of the House of Commons also became untenable following the disclosure of the extent to which members of the House of Commons had milked the system and his role in this. He, therefore, resigned as Speaker on 21st June, 2009, becoming the first Speaker of the House of Commons, forced from office in 300 years.
30. The role of the Legislature in reviewing the salaries and allowances of its members, which is applicable in some countries of the Commonwealth, is dealt with in Chapter Four of this Report. It is relevant to give in respect of Uganda, a neighbouring country, and which the Tribunal visited in July, 2009, more details about the role of the Legislature in determining the remuneration of the Uganda Members of Parliament. There are 327 seats in the Uganda Parliament which now tolerates opposition parties. Of these seats, 215 are for elected parliamentarians, 104 for nominated members, of which: 79 are elected women, 10 members of the Army appointed by the Defence Authority, and 5 each nominated by the National Association of Students, Disabled Persons and Workers, and 8 ex-officio members. The emoluments these parliamentarians enjoy, are, according to Article 85 of the Constitution of Uganda, determined by Parliament upon the recommendations made to it by the Parliamentary Commission established under Article 87A of the Constitution. The Parliamentary Commission has as its Chairman, the Speaker of Parliament and 7 other members who are the Leader of Government Business, the Leader of Opposition, the Minister of Finance and 4 Commissioners elected by the Parliament from among its members. However, since any bill passed by Parliament to be effective, would require the assent of the President, the President has role to play in this matter.
31. Addressing the members of the Tribunal during its visit to Uganda, the Speaker of Parliament there, referred to the fact that the Members of Parliament of Uganda, were

the lowest paid parliamentarians in East Africa. The reason for this, he stated, was that:

“We have the powers but we are not tempted to use them because we are not that selfish. We take many factors into consideration, otherwise it would raise bitterness in the public.”

32. However, according to a recent newspaper article (The Star, October 19th, 2009), the Ugandan Member of Parliament now earns, after taxation, an increased emolument of Ksh. 576,000/=.
33. In order that the Legislature can be seen not as a group of people that can in effect, set their own salaries and allowances, provisions have been made in some Commonwealth countries for the salaries and allowances of Parliamentarians to be determined by a mechanism that is independent of their votes.
34. The relevant legal information which fully clarifies the determination of the remuneration of the Members of the South African National Assembly, that the Tribunal was able to obtain during its visit to South Africa in July, 2009, is contained in the Remuneration of Public Office Bearers Act of the Republic of South Africa. According to Section 3.(1) of this Act:

“ Members of the National Assembly, excluding members of the Cabinet and Deputy Ministers, and permanent delegates shall be entitled to such salaries and allowances as the President may from time to time determine by proclamation in the Gazette, after taking into consideration –

- (a) the recommendations of the Commission;*
- (b) the role, status duties, functions and responsibilities of different members of the National Assembly and different permanent delegates;*
- (c) affordability of different levels of remuneration of office bearers;*
- (d) current principles and levels of remuneration in society generally; and*
- (e) inflationary increases.*

Despite the provisions of subsection (1), a member of the National Assembly or a permanent delegate who holds different public offices simultaneously, is only entitled to the salary, allowances and benefits of such office for which he or she earns the highest income.”

Similar provisions apply to the Deputy President, Ministers and Deputy Ministers of South Africa.

35. The remuneration of the Prime Minister is a matter of grave importance in the present unique Coalition Government, which was established by the National Accord and Reconciliation Act No.4 of 2008, and which had been triggered by the 2007 disputed presidential elections. This Act which has been entrenched in the Constitution shall

cease to apply upon the dissolution of the Tenth Parliament, if the coalition is dissolved, or a new Constitution is enacted whichever is earlier. The purpose of this Act is:

“... to give effect to the Agreement on the Principles of partnership of the Coalition Government, to foster national accord and reconciliation, to provide for the formation of a Coalition Government and the establishment of the offices of Prime Minister, Deputy Prime Ministers, and Ministers of the Government of Kenya, their functions and various matters connected with and incidental to the foregoing.”

36. The Agreement on the Principles of Partnership of the Coalition Government which is set out in the Schedule of the Act, was entered into on 28th February, 2008, between H.E. President Mwai Kibaki, Government/Party of National Unity and Hon. Raila Odinga, Orange Democratic Movement, who are the two Principals of the Agreement. Therefore, notwithstanding the insertion in the amended Constitution, of the post of Prime Minister after that of the Vice President, the political standing of the Prime Minister, is still higher than that of the Vice President, but not equal to that of the President whose political status as Head of State and Commander in Chief of the Armed Forces of the Republic of Kenya, and constitutional role, such as the giving of assent to bills passed by the National Assembly, are unaffected by the coalition agreement. This is what should be taken into account whilst determining the emolument of the Prime Minister. The standing of the Deputy Prime Ministers, though higher than that of a Minister, should, however, be lower than that of the Vice President whose political standing is contained in the Constitution. In the meantime, however, the Prime Minister and the Deputy Prime Ministers are paid by the PSC, the same salaries as are paid to Ministers.
37. The Speaker of the National Assembly is the head of the legislative arm of government and this is what should be taken into consideration, in determining his constitutional standing and remuneration. However, though the President and the Prime Minister constitute the principals of the executive arm of the present coalition government, their remuneration as such, as applies in many countries, is higher than that of the head of the legislative arm of government as well as that of the Chief Justice who is the head of the judicial arm of government.
38. It is relevant in making recommendations concerning the emoluments of the Speaker to also consider the following facts: the duties and responsibilities of the Heads of the three arms of government and the number of staff under their control.
39. The duties and responsibilities of the three arms of government will now be summarized.
40. The tremendous responsibilities of the Principals of the Coalition Government who constitute the head of the executive arm of government, are set out in the Presidential Circular No.1/2008 on the Organization of The Government of the Republic of Kenya, May, 2008, Issued By The Office of the President, Nairobi. In this publication, the Ministries that come under the supervision of the President, are the Ministry of State for Provincial Administration and Internal Security – which relate, inter alia, to the Police Force, the General Service Unit, the Administration Police, and the National Security Intelligence Service, the Ministry of State for Defence, and the Ministry of State for Special Programmes. The Ministries under the supervision of the Prime Minister are, the Ministry of State for Public Service; the Ministry of State for

Planning, National Development and Vision 2030 and the Ministry of State for Development of Northern Kenya and Other Arid Lands.

41. The functions and responsibilities of the Speaker of Parliament, who is the Head of the legislative arm of Government, are very important and indeed, indispensable in governance.
42. As contained in the Draft Report of the Study on Benchmarks for Good Governance and Civil Society Participation, by Peter Wanyande, Ludeki Chweya, Paul Collins and Horacio Boneo, Parliament has four basic responsibilities. It is responsible for the enactment of laws and the amendment of existing laws which form the basis on which the country is governed. As the custodian of Public Funds, it is the responsibility of Parliament to approve all public revenue and expenditure except the salaries of certain cadres of public officials and the servicing of public debts. Furthermore, Parliament is the institution that the Controller and Auditor-General submits his report, via the Public Accounts Committee. As the representation of the general public, it is also the primary responsibility of Parliament to debate all matters of general interest and to make appropriate decisions or recommendations for action by the executive arm of government. Lastly, Parliament is mandated to ensure that all other areas of Government operate efficiently and effectively, within the limits of the law. Parliament has therefore, the duty to scrutinize the activities of government including expenditure of public funds and to prevent the abuse of power.
43. All other specific functions of the National Assembly fall within the ambit of four basic responsibilities averted to, and which are very important and indispensable in good governance.
44. The mission of the judicial arm of Government, and which is headed by the Chief Justice, is to provide an independent, accessible, responsive forum for the just resolution of disputes in order to preserve the rule of law and to protect all rights and liberties guaranteed by the Constitution of Kenya.
45. The Judiciary has the following structural levels namely, the Court of Appeal which hears and determines appeals from the decisions the High Court which has unlimited original jurisdiction in civil and criminal matters, the Magistrate's Courts which are sub-ordinate to the High Court in civil and criminal matters, and the Kadhis Courts whose mandate are restricted to:

"the determination of questions of Muslim law relating to personal status, marriage, divorce, or inheritance in proceedings in which all the parties profess the Muslim religion."
46. The establishment of the Judiciary is based upon the need to establish a process for the settlement of civil disputes and the prosecution of criminals. In this regard, the Judiciary undertakes and determines criminal trials, civil disputes, probate and administration disputes, divorce cases, bankruptcy and winding up disputes, the interpretation of the Constitution, and the execution of judgments.
47. As the institution responsible for the administration of justice throughout the country, the Judiciary occupies a critical position in the welfare and activities of Kenya and its citizens.

48. The civil service under the Head of the Executive arm of Government, consists of not less than five hundred thousand persons, those under the control of the Head of the Judicial arm of Government country wide, amount to four thousand professional and support staff; and those under the Speaker, including the Members of the National Assembly, amount to no more than nine hundred and forty one employees.
49. Furthermore, since the Members of the National Assembly are seen by the electorate as the people responsible for steering the course of development in their constituencies, the Act provides that the elected Member of the National Assembly for each constituency, shall be the person responsible for the submission, through a Select Committee established by the National Assembly, of project proposals for his or her constituency.
50. The important role of the CDF was reconfirmed recently, when the Minister of Finance in his budget allocation made in June, 2009, increased the amount allocated to the CDF from Kshs.9 billion to Kshs.12 billion. In addition to this, a further sum of Kshs.60 billion which will be disbursed through the CDF, has been granted, inter alia, for the maintenance of rural roads, the up grading of primary schools, the construction of secondary schools and health centres, and the purchase of drugs and medical equipment.
51. With the increment of the resources of the CDF, more steps should be taken to stop the misuse of the CDF and other devolved funds channeled through the constituency. Tough new rules on the management of the CDF are in the process of being considered by a Task Force established by the Minister of Planning.
52. The role of the Members of the National Assembly in financing the needs of their constituents, deserves to be briefly referred to. Many Members of the National Assembly, in justification of the allowances paid to them, referred to the existing culture whereby, they are required to contribute money for the wedding, funeral, school and other expenses of their constituents. Although the Harambee system is forbidden, it is still practiced in spirit and culture and the Members of the National Assembly are regarded by their constituents as a source of financial assistance. Political party affiliation seems irrelevant and a Member of the National Assembly may not be re-elected if his constituents regard him as being mean and ungenerous.
53. With regard to paragraphs (f) and (f) iii of the Terms of Reference of the Tribunal, which deal with the review of the salaries, allowances and grading of the employees of the National Assembly and the making of recommendation thereon, it was agreed at a meeting of the PSC and the members of the Tribunal on 14th May, 2009, that an independent reputable human resources firm, should be hired to assist the Tribunal in the discharge of its work in connection with these paragraphs. This idea was subsequently, abandoned and upon the proposal of the Clerk of the National Assembly to the Permanent Secretary of the Ministry of State for Public Service, the Technical Team already referred to, was appointed by the said Permanent Secretary. It is the view of the Tribunal that the Technical Team had prepared a Report which the Tribunal expected to have been done in a fair and independent manner, and which has been considered by the Tribunal in the discharge of its mandate under paragraphs (e) and (f) iii of its Terms of Reference.
54. The prevailing Terms of Reference of the Tribunal will now be dealt with specifically, as already determined, and the Tribunal recommends that all the recommendations made in its Report, should be implemented as soon as possible.

CHAPTER 2

REVIEW OF THE TERMS AND CONDITIONS OF SERVICE OF MEMBERS OF PARLIAMENT

Paragraph (a) of the Term of Reference of the Tribunal.

55. This Paragraph requires the Tribunal to:

“review the terms and conditions of service of the Members of Parliament;”.

This wide ranging directive was interpreted by the Tribunal as not relating to other more specific paragraphs of the Terms of Reference of the Tribunal such as paragraphs (b) and (c) thereof, which are to:

“review the facilities available for the use of Members of Parliament within the precincts of the National Assembly and in their constituencies;” and to:

“review the salaries, allowances and benefits including retirement benefits payable to”,

the Members of the National Assembly including the Prime Minister, the Vice President, the Speaker, the Deputy Prime Ministers, the Deputy Speaker, Ministers, Assistant Ministers, Parliamentary Service Commissioners, the Leader of Official Opposition, Government Chief Whip, Opposition Whips, Members of Departmental or Select Committees and the Speaker’s Panel, and holders of other Parliamentary positions.

56. Other related specific Terms of Reference of the Tribunal, are paragraphs (d) and (f) i and ii. Paragraph (d) requires the Tribunal to:

“review the level of taxation on the salaries and allowances of Members of Parliament;”,

and paragraph (f) i and ii imposes the more demanding and effective obligation on the Tribunal, to make recommendations on:

“ the terms and conditions of service for Members of the National Assembly, including their salaries, allowances, benefits (including retirement benefits), training and international exposure, the facilities and amenities necessary for their use both within the precincts of Parliament, in their constituencies and any other relevant place;”, and on:

“ the level of taxation on the salaries, allowances and benefits of Members of Parliament;”.

57. In dealing with paragraph (a) of its Terms of Reference, the Tribunal will therefore, only consider the issues raised therein, other than those referred to, in paragraphs (b), (c), (d), and (f).

58. In a normal employment setting, general terms of employment (i.e. those other than salaries, allowances and retirement benefits) commonly comprise the following, among others:

- Leave(s) – Annual, compassionate, maternity, paternity sick etc.
- Induction
- Next of Kin
- Probation
- Official Working Hours
- Public Holidays
- Medical Cover (Treatment)
- Group Personal Accident Cover
- Group Life Cover
- Conduct, Grievances and Discipline
- Training
- Appraisals
- Termination
- Redundancy
- Travel (Transport – self & family)
- Bereavement (death of employee)
- Loans – House, car etc.
- Financial Regulations

59. Many of these general terms are not applicable to Members of Parliament as they are not *per se*, employees of Parliament or the PSC but they are mandated to represent the interests of their constituents and the country by making laws and overseeing and checking and balancing the activities of the Executive. Those general terms that relate to their service, some of which have been discussed elsewhere, in this Report and a couple of which were alluded to during the presentations before the Tribunal, include the following:

- Conduct, Grievances and Discipline,
- Medical Cover,
- Group Personal Accident Cover,
- Group Life Cover,
- Bereavement (Death of Member), and
- Maternity and Paternity leave.

Conduct and Discipline

60. The main issues of conduct and discipline are largely dealt with in the National Assembly (Powers and Privileges) Act. No representations whatsoever, were made on this matter requiring its review, neither do we think that it should be reviewed. We would only refer briefly, to this Act and other relevant orders and publications, merely as a matter of information.

61. The National Assembly (Powers and Privileges) Act is, as is well known, to:

“... declare and define certain powers, privileges and immunities of the National Assembly and of the members of the National Assembly; to secure freedom of speech in the National Assembly; to make provision regulating admittance to and conduct within the precincts of the National

Assembly;... and for purposes incidental to or connected with the matters aforesaid."

62. By virtue of the powers conferred on him by the National Assembly (Powers and Privileges) Act, the Speaker after consultation with the Speaker's Committee, has determined the National Assembly Standing Orders that regulate proceedings in the National Assembly, and has published the National Assembly Speaker's Rules which set out briefly, regulations concerning the conduct of the Members of the National Assembly and the strangers brought by them, within the precincts of the National Assembly, as well as the National Assembly Member's Handbook, both of which, though not substitutes for the Constitution, the National Assembly (Powers and Privileges) Act or the Standing Orders, set out in brief form, as a guidance to the Members of the National Assembly, some of the modalities of the working of the National Assembly and the rules concerning the proceedings and business of the National Assembly.

Grievances

63. The Tribunal did not receive any presentations on the issue of the redress of Members of Parliament's complaints. However, in a large organization like Parliament, there are bound to be some complaints or grievances from Members of Parliament. Currently, the Administrative Complaints are dealt with by the Clerk of the National Assembly and political problems are sorted out by the Speaker of The National Assembly.
64. The Speaker, the Clerk and Members of Parliament have heavy responsibilities in Parliament, and nationally. They should therefore, not be bogged down with minor complaints. A straightforward complaint system should be developed and documented to save on valuable time. This system may be adequate for the time being, but bearing in mind that these are very busy persons, a grievance handling system to sort out minor issues should be put in place.

Recommendation

65. The Tribunal recommends a grievance handling system to be developed and documented as part of the National Assembly Member's Handbook.

Medical Cover

66. The National Assembly provides a comprehensive medical insurance cover, with the following limits to the Members of Parliament through AON Minet Insurance Brokers:

| | |
|----------------------------|---|
| In-patient benefit | Kshs.10,000,000/= per family per annum, |
| Out-patient | Ksh. 100,000/ per family per annum, |
| Maternity | Ksh. 100,000/ per family, |
| Dental | Ksh.120,000/ per family per annum, |
| Optical | Ksh. 20,000/ per person per annum, and |
| Last expense/funeral cover | Ksh.100,000/ per person. |

67. The in-patient scheme caters for the following expenses when admitted in hospital - Hospital Accommodation Charges, Hospital Bed Occupancy limited to the particular hospital's Basic Standard Ensuite Room, Doctors fees, Theatre Charges, Drugs and Dressings, X-ray, Pathology Services, Treatment for HIV/Aids and Related Ailments, Maternity including prenatal outpatient care, Delivery, Postnatal Outpatient Care and any maternity related complications, and Congenital Conditions

68. The outpatient medical scheme caters for the following expenses:
 consultations limited to Kshs.1,500/- per visit, Medical Specialist's fees payable in full where the patient has been referred to him by a General Practitioner, Prescribed Drugs, X-ray, Lab Tests, Dental and Optical treatment subject to the limits specified above, General Health Checkups not incidental to treatment and limited to the following - physical examination by a General Practitioner, blood pressure, temperature, pulse and respiratory rates; Full Haemogram; Urinalysis; Blood Sugar Analysis (fasting and random); and Sputum Analysis for alcohol and acid fast bacilli.
69. The following conditions are, however, excluded from the Scheme: consultation with a Chiropractor, Acupuncturist or Herbalist; injury/illness as a result of riots, strikes, and civil commotion; injury/illness as a result of war and kindred risk; Naval, Military or Airforce operations; expenses arising out of political violence; cosmetic surgery unless caused by accident; family planning/infertility treatment; intentional self injury, drunkenness or drug addiction; nutritional supplements and hearing aids; expenses recoverable under any other insurance scheme beauty treatment in natureclinics or health hydros; and contamination by radio activity from nuclearfuel, waste or fission. Those eligible for coverage are: Members ofParliament; spouses (maximum of 2); and children (maximum of 5) shouldbe owned biological, legally adopted or step child and should be below the age of 25 years, attending school and not married. There is a panel of hospitals, clinics and doctors where a Member of Parliament and his/her registered family members, may access treatment on credit.

Recommendation

70. There were no complaints presented to the Tribunal about the above scheme provided by Parliament. However, a survey by the Tribunal noted the following:

- (a) The In-patient Benefit of Kshs.10,000,000/= seems to be reasonable and should be retained. Where this amount is exceeded, consideration of an ex-gratia payment in line with Government policy, may be considered.
- (b) It is noted that maternity cover, which relates only to re-natal out- patient care, delivery, post-natal out-patient care and any maternity related complications is limited to KSh.100,000/= per family. This amount seems inadequate as a caesarean section may cost up to Ksh.170,000/=. The maternity cover should be increased to Kshs.500,000/= per family.

Group Personal Accident Cover

71. The PSC has since 2003, provided Group Personal Accident Cover for all Members of Parliament namely, the 210 elected, 12 nominated, and the 2 ex-officio Members of Parliament, and every financial year, funds are set aside for the provision of the cover.
72. The benefits that accrue are as follows: Upon the death of a Member of Parliament, the beneficiaries are paid Kshs.10,622,000/=. Should a Member of Parliament suffer permanent and total disability, he or she will be paid Kshs.10,622,000/=. The cover provides for a weekly benefit of Kshs.30,000/= for a maximum 104 weeks, should a Member of Parliament be hospitalized and therefore be unable to earn any money.

Loss of limbs and other organs are compensated for according to the continental scale. The maximum aggregate amount of compensation payable by the insurer in respect of all insured persons traveling in any one aircraft or vehicle, does not exceed Kshs.100,000,000/=. The applicable age limit for the payment of these benefits, is 80 years.

73. The insurance providers who have been engaged by the PSC have always paid the insurance claims expeditiously. It was noted, however, that after the Marsabit air crash, the premiums demanded by the insurers rose by almost 80%. The PSC has adopted a wise system which ensures that the insured persons in a large delegation, do not travel in the same aircraft.

Recommendation

74. **Recently, the Work Injury Benefits Act, 2007 was enacted to provide for compensation of all workers during the course of their employment. Because Members of Parliament have contracts of service, consideration should be given to align this insurance cover to the Work Injury Benefits Act.**

Life Cover

75. Members of Parliament do not have a life cover save for death through an accident and which does not cover death due to natural causes. This was experienced by the members of the family of the late Member of Parliament for Shinyalu who were expecting a sum of Kshs.10,622,000/= only to be told that they were not eligible for any payment since the former Member of Parliament, died of natural causes. It is also noted that there are now many younger Members of Parliament with very young families. It is therefore, important that when their families are bereaved by any cause, they should be cushioned from becoming destitute.
76. Some organizations have Group Life and Personal Accident cover to cater for death of an employee in service. Other organizations include life cover in pension schemes.
77. The Tribunal recommends that the PSC should establish Group Life and Personal Accident Policy to cover Members of Parliament for death either by accident or natural causes during their service.

Death of a Member of Parliament

78. In many organizations, when a member of staff dies, there are certain obligations that the organization performs including catering for the funeral expenses. This may only in practice, apply to Members of Parliament, and it is therefore, necessary that the PSC should formalize decent burials for deceased Members of Parliament.

Maternity/Paternity Leave

79. Representations were made to the Tribunal concerning the maternity leave of Members of Parliament and the day care centre facilities for nursing mothers. The issue of the day care centre facilities is dealt with elsewhere in this Report. The question of maternity/paternity leave is an administrative matter that should be dealt with by the Speaker through the grant of permission to be away officially. A Member of Parliament who goes on maternity/paternity leave will be entitled to the appropriate days granted by the Speaker, for such leave. What will therefore, be required, is for a Member of Parliament to first seek the permission of the Speaker and when granted, to be away on Maternity/Paternity leave for the authorized number of days.

CHAPTER 3

REVIEW OF THE FACILITIES AND AMENITIES WITHIN THE PRECINCTS OF THE NATIONAL ASSEMBLY AND IN THE CONSTITUENCIES AND RECOMMENDATIONS ON THE TRAINING AND EXTERNAL EXPOSURE FOR MEMBERS OF PARLIAMENT

Paragraph (b) and part of Paragraph (f) i of the Terms of Reference of the Tribunal.

85. These Paragraphs require the Tribunal to:

“review the facilities available for the use of Members of Parliament within the precincts of the National Assembly and in their constituencies;” and to:

“make recommendations ... on training and international exposure, the facilities and amenities necessary for their use both within the precincts of Parliament, in their constituencies and any other relevant place;”

86. It is necessary to define the facilities available for the use of the Members of the National Assembly within the precincts of Parliament and those available in their constituencies. First of all, Section 45 B (5) (c) of the Constitution, gives powers to the Parliamentary Service Commission to provide such services and facilities as are necessary to ensure the efficient and effective functioning of the National Assembly. The services and facilities as defined in the Parliamentary Service Commission Act:

“includes all means by which members of the National Assembly are officially assisted in performing their parliamentary duties.”

87. The precincts of the National Assembly, are defined in Section 2 of the National Assembly (Powers and Privileges) Act, to include:

“... the Chamber, every part of the building in which the Chamber is situated, the offices of the Assembly, the galleries and places provided for the use or accommodation of members, strangers, members of the public and representatives of the press, and any forecourt, yard, garden, enclosure or open space appurtenant thereto and used or provided for the purposes of the Assembly:

Provided that any part of the buildings, forecourt, yard, garden, enclosures or open space may, by an order signed by the Speaker and published in the Gazette, be excluded from the foregoing definition, either generally or for specific purposes, and either temporarily or permanently;”

The Parliament

88. According to Section 30 of the Constitution, the current Parliament of Kenya consists of the President and the National Assembly. The National Assembly, pursuant to Section 31 of the Constitution, consists of elected and nominated Members of Parliament who are currently, 210 and 12 respectively. In the exercise of the legislative power of the Republic of Kenya, bills are passed by the National Assembly and become law upon the President assenting to them, and they become Acts of Parliament. Similarly, in its deliberative role and oversight of the Executive,

Incapacity/Infirmity

80. Section 44 of the Constitution provides for the determination of questions as to whether a person is a Member of the National Assembly. It gives the High Court jurisdiction to hear and determine any question whether, ".... the seat in the National Assembly of a Member thereof, has become vacant." It goes on to provide that the Speaker may declare a seat vacant "by reason of a provision of the Constitution", or in any other case by a person who is registered as a voter in the election of an elected Member of the National Assembly or by the Attorney General. It further stipulates that Parliament may make provision with respect: to "the circumstances and the manner in which, the time within which and the conditions upon which an application may be made to the High Court for the determination of a question under this Section."
81. Section 39 of the Constitution gives instances where a Member of the National Assembly vacates his/her seat. These include ceasing to be a citizen of Kenya; without having obtained the permission of the Speaker, failing to attend Assembly on eight (8) consecutive days on which the Assembly was sitting in a session; is sentenced to imprisonment for a period in excess of six months without the option of fine; is adjudged to be of unsound mind and is an undischarged bankrupt under the laws of Kenya.
82. Apart from a person who has been adjudged to be of unsound mind, no provision exists in law for vacation of seat due to infirmity/incapacity on account of ill-health. For short illnesses, a doctor's certificate may suffice as a valid reason for failure to attend the Assemblies' sessions. This can be covered by seeking permission from the Speaker. However, there is no specific provision for infirmity that incapacitates a Member of the National Assembly permanently from carrying out his duties. Where it is certified that a Member of Parliament is medically and totally incapacitated with no hope of resumption of duty, it may be in the public interest to replace such a Member of Parliament on account of infirmity/incapacity. To do this, the PSC will be required to set up a procedure to certify a Member to be medically incapable of performing his duties, and consequently seek to replace him.
83. The normal procedure widely used by many organizations is to subject such a Member to medical examination to determine whether he/she should be retired on medical grounds. The organization then informs the person of the Doctor's recommendation. If the person agrees with the organisation's doctor, such a person is retired on medical grounds. If the Member or family does not agree with the report, such a Member is allowed to subject himself to medical examination by a doctor of his/her own choice. Where there is no agreement between the reports of the two doctors, then the Parliamentary Service Commission shall request the Director of Medical Services to establish a Medical Board whose decision shall be final.

Recommendation

84. **The Tribunal recommends the establishment of a legal procedure to enable the PSC to recommend the retirement of a Member of Parliament on medical grounds due to incapacity or infirmity.**

resolutions adopted by the National Assembly are implemented by the Executive. Thus the use of the term Parliament refers to an institution larger than the National Assembly and the President in their respective entities.

89. Each of the 210 elected Members of Parliament has two offices, one at the constituency and another at the Continental House in Nairobi, while the nominated Members of Parliament have each, only one office at the Continental House.

The Parliamentary Service and the Parliamentary Service Commission

90. The PSC as provided for, in Section 45B of the Constitution, consists of The Speaker of the National Assembly as its Chairman, a Vice Chairman, the Leader of Government Business, the Leader of Opposition, and 7 Members appointed by the National Assembly from amongst its members, making a total of 11 Members of the PSC. The Clerk of the National Assembly shall be the Secretary of the PSC. The PSC has powers, among others, to:

- (i) appoint persons to hold or act in the offices of the Parliamentary Service, and
- (ii) to provide such services and facilities as are necessary to ensure efficient and effective functioning of National Assembly.

91. As provided under Section 45 A (2) of the Constitution, there shall be a Clerk of the National Assembly and such other officers and staff as may be appointed for the purposes of the National Assembly, in accordance with Section 45B of the Constitution, and who shall be officers of the Parliamentary Service. The Clerk is the repository of, and principal advisor to, the Speaker and all Members of Parliament. He is the Chief Executive of the Parliamentary Service and its Accounting Officer. He is also the Honourary Secretary/Treasurer of the local branches of the Commonwealth Parliamentary Association, Inter Parliamentary Union and the African Pacific Caribbean/European Union Parliamentary Consultative Assembly.

The National Assembly and Constituency Office Staff

92. The PSC has a staff of 941, of which, 485 employees serve on permanent and pensionable terms. The remaining 456 are partisan staff employed on five year contracts, 420 of whom, are employed by the Members of Parliament in the 210 constituencies. The constituency staff running cost, is included in the Kshs.2.4 million that the Government allocates annually, to every constituency through the PSC for expenses such as salaries, rent and other relevant costs.
93. As regards the Staff of the National Assembly, it was presented to the Tribunal that the nature of their work in Parliament, is such that they work an average of 16 hours a day. In addition, in order to guide and protect the institution of Parliament, the staff must maintain professionalism. Hence, the need to have consistency in service and staff stability as membership of Parliament changes at a high rate. Furthermore, it was pointed out to the Tribunal that the National Assembly is facing challenges in the recruitment and retention of staff. This is because the remuneration paid to the Staff of the National Assembly, is much lower as compared with those earned in the private sector, in critical areas like such as the legal, research, broadcasting and computer technology professions.

94. It was suggested to the Tribunal that the staff being the engine of Parliament, the PSC needs to guarantee their retention in the Parliamentary Service by offering them competitive terms and conditions of service. As regards the constituency office staff, it was presented to the Tribunal that Members of Parliament often recruit whoever they think they can manage and pay unreasonably. It was proposed that the constituency office manager should be employed by the PSC on regular terms and be properly trained on Parliamentary business so as to be able to assist new Members of Parliament, among other duties. Further, it was stressed that the subordinate constituency office staff should also have standardized terms and conditions of service and proper recruitment procedures determined by the PSC.
95. Furthermore, the evidence submitted to the Tribunal indicates that there has been substantial expansion of Parliamentary activities and the consequent increase in the workload has been overwhelming for the Speaker, the Clerk, members of the PSC, as well as the members of the Chairman's Panel, without a commensurate increase in their remuneration.
96. In order to improve the situation described in the forgoing paragraphs, it is essential that an ameliorating scheme of service be established. This is dealt with comprehensively in Chapters Four and Seven of this report.

Parliament Buildings

97. Parliament Buildings refer to all the buildings for the use of Parliament and consists of two Wings – A and B. Additional accommodation has been acquired, and are, the County Hall and the Continental House, currently being used as offices for individual Members of Parliament. In Wing A, is the old Parliament Chamber, National Assembly Library and the Commonwealth Parliamentary Association Room. On the first floor is a large Committee Room, the Uganda Room, and two smaller rooms both of which are occupied by the Hansard Staff. To the west of the library, is the lounge and dining room. Above these, are the offices of the Speaker, the Clerk and other staff of Parliament.
98. Between Wings A and B is an eight storey clock tower which houses offices, archives and water tanks. Around Parliament, there are gardens, a parking bay and to the North, is the Mausoleum of Mzee Jomo Kenyatta, and to the extreme South West, is the Bunge Staff Canteen.
99. Wing B provides accommodation as follows: the ground floor houses the Chamber of the National Assembly, the Mail Room with pigeon holes for each Member of Parliament and a small television/reading room with telephones for the use of Members of Parliament. To the west of Wing B, is the crypt meditation chamber, switchboard and offices for the subordinate staff. On the first floor, are the public and Speaker's galleries, staff offices, three Committee cum Conference Rooms and a private Presidential Suite.
100. Through various presentations made to, and evidence gathered by, the Tribunal, the indication is that the space where the National Assembly is located is inadequate. There are plans by the PSC, as per the 2008-2018 Strategic Plan, to rehabilitate the Chamber with a view to accommodate 350 Members of Parliament. However, the dire need for more space in the Chamber of Parliament, cannot be stressed enough. Further, the offices both in the Continental House, the County Hall and the Old Chamber are overcrowded, and there is need for more offices, restrooms and other facilities.

101. In view of the above, the Tribunal therefore, recommends in the long term, the acquisition of a new site for the re-location of Parliament. Meanwhile, the proposed plan to renovate the Chamber to accommodate more Members of Parliament be accelerated, as well as the provision of more office rooms, additional parking space, a new dining hall, more restrooms and reading rooms.

Library Services

102. There are three library services available for Members and Staff of the National Assembly. In the old building is a Reference Library which is very small as it was originally meant for only twelve Members of Parliament. In the Continental House and the County Hall, are respectively a resource centre and an archive for research purposes.
103. Presentations made to the Tribunal regarding the libraries located within Parliament and the Continental House, stressed the need for well modernised and equipped spacious libraries, that will make information easily accessible. It was also recommended, that information on the activities of Members of Parliament, and parliamentary proceedings and any matter of interest pertaining to the Government of Kenya, should be made available in the constituency libraries.

Dining Hall

104. A restaurant and a canteen are available within the precincts of Parliament. However, these facilities which cater for both Members and Staff of the National Assembly and their visitors, are now so overstretched that Members of Parliament, at times, have to eat while standing. The dining facilities were originally designed for a fewer Members of Parliament. Since the Members and Staff of the National Assembly have greatly increased in number, the current dining facilities are indeed, overstretched. As a result, the dining and kitchen facilities as well as the related staff levels, are all inadequate.
105. In view of the above evidence, the Tribunal recommends that there should be a more well staffed, spacious dining facility and a modernised kitchen, befitting the dignity of Parliament.

Members of Parliament Offices at the Continental House and the County Hall

106. It is also encouraging to note that the PSC has made it possible for all the elected Members of Parliament to each have an office in the Continental House. In addition, each of them has an office at his or her constituency. These offices provide convenient facilities for the Members of Parliament, not only, to serve their constituents, but also, to enable them to perform legislative and oversight roles. However, each of the 12 nominated Members of Parliament, has only an office in the Continental House. The offices in the Continental House are staffed with secretaries and equipped with computers. There is also a Health Club at the Continental House, for which a Member of Parliament pays a membership fee of Kshs.2000/= per annum. The Health Club, however, lacks adequate space and has poor ventilation.

Information, Communication Technology

107. This is a key area in the modern world, and currently, the PSC is connected by internet to all the Provincial Headquarters but only, to 50% of the District Headquarters. This is a big challenge to the PSC as it is its aim, to be connected to all the constituencies in Kenya.

108. Presentations on Information and Communication, made to the Tribunal, indicate that the PSC intends to have a fully fledged e-Parliament. The PSC also intends to reduce the 700 reams of paper used per week, by 10%.

Recommendation

109. **The Tribunal would like the PSC to pursue the above line of action with more vigour so as to bring the National Assembly into a modern technological status.**

Research Unit

110. Though the PSC has established a Research Unit composed of 10 research assistants, this is inadequate, since it is expected that each Member of Parliament, should have a research assistant.
111. As regards the Research Unit, the presentations made to the Tribunal show clearly, that the establishment of a such a Research Unit, with sufficient appropriate professionals, is in high demand. It was emphasized severally, that Members of Parliament who have diverse professional qualifications and are not necessarily experts in everything, require professional resource personnel to enable them to work efficiently and effectively.

Recommendation

112. **In order that the Members of Parliament may make quality contributions and debates, not only, in Parliament but also, at the constituency level, the Tribunal recommends that enough qualified research assistants should be deployed to assist Members of Parliament in research and other related activities. For this purpose, the present Research Unit should be enlarged and upgraded to a full fledged Research Directorate.**

Constituency Offices

113. The Constituency Office Act, allows Members of Parliament to have constituency offices, employ constituency managers and staff and to provide other amenities through the PSC. For this purpose, the Government allocates, from the public funds, Kshs. 2.4 Million per annum, to each of the 210 constituencies in Kenya, for salaries, hiring of offices and the provision of other amenities.
114. The constituency offices, have conveniently, taken services close to the constituents who now, do not have to travel long distances to Nairobi to see their Member of Parliament, or visit them at their homes, as they can be contacted at the constituency offices. Presentations made to the Tribunal, however, indicate that hardly, any facilities exist in the constituencies, other than what the Members of Parliament have used CDF funds to construct, such as their constituency offices. In some of these constituencies, the land for the building of constituency offices is very expensive, and in some other constituencies, the inhabitants are nomadic. Furthermore, some constituencies do not have electricity, and so, communication through computers and websites is untenable. However, the establishment of constituency offices as evidenced by presentation made to the Tribunal, is highly appreciated by the citizens.

Recommendation

115. **In view of the above, the Tribunal recommends that every constituency should have an easily accessible constituency office, and where applicable, computers be provided and websites developed.**

116. The Tribunal received oral presentations and memoranda proposing that people at the grassroots level, especially in the constituencies, should be educated on the responsibilities and roles of the Member of Parliament and that of the constituents.

Recommendation

117. The Tribunal therefore recommends, that civic education be provided to the constituents on the role and responsibilities of Members Parliament and the constituents, and that the civic education should include programmes that would enable leaders of the constituencies to visit Parliament to witness the performance of their Members of Parliament.
118. Further, the Tribunal recommends that there should be nationally recognized organizations to provide properly structured and approved civic education programmes to constituency trainers, who in turn, will provide civic education to the constituents.

The Parliamentary Service Commission Strategic Plan for 2008 – 2018

119. It is encouraging to note that immediately the present PSC was constituted in 2008, it revised the then existing Strategic Plan formulated by the previous PSC, and came up with the new 2008-2018 Strategic Plan to guide it in the provision of improved services and facilities for the Members and Staff of the National Assembly. The PSC is faced with the challenges of a highly informed public that demand much higher level of service delivery. This is in addition to the challenges of new Members of Parliament who are young, highly professional, and eager to serve the public more efficiently and effectively, and their need to be facilitated.
120. Arising from the above challenges, the PSC in its 2008 – 2018 Strategic Plan objectives intends to strengthen the Members of Parliament in their role as law makers, increase their capacity as Members of Parliament, improve Parliamentary research services, enhance staff performance and improve the utilization and absorption of allocated funds. The PSC has bought a plot of land for the construction of an office block, and has commenced the process for the rehabilitation of the Parliamentary Chamber, and the deployment of information communication technology by the upgrading and development of ICT service model 2008 -2018, and the establishment of the Directorate of Information, Research and Library.
121. The Tribunal considered the Parliamentary Service Commission Strategic Plan 2008 to 2018, and appreciates the commitment of the Chairman of the PSC and the Speaker of the National Assembly, as embodied in his remarks in the Foreword of the Strategic Plan, where he stated the following:
- “The achievement of the goals set in this Strategic Plan is the responsibility of all of us. All efforts and resources shall be focused on releasing these achievements. In so doing, you are assured of my support and that of the entire Commission.”*
122. The Tribunal takes cognizance of the establishment by the PSC of the Monitoring and Evaluation Unit under the Clerk of the National Assembly, whose key role is the implementation of the Strategic Plan 2008-2018.

Recommendation

123. In view of the foregoing, the presentations received and the experiences of the study tours made by the Tribunal to South Africa and Uganda, the Tribunal

recommends in addition to what is planned to be achieved in the 2008 - 2018 Strategic Plan, the creation of a medical center, nursing-mother cubicles and baby creches, the establishment of Members of Parliament Guest Centre and electronic voting system.

Constituency Development Fund

124. Many presentations made to the Tribunal, criticized the lack of a transparent and effective management of the CDF, as well as its use to satisfy the personal interest of Members of the National Assembly. This issue is not clearly set out in the mandate of the Terms of Reference of the Tribunal, and the only Term of Reference that may be relevant to this issue, is paragraph (b) thereof, requesting the Tribunal to:

“review the facilities available for the use of Members of Parliament within the precincts of the National Assembly and in their constituencies;”.

The Tribunal will therefore, consider the presentations made to it on this issue, but will only deal with the purpose and development concerning the establishment of the CDF.

125. The primary objective of the CDF is to eradicate poverty by allocating devolved Government funds to finance projects planned and identified by the local communities at the constituency level. The CDF is allocated 2.5% of all the Government ordinary revenue collected in every financial year, and is distributed as follows:

3% to the National CDF Board,
75% is distributed equally to all the 210 constituencies, and
The remaining 22% is allocated as per the population and poverty levels of the constituencies.

126. However, in the 2009/2010 budget, the CDF allocation was increased from the current 2.5% to 4% of the Government's ordinary revenue collected and in addition a portion of collected fuel levy meant for the maintenance of rural roads, will now be channelled through the CDF. Furthermore, Kshs.105million will be allocated to each constituency, as conditional economic stimulus or resilience package towards financing infrastructure development covering education and healthcare, and Kshs. 20 million through the Ministry of Health and Sanitation for the construction of health centres in each constituency. This raises the annual CDF kitty averaged at Kshs.60 million to more than Kshs.150 million per a constituency.

127. In the year 2007, The Constituencies Development Fund Act, 2003, was amended by The Constituencies Development Fund (Amendment) Act, 2007, so as to provide, improved systems of implementing constituency based development projects under the Act. The amendments include the creation of a CDF Board, as a body corporate - so as to achieve efficiency in the management and administration of the CDF; the transfer of the power of approving project proposals under the Act, from the National CDF Management Committee to the CDF Board; the giving of clear responsibility solely, to the CDF Board, of deciding how the funds allocated to a particular constituency shall be utilized; and the appointment and designation by the CDF Board of the CDF staff which shall include an officer of the Board, to be based in each constituency. The recent amendments to the CDF Act have, however, not inspired in many of those who made presentations before the Tribunal, confidence and satisfaction in the operation of the CDF.

128. The organizational structure of the CDF indicates that its top organ is the Parliament Constituency Fund Committee. Section 23 of the Act gives power to newly elected Members of Parliament to appoint members of the Constituency Development Fund Committee (CDFC). Further, Section 23 (5) of the Act, allows the elected Member of Parliament to be the chairman of the CDFC. There is, however, no provision in the Act for Members of Parliament to be patrons of the CDFC. It is in the above context, that the Tribunal regards the CDF as a facility for the use of the Members of Parliament in their constituencies; and more importantly, there were many oral and written presentations made in regard to the management of the CDF at the constituency level.
129. However, there have been several proposals in the media and presentations made to this Tribunal for the amendment of the CDF Act so as to enhance the efficiency and accountability of the CDF in the achievement of its objectives. Because of this, and as already referred to, the Minister of Planning, has established a Task Force to review and recommend necessary amendments to the CDF Act by collecting and collating views on the CDF. This Task Force will carry out a more detailed examination of the CDF with a view to making far reaching recommendations and amendments required to meet the operational and policy challenges facing the CDF Board. Since the role of the Tribunal in this regard, is minimal, the Tribunal will confine itself to views and opinions touching on the CDF as a facility.
130. The Tribunal received memoranda from the National Tax Payers Association, concerning 23 constituencies which had received close to Kshs. 1.2 Billion; 25% of which, amounting to approximately Kshs. 306 Million, it was claimed, had either been misused or unaccounted for; whilst 75% of the total amount, which is approximately Kshs. 900 Million had been well spent. Those knowledgeable of the history of public expenditure, would admit this is a good score, especially considering the unique grassroot management structure for the CDF that involves many players, many of whom are untrained and lack basic accounting skills
131. Notwithstanding reported misuse of the CDF, it is also a fact that the kitty has scored solid countrywide successes in line with its objectives. There is proof of the CDF achievements which are hard to deny, concerning the speeding up of infrastructural developments in key economic and social pillars like education, health and water supply, and in the diminishing of the typical red tape applicable to public funded projects. There is hardly a village in the country that does not boast of at least one CDF project. Many of these are demand driven initiatives, and the intended utility value is often realized. The CDF is thus, well spent in comparison with other public funded projects. It should be noted that the only 6 years old CDF, has significantly, changed the country's development landscape and any increase in its fund allocation, would certainly, yield greater results.
132. Since the Kenyan economy is highly centralized, Parliament has been advocating for a devolved system, including the CDF, where more resources will go to the grassroots, without which, any growth in the economy will not be felt at the grassroot level. The CDF is one of the means of ensuring that resources go to the Wananchi to cover some of the deficiencies created by the existing centralized system of the economy. Whereas, the Tribunal appreciates that Parliament has devolved funds to the grassroot, it feels obliged to emphasize that in spite of its noble intentions, the CDF model as presently structured, is inadequate as it limits the involvement of the constituents in the management of the CDF.

Recommendation

133. **The Tribunal therefore recommends that managing grassroots development can only be possible if the CDF management and the constituents work together, through meaningful participation by the constituents in the projects. The abolition of cronyism in the control and management of the CDF projects, can only be achieved through the expanded mandate for the elected representatives.**
134. The non proponents of the CDF have in their presentations and memoranda, argued that they see a political agenda in placing such large sums of money under the control of politicians. They argued that, although, it is a good idea for the Government through the CDF to enable the constituents to determine their development agenda, some Members of Parliament have been using that money to campaign and strengthen their positions as sitting Members of Parliament rather than initiating constituency development projects.
135. Further, they argued that to place vast sums of money under the direct control of Members of Parliament, represents a clear departure of the role of Members of Parliament, who are now more involved in the execution of the programme by the Executive, to guard against Government excesses. And then, whatismore, how can such Members of Parliament audit the use of funds by the Government. It is vital to ponder on the implications of this shift in the fundamental role of the Members of Parliament.
136. The presenters went further to state that there is no proper mechanism for the employment of independent, efficient and effective staff and members of the CDF, who are often picked at the discretion of the Members of Parliament. The free hand given to the Members of Parliament, has enabled them to hire at random, any number of unqualified cronies, hence in one CDF office, you will find up to fifteen staff members and in another, you will find five. This has resulted, in the ineffectiveness of the management of the CDF.

Recommendation

137. **The Tribunal therefore, recommends that Parliament should redefine the role of a Member of Parliament, in the relevant Acts, with a view to making a Member of Parliament perform not only, his/her vital oversight role of over the Executive, but equally important, his/her role in the CDF.**
138. **Furthermore, the Tribunal calls upon the CDF National Board to provide civic education to the constituents on the CDF Act and encourage more civil society and civic vigilance engagement in the monitoring of the CDF and the funded projects, so as to guard against the mismanagement of funds intended for projects in the constituencies.**
139. The presenters also argued that, the CDFC conceive and operate projects that are not evaluated, and thus, raising serious questions whether the devolved funds are serving the public or the interest of a few selfish people. In addition, they argued that in the absence of the participatory, monitoring, evaluation, auditing and reporting mechanisms for every constituency project, it is doubtful whether any meaningful level of development through the CDFC will be sustained.
140. The Tribunal noted that while there is a good communication channel for relaying information between the CDFC and the National Board, conspicuously missing is an

established communication system whereby, constituents can receive vital information, such as the dates and amounts allocated, and disbursed for projects. This lack of information has hampered the enthusiasm of the constituents' commitment to, CDF projects.

Recommendation

141. The Tribunal therefore, recommends that Parliament through the CDF National Board must provide the framework for the dissemination of information to the electorate through, among others, assistant chiefs, chiefs and updated information posted on the website. The Tribunal further recommends, that Parliament must prepare, provide and facilitate civic education and training towards building the capacity of both the CDFC members and the constituents. For the success of the CDF, it is crucial for members of the public to be empowered, not only, to identify and prioritize their projects, but so that they have adequate information to enable them to monitor and evaluate these projects. The Tribunal therefore, recommends that, Parliament must mainstream the monitoring and evaluation components into each CDF project proposal.

142. Some presenters went further, to argue that a Member of Parliament is expected to give ample time serving in the CDF office and at the same time, dedicate his/her time in Parliament on Tuesdays, Wednesdays and Thursdays, attend a number of Committee meetings, draft motions, attend international fora and other meetings outside Parliament for instance, in the constituency. Sentiments expressed were that the CDF offices are, unnecessarily, imposing financial liabilities on the poor Kenyan tax payers, given that a Member of Parliament cannot work in all the offices available to them, namely: the constituency office, the CDF office, the Continental Building Offices and attend Parliament, all in one week.

143. The Tribunal notes that most of the constituency offices, have been built by or through the CDF, and that, it is important for every constituency to have such an office to facilitate the operations of the CDF and the work of the Member of Parliament in the constituency. The Member of Parliament should set aside a day when he/she can be available in the office, and which should be communicated to the constituents so that they know when and where to meet their Member of Parliament, rather than going to his/her home in the constituency or even travelling to see him/her in Nairobi.

Recommendation

144. In view of the above the Tribunal recommends that there should be a professional management committee established to manage and execute the CDF projects, and that the role of a Member of Parliament should be that of a patron with oversight responsibilities, and should not determine the day to day implementation of projects. This will give the Member of Parliament an office that is closer to the constituents so that they do not, as already stated, have to travel distances to see their Member of Parliament. This will also provide ample time to the Member of Parliament to meet his/her constituents.

Training and External Exposure for Members of Parliament

145. Currently, the training of Members of Parliament takes place in the form of induction which is related to the work they are expected to perform, like Parliamentary Procedure, Standing Orders, House Committees and Budgetary Procedures.

Members of Parliament selected to serve in Parliamentary Committees like the Public Accounts Committee, receive induction courses on accounting. Induction takes place both locally and overseas. Depending on the areas of need, exchange programmes are arranged for Members of Parliament to visit relevant countries. Seminars and workshops are organized locally and internationally, for Members of Parliament to interact with their foreign counterparts. Local and international experts and foreign universities are invited to provide professional information on various topics of national and international significance, such as, the Millennium Development Goals (MDGs). Members of Parliament are also trained to become computer literate which will enable them to access the internet, send e-mails and write reports.

Recommendation

146. From the views received by the Tribunal, the duration and intensity of these induction courses are, inadequate to suitably prepare the Members of Parliament in the execution of their role as Parliamentarians. In addition to the existing induction courses, the Tribunal recommends that new Members of Parliament be given a total of six months induction courses, and an orientation on their terms and condition of service, especially on community and resource mobilization, capacity building, initiation of programmes, issues of efficiency, public and media relations and leadership.
147. The Tribunal received presentations and memoranda to the effect that there are local institutions such as the Government Training Institute and the Kenya Institute of Administration where such relevant training can be offered. While appreciating the courses and trainings available in these institutions, the Tribunal calls upon the PSC to establish its own Parliamentary Training Institute with properly formulated programmes for the training of Members of Parliament, the Staff of the National Assembly and grassroots leaders. This training institute should have a well structured training programme including research and resource centres.

External Exposure

148. On external exposure, the Tribunal received presentations and memoranda to the effect that currently, Members of Parliament are given external exposure by the National Assembly depending on its priorities. Members of Parliament are also, given the opportunity to visit other Parliaments on sponsored programmes, mostly through the exchange programmes provided by the Commonwealth Parliamentary Association.
149. In view of the above, the Tribunal reaffirms that external exposure is necessary for purpose of peer learning and performance comparison, especially, in areas such as, governance, agriculture, health systems, education, infrastructure development, disaster preparedness and management. In addition, the Tribunal would like to encourage Members of Parliament to visit websites that provide useful information and exposure on training in other countries of the world, such as Malawi, United Kingdom, Canada, Bangladesh, Egypt, Rwanda and France.
150. The Tribunal in their visits to provincial headquarters and other places like Lodwar, Mander, Gekonga in Kuria and Isiolo, received presentations and memoranda calling on all Members of Parliament to visit all the of 210 constituencies during the first months of their election to Parliament.

Recommendation

151. The Tribunal therefore, recommends that internal exposure to all the constituencies, should be provided soon after the inauguration of a new Parliament, so that Members of Parliament, would obtain comprehensive information on the social and economic problems in the country, that would enable them to contribute usefully, in Parliamentary debate on such matters.

CHAPTER 4

REVIEW OF THE SALARIES, ALLOWANCES AND BENEFITS PAYABLE TO THE PRIME MINISTER, VICE PRESIDENT, THE SPEAKER, THE DEPUTY PRIME MINISTER, THE DEPUTY SPEAKER, MINISTER, LEADER OF THE OFFICIAL OPPOSITION, PARLIAMENTARY SERVICE COMMISSIONER, GOVERNMENT CHIEF WHIP, ASSISTANT MINISTER, DEPUTY GOVERNMENT CHIEF WHIP, OPPOSITION WHIPS, MEMBER OF SPEAKER'S PANEL, OTHER RECOGNIZED WHIPS, CHAIRMAN OF DEPARTMENTAL OR SELECT COMMITTEE, MEMBER OF DEPARTMENTAL OR SELECT COMMITTEE, MEMBER OF PARLIAMENT, AND ANY OTHER POSITION OF RESPONSIBILITY HELD BY A MEMBER OF PARLIAMENT AND RECOMMENDATIONS THEREON

Parts of Paragraphs (c) and (f) i of the Terms of Reference of the Tribunal.

152. These Paragraphs require the Tribunal to:

"review the salaries, allowances payable to:

- (i) The Prime Minister;*
- (ii) the Vice President;*
- (iii) the Speaker;*
- (iv) the Deputy Prime Minister;*
- (v) the Deputy Speaker;*
- (vi) Minister;*
- (vii) the Leader of the Official Opposition;*
- (viii) Parliamentary Service Commissioner;*
- (ix) Government Chief Whip;*
- (x) Assistant Minister;*
- (xi) Deputy Government Chief Whip;*
- (xii) Opposition Whips;*
- (xiii) Member of Speakers Panel;*
- (xiv) Other recognized Whips;*
- (xv) Chairman of Departmental or Select Committee;*
- (xvi) Member of Departmental or Select Committee;*
- (xvii) Member of Parliament;*
- (xviii) Any other position of responsibility held by a Member of Parliament,"* and to

"make recommendations on the terms and conditions of service for Members of the National Assembly, including their salaries, allowances, benefits."

153. It is evident that the issue of determining the remuneration of Members of Parliament is, as referred to in the Omamo Report, a process that is:

"technically complex and politically sensitive. This is essentially so because the Government has to balance its desire to recognise the Member's responsibility to parliament and the nation in general and its responsibility to the tax-payer. ... The Committee has, therefore, no illusion that the task of determining the remuneration for Members will require striking a delicate balance between these two conflicting interests."

154. Whichever objective and well-meaning process of reviewing legislative terms and conditions, and in particular the salaries and allowances of Members of Parliament, it cannot be delinked from prevailing political and economic conditions and other performance indicators existing during the tenure of office of Members of Parliament. The Legislature is one of the three arms of the Government and it is considered a supreme organ of the State. This supremacy comes with heavy responsibility on the legislators, to pass laws, oversee the Executive and represent the people. In view of this heavy responsibility, there is need to commensurately, compensate the Members and Staff of the National Assembly.
155. It is imperative to state that most of the presenters before the Tribunal, were of the view that Members of Parliament, just like other workers, have a right to be remunerated in a just and fair manner, that is comparable to their responsibility and the role that they play.

The National Assembly Remuneration Act

156. Salaries, allowances and benefits that Members of Parliament earn monthly, have been of great debate and concern to the Kenyan public. This issue received its fair share of media sensitisation in the later part of 2008, causing an outcry by Kenyans on the high salaries and allowances that the public perceived Members of Parliament earn. The majority of the members of the public, who made their presentations, did not know that there exists a law that exempts Members of Parliament from paying tax on their allowances, and were therefore, of the opinion that the Members of Parliament were actually, refusing to pay tax on their “huge” allowances.
157. However, the hype created by the media over the salaries of Members of Parliament, has caused the issue of their remuneration to be under public scrutiny and to be unnecessarily, over politicized, and which clearly distorted the picture of the actual emolument of Members of Parliament. This is because information concerning the remuneration of Members of Parliament, is not availed and easily accessible to the public. This leaves room for speculation, as one presenter mentioned, that the remuneration of Members of Parliament, had been shrouded with a lot of “misinformation and innuendos”. This situation was blamed on the fact that Parliament was doing poorly in public relations, as it has not had a Public Relations Officer for some time.
158. Though the National Assembly Remuneration Act is a public document, there are very many Kenyans who are ignorant of this Act and its contents. To reiterate this position, some current Members of Parliament appearing before the Tribunal, also, did not know that the Act existed. A look at the practise of the disclosure of the remuneration and expenses of the Members of Parliament in the Commonwealth Countries, revealed that there are numerous Commonwealth Countries that have a policy of public disclosure of the salaries and expenses of their Members of Parliament. While other Commonwealth Countries may not of necessity, publish these details, they may however, be accessible to the public upon request. For instance, Gibraltar, Canada, Bangladesh, Barbados, Jamaica, New Zealand, Nigeria and South Africa all disclose information on the remuneration of their Members of Parliament. Some of these Commonwealth Countries, like the Falkland Islands and United Kingdom, go to the extent of publishing the information in the media and on the websites respectively. In Singapore, the salaries and allowances of Members of Parliament are determined by Parliament and recorded in the Hansard, while in Australia, the travelling allowance expenditure of Members of Parliament, is tabled in Parliament at six monthly intervals. The following Commonwealth Countries do not

disclose, nor does the public have access to, the expenses of their Members of Parliament - British Virgin Islands, Cyprus, Grenada, Lesotho and Zambia.

Recommendation

159. **Misinformation and poor public relations have created a vacuum between the general public and Parliament, leaving room for speculation and the distortion of information leading to misconceptions and conjured positions resulting in mistrust. To remedy this, the Tribunal recommends that there should be in the Kenya National Assembly service a strong and well equipped Public Relations Office which will prepare and disseminate information in a public-user-friendly manner. For instance, the Uganda Parliament had very useful information on its Parliament, and user friendly too. In South Africa, they have coat lapels give-aways that help towards creating good public relation between the public and its Parliament.**
160. **Information on the remuneration of the Members of Parliament, should be accessible to the public, and other related laws, such as the National Assembly Remuneration Act, be made available through the media, the Parliament website and other means. This will reduce future over politicization of remuneration of the Members of Parliament especially, when the information is in the public domain. It is also, a reflection, that there is no mystery or concealment of the earnings of the Members of Parliament.**

Role of a Member of Parliament

161. In the determination of the salaries, allowances and benefits of Members of Parliament, most presenters expressed the view that they would want to be able to assess the value that Members of Parliament, as law makers, in their role as watch dogs and as agents of development, bring to the people of Kenya, and the level of economic growth accruing from their engagement and involvement in Parliament.
162. The role of a Member of Parliament is more of a calling, as stated in the Cockar Report, while citing the Slade Report, that a Member of Parliament:

“should serve with dedication, and part of their reward should lie in the honour and interest of that service.”

The Omolo Okero Report also stated that:

“When one ... analyses the totality of the situation with which the Member of Parliament operates, no amount of remuneration can adequately reward or compensate him for the responsibilities he is expected to shoulder.”
163. In this regard, it became apparent from views received from the public, that Parliament has not done enough to educate the public on the role of an elected Member of Parliament. In addition, there does not exist a job description of Members of Parliament, that will help the public in understanding how they can determine the criteria or calibre of the Member of Parliament they want to elect to represent them.
164. The views of the public were that that since Members of Parliament have a responsibility placed on them primarily, by their electorate and by the whole nation, it is important that the integrity and dignity of the country's supreme body,

Parliament, be protected by all stakeholders in the country, so that Parliament, can reciprocally, give its best.

165. The Cockar Report stated that:

“The role of the Legislature... is to make laws, deliberate on public policies, debate and pass the budget and to represent the people. In doing all this, it is an accepted democratic practice that Parliament must therefore hold Government to account. It must bring to the attention of the Executive the citizen’s grievances against it through Question, Motion, Bills and literally any debates that take place in the House. Parliament is the representative for the people and the Executive is accountable to the public through Parliament.”.

Recommendation

166. **Parliament should prepare an outreach programme that seeks to educate the public on the role and job description of a Members of Parliament that gives a snapshot of what a Member of Parliament, is expected to do.**

Parliament’s Role as one of the three arms of Government

167. There should be parity in the three arms of Government on remuneration. Writing on the context of separation of powers, the Speaker noted that:

“...it manifest that the powers of the Government in our Constitution are divided amongst three arms the Executive, Legislature and Judiciary. The Executive headed by President ... has power to dissolve and prorogue Parliament, ... The Legislature, ... headed by the Speaker, is responsible for making laws, ... approval and scrutiny of Government expenditure ... The Judiciary, ...headed by the Chief Justice, determines disputes which arise between individuals and those arising between individuals and the State.”.

It was reported that the 2003 remuneration increase for Members of Parliament, has enhanced the independence of Parliament and contributed towards increasing the democratic space. The appealing remuneration package has been perceived as a mitigating factor against undue influence towards the Legislature from the Executive, and has also attracted professionals to Parliament who have brought in a wealth of experience and positive contributions to the national agenda.

168. Into the bargain, the 2003 pay increase for Members of Parliament is observed not only, to have enhanced the independence of Parliament and contributed towards increasing the democratic space, but in addition, the adequate remuneration has gone a long way in reducing corruption. However, there were some very strong sentiments that contradicted this view, stating that:

“... impunity from manipulation is a product of personal integrity and cannot be ‘vaccinated’ by huge salaries.”.

Others, commented that since going to Parliament is a non profit making business, and that no one is compelled by another to become a Member of Parliament,

therefore, Members of Parliament are not entitled to earn competitive packages equivalent to those enjoyed by professionals both in the private and the public sectors. Echoing similar sentiments, the Omamo Report observed as follows:

“The Committee ... noted that Members are not necessarily motivated by financial or material rewards when they seek elective position. Rather, they are motivated by patriotic zeal to serve their people and country, which in itself is a sacrifice that any patriotic citizen would be proud of.”

The Report continues to express the view that any remuneration given to Members of Parliament is, more of a token of appreciation of their contribution in nation building, than compensation for their work.

Recommendation

169. **However, even as serving as a Member of Parliament should be regarded as a call and a patriotic duty that every Kenyan should be proud of, it is worthwhile noting that Kenyans expressed an appreciation that the improved terms of service of Members of Parliament since 2003, has attracted professionals from the private sector and the academia, who have brought into Parliament a wealth of experience that has resulted in constructive contributions during debates and proceedings in Parliament. It is therefore, important to consider adequately remunerating Members of Parliament towards a reasonable standard of living that is commensurate with their role and the weight of their responsibilities.**

Prevailing Economic Situation

170. A brief review of Kenya's current economic situation and, the regional and the global economy trends will now be considered. This will help to put in perspective, not only the health of our economy and its preparedness to adjust to adverse global trends, but also, the fact that any changes in the remuneration structure directly impact on the economy. It is also in accordance with most of the views presented by the public who stressed the import of reviewing the performance of the economy, and that the economic growth should be taken into account before the contemplation of any salary increase. The country is going through a very difficult time financially, and there is the question whether the country can really afford the 'huge salaries' that Members of Parliament earn. The common question and understanding is that Kenya does not have enough teachers in schools or lecturers, neither are there enough hospitals, doctors and nurses, and those that are there, are poorly paid. The country is therefore sacrificing the building of schools, hospitals, and other developments in order to meet the remuneration bill of the Members of Parliament.
171. The economic growth for 2008, slowed down due to the slothful economic activities experienced in the first quarter of the year, arising from the post 2007 election violence. The loss of lives, capital, decline in investment and revenue from tourism adversely, affected the economy. Disruptions in agricultural activities due to the post election violence, drought and the increase in world oil prices, have contributed significantly, towards high food prices and high cost of living.
172. The Minister of Finance, explained Kenya's economic scenario in his 2009 -2010 Budget Speech, as follows:

“...most of the gains that had been painfully achieved between 2003 and 2007 were substantially reversed in 2008. The economy experienced a dramatic downturn in 2008, growing by a mere 1.7 percent, largely attributed to the adverse effects of the unfortunate events that followed the 2007 December General Elections. The problem was compounded by the sharp increase in the prices of oil and fertiliser in the international market, and the drought conditions following failed rains in the short-rain season. ..., the outlook for 2009 and 2010 is only slightly better, especially in the face of the ongoing global recession that has reduced demand for our exports, tourism earnings and remittances from Kenyans in the Diaspora. We now project a modest recovery, with the national cake growing by only 3 percent in 2009.”

173. In the 2008 -2009 Budget, it was estimated that total revenues (including fees and duties collected and applied at source) would amount to Kshs.512.7 Billion. However, due to the slowdown in economic activities and other challenges, total revenues are now estimated to reach Kshs.501.9 Billion by the closure of the 2009-2010 financial year. Because of the inflation rate of about 25% from 9.6%, the purchasing power has been eroded by about 15%. Ordinarily, this is the figure that organisations use to adjust wages of their employees.
174. The Minister of Finance ended his budget speech by expressing confidence not just in the Wananchi in Kenya, but also in the Honourable Members of Parliament who are entrusted by Kenyans with the responsibility of management over the national resources. The challenge is to have a unified front, rise to the occasion of nation building and as with the prowess of our long distance runners, that Kenya prides itself with, that then we as a country, can have a great expectation of steering our economy along the path of prosperity as enshrined in our Vision 2030.

The International Scene

175. The global economy is currently, experiencing one of the worst recessions since the Great Depression. This has had an adverse impact on most countries especially, the developing nations. The developed nations have come up with rescue plans and packages in an attempt to mitigate the impact of the recession. It is noteworthy, to mention that while developed nations have built, in some measure, an economic ‘fire-wall’ to avert and reduce the potency of the recession, the developing nations have remained susceptible to this downturn of the global economy.
176. The world economy was estimated to have grown at 5.2% in 2007, which is a slight decline from the 5.4 % growth in 2006. Among the advanced economies, growth in the Euro area and Japan slowed in 2007, while major emerging markets have become leading contributors to global growth. The world economy growth was predicted to slow down in 2008, this slow growth persisted causing a major global economic crisis, whose effects are still being felt to date. The economic crisis started in the United States of America and has spread to other developed countries. Since Kenya depends on the developed world for aid, the adverse global economy has also affected Kenya and the flow of expected aid.
177. The remittances to Kenya from Kenyans in the Diaspora, are important to Kenya’s economic indicators and growth. For instance, in 2007, the total inflow of remittances was US\$573 Million. In January to December 2008, it went up to US\$611 Million,

however, remittances during the first half of 2008, that is January to June 2008, had declined in comparison to the same period of January to June 2007. It had declined from US\$ 316 Million to US\$ 218 Million.

Africa

178. The economic growth in Sub-Saharan Africa was estimated to average 6.1% in 2007. However there was a rise in inflation on most of the emerging markets and developing economies. Oil prices remained high.

Kenya's Economic Situation

179. In the year 2008, Kenya experienced a combination of both internal and external shocks which have curtailed the economic growth. The post election violence in Kenya took a toll in undermining investor confidence in the country, and at the same time, the tourism and the agriculture sectors were adversely affected. The National Development and Vision 2030-of the Ministry of State for Planning, has had to make provisional recovery budget of Kshs. 37 Billion in order to put some structures in place and address some internal challenges such as the Internally Displaced Persons.
180. However, the adverse weather and drought that Kenya experienced, has had a negative impact on the economy since most of our agricultural activities depend on rainfall. Arising from the drought, there has been a drop in food production. It is important and noteworthy, that any drop in food production greatly affects our economy as agriculture continues to be the backbone of our economic activities. Conversely, a bumper crop, stirs our economic growth. Since there has been a drop in food production, the Government has had to import food for local consumption, triggering high food prices of not only, the imported food but also, those locally produced. There was an unprecedented rise in fuel prices and the cost of electricity also went up.
181. The economy was expected to grow by more than 7%, but that was not realistic, owing to the above mentioned issues and challenges. The expected growth of the economy was 2.1% as compared to 7% growth achieved in 2007. This is arrived at by taking into account, the performance of key sectors in the economy. Overall, a 0.4% decline in the economy was achieved, occasioned by a decline in the performance indicators for most of the key sectors of the economy, recorded in the third quarter of the year 2008. However, though the building and construction sectors reflected a growth of 27.5%, it is estimated that Kenya's economy will grow by a mere 3% in 2009 - 2010.
182. Some indicators obtained from the National Economic Survey for The Third Quarters of 2007 and 2008, are set out in the Table below:

| Sector | Percentage of growth in Third Quarter of 2007 | Percentage of growth in Third quarter of 2008 | Comments |
|-----------------------------|--|--|-----------------|
| Wholesale and Retail Sector | 9.3 | 8.6 | Decline |
| Agriculture and Forestry | -0.3 | -4.7 | Decline |
| Manufacturing | 7.5 | -0.7 | Decline |

| | | | |
|---------------------------|------|-------|---------|
| Tourism | 13.7 | -37.7 | Decline |
| Building and construction | 7.1 | 27.5 | Growth |

External Trade and Balance-of Payments

183. The balance of payments which compares the net effect of the inflow and outflow of fund, shows that in 2007, Kenya had a deficit in balance of payments of US\$ 1.17 Billion. Owing to the high oil import bill occasioned by sharp increase in international oil prices the above situation worsened in 2008, with the balance of payments doubling to US\$ 2,07 Billion. The overall balance in 2009 – 2010 is expected to be in deficit by about 6.6% of Gross Domestic Product Per capita.

Foreign Exchange Reserves

184. The foreign exchange reserves are expected to decline from US\$3,225,000 which is 4.1 months of import cover in 2008, to a paltry 2.9 months of import cover in 2009, amounting to US\$ 2,635,000,000. This is instigated by a decline in export earnings, reduction in earnings from tourism, decline in remittances and reduction in capital inflow.

Consumer Price Index

185. Inflation averaged at 9.6% for the year 2007; in 2008, it went up to 26.2%. In March 2009, it stood at 25.8%. However, it was estimated that the inflationary rate would continue to go down to 10% if the oil prices do not increase. The interest rate in 2007, and 2008, averaged at 13.3% and 13.9% respectively. The Treasury Bills rates increased from 6.8% in 2007, to 7.7% in 2008.

Reduced non-priority expenditure

186. It is important to note that the Minister of Finance in his Budget Speech did not include personnel costs among what he was reducing from the ceilings of all ministries, that are non-priority expenditures and which he believed would have no material impact on service delivery. These non-priority expenditures, entailed the following reductions:
- 80 percent on furniture and fittings,
 - 60 percent on advertisement and publicity,
 - 40 percent on telephone expenses,
 - 20 percent on hospitality supplies and services, which include, payments to various taskforces appointed by the government, and
 - 10 percent on domestic and foreign travel and subsistence.

Increasing the Salaries of Members of Parliament

187. Asked whether the salary and allowances of Members of Parliament ought to be increased, Kenyans felt that the country cannot afford to have them increased as the nation is undergoing some unprecedented challenges economically. In addition, it was argued that Kenya is experiencing drought and famine, most companies are laying off staff, the Government has a Kshs. 25 Billion budget deficit, and the salaries of the Members of Parliament with no exception, should be commensurate with the state of the economy. Since the increase in salaries ought to be based and adjusted on the economic growth and Kenya's economy is weak and performing poorly, the rationale by some presenters, was that Members of Parliament should take a pay cut; others were of the view, that the salaries of the Members of Parliament, should be reduced.

The justification propounded was that since salary increase is based on the performance of the economy, and our economy is not doing well, then there is no justification to validate an increase.

188. Conversely, it was submitted that, increasing the salaries of the Members of Parliament, would also affect the salary levels of the Staff of the National Assembly, and which will create a disparity that may cause discontent in the public service as other sector members such as, teachers, doctors, civil servants and others, may well demand a pay rise. In addition, the 2003 salary increase for Members of Parliament resulted in their being very well paid and, there should therefore, be a freeze on their salaries for a while. There was some proposition that the salaries and allowances of the Members of Parliament, ought to be retained at the current level until the economy picks up, whilst others recommended that the emolument of the Members of Parliament be streamlined and reduced to be in line with the prevailing economic situation.
189. One presenter pointed out that there had been a rising tide of public criticism on the way the Members of Parliament are remunerated. This has in effect, affected the public trust that citizens have or should have in the political leadership. In addition, the current system of remunerating Members of Parliament, has not served the interests of the public. However, the Tribunal was cautioned articulately by one presenter who said that:

“... I would like to recommend that whatever shall be done, that is adjusting the Members of Parliament allowances; let it not be done according to opinion polls. That is because in the opinion polls, people would never say increase anybody's salary, unless it is affecting them directly, they would always say reduce their salaries. So, even if you take any opinion through strategic marketing or any other marketing firm, people would always say 'reduce'.”.

Someone else added to this premise by warning that:

“If we feel that maintaining a Legislature is an expensive thing that we cannot afford, then try dictatorship of what we call military rule ... then maybe Kenyans ... will have a second thought about it.”.

Recommendation

190. **Members of Parliament enter into a five year contract, and this contract is sought for a renewal after every five years. Since Members of Parliament enter into the contract on already set out Terms and Conditions, plus the fact that the principle of equity and justice or the acquired right does not allow one to reduce salaries earned, it would be unjust, in mid term to reduce the remuneration of Members of Parliament.**

Cost of Living Adjustment

191. In many organisations, they have an annual adjustment based on Cost of Living Adjustment (COLA) and increment based on performance evaluation. There are a number of Parliaments in the Commonwealth Countries that also have a policy of annual increments for their Members of Parliament to guard against loss of purchasing power in between salary reviews. However, the Kenyan Parliament does

not have this in place, and therefore, there is always a perpetual loss in the salary of Members of Parliament between the last raise and their current earnings. In situations where the price of fuel goes up, the private sector, for instance, usually reviews its employees' salaries in order to compensate them accordingly. For Members of Parliament, this is not the case.

192. The salaries and allowances currently earned by Members of Parliament were last increased by the Eighth Parliament and took effect in the Ninth Parliament. Consequently, there has been an erosion of the purchasing power. Although customarily, salaries of Members of Parliament remain at the same level for five years, the increase in cost of living, the value of the remuneration that Members of Parliament received in 2003, has been eroded steadily and their purchasing power reduced drastically by up to 15%. Commenting on this lack of inflationary adjustments on the salaries of Members of Parliament, a presenter said that the result is that the gap between the salary reviews and the inflexibility of the salaries, constitute a real unquantifiable sacrifice on the part of the Members of Parliament.
193. In support to the need of considering an increment of the salary of Members of Parliament, it was pointed out that since the salary increment recommended in the Cockar Report of 2002, the cost of living has increased and notably, public servants have had their salaries increased due to inflation. Further, it was stated that if one takes into account the rate of inflation from 2003 to date, Members of Parliament ought to be earning Kshs. 1.5 Million per month, and that their salaries should be pegged on a Consumer Price Index.
194. It was proposed that, an annual increment of the salaries of the Members of Parliament due to inflation, as is done in New Zealand, should be introduced. It was also proposed that the adjustment may be carried out every two years and 75% of the rise in the cost of living or the inflation be compensated. But it is critical that the salaries of the Members of Parliament remain at levels that are sustainable and commensurate with the performance of the Members of Parliament. Furthermore, the benchmarking exercise, needs to be carried out by an independent body, and the reviews should not be too frequent to give the impression that the National Assembly is a commercial entity.
195. The Slade and Omolo Reports, had recommended that the remuneration of the Members of Parliament be reviewed every two and a half years. The Waruhiu and Ramtu Reports on Civil Service, had recommended that the review of the remuneration of civil servants, should be done every two years. The Mbithi Report also concurred with the Waruhiu and Ramtu Reports on this issue. As set out in the Julia Ojiambo Report, the Mbithi Report had noted that, although the Government had, in Session Papers No. 10 of 1980 and No. 3 of 1985, accepted the proposal to review remunerations every two years, the Government had yet to implement the proposal, even though frequent salary reviews, reduces the impact of rising cost of living. The Julia Ojiambo and Cockar Reports both recommended that the salaries of the Members of Parliament should be reviewed every two years.
196. Looking at the Consumer Price Index since 2003, it is evident that the purchasing power has been eroded. For instance, in 2004, the Consumer Price Index was 163.7, in 2007, it rose to 226.8 and in 2008, to 286.4.
197. The following Commonwealth Countries have annual reviews of the remuneration of their Members of Parliament - Alderney, Channel Islands, Australia, Canada, Cyprus,

Gibraltar, Guyana, Jersey, Lesotho, New Zealand, South Africa, Uganda, United Kingdom and Zambia. The basis for most of these reviews is either: Retail Price Index, Inflation or Consumer Price Index.

Recommendation

198. **Whilst detrimental salary reviews will not affect a sitting Member of Parliament, in practice, there may be reluctance to apply a beneficial salary review to a sitting Member of Parliament. In order to shield Members of Parliament from the constant erosion of purchasing power between salary reviews, the Tribunal recommends that there be introduced an annual Cost Of Living Adjustment Mechanism for the salaries of Members of Parliament.**

Members of Parliament - Social Responsibility

199. There were many Kenyans who felt that the Members of Parliament exaggerate and overplay their social responsibility role. It was felt that since there are a number of devolved funds available at the constituency levels, Members of Parliament are no longer overburdened and looked upon by the electorate as mobile banks. Such funds as the CDF, should go a long way to reduce the electorates' dependence on the Members of Parliament.
200. Some Members of Parliament detailed the number of local functions that they are required to attend, the funeral contributions that they have to make, the number of harambees that they have to attend during a weekend, the payment of the hospital bills of their constituents who are unable to do so, and sometimes, the payment of cash bail, for the release of their constituents who may have been arrested by mistake. For instance, one Member of Parliament stated that on a typical weekend at his constituency, he spends charitably, as expected, approximately Kshs. 400,000/=. Another Member of Parliament said he spends about Kshs. 200,000/= per month on charitable constituency organisations. It would be unreasonable for the Tribunal and Kenyans in general, not to appreciate that Members of Parliament have a very heavy burden taking to consideration the current level of poverty and unemployment amongst Kenyans. The financial expectations or hand out mentality is, unfortunately, been acutely entrenched in many of the constituents and the re-election of a Member of Parliament, depends on his or her generosity in the constituency. Echoing similar sentiments, Omamo in his Report said:

"The Committee is fully aware that no amount of monetary rewards can adequately compensate Members for the heavy responsibility they shoulder in the economic and political development of the nation."

201. However, a different school of thought on this issue, was that it is not only, Members of Parliament who are involved in social responsibility, and that Kenya being a country where we pull together in the spirit of harambee, everyone is involved, concerned, affected and engaged in the alleviation of social needs, all the time. This is not peculiar to Members of Parliament, who should therefore, desist from using their Social Responsibility card as an excuse to seek higher pay. Furthermore, it was also observed that charitable contributions towards the building of a church or for funeral expenses, is a collective non compulsory responsibility. However, in as much as the public would like to underrate or underestimate these heavy social responsibilities of Members of Parliament, this role upon which the successful re-election of the Members of Parliament, is hinged, cannot be ignored.

Recommendation

202. There are countries such as, the United States of America, Canada and the United Kingdom that grant tax rebate in respect of charitable contributions. It is recommended that such tax rebates on contributions to registered charity organisations, by Members of Parliament, be considered.
203. There should be a massive civic education to educate the public of the resources available at their disposal for certain social issues and challenges. It is also crucial that Members of Parliament realise that the amount of money that their constituents run to them for hand-out, is the same as what they will need to bring development to their constituencies and to educate their electorate.

Performance of Members of Parliament

204. The public's perception in regard to the performance of Members of Parliament, is that they have a casual attitude towards making laws, their attendance record is poor, and in addition, that they only put in three days worth of work in a week. It is important to note that although the current Parliament has passed more Bills than the previous Parliaments, it has still come under intense fire from the public. One presenter felt that Members of Parliament are attempting to hold the country at ransom, and that no amount of money is enough to satisfy them, yet what the public requires of them is a greater sense of public service. It was pointed out that it is the onus of the Members of Parliament to serve Kenyans and be the voice of the voiceless, set priority for development and they should not see Parliament as a commercial venture. Some presenters commenting on the remuneration of the Members of Parliament, said in effect, that the level of the remuneration of Members of Parliament, would not be a concern to the public so long as Kenyans are satisfied that Parliament as an institution is effective, and that they are getting value for money, particularly taking into account the hefty wage bill that taxpayers foot towards the remuneration of Members of Parliament. This brings to the fore, that Kenyans are in the quest for a value based performance and productivity.
205. Some sentiments indicated that Parliament had lost its moral authority and mandate in the eyes of the people; and strongly recommended that Parliament should re-gain the respect and trust of the Wananchi, which has been eroded owing to the perceived non-performance of the Members of Parliament, frequent lack of quorum in Parliament, tagged by the few or inadequate man-hours input by the Members of Parliament in Parliament. In addition, the electorate complained about the absence of their Members of Parliament in the constituency and their inaccessibility to them during their five year term until campaign time. This failure by some Members of Parliament to visit their constituencies, was also cited in the Cockar Report, where members of public felt that there were too many absentee Members of Parliament and because of that, they do not justify their pay owing to such absenteeism.
206. In support of the performance of Members of Parliament and responding to the negative public perception of Members of Parliament, a Member of Parliament commented that:

“with as little knowledge or civic education on this as is now available, and the ferocity with which the media houses and the common people have been brought on board, it is important that we are able to educate Kenyans on essentially how these things are meant to work and how they should be respected.”

This Member of Parliament aptly warned that:

“If we vilify the Judiciary and destroy the dignity of the Judiciary in the common man’s eyes, then the judges will not be respected people in this country. The same thing is also true: if we vilify the Members of Parliament to the extent which the Members of Parliament are going to be seen as common thieves and common criminals ... it is not fair... .”

207. On the question on how to address the issue of informing the public on the performance of Members of Parliament, one presenter, a sitting Member of Parliament, noted that it is important to have performance indicators for Members of Parliament. This could be done through a mandatory Strategic Plan and its implementation be the performance contract of the Member of Parliament. In addition to the Strategic Plan, attending Parliament and visiting the constituency, can also be other indicators. Such information should then, be made public as this would provide answers to questions that members of the public ask, such as: “What does an Member of Parliament do?”, “Do they actually do it?” and “Does the public see them doing it?”.
208. Additional views expressed, were that Members of Parliament hastily, address the issues that concern them directly. The Cockar Report also noted some of these sentiments and it was stated in Paragraph 108 of that Report, that the Cockar Tribunal encountered hostility from the members of the public during its provincial visits. This hostility was attributed to hefty transport allowances that the Members of Parliament had awarded themselves, while ignoring the feelings and predicament of the teachers, nurses, civil servants and the general public. Presenters emphasized that Members of Parliament need to provide service to Kenyans instead of politicking from the beginning to the end of their term.
209. Towards improving the Members of Parliament performance, it was proposed that Members of Parliament should have job descriptions developed for them and a performance review mechanism be instituted, based on a collective merital performance. It was suggested that the performance review mechanism be based on the number of laws that Parliament has passed, the revenues collected in the year, the rate of economic growth and other indicators that may be set and agreed upon. Other parameters presented include, the quality of debates, and how Members of Parliament engage in bills that are brought before Parliament. This evaluation can be done by the Parliament itself, or by another body. It is ironical, the public observed, for civil servants to have performance contracts and yet the performance of Members of Parliament, cannot be challenged or quantified. However, one Member of Parliament remarked that performance evaluation of Members of Parliament should be left to the voters to decide during elections.
210. There is need to identify creative ways through which the PSC and Members of Parliament can demonstrate that Kenyans are getting value for money. Parliament is now perceived as one of the best places to work in, both in terms of remuneration and conditions of work. Members of Parliament enjoy exclusive dining facilities, a well-equipped gym, offices, inexpensive car and house loans, a generous life-insurance cover just, to mention a few. However, it is of vital importance and Members of Parliament owe it to the tax payer, that Kenyans perceive that they are getting value for money through value based performances of the Members of Parliament.

Recommendations

211. The Tribunal, taking into account the principle of value based performance, recommends that every Member of Parliament should prepare a Constituency Strategic Plan (CSP) within the first six months after being sworn in as a Parliamentarian, and which CSP must be made available to the constituents so as to enable them to evaluate the performance of the Member of Parliament on a yearly basis. The PSC should facilitate the preparation of, the CSP and its

Transmission to the constituents.

212. Websites for the constituencies should also, be created so that the CSP and the diary of Members of Parliament, their contributions in Parliament and other relevant information, can be posted on the websites, and which should be to updated regularly.

Number of Hours Worked

213. As mentioned before, Members of Parliament are seen to be engaged in only minimal working hours in a week, leading to suggestions from the public, that they, must engage themselves in more working hours a week, for instance, three full working days - Tuesday to Thursday, a week. One presenter stated that currently, Members of Parliament work for only 56 days in a year. Another suggestion was that Members of Parliament should sit four full days a week in Parliament and not the current two half days and one full working day. The Cockar Report had recommended a three-full-day sitting a week. However, this has not been implemented.
214. In addition, it was suggested that when Parliament is on recess, Members of Parliament must be in their constituencies working in order to properly, earn the monthly pay; and that there should be stipulated hours a week, which Members of Parliament should spend in their constituencies. This, it was suggested, can be monitored, by the constituents, who being the employers of the Members of Parliament, should have access to, and spend a significant amount of time with them. The minimum suggested number of hours per week, that Members of Parliament should spend in their constituencies, when Parliament is on recess, is at least 24 hours. However, even as the public perceives that Parliament's input is minimal, it is important to note that Parliament now has 28 Parliamentary Committees, each consisting of 11 members. Most of the meetings of these Committees last between 2 to 3 hours. Members of Parliament can therefore, attend at least two or three such Committee meetings a day.
215. A Member of Parliament, responding to the public sentiments that since Members of Parliament are paid for sittings in Parliament, they should therefore, not be paid a sitting allowance, said that:

"... it is wrong to assume that Members of Parliament are employed to go to Parliament. I heard that opinion before I joined Parliament. "... there is very little work! You only go to Parliament three times a week ...".

This Member of Parliament, continued to say that the work of Members of Parliament starts at the grassroots as they have to deal with their constituents. Secondly, Members of Parliament have to deal with the developmental issues in their constituencies, CDF, Harambees, *et cetera*. Apart from the constituency issues, Members of Parliament have to address national issues to enable them to be relevant

and active in national politics. Members of Parliament sometimes have to attend functions, especially where the President is presiding, or even to attend to some national, regional or international fora. These events force Members of Parliament to be absent from their normal working area. He further continued to say that:

“Above that, you also now have to think of how to represent your constituency. The demand for representation is such that if you needed money for water, you need to see the Minister for Water and Irrigation. ... If you are to see all the 42 Ministers to address the issues of your constituency, you can actually do that as an engagement. ... I have not yet touched on the issue of sitting in Parliament.”

216. In addition, Members of Parliament have magazines or periodicals in their pigeon holes to be read, they also, have to carry out research on Bills and other related issues, and deal with complaints, even before considering whether to attend and participate in Parliamentary debates. The formal Parliamentary sitting hours are: Tuesdays from 2.30 p.m. to 6.30 p.m., Wednesdays from 8.30 a.m. to 6.30 p.m. and Thursdays the whole afternoon to 6.30 p.m., and although, the Members of Parliament are not monitored as regards their Parliamentary sittings, it is accepted that they should act honourably and with responsiveness that behoves their status and their national roles.

Recommendation

217. **Given that Parliament houses honourable members, it would be deemed as a dishonour to start monitoring the Members of Parliament in their constituencies as to whether they have been there or not. However, it is important for members of the public to know when they can access their representatives.**
218. **It is important that the public knows and understands how Parliament operates to demystify the working hours of the Parliamentarians. With the increase in the number of Parliamentary Committees and since a lot of work is carried out by these Committees, it is only proper to educate the public on these important issues.**

House Attendance and Quorum in Parliament

219. The public's growing disquiet over the issue of quorum in Parliament is worth noting, and taken into consideration. This is an issue that was also featured in the Cockar Report, and was also repeatedly raised before this Tribunal at various venues. The public's displeasure was clearly seen especially in instances where Bills have been passed in Parliament by just a few Members of Parliament. To correct this worrisome trend and to improve the attendance of the Members of Parliament in Parliament, and to address the problem of quorum, it was suggested that a system be introduced where Members of Parliament clock in and out and a record be kept on the length of time that they sit in Parliament, and that their salaries be paid as per their attendance in Parliament and in Parliamentary Committees. It was proposed, that the provisions of the Employment Act, 2007, which provide that employees who stay away from their duty stations, without proper permission, should suffer deductions of their salaries, should likewise, apply to Members of Parliament. This would promote fairness in remuneration, pertaining to equal work for equal value.
220. Finally, a Member of Parliament, stated that attending Parliament did not necessarily constitute or represent the quality of the work of the Members of Parliament. He

expounded that since most of the work is done at the Parliamentary Committee level, it is not always necessary for a Member of Parliament to sit in Parliament for the reading of Bills or for debates. He continued to state that for instance, in Sweden, Members of Parliament only turn up for motions that are relevant to them. However, it goes without saying, that the lack of quorum in Parliament has continued to receive adverse media reporting, and with the concerns raised by the Wananchi, it would appear that if Members of Parliament addressed the issue of quorum in Parliament, it would go a long way in addressing the issue of performance in the eyes of the public.

Recommendation

221. It is worth noting that there is a marked improvement on attendance in Parliament since the Live Coverage of Parliamentary proceedings began. However, the attendance and the issue of quorum, in Parliament, are still some of the parameters that most of the public apply in determining the level of performance of Members of Parliament. Therefore, it is critical that the public deem that Members of Parliament that they sent to Parliament to represent them, are actually doing just that in the House. This would quell the public's antagonism.

222. There was a general consensus that in prescribing the level of the salaries of the Members of Parliament, the following matters should be taken into account: the levels of pay of the Members of Parliament in other countries, and the economic conditions prevailing in Kenya and in those other countries. A good percentage of the members of public was convinced that the Kenyan Members of Parliament are over-paid and under-worked; while some commented that they are paid too much in comparison to other countries more endowed than Kenya. A comparison in Kenya Shillings of the remuneration of the Members of Parliament and of some selected Civil Servants, are contained in the Table below:

| Office holders / Remuneration | Member of parliament | Vice President | Speaker | Minister | Head of Public Service | Chief Justice | Attorney General | Clerk | Permanent Secretary |
|--------------------------------------|----------------------|----------------|----------------|----------|------------------------|----------------|------------------|-------------------|---------------------|
| Basic Salary - Minimum | | | | | 339,440 | 399,144 | 300,105 | 225,825 | 329,980 |
| Maximum | 200,000 | 300,000 | 300,000 | 200,000 | 715,080 | 531,650 | 531,650 | 535,575 | 492,380 |
| Average | | | | | 527,260 | 415,878 | 415,878 | 380,700 | 411,180 |
| Ministerial / Constituency Allowance | 50,000 | 100,000 | | 50,000 | | | 200,000 | | |
| House Allowance | 70,000 | 200,000 | | 100,000 | 100,000 | 100,000 | 100,000 | 130,000 | 80,000 |
| Extraneous Allowance | 30,000 | 116,667 | 116,667 | 66,666 | 185,000 | 145,000 | 145,000 | 80,000 | 130,000 |
| Entertainment | 60,000 | 116,667 | 116,667 | 80,000 | 120,000 | 100,000 | 100,000 | 65,000 | 100,000 |
| Responsibility Allowance | | 200,000 | 300,000 | | | 15,000 | 16,500 | Paid ¹ | |
| Domestic Allowance | | | | | 69,500 | 69,500 | 69,500 | 20,000 | 15,600 |
| Leave Allowance (p.a.) | | | | | 50,000 | 13,000 | N/A | 50,000 | 50,000 |
| Non Practise Allowance | | | | | | 13,500 | 13,000 | | |
| Other | | | | | | 90,000 | 240,000 | | |
| Transport/Commuter Allowance | 75,000 | 75,000 | | 75,000 | | 8,000 | | | |
| Vehicle Fixed Allowance | 366,000 | 366,000 | 366,000 | 366,000 | | | | | |
| Sitting Allowance | 5,000 | 5,000 | | 5,000 | | | | | |
| Medical | Medical Scheme | Medical Scheme | Medical Scheme | | Medical Scheme | Medical Scheme | Medical Scheme | Medical Scheme | Medical Scheme |
| TOTAL | 851,000 | 1,274,334 | 1,199,334 | 937,666 | 1,001,760 | 956,878 | 1,299,878 | 675,700 | 786,780 |

¹ Responsibility allowance is paid 20% of the Basic Salary.

223. Other than the above mentioned benchmarking, it is important to take cognisance of salary increases of similar office holders to ensure that there is a harmonisation. For instance, The Statute Law (Miscellaneous Amendments) Bill, 2009, which has been assented to by the President, amended the Constitutional Offices Remuneration Act, to increase the salary of, among others, the Chief Justice – the Head of the judicial arm of Government. Yet the salary of the Speaker – the Head the legislative arm of Government, has not been increased.
224. The views expressed were that salaries of the Kenyan Members of Parliament, are way above their counterparts in the whole of Africa and to some extent the world; and that these salaries are not commensurate to the rate of Kenya's economic growth and therefore not sustainable. Some of the presenters insisted that Members of Parliament earned too much money. When asked how much a Member of Parliament earned, they said they did not exactly know how much, but in their opinion it was too much.

Independent Reviews of Terms and Conditions of Service of Member of Parliament

225. Presentations from around the country and the memoranda submitted, indicated that there was a general consensus that an Independent Body should be established to review the remunerations of Members of Parliament. The sentiments expressed were that natural justice requires, that one cannot be a judge and a jury in their own case and therefore, the National Assembly should not review or decide on the review of the remuneration package of its members. The argument was that since employment is a contractual agreement between the employee and employer, the implication is that an employee cannot review his-or her own terms and conditions of employment. This then portends that, Parliament should not determine and set the terms and conditions of service of its own members, either directly or through tribunals as there exists a conflict of interests. The general expectation was that this Tribunal would facilitate the correction of this anomaly and consequently, recommend the formation of an independent body mandated to determine and review the remuneration for Members of Parliament.
226. The public opinion was that since Parliament regulates itself, through the PSC, even if the public says 'No' to a salary raise, Members of Parliament, can still decide to raise their pay, hence, the need for an Independent Body to determine the salaries of Members of Parliament. The necessity for Institutions not to determine their own remunerations and the need to move away from appointing ad-hoc tribunals to review the salaries of Members of Parliament, would dictate the establishment of a permanent remuneration review body and a remuneration review process that is perceived by the public, as independent from the influence of Members of Parliament. If the salaries of Members of Parliament continue to be reviewed through the PSC, then it's essential that the composition of the PSC be non-Members of Parliament.
227. A number of recommendations articulated that the remedy for the apparent lack of segregation of duties was the establishment of a Remuneration Commission that is anchored and protected by the Constitution. This body would be responsible for reviewing and making recommendations on the remuneration of all public officers, civil servants, Constitutional Office Holders, elected leaders, the Executive, Tribunals and Commissions established by Government. It is significant to note that the expectations from the creation of such a Remuneration Commission, would

ensure that there is ensure that there is equity, harmony, consistency and moderation in the remuneration levels and in addition, develop a review mechanism.

228. The Parliamentary Service Commission Act, provides that the Service Commission shall uphold the provision of non-partisan and impartial advice and services to the National Assembly, its Committees and its Members, and ensure the maintenance of the highest ethical standards and the provision of a workplace that is free from discrimination, recognizes the diverse backgrounds of the Staff of the National Assembly and promotes national integration.
229. Section 7 of the Parliamentary Service Commission Act recognizes the PSC as a body corporate with perpetual succession and a common seal and shall, under Section 23 of the Act, from time to time, appoint an independent body of experts to review the terms and conditions of service of Members and Staff of the National Assembly. The Commission shall upon receipt of the report of the independent body of experts transmit the report together with its comments thereon, if any, to the National Assembly for its consideration and adoption.
230. Sub-Section 5 (g) of Section 45 of the Constitution of Kenya, also provides for the appointment of an independent body to review and make recommendations on the salaries and allowances of the Members of the National Assembly. Such a body is expected to consist of individuals who are, "distinguished and independent Kenyans with proven merit, professionalism and high moral integrity". In the exercise of its powers or the performance of its functions, the employees of the Service Commission shall not be subject to the direction or control of any other person or authority.
231. **Different Commonwealth Countries have various ways of reviewing salaries of Members of Parliament as detailed in the Table below:**

| Country | Who or what body revises the Salaries |
|---------------------------|--|
| Alderney, channel Islands | Policy & Finance Committee of the States of Alderney |
| Australia | Remuneration Tribunal |
| Bangladesh | Act of Parliament |
| Barbados | Unions and Establishment Division |
| Belize | Constitution and Foreign Affairs Committee (privileges, regulations & standing orders) |
| British Virgin Islands | Standing Finance Committee / ad hoc Committee |
| Canada (Senate) | Provided for by legislation |
| Cyprus | Ministry of Finance as per the legislative provisions |
| Dominica | Special Committee |
| Falkland Islands | Executive Council |
| Gibraltar | Office of the Chief Secretary |
| Grenada | Cabinet |
| Guyana | Ministry of Public Services |
| India | Parliament |
| Jamaica | Ministry of Finance and Planning |
| Jersey | Independent States Members Remuneration Review Body |
| Lesotho | Cabinet |
| New Zealand | Remuneration Authority |

| | |
|----------------|---|
| Nigeria | Federal Government and National Salaries and Wages Commission |
| Singapore | Prime Minister's Office |
| South Africa | Commission of Remuneration for Political Office Bearers |
| Uganda | Parliament |
| United Kingdom | Senior Salaries Review Body and sanctioned by the House |
| Zambia | Standing Orders Committee |

Recommendation

232. **The Tribunal recommends that the PSC continues to set up Tribunals to review the Remuneration and Terms and Conditions of Service for Members of Parliament as it has been doing in the past and which in practise when detrimental, may not be applied to the sitting Parliament but to the next. However, there are times when Parliament has increased its own remuneration without invoking the prevailing Act for such reviews, and such reviews have benefitted the sitting Parliament.**

Proposed Emoluments for Members of Parliament

233. In the remaining part of this Chapter the Tribunal wishes to propose remuneration for Parliamentarians as mandated in it's Terms of Reference. In doing so the Tribunal has considered the prevailing economic situation in the country, the inflation rate since 2002, and the fact that the salaries of Members of Parliament have remained the same since 2003 and that unless adjusted by this Tribunal, they may stay the same for the foreseeable future of say 5 to 10 years.

Recommendation

234. **In order to cushion the emoluments of Members of Parliament from erosion, the Tribunal recommends that a process be established by the PSC to give Members of Parliament an automatic adjustment of their emolument based on the Government Annual Economic Survey.**

House Allowance

235. There was a recommendation to increase the House Allowance of Members of Parliament as it was felt that the house allowance being currently paid to them, is not enough to get a decent house in Nairobi.

Recommendation

236. **The Tribunal therefore, recommends that Members of Parliament should be paid a House Allowance of Kshs. 140,000/= as a bare minimum to enable them to get a decent house in Nairobi. This allowance should remain tax exempt.**

Transport Allowance

237. There is a lot of mystery that seem to shroud this particular allowance which has been referred to in different names such as, Commuted Mileage Allowance, Reimbursement of Vehicle Running Costs, Motor Vehicle Operating Allowance and Fixed Allowance for Reimbursement of Vehicle Running Costs. There was a request to regularise this allowance and to put it to be part and parcel of the basic salary.

238. In the year 2000, Members of Parliament increased this allowance from Kshs. 118,000/= to Kshs. 336,000/=. The Cockar Tribunal observed that this item was 'contentious' and caused members of the public to display a belligerent attitude towards the Tribunal. The Cockar Tribunal felt that they were duty bound to, "...deal with and bring the offending item to an acceptable conclusion". Consequently, the Cockar Report recommended that the Kshs. 336,000/= paid monthly to Members of Parliament be replaced by the vehicle grant. This was in the form of an interest free Car Grant of Kshs. 3.3 Million for each Member of Parliament, and they were to receive an increased transport allowance of Kshs. 75,000/= per month to facilitate vehicle maintenance and repairs. However, the Kshs. 336,000/=, was subsequently, approved as a monthly transport allowance. In 2006, the figure was increased by Kshs. 30,000/= to Kshs. 366,000/= and continues to be paid to all Parliamentarians to date.

Recommendation

239. The Tribunal recommends that this controversial allowance be paid categorised as "Taxable Allowance - Transport".

Mileage Allowance

240. It was alleged that some Members of Parliament claim mileage allowance to and from their constituencies and yet they do not so travel, and in addition, that there is no verification or evidence required to show whether a Member of Parliament travelled to his or her constituency or not. There should be a mechanism put in place that checks on the travels of Members of Parliament to their constituencies and which records such travels as proof for mileage claim. Some Members of Parliament expressed the view that there is too much paper work that accompanies the mileage claims, and that this mileage claim should be consolidated with the salary. Mileage is paid to Members of Parliament at the rate of Kshs. 38.70 per kilometre for the first 750 kilometres, and thereafter, at the rate of Kshs.100/= per kilometre to and from their constituencies on a weekly basis. However, it was learnt that it is left to the discretion of a Member of Parliament, on whether to go or not to, his/her constituency as there is no verification to confirm the travel to the constituency and no evidence is required before and after the supposed travel.

Recommendation

241. In order to protect the dignity of Members of Parliament and reduce incidences where mileage claims are made for payment that is not justifiable, the Tribunal recommends that the PSC should come up with a mechanism for accountability and documentations of the weekly mileage claims made by Members of Parliament. For instance in Australia, vehicles for Members of Parliament get their odometers read on a weekly basis. The Tribunal also recommends that the AA rate be applicable for all mileage claims.

Car Maintenance Allowance

Recommendation

242. The Tribunal recommends that, the Car Maintenance Allowance that is recommended to cater for repairs and maintenance of the Parliamentarians' vehicles, be increased to Kshs. 95,000/= per month from the current Kshs. 75,000/=. This should continue as a tax exempt allowance.

Sitting Allowance

243. There was a lot of hue and cry over the Sitting Allowance of Members of Parliament, the main thrust being the fact that Sitting Allowance should not be pegged just on attendance, but rather be paid based on quality and quantifiable attendance. Sitting in Parliament to make laws and serving in the House Committees are some of the primary responsibilities of a Member of Parliament and some presenters correspondingly, reckoned that Members of Parliament should not be given sitting allowances for attending the house. Sitting Allowance ought to be paid to Members of Parliament who may be engaged or called upon to contribute in committees or in other organisations or institutions outside their 'normal' course of duty. Towards tackling and solving the problem of technical appearances in the House in order to earn the day's sitting allowance, it was suggested that a Member of Parliament must spend a minimum of 24 hours per week in Parliament in order to warrant or earn the full allowance.
244. Concerning the Sitting Allowance, it is important to note that the Cockar Report recommended an increase from Kshs. 3,000/= to Kshs. 5,000/= per session as a way of motivating Members of Parliament to attend Parliament. It was suggested that since most of the work of Parliament is now being carried out by the House Business Committees, and keeping in mind the late and odd hours that Members of Parliament put in the Parliamentary Committees and in Parliament, that a consideration be made to increase the sitting allowance from the current Kshs. 5,000/= and be equated to what the Government Statutory Bodies pay as sitting allowance, namely Kshs. 20,000/=. It was also suggested that consideration be made to have differential sitting allowance paid for sitting in Parliament and in the Parliamentary Committees. Sitting allowance for Parliament should be smaller amount than what is paid to Members of Parliamentary Committees, as it is in these Committees that Members of Parliament really engage themselves.
245. It is important to recognize that the Tenth Parliament is raising its threshold on performance and has spearheaded reforms through the new published Standing Orders. These Standing Orders ensure that the major work of Parliament is carried out in the Parliamentary Committees. These Standing Orders also require that every Member of Parliament must be a member of at least one Parliamentary Committee.

Recommendation

246. The sitting allowance paid to Members of Parliament for attending Parliamentary sessions, should remain at the current rate. However, Members of Parliament can count up to a maximum of 2 sittings in a day instead of the current limitation of one sitting per day. This means that a Member of Parliament who attends a Parliamentary Committee meeting in the morning and a Parliamentary session in the afternoon, earns Kshs. 10,000/=: composed of Kshs. 5,000/= for each sitting for that day. The sitting allowance should also be categorised as taxable "Sitting Allowance".

Severance Allowance

247. At the end of the Ninth Parliament, the PSC adopted a resolution in their 99th meeting of 16th August, 2007, to pay all Members of Parliament, a Severance Allowance at the rate of Kshs. 300,000/= for every year of service. As a result, all Members of Parliament received Kshs. 1.5 Million, irrespective of whether a Member of Parliament was on pension or not, or whether the Member of Parliament is to be re-elected or not.

Recommendation

248. The Tribunal recommends that this allowance be categorised as taxable "Severance Allowance".

Entertainment Allowance

Recommendation

249. Currently, Members of Parliament are paid an entertainment allowance, and this should be retained and categorised as taxable "Entertainment Allowance".
250. The following Table 1 and Table 2 respectively, contain the current and recommended remuneration of Members of Parliament:

Table 1 - Current Salaries and Allowances in Kenya Shillings of Members of Parliament

| Office Held | Salary Per Month | Parliamentary Responsibility Allowance | Constituency Allowance | House Allowance | Extraneous Duty Allowance | Car maintenance Allowance | Entertainment Allowance | Transport Allowance | Total Monthly pay |
|-----------------------------------|------------------|--|------------------------|-----------------|---------------------------|---------------------------|-------------------------|---------------------|-------------------|
| Vice President | 300,000 | 200,000 | 100,000 | 300,000 | 200,000 | - | 200,000 | 366,000 | 1,660,000 |
| The Speaker | 300,000 | 300,000 | - | 200,000 | 200,000 | - | 200,000 | 366,000 | 1,566,000 |
| Deputy Speaker | 200,000 | - | 50,000 | 100,000 | 80,000 | 75,000 | 80,000 | 366,000 | 951,000 |
| Minister | 200,000 | - | 50,000 | 100,000 | 80,000 | 75,000 | 80,000 | 366,000 | 951,000 |
| Leader of The official Opposition | 200,000 | - | 50,000 | 100,000 | 80,000 | 75,000 | 80,000 | 366,000 | 951,000 |
| Assistant Minister | 200,000 | - | 50,000 | 80,000 | 50,000 | 75,000 | 70,000 | 366,000 | 891,000 |
| Member of Parliament | 200,000 | - | 50,000 | 70,000 | 30,000 | 75,000 | 60,000 | 366,000 | 851,000 |
| Government Chief - Whip | 200,000 | - | 50,000 | 80,000 | 50,000 | 75,000 | 70,000 | 366,000 | 891,000 |
| Opposition Whips | 200,000 | - | 50,000 | 80,000 | 50,000 | 75,000 | 70,000 | 366,000 | 891,000 |
| Member of Speaker's Panel | 200,000 | - | 50,000 | 80,000 | 50,000 | 75,000 | 70,000 | 366,000 | 891,000 |
| Other Recognized Whips | 200,000 | - | 50,000 | 70,000 | 50,000 | 75,000 | 60,000 | 366,000 | 871,000 |

251. The majority of the members of the public, who made their presentation, were of the opinion that the Members of the National Assembly should pay tax on their allowances. This has to a large extent been achieved by taxing the bulk of the allowances. This issue is dealt with comprehensively, in Chapter 6 of this Report.
252. The majority of the presenters were of the opinion that the Prime Minister should earn higher than the Vice President and below the President, hence there were suggestions of 75%, 80% & 90% of the President's remuneration.

Recommendation

253. The Tribunal, however, recommends that the Prime Minister should earn 80% of the gross remuneration of the President as from the date when he was sworn in as Prime Minister. The Tribunal also, recommends that the Vice President should earn 60% of the gross remuneration of the President, and correspondingly, the Deputy Prime Ministers as from the date they were sworn in as Deputy Prime Ministers, should each earn 60% of the gross remuneration of the Prime Minister. The Tribunal recommends that the Speaker of the National Assembly should earn 58% of the gross remuneration of the President. The Tribunal further, recommends that the Deputy Speaker should earn 70% of the gross remuneration of the Speaker. The Vice Chairman of the PSC should earn a Parliamentary Responsibility Allowance.

Table 2—The Tribunal's Recommended Monthly Remuneration in Kenya Shillings, of Members of Parliament:

| Office Held | Salary Per Month | Taxable Allowance-Transport | Taxable Allowance-Extraneous duty | Taxable Allowance-Entertainment | Taxable Allowance-Responsibility | Tax Exempt Allowance- Car Maintenance | Tax Exempt Allowance- House | Tax Exempt Allowance- Constituency | Total |
|--|------------------|-----------------------------|-----------------------------------|---------------------------------|----------------------------------|---------------------------------------|-----------------------------|------------------------------------|-----------|
| P M | 1,300,000 | 366,000 | 300,000 | 336,800 | 200,000 | | 300,000 | 130,000 | 2,932,000 |
| VP | 700,000 | 366,000 | 200,000 | 303,600 | 200,000 | | 300,000 | 130,000 | 2,199,600 |
| Speaker | 700,000 | 366,000 | 200,000 | 260,280 | 300,000 | | 300,000 | | 2,126,280 |
| DPM | 400,000 | 366,000 | 200,000 | 263,280 | 100,000 | 100,000 | 200,000 | 130,000 | 1,649,700 |
| D/ Speaker & | 300,000 | 366,000 | 100,000 | 100,000 | 200,000 | 95,000 | 200,000 | 130,000 | 1,491,000 |
| V- Chair PSC | 300,000 | 366,000 | 100,000 | 80,000 | 150,000 | 95,000 | 170,000 | 80,000 | 1,341,000 |
| Minister, PSC Member, & L.O. Opp | 300,000 | 366,000 | 100,000 | 80,000 | | 95,000 | 170,000 | 80,000 | 1,191,000 |
| Asst Minister, G/ Chief & O/ Whips & Member of Speaker's Panel | 300,000 | 366,000 | 70,000 | 70,000 | | 95,000 | 150,000 | 80,000 | 1,131,000 |
| Other recognized whips | 300,000 | 366,000 | 70,000 | 50,000 | | 50,000 | 140,000 | 80,000 | 1,111,000 |
| Member of Parliament | 300,000 | 366,000 | 50,000 | 50,000 | | 50,000 | 140,000 | 80,000 | 1,091,000 |

Other Pertinent Issues

Loss of Sitting Allowance by female Members of Parliament on Maternity Leave

254. It was observed that female Members of Parliament are entitled to 3 months maternity leave, however, during such leave, these Members of Parliament are not entitled to any sitting allowance.

Recommendation

255. Though the female Members of Parliament, who are on maternity leave, are not physically sitting in Parliament, they may still contribute somewhat to Parliamentary debate, and they should therefore, be considered to receive some form of allowances to compensate for their loss of sitting allowance while on maternity leave. It is therefore, recommended that female Members of Parliament be paid an increased "Maternity Leave Pay" of KSh. 60,000 per month.

Members of Parliament - Mortgage Scheme

256. Members of Parliament are entitled, through the Housing and Mortgage Scheme to a House Loan of Kshs. 15 Million, repayable within four years at low interest rates.
257. A Member of Parliament expressed the view that, sometimes, there were delays in awarding Mortgages to Members of Parliament, and as a result, they have to re-pay their house loans within a very short time, and consequently, have hefty monthly repayments schedule. The loan advance against the Housing and Mortgage Scheme have to be serviced within 48months, implying that most Members of Parliament servicing their mortgages have to pay very high monthly rates, and they end up with very little or negative salary balances reflected in the pay-slip at the end of the month. It was suggested that the National Assembly should explore the possibility of getting into arrangements with the Housing Finance Company of Kenya Limited, the Savings and Loans Kenya Limited and other related institutions that can loan Members of Parliament money while Parliament acts as a guarantor. If the National Assembly enters into such arrangements with mortgage companies, Members of Parliament will get a longer period to service their loans, and subsequently, continue paying their loans even if they are not re-elected.

Recommendation

258. Timely allocations be made to ensure that Members of Parliament are not put under undue pressure to repay their house loans.

Monthly take home

259. It was brought to the Tribunal's notice that recent salary slip of 29 Members of Parliament, reflected a net payment to the Members of Parliament of about Kshs. 10,000/= and below and 81 pay slips had Kshs. 100,000/= and less. Most Members of Parliament have seemingly over committed themselves, it was deemed as a potential ground where some Members of Parliament may start 'looking for other avenues of getting resources'. Arguably, this meagre balance may conversely compromise the objectivity of Members of Parliament in passing laws.

Recommendation

260. The Tribunal therefore, recommends that Members of Parliament be allowed to commit themselves up to a certain percentage of their salaries and no more, and that total monthly deductions should not be more than two thirds of their salary.

CHAPTER 5

REVIEW OF THE RETIREMENT BENEFITS PAYABLE TO THE PRIME MINISTER, VICE PRESIDENT, THE SPEAKER, THE DEPUTY PRIME MINISTER, THE DEPUTY SPEAKER, MINISTER, LEADER OF THE OFFICIAL OPPOSITION, PARLIAMENTARY SERVICE COMMISSIONER, GOVERNMENT CHIEF WHIP, ASSISTANT MINISTER, DEPUTY GOVERNMENT CHIEF WHIP, OPPOSITION WHIPS, MEMBER OF SPEAKER'S PANEL, OTHER RECOGNIZED WHIPS, CHAIRMAN OF DEPARTMENTAL OR SELECT COMMITTEE, MEMBER OF DEPARTMENTAL OR SELECT COMMITTEE, MEMBER OF PARLIAMENT, AND ANY OTHER POSITION OF RESPONSIBILITY HELD BY A MEMBER OF PARLIAMENT AND RECOMMENDATIONS THEREON

Parts of Paragraphs (c) and (f) i of the Terms of Reference of the Tribunal.

261. These Paragraphs require the Tribunal to:

“review the retirement benefits payable to:

- (i) the Prime Minister;*
- (ii) the Vice President;*
- (iii) the Speaker;*
- (iv) the Deputy Prime Minister;*
- (v) the Deputy Speaker;*
- (vi) Minister;*
- (vii) the Leader of the Official Opposition;*
- (viii) Parliamentary Service Commissioner;*
- (ix) Government Chief Whip;*
- (x) Assistant Minister;*
- (xi) Deputy Government Chief Whip;*
- (xii) Opposition Whips;*
- (xiii) Member of Speakers Panel;*
- (xiv) Other recognized Whips;*
- (xv) Chairman of Departmental or Select Committee;*
- (xvi) Member of Departmental or Select Committee;*
- (xvii) Member of Parliament;*
- (xviii) Any other position of responsibility held by a Member of Parliament,” and to*

“make recommendations on the terms and conditions of service for Members of the National Assembly, including their ... retirement benefits...;”.

Retirement benefits of Members of Parliament

262. Members of Parliament are honourable members of society, and in their retirement, need to live honourably. However, the danger posed by their rate of turnover, is something to consider in order to avoid overburdening the taxpayer. As stated in the memorandum submitted by The Retirement Benefits Authority (RBA):

“The life of a Member of Parliament is not an easy one, it has no comparison and no other occupation comes under such intense scrutiny. The heavy workload, frequent travel, separation from family, stress upon personal health and lack of job security after retirement, are often under estimated or not recognized by the general public.”.

Funding of the Retirement Benefit Scheme

263. Currently pensions of Members of Parliament are financed through contributions by the Members of Parliament at the rate of 12.6% of their pensionable salary, and the government contributes currently 25.4% or an amount sufficient to finance the promised pension benefits.

Eligibility

264. A Member of Parliament is eligible for pension payment after attaining the age of 45 years and above, and has served at least, two 5 year terms continuously. If a Member of Parliament does not meet these conditions he/she can be refunded his/her contribution with some interest but after attaining 45 years of age.

The Pensions Act Cap 196

265. Currently, the provisions of pensions and gratuities for serving Members of Parliament, is governed by the Parliamentary Pensions Act, Cap 196. The related pensions scheme is administered by the Parliamentary Pensions Committee (Committee), and draws its funds from the Consolidated Fund. The Contributions by Members of Parliament are defined in the Act. The fund is valued by an Actuary after every 10 years as directed by the President. And, also, the fund may be audited annually, by the Controller and Auditor General. Other local Pension Schemes are valued after every 3 years.

Gratuity payable on death in certain cases

266. Section 12 of the Parliamentary Pensions Act, Cap 196, provides that:

“Where a pensioner dies and no pension is payable in respect of him under section 13 or 14 and the total of the sums paid to him at the date of his death on account of his pension including any part of the pension which has been commuted under section 10 is less than the total of his contribution accumulated with interest to the date of his retirement then the committee shall grant a gratuity to his legal personal representative equal to the excess of the amount by which those contribution accumulated with interest exceed the total sums so paid.”.

Death before retirement

267. Where a person dies after the commencement of the Act at a time when he / she was or had at any time prior to his/her death, been a Member of Parliament, and he/she has not become eligible for a pension:
1. If his /her aggregate period of reckonable service, is less than twelve months, the Committee shall refund to his/her legal representatives his/her accumulated contributions with interest;

2. If his/her aggregate period of reckonable service is not less than twelve months but less than ten years, the Committee shall pay a gratuity to his/her legal personal representative an amount equal to five times his/her annual pension emoluments on the date of his/her death or on the last date on which he/she was a member as the case may be; and
3. If his /her aggregate period of reckonable service is not less than ten years the Committee shall pay:
 - i. a gratuity as prescribed in subparagraph 1 above,
 - ii. a pension as prescribed by the Act, to a surviving spouse, and
 - iii. a pension as prescribed by the Act to the surviving children.

Pensionable emoluments

268. All Members of Parliament contribute 12.6% of their pensionable emoluments which are - Basic Salary, Constituency Allowance and House Allowance. The Responsibility Allowance of the Vice President and the Speaker is included in their pensionable emoluments. The Government contributes double of this amount. The pension benefits are calculated by the Treasury, and the book-keeping is done by the PSC.

Benefits charged to the Consolidated Fund

269. All refunds of contributions, interest on the contributions, pensions, gratuities and allowances which are payable under the Act shall be charged on, and paid from, the Consolidated Fund.

Severance Allowance

270. This allowance which does not form part of the pension, is provided for the National Assembly Remuneration Act, and the amount payable, is Kshs. 300,000/= for every year of service.

Retirement Package for the Prime Minister and Vice President Eligibility

271. A retired Prime Minister of the Coalition Government or Vice-President, who has served continuously as Prime Minister or Vice President for at least one full term of five years and is no longer engaged in active politics, is eligible for the retirement package detailed below. However, for the purpose of eligibility, the term served by the Prime Minister in the Coalition Government will be considered as a full one term. If the Prime Minister and Vice President are in office for less than one term, then, they qualify for a lump sum gratuity equivalent to one year's salary and winding up allowance proportional to the period served in those offices.

When benefits may not be paid

272. An individual who after serving as Prime Minister or Vice President is still actively involved in politics and is elected and serving as a Member of Parliament shall not be qualified to receive the retirement benefits applicable to a Prime Minister or Vice President. Where the Prime Minister or Vice President has been elected to Parliament and continues to serve in those capacities beyond the period stipulated above, the benefits will be suspended until they finally retire.

Retirement benefits

Remuneration

273. Pension is to be 80% of their current basic salary, and Gratuity at the rate of 20% of their basic salary, is payable at the end of every two year's service. Where the service of the Prime Minister or Vice President is terminated for reasons other than dismissal or change of political allegiance, prior to the completion of one term of five years, an appropriate gratuity will be payable. In addition, the Prime Minister and the Vice President, not as such, but as Members of Parliament, will be eligible for a pension under the Parliamentary Pensions Scheme after contributing to the scheme for two 5 year continuous terms. If the office holder is in office for less than one term, then he/she will be entitled to only a gratuity equivalent to one year's salary and a winding up allowance proportional to the period served as Vice President. Benefits on retirement should also include:

- (i) one vehicle of their choice not exceeding 1800cc,
- (ii) one new four-wheel-drive vehicle of their choice not exceeding 3000cc
- (iii) fuel allowance of Kshs.50,000/= per month,
- (iv) the vehicles will be maintained at the Government's cost and replaced after every four years,
- (v) full medical cover for self, spouse and children under the age of 18 years, and
- (vi) Staff as follows; one personal assistant, one secretary, one house keeper, one senior support staff, one cook, one gardener/support staff, one cleaner, two drivers and two security officers.

Other retirement benefits for the Prime Minister and Vice President

274. Travel: Diplomatic passport for a retiring Prime Minister, Vice President and their spouses to be provided.
Health: Full medical cover for local and overseas treatment through a reputable health insurance for Prime Minister, Vice President and their Spouses and
Death: In the event of the death of the Prime Minister and or the Vice President, their spouse will be entitled to 50% of their monthly retirement pension for life.

Retirement benefits of the spouse of the Prime Minister and Vice President

Recommendation

275. The Tribunal recommends that the spouse of a retired Prime Minister and Vice President, be entitled, upon the death of the retired Prime Minister and Vice President, to:
- (i) one new car of choice not exceeding 1800cc to be maintained by the State and replaced after every four years,
 - (ii) fuel allowance of Kshs.15,000/= per month,
 - (iii) one security personnel, and
 - (iv) one personal assistant.

The Speaker's retirement package
Eligibility

276. To qualify for pensionable benefits, the Speaker should have served for one term and in case of death, the spouse will be entitled to 50% of his/her monthly retirement pension for life. However, if the Speaker is in office for less than one term, then he/she qualifies for a lumpsum gratuity equivalent to one year's salary and a winding up allowance proportional to the period served as Speaker.

Recommendation

277. The Tribunal makes the following recommendations for a retiring Speaker. A pension of 80% of the basic salary per month of the incumbent Speaker.

Winding Up Allowance

278. One year's salary payable per term subject to a maximum of two terms.
House Allowance
 Kshs.200,000/= per month.
Security
 Two armed guards on request.
Transport Allowance
 One car of choice, not exceeding 1800cc maintained by the State and replaced after every four years,
 Petrol allowance at Kshs.25,000/- per month, and
 One driver to be paid by the State.
Travel
 Diplomatic passport for a retiring Speaker and spouse to be provided.
Health
 Full medical cover through a reputable health insurance company for both, local and overseas treatment for the retired Speaker and his/her spouse.

279. **Comparison between Parliamentary Pensions Act and other local Defined Retirement Benefits**

| No. | Item | Parliamentary Pensions Act | Conventional Defined benefits Scheme - RBA Model |
|-----|--|--|--|
| 1 | Who governs or presides over it? | Management Committee under Parliamentary Pensions Act | Trustee Board |
| 2 | Where are its funds raised from? | Contribution by Members of Parliament and Government not clear | Both workers and employers contribute monthly |
| 3 | Legislation | Established and regulated by the Parliamentary Pensions Act | Established and regulated by the RBA |
| 4 | When does the Actuary value the scheme | Every 10 years | Every 3 years e.g. Civil Service and Parastatal |
| 5 | How pensions accrue | Not clearly defined | Between range of $\frac{1}{520}$ and $\frac{1}{360}$ |
| 6 | What is the pensionable service? | Not clearly defined | Clearly defined |
| 7 | Early benefits access | 45 years | 50 years |

280. Overview of other Retirement Benefits Schemes in Kenya

| | Civil Service Pension Scheme | National Social Security Fund (NSSF) | Private Occupational Schemes | Individual retirement benefits scheme |
|---|----------------------------------|---|--|---|
| 1 | Non contributory and not funded | Contributory and funded by both employer and employee | Contributory and funded | Contributory and funded |
| 2 | Covers all service employees | Accounts for 28% of all retirement benefits industry | Accounts for 28% of all retirement benefits industry | Open to all formal and informal workers |
| 3 | Exempted from RBA supervision | Covers all employers with 5+employees and more | Covers all employers' employees | Regulated and supervised by RBA |
| 4 | Established by Act of Parliament | Regulated and supervised by RBA | Regulated and supervised by RBA | Legally formed under the Trust Deed |

281. Examples of some foreign countries' Pensions and Retirement Benefit Schemes

Benefits provided in the United Kingdom, by the Parliament Pension Scheme are shown in the Table below:

| No. | Item | Description |
|-----|-------------------------|---|
| 1. | Gratuity Benefit | Based on two terms serve multiply the last year's pensionable emoluments |
| 2 | Pension Benefit | Based on 1/40 th of pensionable salary for each year of service |
| 3 | Contributions | Clearly defined at 10% of MPs' pensionable salary |
| 4 | Spouse's allowance | Only spouse' allowance is provide: No allowance for children |
| 5 | Government Contribution | As directed by Government Actuary: currently standing at 24% of MPs' salaries |

282. In Tanzania Members of Parliament are entitled to gratuity of a sum equal to 40% of their salary of each completed month of service and is payable in lump sum. In Uganda, the Parliamentary Pension Act (2007), makes provision for a contributory Pension Scheme for Members of Parliament and Staff. The Pension Scheme is contributory and Section 6 of the Act sets rates of contribution at 15% for Members of Parliament.

The South African Legislation, Acts and Parliamentary Information, provide that all Members of: the National Executive (excluding the President), the National Assembly, the National Council of Provinces and the Provincial Legislatures contribute towards the Political Office Bearers' Pension Fund.

Current South African benefits

283. The Political Office Bearers' Pension Fund, provides a defined contribution benefit and an additional service benefit to its members. The Fund therefore, has a hybrid

structure. The additional service benefit is funded on a pay-as-you-go basis. The rules governing the Fund include:

(a) Membership:

- Its compulsory for all political office bearers who are defined as follows:
- An Executive Deputy President,
- A Minister, or Deputy Minister,
- A Member of the National Assembly or National Council of Provinces,
- A member of the Provincial Legislature,
- A diplomatic representative of the Republic of South Africa, who is not a member of the public service, and
- Any other person recognized as political office bearer under Section 190 A of the Interim Constitution of 1993.

(b) Contribution:

Members – 7.5% of pensionable salary.

(c) Minimum retirement age:

The retirement age prescribed by the Fund is the last day of the month in which a member attains the age of 50 years. If a member continues to be a political office bearer after attaining 50 years. He/she would continue and the employer would continue to contribute until such a date the member ceases to be a political office bearer.

(d) Members' shares:

Members and employees contributions, at a total of 24.5% of pensionable salary, plus transfer value are accumulated with the actual return earned by the assets of the Funds.

Recommendation

284. In order to streamline and improve the pensions and gratuity scheme for serving Members of Parliament, the following recommendations should be considered:

Parliament should set up a proper and more conventional superannuation defined benefit scheme for Members of Parliament which is contributory and based on the Trustee Act. Such a scheme should be a revolving pension and gratuity fund preferably managed as a semi-autonomous entity under the PSC, with relevant professional experts (actuaries) working under the directorship of a pension and gratuity fund management team selected by Parliament.

There should be a Consumer Index linked salary for Members of Parliament since their current salary is prone to inflation because it does not provide for cost of living adjustments.

The contributions of Members of Parliament to the scheme should enjoy the following tax advantages, available for Registered Retirement benefits schemes:

- (a) tax deductible contributions,
- (b) tax free investment income,
- and
- (c) tax-free on all or part of the pension or retirement lump sum.

To avoid confusion, the Trust Deed and rules of the Parliamentary Pensions Act should provide clear definitions of pension, gratuity, beneficiaries, percentage deductible from the salaries of Members of Parliament, and Government contributions, pensionable service terms, rates or percentages of pension and gratuity applicable. The required amendments of the Parliamentary Pensions Act be undertaken together with professionals (actuaries) – to ensure that it borrows and benefits from the best practices in the industry.

There should be a new pension policy governing all retirement benefits, and which also harmonizes all the relevant legislations in this sector.

- Living Pension for Former Parliamentarians**
285. The Tribunal received presentations from many Kenyans in all the provinces as well as presentation from officials of the Former Parliamentarians Association of Kenya recommending very strongly, that all former Members of Parliament be granted pension due to the fact that most of them cannot afford basic livelihoods. Because of this, the Tribunal has, even though this is not a specific part of its Terms of Reference, considered the presentations made.
286. Former Members of Parliament are part of the face of the Kenyan leadership landscape outside Parliament, more so at the grassroots levels, where people look up to them for all manner of support, guidance, leadership and just about everything. They bear the burden of social responsibility, meeting the many challenges of basic needs of local people, which are imposed on them by circumstances beyond their control. When a former Member of Parliament leaves Parliament, it is next to impossible for him to get gainful employment. The foregoing, and a host of other considerations, make a powerful case for the payment of a LIVING PENSION for former Members of Parliament as a pension is the only source of livelihood, available for a majority them.
287. There are only about 500 former Members of Parliament who are either not on pension, and if on pension, only get a monthly pension of between KSh.2,000 and KSh.14,000. Therefore, an increment in their pension benefits, will not put a very heavy burden on the Exchequer. Many countries including those in the Commonwealth, pay their former Members of Parliament a token tax free pension, equivalent to US\$1000 per month.

Recommendation

288. The Tribunal recommends that a minimum living pension equivalent to US\$1000 per month, be paid to all former Members of Parliament whose current pension is either none, or less than US\$1000.

Benefits of the spouse of a living President.

289. Though this is not within the ambit of the Terms of Reference of the Tribunal, it was, however, observed that the Presidential Retirement Benefits Act, 2003, does not provide for the payment of any benefits to the spouse of a living President. The Tribunal therefore, recommends that the spouse of a living President should be provided with some benefits so as to enable the spouse to discharge the responsibilities, that he/she used to discharge while the President was in office. It will therefore, be necessary to make appropriate amendments to the Act.

CHAPTER 6

REVIEW OF THE LEVEL OF TAXATION ON THE SALARIES AND ALLOWANCES OF MEMBERS OF PARLIAMENT AND RECOMMENDATIONS THEREON AND BENEFITS OF MEMBERS OF PARLIAMENT

Paragraphs (d) and (f) ii of the Terms of Reference of the Tribunal.

290. These Paragraphs require the Tribunal to:

“review the level of taxation on the salaries and allowances of Members of Parliament;”, and to:

“make recommendations on the level of taxation on the salaries, allowances and benefits of Members of Parliament;”.

Currently, Members of Parliament earn a basic salary of Kshs. 200,000/= and pay full tax on this at the level specified in law. They also receive the following monthly allowances which are exempt by law, from taxation:

| | | | |
|-----|---------------------------|------|----------------|
| i | Car Maintenance Allowance | Ksh. | 75,000 |
| ii | House allowance | Ksh. | 70,000 |
| iii | Extraneous Duty Allowance | Ksh. | 30,000 |
| iv | Entertainment Allowance | Ksh. | 60,000 |
| v | Constituency allowance | Ksh. | 50,000 |
| vi | Transport allowance | Ksh. | <u>366,000</u> |
| | Total | Ksh. | <u>651,000</u> |

The reason these allowances are not taxed is because they are exempt from taxation under Section 5 of The National Assembly Remuneration Act. This is revisited later in the Report.

291. This non payment of tax on the allowances of the Members of Parliament, is the reason for the countrywide public outcry that had for some time, been associated with the remuneration of the Members of Parliament. After the Tribunal had considered the related oral and written presentations made to it, as well as related local and foreign material, the following three scenarios emerged:

- (i) The status quo remaining - Members of Parliament paying tax on basic salary only, and no tax on allowances.
- (ii) That Members of Parliament pay tax on their basic salary and on all allowances as well, at the level applicable to all other Kenyans with or without compensation.
- (iii) That tax be paid on the basic salary, some allowances remain tax exempt while others, for example, Extraneous Duty, Parliamentary Responsibility and Severance Allowances, become taxable.

The result of the process of examining the evidence for and against the three scenarios is as set out below.

Historical background

292. A presentation was made to the Tribunal regarding the evolution of the First Parliament in the United Kingdom (UK), showed that this First Parliament arose from the need to have a neutral body to arbitrate between the Monarchy and the taxpayers in the determination of the rate of taxation. According to the House of Commons FS M5 Revised October 2008, Members of the House of Commons have

not always been paid. Some form of payment can, however, be traced back to the Thirteenth Century; and this initial irregular payment was not subject to tax. The Members of the House of Commons, started receiving a regular salary in 1908.

293. Information availed to the Tribunal, indicates that the allowances of the Members of Parliament of the following Commonwealth Countries, are currently taxed: The United Kingdom, South Africa, Virgin Islands, Canada, Falkland Islands, Gibraltar, Malta and Singapore. There are also a number of Commonwealth Countries in which the Members of Parliament enjoy tax-free allowances. These include, Bangladesh, Barbados, Belize, Cyprus, Grenada, Jersey, Lesotho, Malawi, New Zealand, Nigeria, Cayman Islands, Samoa, Sri Lanka, Trinidad and Tobago and Zambia.

294. The Tribunal was informed that:

“allowances of Kenyan Members of Parliament have never been taxed in the history of this country.”

The amounts paid in respect of those allowances have gradually increased over time, leading to the current purported high level of remuneration which in turn, has led to the current clamour for taxation witnessed in the country.

295. The Table of the increase of the salary and allowances of the Members of Parliament since independence, in 1963 to date, is the following:

| Year | Salary per month (Kshs) | Allowances(Kshs) | Total Salary & allowances(Kshs) |
|--------------|-------------------------|------------------|---------------------------------|
| 1963 | 660.60 | 200.00 | 860.60 |
| 1968 | 24,000.00 | Not provided | |
| 1975 | 36,000.00 | 1,600.00 | 37,600.00 |
| 1986 | 54,000.00 | 5,583.30 | 59,583.30 |
| 1992 | 63,720.20 | 6,310.00 | 70,030.20 |
| 1994 | 120,000.00 | 7,500.00 | 127,500.00 |
| 2003 2009 | 200,000.00 | 651,000.00 | 851,000.00 |

Public Hearings and Memoranda

296. There was one almost unanimous message, regarding the payment of tax by the Members of Parliament, that was received from the presenters in: Nairobi, 7 Provincial Headquarters, and the 5 additional stations visited by the Tribunal namely, Isiolo, Mandera, Lodwar, Bungoma and Kuria. This message was that Members of Parliament must pay tax on both their basic salary and on all their allowances.

297. The following 11 quotes from the oral presentations made to the Tribunal, may help in bringing the point home:

Government Chief Whip, in Nairobi on 19th March, 2009:

"The second thing I want to say is about taxation. Let me be extremely clear that MPs ought to be taxed. Indeed, at the high risk of upsetting my colleagues, I would say that in my opinion, with the current highest bracket being, I think 30% for an individual, I would suggest that MPs ought to pay up to the 30%. but a slightly more figure, say. an extra 2.5%, so that we can have bragging rights as those who are leading in taxation. We ought to lead in every field, taxation included. One can argue effectively that a person who is not being taxed --- We do pay taxes but not on everything. If the public believes that we are not paying our due taxes, it would be very difficult for a person who is perceived not to be paying his full taxes to represent a taxpayer. So, we ought to be taxpayers of the same level so that we can effectively represent other taxpayers.

Mr. Chairman: on salaries as well as allowances?.

Presenter: In my opinion, because these things are about perception and what the public wants, ultimately, the public must have what they want. If this must be taxed on everything, then so be it. All that is critical is that there is adequate compensation or whatever would be determined by this Tribunal to ensure that the public gets what they want. This is because this debate is actually stifling other more important and pressing issues. If it is the one that is the stumbling block to those issues, we ought to remove it by doing what we must do and then move on."

Commissioner General, Kenya Revenue Authority, in Nairobi on 30th March, 2009:

"In the western world, especially the EU and USA, government officials, including holders of Constitutional Office, are subjected to the same taxes as every other citizen. In addition, public officials like the President, Congress members in the USA publish their tax returns. In the UK, MPs pay the same rate of taxation and national insurance as any other employed person. The proposals by the KRA in your document are on page 7 of 9.

Our first proposal is that no Kenyan should be exempt from taxation for any reason whatsoever. Every Kenyan earning an income must be subject to taxation because they also enjoy goods and services provided and paid for by taxes that the other people pay. I have heard the argument presented here that, perhaps, if MPs were to pay tax, the pension costs would be quite high but that need not be the case because there can be a very clear qualification that the pensionable salary is different from the other emoluments. So that you say KSH 200,000 on which they pay tax is a pensionable amount and the rest is other salary and it is subject to tax. We have institutions that have similar arrangements."

Director, Kenya Anti Corruption Commission, in Nairobi on 1st April, 2009:

“As it is now, Members of Parliament lack moral authority to scrutinize and direct how Government revenue, that is in essence the pool of taxes, is used, when they contribute very little, given their substantial remuneration, towards that revenue. I submit that it is immoral for a group of people to sit down to approve the Budget and expenditure of the income of another group.”

Chairman, Law Society of Kenya, in Nairobi on 23rd April, 2009:

Presenter: “On taxation, my Lord, our position is that MPs, just like any other Kenyans, should pay full taxation on their income.

Mr. Chairman: On their salaries and allowances?

Presenter: On their salaries and allowances. From our report, my Lord, you will see that we have analyzed the various Acts that deal with the taxation of allowances for MPs and other constitutional office holders. Our conclusion is that Section 82(1) of our Constitution outlaws discrimination of any law that may be discriminatory on the face of it or whose effect would be discriminatory.

Mr. Chairman: The laws, which provide for non taxation of allowances, are not discriminatory in respect of those who benefit from them.

Presenter: Well, we are saying that it is discriminatory because there are other Kenyans who are also paid allowances, but they pay full tax. The Act that Section 5.

Mr. Chairman: Section 5 of which one? Is it the National Assembly Remuneration Act?

Presenter: Yes. It is the one that exempts Income Tax from all allowances that are paid to MPs.

Mr. Chairman: Do you mean it is unconstitutional?

Presenter: Our submission is that it is unconstitutional.”

Additional quotes from the Provinces:

Kisumu, 26th March, 2009:

“The law exempting MPs from paying taxes should be amended alongside the Constitution so that any party that was exempted from taxation bracket is brought back to the fold.”

Eldoret, 6th April, 2009:

“I would suggest that they speed up the amendment of this law which is supposed to enable them pay taxes because they are the lawmakers. They do not have to come and tell us that the law cannot allow them to pay taxes. Who is supposed to make the law? They are the same people who are supposed to make the law.”

Eldoret, 6th April, 2009:

"The MPs are reluctant to pay taxes because when they sit, they look at other Constitutional offices: is the Chief Justice paying tax? Are the Appellate judges paying taxes? Are the judges paying tax? So, they are saying other Constitutional officers should also be taxed. When we have commission, we should tell those who receive the reports that there are concerns about Constitutional offices."

Garissa, 28th April, 2009:

"Here is a mother; all her children are hungry; she is eating all the food and whatever comes from above she wants to continue eating. These are our MPs. The country is hungry. Our MPs are asking for more and more salary and allowances. It is not fair."

Garissa, 28th April, 2009:

"If the greater Kenya and everybody here is saying that the allowances of Members of Parliament must be taxed, something should be done to repeal that law. That law should not be there at all. It is not fair. It is dictatorial and draconian. That law should be repealed with all due respect."

Mombasa, 6th May, 2009:

"If a managing director of a private company has exclusive use of a vehicle that has been assigned to him, it is a benefit that is calculated, and he pays tax on it. Another thing that is also common but which, probably is not common with these people, but which is also a benefit, is, if you have the Government or the organization paying school fees for your children, that is calculated and taxed as a benefit. It is added onto your salary for purposes of taxation."

Lodwar, 2nd June, 2009:

"Secondly, 1975 is a long time ago when they said that allowances should not be taxed. Even the previous Parliament up to today when salaries have been increased should now think of repealing that law that was passed in 1975. We should repeal that law and have MPs pay tax on their allowances just like councilors and other civil servants are doing. In so doing, an MP will have the authority to say: "I am your leader. Even my allowances are being taxed like any other citizen."

298. However, there were a few people in the public hearings and memoranda, who felt that Members of Parliament should not be taxed. One such presenter was of the view that if Members of Parliament are taxed, it would reduce their take home income, and therefore, if taxation is imposed, the current allowances should be increased to offset income lost due to taxation.

Implications of taxation

299. Taxing the allowances will no doubt have some implications. Currently, tax payable on the basic salary of Kshs. 200,000/= is Kshs. 53,000/=. If tax was to be imposed on the allowances amounting to Kshs. 651,000/= an additional tax of about Kshs. 209,000/= would become payable. This would reduce the current take home from the current Kshs. 768,000/= to Kshs. 559,000/=.
300. An analysis of the additional income to the Exchequer due to the taxation of the allowances of the Members of Parliament, revealed that this would improve the national tax revenue by only 0.1%. Despite appearing like an insignificant percentage, some of the presenters argued that it is worth it, since there is more at stake other than just the revenue. The principle that “everyone, beginning with MPs, pays tax” is very important for our country.

The timing of taxation

301. One of the possible recommendations of the Tribunal could be that Members of Parliament should pay tax on these allowances. In the event that the required amendment is passed by Parliament, another issue of contention would be when the amended law would take effect. The majority view from the public hearings and memoranda, was that taxation should start immediately.
302. **Arguments made for and against these are as follows**

- (i) Those in favour of immediate implementation argue that, when tax is imposed by the Minister for Finance it applies to other citizens without caring about their loss of income. So, why should it not apply to the Members of Parliament? If Section 5 of Cap 5 is to be repealed, they should pay tax immediately.
- (ii) Against the idea of immediate implementation, some presenters argued that making MPs suffer loss of income through the additional new tax is tantamount to breaching a contract midstream since they started their Parliamentary Term with known and defined salary as per the law. They also argued that since this taxation had been specifically exempted by the law, this is different from when the law imposed taxation afresh to the public.
- (iii) Currently, Constitutional Office Holders are exempt from tax on their allowances. For all practical purposes, Members of Parliament are Constitutional Office Holders, though governed by a different Act in their remuneration.
- (iv) It should also be noted that, most of the recommendations of the past reviews or new changes affecting the salary or allowances have not been implemented immediately but have waited for the next Parliament.

In view of the facts above, the Tribunal in its recommendations, has to address this issue, namely whether Section 5 of the National Assembly Remuneration Act, be amended so that Members of Parliament pay taxes on their salary and allowances immediately, or whether it should only be applied to Members of the Eleventh and subsequent Parliaments.

Compensation for income lost after taxation of allowances

304. The big question glaring at the Tribunal, is whether there should be compensation for income lost through taxation. As much as possible, Members of Parliament should not suffer any reduction of their income as a result of the introduction of tax on allowances. It has also been stated that any additional salary increment just to compensate for income lost owing to the introduction of taxation, will be ill advised.
305. Consolidating salary and allowances and taxing them at a reduced rate, will be counterproductive as this will go against the principle of non-discrimination, compensating Members of Parliament through other indirect ways; for example, through mileage claims, will be seen as deceitful and will go counter the very principle of taxing income and glossing over the principle that most of the allowances that Members of Parliament get, are basically to facilitate their work rather than being of a remunerative nature, that is, income.
306. Some members of the public and particularly, Members of Parliament who made presentations before the Tribunal, argued that the only way to tax the allowances was to compensate for lost income. This, they said, was the only way out; otherwise, there was a likelihood that Section 5 of the National Assembly Remuneration Act, will not be repealed. Other presenters, however, were of the view that this would amount to outright cheating and that Members of Parliament ought to pay tax without any form of compensation.

Status Quo - No Taxation of Allowances

307. The question of the status quo remaining, was an alternative that the Tribunal needed to consider as stated herein below. As is well known, tax is payable on the salaries of the Members of Parliament but none is payable on their allowances as they are exempt by the National Assembly Remuneration Act and the Income Tax Act, from taxation.
308. The issue of either taxing or not taxing emoluments received by Members of Parliament started during the colonial time. The Members of the Legislative Council (Salaries and Allowances) Ordinance 1956 was the first legislation to provide for the separate payment of salaries and allowance to members of the Legislature. The allowances given were Attendance Allowance, Subsistence Allowance, Constituency Allowance and Transport Allowance (approved by the Treasury). This Ordinance and (Subsequently Act) and Act No.20 of 1968 did not specifically exempt Members of Parliament from payment of Income Tax, until 1970. The National Assembly Remuneration (Amendment) Act 1970, (Act No 25 of 1970) was the first legislation that exempted all allowances payable to Members of Parliament from Income Tax. It amended the principal Act by the insertion of the new Section 3A which reads as follows:

“3A (1) All allowances payable under this Act after 31st December 1970, shall be exempt from income tax.

(2) This section shall have effect notwithstanding the provisions of any other written law or of any Act of the High Commission, Act of the Organization or Act of the Community and shall not be construed as being repealed by any Act of the Community”.

309. The National Assembly Remuneration Act, in the current form, was passed in 1975. It is the main legislation governing the salaries and allowances of the Speaker, the Deputy Speaker, Members of Parliament, the Vice President, Ministers and Assistant Ministers. This Act should be amended to include salaries and allowances payable to the Prime Minister and Deputy Prime Ministers - positions that were created by the Constitutional Amendment in 2008.
310. For a better understanding of exemptions given under the Act, it was felt wise by the Tribunal to get some background information about the origin of this Act. The National Assembly Remuneration Bill No. 16 of 1974, that established the Act, was moved by the then Minister for Finance and Economic Planning, Hon Mwai Kibaki, on 9th October, 1975, and was, not surprisingly, unanimously approved within one day. The then Minister for Finance and Economic Planning gave justification of the Bill as follows:

"Mswada wenyewe, Bw. Spika, ni rahisi kabisa kwani unanuia kubadilisha yale malipo; yaani alaunsi ambazo hulipwa Wabunge wakati wanapokutana na wakati wanapokuja kwa kamati za Bunge. Bw. Spika, itakumbukwa ya kwamba malipo haya yamekuwa ni yale yale ambayo yalikuwa yakilipwa tangu mwaka wa 1971, na kwa vile hasa hali ya maisha imebadilika na imekuwa ni gharama kubwa zaidi kwa kazi ya Wabunge, tulionetea ya kwamba alaunsi hizo nazo ziangaliwe, yaani wakati Mbunge anapokuja hapa Nairobi kwa mkutano awe anaweza kukodisha nyumba mahali ambapo panafaa, kwa maana bei ya kila kitu imeongezeka. Ikiwa ni alaunsi ya kumwezesha kusafiri kutoka mahali anapowakilisha, iwe vile vile ni alaunsi ambayo inatoshā kulipa petrol na mambo mengine aina hiyo. Vile vile, Bw. Spika ilionekana kwamba alaunsi ambazo hulipwa siku hizi wakati Bunge huwa limeahirishwa zichunguliwe. Tunazo kamati ambazo hukutana wakati Bunge huwa liko likizoni na inawabidi wanachama wa kamati hizo kuja Nairobi kwa hivyo ingefaa walilpwe alaunsi Fulani. Wakati huu wanalipwa lakini ilikuwa katika sheria nyingine. Kwa hivyo, ilionekana ya kwamba ni heri taratibu hiyo iwekwe katika Mswada huu vile vile ili mambo yote ambayo yanahusu alaunsi ya Sitting na Travelling ya Wabunge wakati ujao yawekwe katika Mswada mmoja."

TRANSLATION

"The Bill itself, Mr. Speaker, is very simple because it seeks to change allowances paid to the Members of Parliament when they meet for Parliamentary Committee meetings. Mr. Speaker, it will be remembered that this payment is the same amount that has been in existence since 1971, and in view of the fact that the cost of living has shot up, we are of the view that these allowances be reviewed so that when a Member of Parliament comes to Nairobi for a meeting the Member can afford a decent accommodation. If the allowance is meant to enable the Honorable Member to travel from his constituency, it should then be sufficient to pay for petrol and other related expenses. Mr. Speaker it is also suggested that the allowances paid when Parliament is on recess is reviewed. We have committees which convene when Parliament is on recess and this necessitates Members' travel to Nairobi and it would be fair if a certain allowance is paid to them. Currently, they are being paid in accordance with a different law. For that reason it became imperative that this issue be incorporated into this Bill so that all matters relating to

future sitting and travelling allowances of the Honorable Members are in one Bill.”.

311. With the above justification, this Act listed the following allowances as exempt from taxation: accommodation allowance, attendance allowance, constituency allowance, house allowance, sitting allowance, responsibility allowance and transport allowance. Subsequent amendments to the Act through various Finance Acts increased the amounts payable and added more allowances to include extraneous duty allowance, entertainment allowance and parliamentary responsibility allowance. Redefinitions and additional allowances have continued to reflect dynamism in the development and responsibilities shouldered by Parliament, its officers and Members.

312. Owing to the nature and activities of Members of Parliament, the other Act that strengthens the case for the status quo is The Income Tax Act itself. Payment of income tax in Kenya covering all persons, is provided for in the Income Tax Act Cap.470. The Act allows some exemptions from payment of tax. The relevant exemptions are provided for in Section 5(2) and Section 13 of the Act and First Schedule to the Act.

313. Section 13 of the Act, which envisages exemptions for some income and allowances from payment of tax, provides as follows:

“Notwithstanding anything in Part II, the income specified in Part I of the First Schedule, which accrues in or was derived from Kenya shall be exempt from tax to the extent so specified.”.

The First Schedule of the Income Tax Act specifies income that is exempt from tax payment as follows:

Paragraph 1 of the First Schedule of the Income Tax Act, provides that:

“ So much of the income of a person as expressly exempted from income tax by or under the provisions of any Act for the time being in force, to the extent provided by the Act.”. and

Paragraph 37 of this First Schedule of the Income Tax Act, provides that:

“All allowances payable to the Speaker, Deputy Speaker, Vice President, Ministers, Assistant Ministers, and other Members of Parliament are exempt from income tax under Section 5 of the National Assembly Remuneration Act.”.

314. As shown above, the Income Tax Act makes provisions for the exemptions from income tax, which were already, in existence when the National Assembly Remuneration Act, was enacted in 1975. This implies that Parliamentarians had it in their mind set, that the allowances payable to Members of Parliament would be specifically exempted from taxation as provided for in The Income Tax Act. In fact, in its subsequent amendments, the Income Tax Act itself, went ahead and inserted in Paragraph 37 of its First Schedule that:

"All allowances payable to the Speaker, Deputy Speaker, Vice President, Ministers, Assistant Ministers, and all other Members of Parliament are exempt from income tax under Section 5 of the National Assembly Remuneration Act."

315. Section 5(2) of the Income Tax Act provides as follows, for exemptions of allowances that are meant for reimbursements:

"Where the Commissioner is satisfied subsistence, travelling, entertainment or other allowance represents solely the reimbursement to the recipient of an amount expended by him wholly and exclusively in the production of his income from employment or services rendered then the calculation of the gains or profit of the recipient shall exclude that allowance or expenditure."

The reimbursed sum is therefore not subjected to taxation. In relation to the performance of duties by Members of Parliament the question that has to be determined, is the mode of the administration of this kind of reimbursement. This will take into account the complexities of administering it with a view to limiting burdens on both Parliament and its Members. The mode adopted should take into account international practice. The Tribunal has taken into account, the practices prevalent in the Commonwealth. Legislation, using the spirit and principles enunciated in that section can give such an exemption to simplify the process of exemption. Furthermore, some latitude may be given to the Commissioner to give exemptions without documentation. An example cited, was the payment of *per diem* where a particular sum is paid as *per diem* to a recipient without the production of receipts.

316. Section 5(2)(a)(iii) of the Income Tax Act, which provides for allowances that are deemed reimbursements, is as follows:

"Notwithstanding the provisions of sub paragraph [ii] where an amount is received by an employee as payment of subsistence, travelling, entertainment or other allowance in respect of a period spent outside his usual place of work while on official duties, the first thirty six thousand shilling per day expended by him for the duration of that period shall be deemed to be reimbursement of the amount so expended and shall be excluded in the calculation of his gains and profits."

317. Members of Parliament do not have one work station like many employees. On a weekly basis, they ought to carry out their duties both in Nairobi and in their constituencies. It is vital that they be facilitated to carry out these duties and this is a unique situation that calls for unique arrangements and compensation. Under these circumstances and considering the cumbersome documentation entailed in such reimbursements, the current Section 5 of the National Assembly Remuneration Act and Paragraph 37 of the First Schedule of the Income Tax Act, seem sound and convenient. Previous Committees, Commissions and the Cockar Tribunal on the Review of Terms and Conditions of Service of Members of Parliament, have recommended the retention and in some cases enhancement of these allowances. None of them considered the issue of taxation.
318. A review of the law and practice indicates that these allowances, by and large, are meant to facilitate the smooth running of the work of the Members of Parliament.

They are not income, *per se*, for which tax must be payable. The Income Tax Act clearly, exempts allowances of this nature from taxation. The net effect of such exemptions from payment of tax, is not different from what exists in most Commonwealth Countries.

319. The facilitation allowance that has raised most concern to the public and the Tribunal, has been the monthly Transport Allowance of Kshs.366,000/=. This allowance is determined by the Treasury and is achieved after extensive considerations. The Tribunal interviewed senior officials regarding this allowance and it received quite contradictory explanations. The Treasury was asked to approve a sum of Kshs.366,000/= but instead it decided only to recommend it for payment by the PSC. This, it has been alleged, falls short of the statutory provisions which allow Transport allowance in the following terms:

“C Transport allowance in any other circumstances approved by the Treasury.”.

320. Explanations given so far, on this allowance show a power struggle between the two arms of the Government – The Executive and the Legislature. The Tribunal does not want to enter into this debate. Its view is that such an allowance should be paid strictly according to the law. The majority of Government Officials interviewed were of the opinion that it was irregularly paid but considering that it has now been paid for a period of four years, it will not be justified to withdraw it especially when it has been paid to persons who were not parties to its irregularity and the recommendation of the approving authority, the Treasury.

321. During the Tribunal’s public hearings, as stated above, the overwhelming view of the public was that Members of Parliament should pay tax. Specifically, on this demand, the Tribunal wishes to concur with the following observations contained in the Cockar Report:

“For the public to feel satisfied that it is they who authorize the salaries that Members of Parliament earn and the types of allowances they are paid, it is vitally important for the various allowances paid to Members to be clear, definite and easy to understand. The Tribunal was keen to find out the rationale for each allowance paid to a Member of Parliament by probing into the origin of each allowance and how it has been handled by each of the past review committees. The Tribunal came to the conclusion that it is not possible for an average member of the public to understand clearly the meaning of each allowance paid to Members. This is particularly true of Transport Allowance and Mileage allowance.

This situation has been made worse by the fact that at the moment, there are two Acts of Parliament which deal with salaries and allowances of Members of Parliament. As if this is not enough Treasury has traditionally negotiated with Parliament over the years with regard to mileage allowance and transport allowance as evidenced by the following review reports 69. Paragraph 25 of 1986, Omolo Okero Committee Report Stated and we quote:

'Mileage Allowance rates for Members of Parliament have in the past been authorized by Treasury....we find this basis of awarding allowance sound and we recommend it continues to be used.'.

322. Few members of the public understand the prevailing law on taxation in Kenya and in particular, the law governing the taxation of the salaries and allowances of the Members of Parliament. It is therefore, somewhat difficult to entirely agree with them for want of proper legal grounding. The public also seems to believe that all the allowances are "earnings" (remuneration). They do not imagine that they are there for the facilitation of the expenses incurred during the course of the duties of the Members of Parliament.
323. It may be important to mention at this stage, that some Members of Parliament who appeared before the Tribunal, stated that they were not aware of the law that exempts allowances of Members of Parliament from income tax. They were also hazy in their understanding and the rationale behind the origin of the exemptions.
324. As analyzed above, very senior Government Officials including Ministers, and even some Members of Parliament, stated that they do not mind paying tax. It has been stated that they were either ignorant of the law or were feigning ignorance of the law. Others wanted to justify this on grounds of political expediency. When arguing a case for the maintenance of the status quo, all these sentiments are taken into account for the Tribunal to do a professional job and be seen to do so.
325. Some bodies including the Law Society of Kenya have alleged that the law exempting Members of Parliament from paying tax on allowances is unconstitutional for being discriminatory contrary to Section 82 of the Constitution of Kenya. This argument does not hold water since the law has not been declared unconstitutional.
326. Parliament has power to make legislation on any subject matter. Such legislation will be in operation immediately it comes into effect and once it is in operation, the only body that may declare it unconstitutional is the High Court on an application of an aggrieved party. This has never been done in respect of Section 5 of National Assembly Remuneration Act, nor the relevant provisions in the Income Tax Act and its 1st Schedule. In any case, there are many other exemptions that such bodies have not questioned, especially those listed in the First Scheduled of the Income Tax Act discussed above.
327. For a broader understanding of the taxation of allowances it may be pointed out that in some countries, Members of Parliament are given facilities rather than allowances in cash. For example, in South Africa, Members of Parliament are housed in a village in Cape Town where Parliament sits and are given transport tickets each year to facilitate their travel to and from their homes, including their immediate families. The issue of taxation in this case, does not arise since the facilitation is meant for the Member of Parliament to be able to carry out their duties rather than as a benefit. Therefore, although the "Survey of the Remuneration Paid To Members of Parliaments and Legislatures of the Commonwealth, 2004 – 2005", by the Commonwealth Parliamentary Association, lists South Africa as a country where income tax is paid on the salaries and allowances of Parliamentarians, the Parliamentarians have such facilities where tax is not an issue.

328. In Africa, this Survey, indicates that apart from South Africa and Uganda, no other country imposes taxes on the allowances of the Members of Parliament. However, during the visit by the Members of the Tribunal to Uganda, it was confirmed that contrary to the Survey, no tax is paid by Ugandan Members of Parliament on their allowances. The interpretation of the law by the Attorney General of Uganda was that Members of Parliament were not expected to pay taxes on their allowances.
329. The countries surveyed in Africa included Nigeria, Zambia, Malawi and of course Kenya. In all these countries, no tax is paid on allowances. Even in countries like the United Kingdom, where Members of Parliament pay taxes on the allowances, they actually claim expenses, such as, on second homes, and which claims are not taxable. In the Regional Legislature of Wales, the survey showed that taxation is only paid on some, and not all, allowances. It was also noted that in some places, tax is chargeable but paid by the Government. There are a couple of countries where no tax is paid on both salaries and allowances of Members of Parliament. There are other Commonwealth Countries where only some allowances attract tax. In some of these countries where taxes are paid, allowances seem to be remunerative rather than facilitative. This practice is shown, for example, in the State of Victoria in Australia, the Northern Territories in Canada and in India.
330. The overwhelming evidence from a related Commonwealth Survey, clearly shows that the non-payment of tax on allowances of Members of Parliament, seems to be the common practice.
331. The most comprehensive presentation to the Tribunal on the taxation of allowances was made by the Speaker of the National Assembly. When commenting on the spirit of the Income Tax Act, he correctly pointed out that generally, the spirit of the Act:
- “appears to be geared at taxing allowances that are a direct benefit to an employee or businessmen but exempting those allowances that are wholly expended for the purpose of fulfilling employment obligations or business activities. This should be the principle applicable when considering whether the salary and allowance of Members of Parliament should be taxed.*
- Members of Parliament occupy the unique role of being representatives of the people. As such they incur significant expenses travelling to their constituencies and other parts of the country. They also incur huge expenses assisting their constituents who approach them with various difficulties. As the political heads of their constituencies they incur further expenses entertaining visiting dignitaries to their constituencies. Members of Parliament also have to lease houses in Nairobi for purposes of accommodation while in Nairobi attending to House business.”*
332. In his presentation, the Speaker analysed the allowances that are a direct benefit to the Members of Parliament and those that are expended on them for the fulfillment of their obligations, in the following two categories:
- (i) Allowances that are direct benefit (to be taxed):
 - Sitting allowance,
 - Parliamentary Responsibility,
 - Extraneous Duty Allowance, and
 - Severance Allowance.

- (ii) Allowances to enable Members of Parliament to fulfil their obligations (to be exempted from taxation):

Constituency Allowance,
House Allowance,
Entertainment Allowance,
Transport, Mileage and Motor,
Vehicle Purchase Allowances,
Per diem, and
Mortgage.

Of special importance is the monthly allowance of Kshs.366,000/= which the Speaker proposed should remain tax exempt, even if tax exemption was to be imposed on some other allowances. He justified this stand in the following terms:

“Transport Allowance, Mileage and Motor Vehicle Purchase Allowance

This should remain tax exempt as the sums are used to facilitate Members to travel to and from Parliament to their constituencies. Further, this item is used by Members to repair and maintain their vehicles to enable them access and serve their constituents.”.

333. The first issue to consider is the taxation of the top officers in the three arms of Government – the Executive, the Judiciary and the Legislature. The President is the Head of the Executive. The Chief Justice is the Head of the Judiciary and The Speaker the Head of the Legislature. Currently, none of them pays tax on their allowances. Specific Constitutional Office Holders also do not pay tax on their allowances. Section 5 of the Constitutional Offices (Remuneration) Act, Cap 423, provides as follows:

“All allowances payable to holders of offices specified in the first column of the schedule shall be exempt from income tax notwithstanding the provisions of any other written law relating to income tax.” The positions listed in the schedule are:- Attorney General, Chief Justice, Judge of Appeal, Puisne Judge, Controller and Auditor General, Chairman – Public Service Commission, Member – Electoral Commission, Vice Chairman – Electoral Commission, Member – Electoral Commission.”.

334. Equity demands that these three arms of Government should be treated equally. An attempt to tax the allowances of Judges and other Constitutional Office Holders and Members of Parliament which includes Ministers and Assistant Ministers was withdrawn by the Government at the same time. Disturbing the status quo by singling out Members of Parliament to pay tax on their allowances under these circumstances, is undesirable. Furthermore, under the concept of separation of powers in a Parliamentary system of government, each of the three arms of Government, has broadly speaking, its separate roles. The Executive arm of Government is responsible for the initiation, formulation, direction and implementation of general government policy. It consists of the President, Prime Minister, Vice-President, Deputy Prime Ministers, Ministers and Assistant

Ministers. The Executive initiates policies which are expected to be translated into law by Parliament. Under these circumstances, it is the Government that is expected to come up with the policy on taxation. As stated in the preceding paragraphs, this should be aimed at covering all offices provided for in the Constitution that do not pay taxes on their allowances. This is not the work of Parliament least of all, the work of the PSC that appointed this Tribunal to look into the terms and conditions of service of Members of Parliament for their review only and not to articulate government policies.

335. The above explanation makes a very strong case for the *status quo* to be maintained.

Discussion

336. Given the above scenarios, it became obvious that there were no easy choices. The Tribunal sought the advice of Parliamentarians and experts on tax matters. The former argued that Extraneous, Sitting and Responsibility Allowances, could be taxed. The latter advised that a close scrutiny of all the allowances paid to Kenyan Parliamentarians today, reveals that they are all taxable. These issues will now be considered specifically:

- (i) House Allowance – originally this was accommodation allowance, meant to reimburse a Members of Parliament with a home upcountry, to enable him work in Nairobi by attending Parliament on Tuesday, Wednesday, Thursday and to go back home on Friday. The current House Allowance enables a Member of Parliament to buy a house in Nairobi and to do whatever he/she may want with it including renting it, or having it as an additional home. This is also one of the benefits enjoyed by all other Kenyans who are paid House Allowance and which therefore, is not a unique allowance enjoyed by Members of Parliament.
- (ii) Transport Allowance basically, is an additional salary though initially, intended as reimbursable emolument and which is at the current rate of Kshs. 366,000/= per month i.e. Kshs. 12,200/= per day. It is based on the principle that a Member of Parliament is entitled to travel 3000 km per month i.e. 100 km daily reimbursed at the rate of Kshs. 122/= per km without the need to claim or produce receipts. Additional payment to support Transport is also made through mileage claim. The Cockar Tribunal recommended that Transport Allowance which was then being paid at the rate of Kshs. 336,000/= per month, be abolished. In its place, the Cockar Tribunal recommended that a Member of Parliament be given a loan to purchase a new car and paid a Car Maintenance Allowance to go with it.
- (iii) Car Maintenance Allowance – as stated above, this was recommended by the Cockar Tribunal which argued that if a Member of Parliament is given a grant/salary advance of Kshs. 55,000/= per month, for one Parliamentary term of 60 months, that is Kshs. 55,000/= x 60 = Kshs. 3,300,000/= , to enable him/her to buy a new duty free vehicle, and in addition, given a Car Maintenance Allowance of Kshs. 75,000/= per month, a Member of Parliament could then do away with the Transport Allowance which the public is complaining so bitterly about. Surprisingly, the Kshs. 336,000/- monthly allowance was retained and subsequently, increased to Kshs. 366,000/=. The Treasury, KRA and the Kenyan people in general, are unhappy with this allowance calling for a thorough study of the transport issue, that would give a comprehensive solution to the problem once and for all.

- (iv) Constituency Allowance – initially, this allowance was given to enable a Member of Parliament to open and run a constituency office. With the coming of CDF, the allowance has translated into pocket money for the Member of Parliament to use as he/she desires. It is understood that the Member of Parliament has a huge financial burden from his constituents, but the truth is that, the Treasury does not pay this allowance to meet this financial burden of the Member of Parliament, and for tax purposes, this allowance is an income since the actual usage is totally dependent on the recipient.
- (v) Extraneous Duty, Sitting and Responsibility Allowances – for all practical purposes, these constitute additional salary pay.
- (vi) Entertainment – Parliamentarians get it whether they entertain or not, and for tax purposes this is also additional pay.

Recommendations

337. After considering all aspects of the taxation of the allowances of Members of Parliament, which included looking at the unique responsibilities of the Members of Parliament, the taxation of the emolument of the top echelons of the three arms of Government under the principle of separation of powers, the views of some Members of Parliament and the public, senior government officials and major organizations, the complexities of the administration of taxation, and the practices in other Commonwealth Countries, the Tribunal makes the following recommendations:

That the payment of tax on basic salary of Members of Parliament continues, and that some of their allowances currently exempt from taxation, be reclassified as “Taxable Allowances” and taxed, and in addition, some of their allowances remain as “Tax Exempt Allowances”. This recommendation, as shown in the Table below, is to apply immediately Parliament approves this Report.

| DESCRIPTION | Status |
|-----------------------------------|---------|
| A. Salary | |
| Basic pay | Taxable |
| | |
| B. “Taxable Allowances” | |
| Extraneous | Taxable |
| Entertainment | Taxable |
| Transport | Taxable |
| Severance | Taxable |
| Responsibility | Taxable |
| | |
| C. “Tax exempt Allowances” | |
| Constituency | Exempt |
| Car Maintenance | Exempt |
| House allowance | Exempt |

The new proposed remuneration, after tax, is depicted in the Table below, using the remuneration package of a Member of Parliament merely as an example. This Table is used as a reference and the computation for other officers, such as, the Prime Minister, Vice President, Speaker and Ministers, can be worked out appropriately:

| DESCRIPTION | Amount |
|---------------------------------|--------------|
| A. Salary | |
| Basic pay | 300,000.00 |
| | |
| B. "Taxable" | |
| Extraneous | 50,000.00 |
| Entertainment | 60,000.00 |
| Responsibility | |
| Transport | 366,000.00 |
| | |
| C. Tax exempt Allowances | |
| Constituency | 80,000.00 |
| Car Maintenance | 95,000.00 |
| House allowance | 140,000.00 |
| | |
| Gross salary | 1,091,000.00 |
| Estimated Tax | 227,861.00 |
| Net - take home | 863,139.00 |

The above recommendation raises the taxation level of the remuneration of a Member of Parliament, from the current level of 23.5 % to a new high level of 71.1%.

The Tribunal further recommends that Section 5 of National Assembly Remuneration Act, be appropriately amended to reflect the following recommendations:

- (i) That only the under listed items, unless revised by a future Tribunal, qualify to be classified as "Tax Exempt Allowances" namely:

Car Maintenance Allowance,
House Allowance, and
Constituency Allowance

- (ii) That the following are classified as "Taxable Allowances":

Transport Allowance,
Extraneous Allowance,
Entertainment Allowance, Responsibility Allowance, and
Severance Allowance

ANNEXES

SPECIAL ISSUE

ANNEX "A"



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Annex "A"

THE PARLIAMENTARY SERVICE ACT

(No. 10 of 2000)

APPOINTMENT OF MEMBERS OF THE TRIBUNAL TO REVIEW THE TERMS AND CONDITIONS OF SERVICE OF MEMBERS AND EMPLOYEES OF THE NATIONAL ASSEMBLY

IN EXERCISE of the powers conferred by section 23 of the Parliamentary Service Act, 2000, the Parliamentary Service Commission appoints—

Akilano Akiwumi (Justice) (Rtd.)—(Chairman);
Karau Stephen (Dr.);
Kivuti Connie (Mrs.);
Oloo Aringo Peter;
Maneno Betty (Mrs.);
Namasake Jason;
Rashid Abdullahi Hussein;
Dabalen Dominic;
Chirchir Joseph;
Nyaundi Kenneth—(Joint Secretary);
Irungu Muthoni Sarah—(Joint Secretary);

to be members of the Tribunal to review the terms and conditions of service of members and employees of the National Assembly.

Dated the 23rd January, 2009.

KENNETH MARENDE,
Chairman,
Parliamentary Service Commission.

the payments to that trade union and to that organization.

ANNEX "B"

SCHEDULE

Deductions

1. The sum of 1% of basic salary subject to a maximum of Kshs. 150 and a maximum of Kshs. 300 from the basic wage of each employee per month.
2. The sum of fifty shillings (Ksh. 50) from the wage of each employee.

Dated the 11th February, 2009.

Annex "B"

JOHN MUNYES
Minister for Labour

GAZETTE NOTICE NO. 1394 THE PARLIAMENTARY SERVICE ACT (No. 10 of 2000) REVOCATION OF APPOINTMENT

IN EXERCISE of the powers conferred by section 23 of the Parliamentary Service Act, 2000, the Parliamentary Service Commission revokes the appointment of-

Oloo Aringo Peter,
Abdirashid Abdullahi Hussein,

as members of the Tribunal to review the terms and conditions of service of members and employees of the National Assembly, with effect from 17th February, 2009.

Dated the 17th February, 2009.

KENNETH MARENDE,
Chairman,
Parliamentary Service Commission.

*G.N. 698/2009.

SUPPLEMENT No. 9

Legislative Supplement

LEGAL NOTICE NO.

- 19 - The Environmental Management and Co-ordination (Wetlands, Riverbanks, Lake Shores and Sea Shore Management) Regulations, 2009
- 20 - The Registered Land (Application) (No. 1) Order, 2009
- 21 - The Registered Land (Application) (No. 2) Order, 2009
- 22 - The Immigration Act - Exemption
- 23 - The National Hospital Insurance Fund Act - Approval of Rebates

- (e) ensure that all projects and programmes contained in the Vision and the Medium Term Plans are funded, launched and completed on schedule.
- (f) co-ordinate the activities of Government Ministries and Departments and private sector institutions that will be collaborating in the implementation of the Vision flagship projects;
- (g) undertake any rapid action necessary to remove such implementation bottlenecks as may arise in the course of implementation of projects;
- (h) undertake constant monitoring and evaluation of all the projects under the Vision and undertake such remedial action as may be necessary for the realization of the goals under the Vision.
- (i) prepare quarterly and mid term implementation Progress Reports for consideration by the Vision Delivery Board and the Vision 2030 Cabinet Committee;
- (j) aggressively market the Vision and its medium term plans and publicize and communicate its activities and achievements to the people of Kenya;
- (k) recommend to the Board any revisions or additions to the Vision in the light of experience, or unexpected changes in the national or global economy; and
- (l) recommend to the Government of Kenya any institutional, legal or administrative changes that may be necessary to realize the Vision goals and aspirations as well as the goals of the medium term plan.

7. (1) There shall be a Director-General of the Vision Delivery Secretariat who shall be appointed by the President following a competitive recruitment process, on such terms and conditions, as the Minister of State for Planning, National Development and Vision 2030 may approve.

(2) The Director-General shall be the chief executive of the Secretariat and Secretary to the Vision Delivery Board

(3) A person shall be qualified to be appointed as Director-General if such person—

(a) holds at least a Master's degree in—

- (i) finance;
- (ii) economics;
- (iii) management; or
- (iv) business or public administration, and

(b) has proven achievements in the planning and implementation of large-scale development projects in the public or private sector.

8. (1) There shall be four (4) directors of the Vision Delivery Secretariat who shall serve under the direction of the Director-General, providing leadership in four Directorates established to correspond to the main project clusters or sectors under the Vision.

(2) The Directors referred in subparagraph (1) shall be appointed by the Minister of State for planning, National Development and Vision 2030 following a competitive recruitment process.

(3) A person shall qualify for appointment as a director under this paragraph if such person holds a minimum of a Master's degree in a discipline which is relevant to the position applied for.

(4) There shall be established such other divisions of the Secretariat as may be found to be necessary for the performance of its functions, which shall be under the direct supervision of the Director-General.

(5) There shall be such other officers, staff or agents as may be necessary for the discharge of the functions and duties of the Secretariat who shall be recruited competitively to serve the Secretariat on such terms and conditions as the Minister of State for Planning, National Development and Vision 2030 may approve.

9. The Vision shall be implemented through five-year rolling implementation plans with the first Plan covering the period between 2008–2012 to implement identified flagship projects around the three pillars of the Vision.

10. (1) The Vision Delivery Secretariat shall establish clear institutional linkages with other existing institutions, structures and organizations both in the public and the private sector.

(2) There shall be set up the following structures in the line Ministries—

(a) Sector Delivery Secretariats, which shall comprise of membership competitively selected from the participating sector Ministries and appointed by the co-ordinating sector Permanent Secretaries as follows—

- (i) the Tourism Sector Delivery Secretariat, to be convened and co-ordinated by the Ministry of Tourism;
- (ii) the Agricultural Sector Delivery Secretariat, to be convened and co-ordinated by the Ministry of Agriculture;
- (iii) the Retail Sector Delivery Secretariat, to be convened and co-ordinated by the Ministry of Trade;
- (iv) the Manufacturing Sector Delivery Secretariats to be convened and co-ordinated by the Ministry of Industrialization;
- (v) the Business Process Outsourcing Sector Delivery Secretariat, to be convened and co-ordinated by the Ministry of Information;
- (vi) the Finance Sector Delivery Secretariat, to be convened and chaired by the Ministry of Finance;
- (vii) the Enablers and Macro Sector Delivery Secretariat, to be convened and co-ordinated by the Ministry of Transport;
- (viii) the Social Sector Delivery Secretariat, to be convened and co-ordinated by the Ministry of State for Planning, National Development and Vision 2030; and
- (ix) the Political Sector Delivery Secretariat, to be convened and co-ordinated by the Ministry of Justice, National Cohesion and Constitutional Affairs.

which shall be tasked with the overall responsibility of overseeing successful implementation of the Vision and the medium term plan projects and programmes in the whole sector.

(b) Delivery teams, which shall be established to serve the respective Sector Delivery Secretariats in the execution of their mandates, and whose number shall correspond with the Vision and medium term plan sector flagship projects and programmes

(c) Sector Working Groups, which shall be *ad hoc* teams with membership drawn from both the public and private sectors and which shall meet on a regular basis to receive feedback on the progress of the implementation of the Vision from the Sector Delivery Secretariats.

(3) The Sector Delivery Secretariat, the Delivery Teams, and the Sector Working Groups shall each appoint their own chairpersons and set the schedule and procedure for their meetings.

11. The funds necessary for the implementation of activities by the Board, the Secretariats, the delivery teams and the sector working groups shall be appropriated—

(a) in the case of the Board and Vision Delivery Secretariat, by the Ministry of Planning, National Development and Vision 2030; and

(b) in the case of the Sector Delivery Secretariats, Delivery teams and the Sector Working groups, by the respective co-ordinating ministries.

Dated the 13th February, 2009.

MWAI KIBAKI,
President.

GAZETTE NOTICE NO 1387

Annex "C"
THE PARLIAMENTARY SERVICE ACT

(No. 10 of 2000)

APPOINTMENT OF MEMBERS OF THE TRIBUNAL TO REVIEW THE TERMS AND CONDITIONS OF SERVICE OF MEMBERS AND EMPLOYEES OF THE NATIONAL ASSEMBLY

IN EXERCISE of the powers conferred by section 23 of the Parliamentary Service Act, 2000, the Parliamentary Service Commission appoints—

Farah Hussein Abdi,
Asiyo Phoebe,

to be members of the Tribunal to review the terms and conditions of service of members and employees of the National Assembly.

Dated the 17th February, 2009.

KENNETH MARENDE,
Chairman.

SPECIAL ISSUE



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GAZETTE NOTICE NO 1386

KENYA VISION 2030

APPOINTMENT

1. IT IS notified for the information of the general public that His Excellency, Mwai Kibaki, President and Commander-in-Chief of the Armed Forces of the Republic of Kenya, has established a Board to be known as the Vision Delivery Board

2 The Board shall consist of—

- (a) a non-executive Chairman;
- (b) the Permanent Secretary, Secretary to the Cabinet and Head of Public Service.
- (c) The Permanent Secretaries responsible for—
 - (i) Prime Minister's Office;
 - (ii) Planning, National Development and Vision 2030.
 - (iii) Agriculture.
 - (iv) Finance;
 - (v) Energy.
 - (vi) Roads;
 - (vii) Water and Irrigation.
 - (viii) Public Service;
 - (ix) Information and Communications
 - (x) Industrialization.
 - (xi) Trade;
 - (xii) Tourism;
 - (xiii) Justice, National Cohesion and Constitutional Affairs;
 - (xiv) High Education, Science and Technology;
 - (xv) Public Health and Sanitation.
 - (xvi) Transport,
 - (xvii) Youth and Sports.
 - (xviii) Local Government;
 - (xix) Foreign Affairs;

(d) Representatives of—

- (i) The Kenya Investment Authority;
- (ii) The National Economic Social Council; and
- (iii) The Capital Markets Authority;

(e) The Governor of the Central Bank of Kenya; and

(f) Seven persons from the private sector with expertise and experience in the areas relevant to the Vision 2030, (herein after referred to as "the Vision"), four of whom shall be nominated by the Prime Minister.

(2) All appointments under subparagraphs (a), (d) and (f) shall be made by the President

(3) The Chairman and the members of the Board appointed under paragraph (1) (f) shall hold office for a term of three (3) years but shall be eligible for re-appointment for one further term

3. The Vision Delivery Board shall—

- (a) play a policy-making and advisory role and provide overall leadership, oversight, guidance and policy direction in implementation of the Vision and sustenance of momentum in realizing the goals and aspirations under the Vision; and
- (b) be responsible for setting targets and evaluating the results achieved.

4. (1) There shall be a Cabinet Committee on Vision 2030 which shall oversee the implementation of the Vision 2030.

(2) The Committee shall comprise the Ministries referred to in paragraph 2 (c) (i)– (xix), and shall provide oversight and general direction and impetus to the Board in the implementation of the Vision

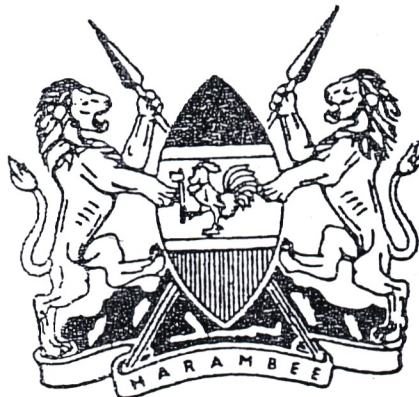
(3) The Committee shall be chaired by the President and in absence of the President, by the Prime Minister.

(4) The Minister in charge of the Ministry of State for Planning, National Development and Vision 2030 shall at the meetings of the Cabinet Committee table a progress report on the implementation of the Vision 2030 and its Medium Term Plan

5. There shall be a Vision Delivery Secretariat which shall spearhead the implementation of the Vision as the country's blueprint and strategy towards making Kenya a newly-industrializing middle-income country capable of providing a high quality of life for all its citizens by the year 2030.

6 The functions of the Secretariat shall be to—

- (a) provide strategic leadership and co-ordination in the realization of the overall goals and objectives of the Vision and its Medium Term Plans.
- (b) drive and manage the transformation process;
- (c) assist in the preparation of all relevant project documents on the Vision flagship projects together with their implementation schedules and costs;
- (d) provide liaison between Government Ministries and the private sector participants in each flagship project.



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GAZETTE NOTICE NO. 1739

THE CONSTITUTION OF KENYA REVIEW ACT
(No. 9 of 2008)

APPOINTMENT OF COMMITTEE OF EXPERTS

IN EXERCISE of the powers conferred by section 8 (4) of the Constitution of Kenya Review Act, 2008, I, Mwai Kibaki, President and Commander-in-Chief of the Armed Forces of the Republic of Kenya appoint—

Under paragraph (a)—

Christina Murray (Prof.);
Chaloka Beyani (Dr.);
Frederick Ssempebwa (Prof.);

Under paragraph (b)—

Njoki S. Ndung'u;
Atsango Chesoni;
Otiende Amollo;
Nzamba Kitonga;
Abdirashid Abdullahi,
Bobby M. Mkangi,

to be members of the Committee of Experts.

Dated the 23rd February, 2009.

MWAI KIBAKI,
President.

GAZETTE NOTICE NO. 1740

THE PARLIAMENTARY SERVICE ACT
(No. 10 of 2000)

REVOCAION OF APPOINTMENT

IN EXERCISE of the powers conferred by section 23 of the Parliamentary Service Act, 2000, the Parliamentary Service Commission revokes the appointment* of—

NYAUNDI KENNETH—(JOINT SECRETARY)

as a member of the Tribunal to Review the Terms and Conditions of Service of members and employees of the National Assembly, with effect from 20th February, 2009.

Dated the 20th February, 2009.

KENNETH MARENDE,
Chairman,
Parliamentary Service Commission.

*G.N. 698/2009.

GAZETTE NOTICE NO. 1741

THE PARLIAMENTARY SERVICE ACT
(No. 10 of 2000)

APPOINTMENT

IN EXERCISE of the powers conferred by section 23 of the Parliamentary Service Act, 2000, the Parliamentary Service Commission appoints—

ODONGO PATRICK LUTTA—(JOINT SECRETARY)

to be a member of the Tribunal to Review the Terms and Conditions of Service of members and employees of the National Assembly.

Dated the 20th February, 2009.

KENNETH MARENDE,
Chairman,
Parliamentary Service Commission.

SPECIAL ISSUE

ANNEX "E"



THE KENYA GAZETTE

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GAZETTE NOTICE No 699

Annex "E"

THE PARLIAMENTARY SERVICE ACT

(No 10 of 2000)

APPOINTMENT OF TRIBUNAL TO REVIEW THE TERMS AND CONDITIONS OF SERVICE OF MEMBERS AND EMPLOYEES OF THE NATIONAL ASSEMBLY

IN EXERCISE of the powers conferred by section 23 of the Parliamentary Service Act, 2000, the Parliamentary Service Commission appoints a Tribunal to review the terms and conditions of service of Members and employees of the National Assembly.

The terms of reference of the Tribunal shall be to—

- (a) review the terms and conditions of service of Members of Parliament;
- (b) review the facilities available for the use of Members of Parliament within the precincts of the National Assembly and in their constituencies.
- (c) to review the salaries, allowances and benefits including retirement benefits payable to—
 - (i) the Prime Minister.
 - (ii) the Vice-President.
 - (iii) the Speaker;
 - (iv) the Deputy Prime Minister,
 - (v) the Deputy Speaker;
 - (vi) Minister.
 - (vii) the Leader of the Official Opposition;
 - (viii) Parliamentary Service Commissioner.
 - (ix) Government Chief Whip;
 - (x) Assistant Minister.
 - (xi) Deputy Government Chief Whip.
 - (xii) Opposition Whips.
 - (xiii) Member of Speakers Panel;
 - (xiv) Other recognized Whips.
 - (xv) Chairman of Departmental or Select Committee;
 - (xvi) Member of Departmental or Select Committee;
 - (xvii) Member of Parliament.
 - (xviii) any other position of responsibility held by a Member of Parliament
- (d) review the level of taxation on the salaries and allowances of Members of Parliament.
- (e) review the recommendations of the Report of the Tribunal appointed by the Parliamentary Service Commission to review and make recommendations on the terms and conditions of service for Members of Parliament chaired by Chief Justice (Rtd) A. M. Cockar, presented to the Speaker of the National Assembly of Kenya on 5th November, 2002.
- (f) review the salaries, allowances and grading for employees of the National Assembly;

(g) make recommendations on—

- (i) the terms and conditions of service for Members of the National Assembly, including their salaries, allowances, benefits (including retirement benefits), training and international exposure, the facilities and amenities necessary for their use both within the precincts of Parliament, in their constituencies and any other relevant place;
- (ii) the level of taxation on the salaries, allowances and benefits of Members of Parliament;

- (iii) the terms and conditions of service for employees of the National Assembly including their salaries, allowances, benefits, grading, scheme of service, continuous professional development and training, the facilities and amenities available for their use.

The Tribunal shall start its work immediately and shall submit its report within three months from its date of appointment.

Dated the 23rd January, 2009

KENNETH MARENDE,
*Chairman,
Parliamentary Service Commission.*

CORRIGENDA

IN Gazette Notice Nos. 3107 and 3108 of 2009, *delete* the expression printed as "District Registrar, Homa Bay" and *insert* "District Registrar, Kangema".

IN Gazette Notice No. 4532 of 2009, *amend* the expression printed as "SUCCESSION CAUSE NO. 20 OF 2009" to read "SUCCESSION CAUSE NO. 32 OF 2008".

IN Gazette Notice No. 4081 of 2009, *delete* the expression printed as "Chai Limited" and *insert* thereof "Inder Sennik Lakhmidass and Raj Kumari Sennik Lakhmidass".

GAZETTE NOTICE NO. 4558

THE STATE CORPORATIONS ACT

(Cap. 446)

REVOCATION OF APPOINTMENT

IN EXERCISE of the powers conferred by paragraph 6 (1) (e) of the State Corporations Act, the Minister for Industrialization revokes the appointment of—

Moses W. Narwenyi*,
Michael Jobita†,
Stanley Were‡
Gerald Jones Muli§,

as members of the Board of the Kenya Bureau of Standards.

Dated the 28th April, 2009.

H. K. KOSGEY,
Minister for Industrialization.

*G.N. 316/2007, †G.N. 9539/2006.
‡G.N. 6603/2006, §G.N. 7997/2007.

GAZETTE NOTICE NO. 4559

THE STATE CORPORATIONS ACT

(Cap. 446)

THE SPORTS STADIA MANAGEMENT BOARD ORDER, 2002

(L.N. 180 of 2002)

APPOINTMENT

IN EXERCISE of the powers conferred by paragraph 4 of the Sports Stadia Management Board Order, 2002, the Minister for Youth Affairs and Sports appoints—

BENJAMIN KAPKIAI SOGOMO

to be the Director of the Sports Stadia Management Board, for a period of three (3) years, with effect from 1st May, 2009, and revokes the appointment of James Kiprop Bett*.

Dated the 4th May, 2009.

HELLEN SAMBILI,
Minister for Youth Affairs and Sports.

*G.N. 3784/2009.

GAZETTE NOTICE NO. 4560

THE STATE CORPORATIONS ACT

(Cap. 446)

THE SPORTS STADIA MANAGEMENT BOARD ORDER, 2002

(L.N. 180 of 2002)

REVOCATION OF APPOINTMENT

IN EXERCISE of the powers conferred by section 6 (1) (c) of the State Corporations Act and paragraph 3 (1) (d) of the Sports Stadia Management Board Order, 2002, the Minister for Youth Affairs and Sports revokes the appointment* of—

PAUL THUITA MAINA

as a member of the Sports Stadia Management Board.

Dated the 4th May, 2009.

HELLEN SAMBILI,
Minister for Youth Affairs and Sports.

*G.N. 6593/2006.

GAZETTE NOTICE NO. 4561

THE STATE CORPORATIONS ACT

(Cap. 446)

THE MOI TEACHING AND REFERRAL HOSPITAL BOARD ORDER, 1998

(L.N. 78 of 1998)

APPOINTMENT

IN EXERCISE of the powers conferred by paragraph 2 (h) of the Moi Teaching and Referral Hospital Board Order, 1998, the Minister for Medical Services appoints—

Hellen Yego (Mrs.),
Ewoi Musa Lochom,

to be members of the Moi Teaching and Referral Hospital Board, for a period of five (5) years, with effect from the date of publication of this notice. The appointment* of Wilson K. Yaban (Dr.) and Zeph Gaya (Dr.) is revoked.

Dated the 23rd April, 2009.

P. A. NYONG'O,
Minister for Medical Services.

*G.N. 3053/2004.

GAZETTE NOTICE NO. 4562

THE PARLIAMENTARY ACT

(No. 10 of 2000)

EXTENSION

IN EXERCISE of the powers conferred by section 23 of the Parliamentary Service Act, 2000, the Parliamentary Service Commission extends the period of the Tribunal stipulated in Gazette Notice No. 699 of 2009, to four and a half months. The Tribunal shall submit its report by 6th June, 2009.

Dated the 5th May, 2009.

KENNETH MARENDE,
*Chairman,
Parliamentary Service Commission.*

GAZETTE NOTICE NO. 4563

THE CHILDREN ACT

(No. 8 of 2001)

APPOINTMENT

IN EXERCISE of the powers conferred by section 73 (d) (ii) of the Children Act, 2001, the Chief Justice appoints—

STEPHEN O. MOGUTE

Senior Resident Magistrate at Tigania to preside over cases involving children in respect of Eastern Province with effect from 1st May, 2009.

Dated the 17th April, 2009.

J. E. GICHERU
Chief Justice.

GAZETTE NOTICE NO. 4564

THE MARRIAGE ACT

(Cap. 150)

APPOINTMENT

IN EXERCISE of the powers conferred by section 5 of the Marriage Act, and in pursuance of a delegation of such powers* under section 38 (1) of the Interpretation and General Provisions Act, the Registrar—General appoints—

ROSE SYOMBUA MUTUKU

to be District Registrar of Marriages for Embu District.

Dated the 26th March, 2009.

B. W. GACHEGU,
Registrar-General.

*L.N. 186/63.



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GAZETTE NOTICE No. 6667

THE ANTI-CORRUPTION AND ECONOMIC CRIMES ACT
(No. 3 of 2003)

THE KENYA ANTI-CORRUPTION ADVISORY BOARD
APPOINTMENT

IN EXERCISE of the powers conferred by paragraph 1 (5) of the Second Schedule to the Anti-Corruption and Economic Crimes Act, 2003, I, Mwai Kibaki, President and Commander-in-Chief of the Armed Forces of the Republic of Kenya, appoint—

BILLOW ADAN KERROW

to be a member of the Kenya Anti-Corruption Advisory Board, for a period of five (5) years.

Dated the 23rd June, 2009.

MWAI KIBAKI,
President.

GAZETTE NOTICE No. 6668

THE ANTI-CORRUPTION AND ECONOMIC CRIMES ACT
(No. 3 of 2003)

THE KENYA ANTI-CORRUPTION ADVISORY BOARD
APPOINTMENT

IN EXERCISE of the powers conferred by section 20 (2) of the Anti-Corruption and Economic Crimes Act, 2003, I, Mwai Kibaki, President and Commander-in-Chief of the Armed Forces of the Republic of Kenya, appoint—

Eric O'kongò Omogeni,
Irene Keino,

to be the Chairman and Vice-Chairman respectively, of the Kenya Anti-Corruption Advisory Board.

Dated the 23rd June, 2009.

MWAI KIBAKI,
President.

GAZETTE NOTICE No. 6669

THE ANTI-CORRUPTION AND ECONOMIC CRIMES ACT
(No. 3 of 2003)

THE KENYA ANTI-CORRUPTION COMMISSION
APPOINTMENT

IN EXERCISE of the powers conferred by section 8 (4) of the Anti-Corruption and Economic Crimes Act, 2003, I, Mwai Kibaki, President and Commander-in-Chief of the Armed Forces of the Republic of Kenya, appoint—

Wilson Kiprotich C. Shollei,
John Parmenus Mutonyi (Dr.),

to be the Assistant Director, Finance and Administration and Assistant Director, Investigation and Asset Tracing, respectively, of the Kenya Anti-Corruption Commission, for a period of five (5) years.

Dated the 23rd June, 2009.

MWAI KIBAKI,
President.

GAZETTE NOTICE No. 6670

Annex "G"

THE PARLIAMENTARY SERVICE ACT
(No. 10 of 2000)

EXTENSION

IN EXERCISE of the powers conferred by section 23 of the Parliamentary Service Act, 2000, the Parliamentary Service Commission extends the period of the Tribunal stipulated in Gazette Notice No. 699 of 2009 to seven months one week. The Tribunal shall submit its report by 31st August, 2009.

Dated the 25th June, 2009.

KENNETH MARENDE,
Chairman,
Parliamentary Service Commission.

ANNEX "H"

ORAL PRESENTERS:

| | NAME |
|----|---|
| 1 | Hon Jakoyo Midiwo, MP Gem & Chief Whip, Coalition Government |
| 2 | Hon Johnson Muthama, MP Kangundo & Deputy Government Chief Whip |
| 3 | Mr Athony Njoroge, Legal Counsel, National Assembly |
| 4 | Hon George Thuo, MP Juja & Government Chief Whip |
| 5 | Hon Otieno Mak'Onynago, Secretary, FOPAK |
| 6 | Hon Wanyiri Kihoro, former MP Nyeri Town |
| 7 | Kennedy Wachira Kanyi, businessman |
| 8 | Hon Walter Nyambati, Vice-chairman, PSC |
| 9 | Javeas Mulama Akhaabi, EALA member |
| 10 | Nyagaka Nyaanga, civil society member |
| 11 | Omutatah, civil society member |
| 12 | Okiyo Muramba Pariti, political activist |
| 13 | Joram Jared Wangira, programme officer, |
| 14 | James Wainaina Guchu, former Olkalau Constituency Manager |
| 15 | Stephen B Nguthi, businessman, |
| 16 | Elisha Musoma Ondatto, auditor |
| 17 | Caleb Njagi Omolo, businessman |
| 18 | Gerishon Machanja, NARC (K) Chairman, Shinyalu |
| 19 | Fred Angumba, teacher |
| 20 | Cllr Danstone Itenya Imbwaga |
| 21 | Clement Were Mukhule, businessman |
| 23 | Hunter Asiebela, Kenya Church chairman |
| 24 | Dora Ingomba, Maendeleo ya Wanawake, Emuhaya |
| 25 | Charles Mutola, Jua Kali chairman |
| 26 | Apostle Jackson Isaiah Sikulia |
| 27 | Enock Wasidia, retired civil servant |
| 28 | Nicholas Ogondo, |
| 29 | Bishop Johnston Simekha |
| 30 | Maria Wafula, farmer |
| 31 | Apostle Caleb Inuko |
| 32 | Vitalis Makokha Wambia, farmer |
| 33 | Francis Onyango Owuor, trader |
| 34 | Julia Kerubo Nyamweya, Maendeleo ya Wanawake Kisii Central |
| 35 | Rev Luke Ogalo, PA to Bishop Thomas Nyagatu |
| 36 | Idd Mubarak Murunga, boda boda operator |
| 37 | Benjamin Opudo Oyugi, businessman |
| 38 | Mayor W Okello, Kisumu |
| 39 | John Onyango Onyango |
| 40 | Pastor Ezekiel Otieno Kimila |
| 41 | Dorothy Awiro, Caucus for Women Leadership |
| 42 | Morris Ongweno |
| 43 | Lawrence Ondiala |
| 44 | Pst Joshua Akello, |
| 45 | Andrew Oduor, herbalist |
| 46 | Leonard Mukua, jua kali artisan |
| 47 | Oketch Orero, retired teacher |

| | |
|----|---|
| 48 | Timothy Nyakwambe Kajwang, district youth officer |
| 49 | John Okelo |
| 50 | Amina A Omumbo, women's right to own land and property |
| 51 | Lynette Ochuma, district youth officer |
| 52 | Amb. Francis Muthaura, PS, OP, HPS & Secretary to Cabinet |
| 53 | Michael Gitau Waweru, Commissioner General, KRA |
| 54 | Sammy Arthur Weya, former MP Alego Usoga |
| 55 | Hon David Ngugi, MP Kinangop |
| 56 | Francis Waigwa Maina, security consultant |
| 57 | Charles Owola, businessman |
| 58 | James Omondi Okeda, lecturer KIM & JKUAT |
| 59 | Finlay Muriuki, law graduate |
| 60 | James Wainaina Guchu |
| 61 | Ashford Muriuki Muguku, advocate |
| 62 | Michael Otieno, |
| 63 | Dickson Mbugua, chairman, Matatu Welfare Ass |
| 64 | Justice Aaron Ringera, Director & CEO, KACC |
| 65 | Thomas Nyabote Gitonga, Ctr for Econ & Humanitarian Affairs |
| 66 | Wagereka, FIDA Chairperson |
| 67 | Dorcas Kitaa, FIDA Treasurer |
| 68 | John Kanya Runji, GNLD businessman |
| 69 | George Muchai, Deputy Sec Gen, COTU |
| 70 | Nerida Nthamburi, Exec Dir, Ctr for Legal Information & Communication |
| 71 | Fr Julius Gichure, Kenya Inter Religious AIDS Consortium |
| 72 | Raini |
| 73 | Steve Lugaha, Charman ICPAK |
| 74 | Daniel Njoroge, auditor |
| 75 | Rashmin Chitnis |
| 76 | Bishop Dr Joseph Methu |
| 77 | Rev Peter Karanja, NCKK |
| 78 | Hon Farah Maalim, Deputy Speaker, National Assembly |
| 79 | Jeff Kimata, advocate |
| 80 | Dr Daniel Cyrus Machana, consultant |
| 81 | Hassan Sheikh Ali, Registrar, KTTC |
| 82 | Kipkorir arap Menjo, businessman |
| 83 | Cpt Wycliffe Akalwa, salvation Army |
| 84 | Joseph Kipng'etich Kogei, student |
| 85 | John Otieno Ochere, student |
| 86 | Mark Ogada Logonze, businessman |
| 87 | Eliud Gathuthi wa Kabiru, businessman |
| 88 | Wycliffe Agesa Oguda, KADDDU Chairman |
| 89 | Pst Justis Oyier Olero |
| 90 | Johnson Ndimu Ndegwa |
| 91 | Kefa Othano Omondi |
| 92 | Daniel Murugu |
| 93 | Edward K O Maina, Ford People Nkr chairman |
| 94 | Mary Adagala |
| 95 | Noah Omondi, actor |
| 96 | James M Rute, businessman |
| 97 | Bruno Owiti, accountant |
| 98 | Bishop Joseph Kamau |

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| 99 | Francis Tuthu Karanja, farmer |
| 100 | Walter O Ojuka, businessman |
| 101 | Gichangi Abdallah, NARC (K) Chairman |
| 102 | Peter Uibusya, secretary for Peace Rift Valley |
| 103 | Jane Gathogo, activist |
| 104 | Jackton Lugale Aura, elderly, man |
| 105 | Simon Wahome, preacher & businessman |
| 106 | Samuel Rogi Kiradi, watchman |
| 107 | Pastor Richard Ndeda Mbanda |
| 108 | Joab Onyango K'Oyoo, retired civil servant |
| 109 | Johnson Ndimu |
| 110 | Stephen Oduor Ogutu, UN Volunteer |
| 111 | Zacharia Sitati, auditor |
| 112 | David Noah Okwemba, volunteer |
| 113 | Bishop Jefferson Nyatuke |
| 114 | Patrick A Njoroge, farmer |
| 115 | Njoroge Wandia, businessman |
| 116 | Samuel K Kamuyu, businessman |
| 117 | Ernest Muguku Mureu, lawyer, LSK Mt Kenya |
| 118 | Bishop Cephas N Wango, Church of Restoration, Kenya |
| 119 | George Kabui, elder |
| 120 | Rev Peter K Kariuki, Full Gospel |
| 121 | Wanjiru Kabaki, Kiambu |
| 122 | Martin Karanu, teacher |
| 123 | Margaret Nyathogora, retired teacher |
| 124 | James Njiru, former MP Kirinyaga |
| 125 | Margaret Wairimu Magugu, businesswoman, Komothai |
| 126 | Humphrey Kigira, farmer |
| 127 | James Ndirangu, farmer |
| 128 | Anthony K Wachira, IT specialist |
| 129 | George M Mureithi, farmer |
| 130 | Johnson N Mwaura, architect |
| 131 | Rev John M Rukwaro |
| 132 | Cllr John K Mbugua, Kiambu |
| 133 | David Ngige, youth |
| 134 | Francis J Ndegwa, businessman Nyeri |
| 135 | Joseph Mirie, CDF chairman, Maragua |
| 136 | Michael Muchomba, co-ordinator |
| 137 | Paul W Ruoya, Chairman, Water Resources Users Assn, Nyandarua |
| 138 | Cllr George K Karonji, Kiambu |
| 139 | Fr Joachim Gitonga, retired Catholic priest |
| 140 | Fr Joseph Muriuki, Embu diocese |
| 141 | Patrick Mwenda, preacher |
| 142 | Shadrack R Nyagah, former MP 1 st Parliament |
| 143 | Dick Mukono, former councillor Embu |
| 144 | Joshua M Musila, Makueni County Council |
| 145 | Mayor Peter M Nyagah, Embu |
| 146 | Cllr Reuben M Kawai, Makueni |
| 147 | Cecilia M Mweu, teacher |
| 148 | Rosemary W Thige, Maendeleo ya Wanawake Embu West |
| 149 | Maalim Mohamed, Embu West DC |

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| 150 | Andrew I Njeru, elder |
| 151 | Samson N Karuki, carpenter |
| 152 | Joseph N Mugo, preacher |
| 153 | Sammy Mutun, Manyatta Constituency office |
| 154 | David Mavuta, teacher |
| 155 | Davis M Njeru, Embu Youth Development Initiative |
| 156 | Cllr Vimal Chadha, Hindu Council, Embu |
| 157 | Cllr Peter Mwanthi, Makueni |
| 158 | Justus Nyagah, retired Town Clerk |
| 159 | Pastor James Muruki, |
| 160 | Cllr Julius M Sila, Wote |
| 161 | Alan Mureithi, retired officer |
| 162 | Hon Kabeere M'Mbijjwe, former minister, MP |
| 163 | John G Munyi, teacher |
| 164 | Mayor Fidels K Muryao, Machakos |
| 165 | Cllr Peter M Karigi, Deputy Mayor Mavoko |
| 166 | Serah M Karigi, retired teacher |
| 167 | James M Munyi, Embu Youth Development Initiative |
| 168 | Paul Kiragu, preacher |
| 169 | Charles M Ndirangu, former MP Laikipia East |
| 170 | James G Mwangi, lecturer |
| 171 | Benard Musau |
| 172 | Joseph K Musyimi, Mwingi |
| 173 | Kori Gackhoka, teacher |
| 174 | Betty Nyabuto, CEO, LSK |
| 175 | Dave' Opiyo, Daily Nation reporter |
| 176 | Betty Nyabuto CEO, LSK |
| 177 | Okongo Omogeni, Charman LSK |
| 178 | Bashir D Dagane, elder |
| 179 | Hassan O Sharuiya, charman, District Youth Forum |
| 180 | Khalif A Farah, co-ordinator, Northern Forum for Democracy |
| 181 | Hamud S Mohamed, retired public health officer |
| 182 | Sigot A Noor, former councillor |
| 183 | Harun M Maalim, businessman |
| 184 | Gabow A Barre, elder |
| 185 | Koleye Abdihaji, elder |
| 186 | Sheikh Hassan A Abdulahi, SUPKEM |
| 187 | Ibrahim H Ali, businessman |
| 188 | Ahmed D Ahmed, former aspirant |
| 189 | Dubow M Nuro, elder |
| 190 | Abdillahi Faud, public health officer |
| 191 | Zainab Ali, Garissa Women for Peace & Development |
| 192 | Zahara Ali, Maendeleo ya Wanawake |
| 193 | Ahmed A Dntow, programme director |
| 194 | Abdi A Abdi, elderly businessman |
| 195 | Mahamud Hussein, elder |
| 196 | Mohamed K Nunde, retired education officer |
| 197 | Cllr Noor S Farah, Fafi |
| 198 | Cllr Amina M Magan, Wajir south |
| 199 | Rashid A Noor, former soldier |
| 200 | Osman I Abdi, farmer |

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| 201 | Adan I Osman |
| 202 | Cllr Noor B Ali, Fafi |
| 203 | Edwin K Swai, public officer, Taveta town council |
| 204 | Cllr Ali Ngome, Kwale |
| 205 | Milton Obote, youth leader |
| 206 | Cllr Donda Kazungu, Kaloleni North |
| 207 | Maalim A Sineno |
| 208 | James Mwangi, youth leader |
| 209 | Cllr Furaha Baa, Kwale |
| 210 | Dr Muinge Chokwe |
| 211 | Hamisi G Bayo, accountant |
| 212 | Raphael Livu, programme officer |
| 213 | Simon Kiarie, businessman |
| 214 | Mike Magak, activist |
| 215 | Konde T Peter, KNUT Kaloleni |
| 216 | Japhet Z Kase, former MP [1963-74] & Hola businessman |
| 217 | Samuel M Sawa, retired teacher |
| 218 | Dr James Maneno |
| 219 | Tom S Abwere, advocate |
| 220 | Pastor Japheth Wekesa [written memo] |
| 221 | Mumia Aukah, consultant |
| 222 | Nelly M Abio, Maendeleo ya Wanawake, Tana Delta |
| 223 | Hamisi Matuga, youth |
| 224 | Khalif Bahola, retired officer |
| 225 | Juma Wario, herdsman |
| 226 | Pastor Fredrick K Mangi, Redeemed Gospel Kaloleni |
| 227 | Dan M Kathuri, consultant |
| 228 | Hassan Dukicha, businessman |
| 229 | Adam Ambetsa, businessman |
| 230 | Dr Mohamed Sirat [written memo] |
| 231 | Wambui Kimathi, KNCHR |
| 232 | Mr Maina KNCHR |
| 233 | Hon John Mbadi, MP Gwasi |
| 234 | Billy Muiruri, Nation Media Group writer |
| 235 | Agnes Odhiambo, CEO, CDF |
| 236 | Mr P G Gichohi, CBS, CAN |
| 237 | Institute of Certified Public Secretaries of Kenya [ICPSK]- team of 4 Jackson Maingi - Chairman, Rose Mambo - Vice Chair, Joshua Wambua, CEO & Peris Mukaru, MSO |
| 238 | Cllr Diwani Maalim Abey Bulla, Mandera |
| 239 | Adan Hussein, youth for peace & Dvt Assn |
| 240 | Ali Billow, district procurement officer |
| 241 | Cllr Hussein Maalim Mohamed |
| 242 | Ahmed Ibrahim Hassan, community NGO |
| 243 | Amin Sheikh Adam, peasant farmer |
| 244 | Cllr Ms Hani Hassan Hussein, Fino |
| 245 | Mohamed Kunya Sheikh, retired education officer |
| 246 | Cllr Jeremiah Lomorukai, Laoima District |
| 247 | Peter D Emase, Chairman, Kenya National Chambers of Commerce & Industry, Turkana |
| 248 | Nathan Lomorukai |
| 249 | Richard Rono, Teacher Lodwar High School |

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| 250 | Ismael Aremani, businessman |
| 251 | Patrick Imama, Riam Riam Turkana Peace Network |
| 252 | Cllr David Ekod, Kerio Ward |
| 253 | Matthew Esinyen, co-ordinator IDDG |
| 254 | Mayor David Kinyonge, Lodwar |
| 255 | Petr Keitany, Town Clerk Lodwar |
| 256 | Imam Ramadhan Shaban |
| 257 | Anna Kiria |
| 258 | Christopher Apua |
| 259 | Rev David N Arika, AIC Turkana Central Church |
| 260 | Pastor Joseph Ekai, SDA |
| 261 | Mr John M Mukenye |
| 262 | Mr Joseph Machani, farmer |
| 263 | Bishop James Murunga, Bungoma Pastors Fellowship |
| 264 | Rev Baraza, ACK |
| 265 | Dan Wafula, civil society |
| 266 | Dr. Jamila-Sahm, pharmacist & Businesslady |
| 267 | John Mukenye, former constituency manager Kanduyi |
| 268 | Mr Machani, farmer |
| 269 | Rev Barasa Wanyonyi, Reformed Church of East Africa |
| 270 | Chacha Nyamori, former youth leader |
| 271 | Beda Mwita, Maranatha Faith Assembly |
| 272 | Rev David Mario |
| 273 | Hussein Mohamud |
| 274 | Joseph Mangiteni, KNUT |
| 275 | Cllr Thomas Otaiyo, |
| 276 | Simon Monanke, retired teacher |
| 277 | J Chacha, farmer |
| 278 | Gabriel Chacha, retired tobacco company employee |
| 279 | Peter Gutui, former BAT employee |
| 280 | Mrs Mary Muita |
| 281 | Cllr Lawrence Nogaye, Maeta Ward |
| 282 | Beatrice Chacha, Maendeleo ya Wanawake Org |
| 283 | Julius Marwa |
| 284 | Mr Fred Waswa, Octagon Pensions Services Ltd |
| 285 | Hon Shabir Ahmed Shakeel Ahmed, MP Kisumu Town East |
| 286 | Hon Lenny Kivuti, MP, Siakago |
| 287 | Hon Chrysanthus Okemo, EGH, MP, Nambale |
| 288 | Mumo Matemo, KRA, Commissioner |
| 289 | Joseline Ogai, KRA Official |
| 290 | Duncan Onduuru, KRA Official |
| 291 | Edward Karanja, KRA Official |
| 292 | Mburu Githii, KRA Official |
| 293 | Patrick Gichohi, Clerk, National Assembly |
| 294 | Hon. Amos Kimunya, MP, Kipipiri & Minister of Trade |
| 295 | Hon. Uhuru Kenyatta, Deputy Prime Minister & Minister for Finance |

ANNEX "I"

WRITTEN PRESENTERS:

| | NAME |
|----|---|
| 1 | A J Okoth, Kisumu |
| 2 | Dr Mohamed Isahakia, CBS, PS Office of the Prime Minister for the Prime Minister |
| 3 | Hon Stephen K Musyoka, VP & Minister for Home Affairs |
| 4 | Hon Musalia Mudavadi, EGH, MP, Deputy PM & Minister for Local Government |
| 5 | Archbishop Z Okoth, Chairman Catholic Justice & Peace Commission |
| 6 | Hon Wycliffe A Oparanya, EGH, MP & Minister for Planning National Dvt & Vision 2030 |
| 7 | Fr Stanley Wambugu, St Anthony Catholic Parish North Kinangop |
| 8 | Dr James Maneno, Kwale |
| 9 | Abdullahi Daud, Garissa |
| 10 | Bishop Joseph Maisha, Ushindi Baptist Church, Mombasa |
| 11 | Pastor Fredrick K Maingi, Redeemed Gospel Church, Kaloleni |
| 12 | Hon Japnet Kase, EBS Hola |
| 13 | Hamisi G Baya, accountant Mombasa |
| 14 | Edward Odundo, CEO, RBA |
| 15 | J S Khakhula, advocate, Bungoma |
| 16 | Luicas Odhiambo for CDF CEO Agnes Odhiambo |
| 17 | James Ndirango, retired teacher, Nyeri |
| 18 | KIPPRA |
| 19 | LSK |
| 20 | Patricia Nyaundi, FIDA |
| 21 | Beverline Ongaro |
| 22 | Provincial Director of Youth Affairs - Eastern |
| 23 | Cllr Daniel Masai, Matuu |
| 24 | Mwingi County Council councillors |
| 25 | Wote Town Council councillors |
| 26 | Kangundo Town Council councilors - Mweki Sammy |
| 27 | Fr Joseph Muriuki, Embu Diocese |
| 28 | Rosemary W Nthiga, Maendeleo ya Wanawake, Embu |
| 29 | KEPHA, Eastern Province |
| 30 | Charles Muthura Ndirangu, former MP Laikipia East [1979-88] |
| 31 | Machakos Municipal Council |
| 32 | Embu KNUT Branch |
| 33 | Hon Kabeere M'Mbijjewe, EGH |
| 34 | Allan Muriithi, retired officer, Embu |
| 35 | Kori Gachoki |
| 36 | UNISA c/o KCA University |
| 37 | Wycliffe A Ogunda, Nakuru |
| 38 | African Independent Pentecostal Church of Africa, Nyeri |
| 39 | Mrs Margaret W Magugu, Komothai |
| 40 | Hannah N Kimani, Githunguri |
| 41 | Francis J Ndegwa |
| 42 | Andrew K Ngugi, KNUT Kiambu East |
| 43 | Francis Nkaranya CDP |
| 44 | Kitui County Council councillors |

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| 45 | Amb. Francis K Muthaura, MBS, PS & Secretary to Cabinet and Head of Public Service |
| 46 | Shadrack Nyagah, Embu |
| 47 | Hon Wanyiri Kihoro, former MP Nyeri Town, FOPAK |
| 48 | Derick Emaase |
| 49 | Bungoma Pastors' Fellowship |
| 50 | John Mukenya |
| 51 | ACK Bungoma Diocese |
| 52 | Patrick Imana, Turkana |
| 53 | Richard Ronoh, Lodwar |
| 54 | Kegonga PEFA Church |
| 55 | Francis Onyango Owuor, Kisumu Joint Bunge Initiative [KJJOBI] |
| 56 | Mrs Bernadette M Nzioka, EBS Secretary, Public Service Commission |
| 57 | Commissioner General Michael G Waweru, EBS, KRA |
| 58 | Hon Otieno Mak Onyango, Secretary FOPAK |
| 59 | Hon Joseph Kimeu Ngutu, former MP Kangundo |
| 60 | Viva Africa Consulting Ltd, Kairo Thuo |
| 61 | Hon Imanyara, MP, Speaker's Panel. |
| 62 | Hon Prof Kamar, MP, Speaker's Panel |
| 63 | Hon Prof Kaloki, MP, Speaker's Panel |
| 64 | Hon Kenneth O Marende, EGH, MP, Speaker of the National Assembly |
| 65 | Wambia Vitalis |
| 66 | Miringu Wambui |
| 67 | Regina Opondo, Catholic Church |
| 68 | Jonah Ongoro |
| 69 | Patrick Gichohi, Clerk of the National Assembly |
| 70 | Hon. Walter Nyambati, Vice-Chairman PSC |

ANNEX "J"

SUBMITTED QUESTIONNAIRES:

| | NAME |
|---|--|
| 1 | Hon Pollyms O Anyangoh, MP Nyakach |
| 2 | Hon Z K Cheruiyot, MP Kuresoi |
| 3 | Hon Abdul Bahari Ali, MP, Isiolo South |
| 4 | Hon Charles M Nyamai, MP, Kitui West |

REPUBLIC OF KENYA

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 'Bunge', Nairobi
 Telephone 2221291
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 When replying please quote
 PLC/T/09
 YOUR REF: T.B.A



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

12th June, 2009

Justice (Rtd) Akilano Akiwumi,
 Chairman,
 Tribunal to Review the Terms and Conditions of Service
 for Members and Staff of the National Assembly,
 Kenyatta International Conference Centre (KICC), 1st Floor,
 P. O. Box 41842 00100,
NAIROBI

Dear *Justice Akilano,*

**TERMS OF REFERENCE OF THE TRIBUNAL TO REVIEW THE TERMS
 AND CONDITIONS OF SERVICE OF MEMBERS AND EMPLOYEES OF THE
 NATIONAL ASSEMBLY**

When the Honourable Vice Chairman of the Parliamentary Service Commission appeared before the Tribunal you sought to know if the Tribunal was to review the conditions and welfare of former Members of Parliament. The basis on which you sought this clarification was that a delegation of former Members of Parliament had appeared before the Tribunal during the week of 16th to 20th March 2009 and sought to give their views on the retirement benefits and welfare of former Members of Parliament. The Honourable Vice Chairman undertook to seek the Commission's directions on this matter and thereafter have the Commission give the Tribunal appropriate directions.

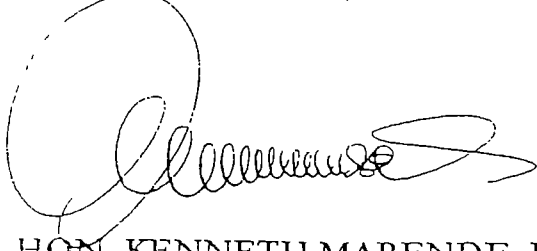
The Commission did consider this issue on 5th May 2009 and noted that under the existing provisions of the law the Commission has no mandate to deal with the overall welfare of former Members of Parliament and by extension cannot legally task the Tribunal to make

the Tribunal to make recommendations as to the overall welfare of these former Members of Parliament. The Commission is however legally mandated to undertake such functions as it may deem fit for the welfare of members and staff of the National Assembly. One of these functions includes the pension and retirement benefits that would accrue to members and staff of the National Assembly.

The Tribunal should therefore address the issue of pension and retirement benefits of Members of Parliament. I trust this now clarifies the issue.

Yours

Sincerely,

A large, stylized handwritten signature in black ink, appearing to read 'Kenneth Marende', written over a large, faint circular watermark or stamp.

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

REPUBLIC OF KENYA

Annex "L"



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KENYA NATIONAL ASSEMBLY

OFFICE OF THE SPEAKER

Speaker's Chambers
National Assembly
Parliament Buildings

P. O. Box 41842 -00100

NAIROBI, Kenya

PLC/T/09

15th July 2009

The Hon. (Rtd.) Mr. Justice Akilano Akiwumi,
Chairman,
Tribunal to Review the Terms and Conditions of Service
for Members and Staff of the National Assembly,
Kenyatta International Conference Centre (KICC), 1st Floor,
P. O. Box 41842 00100,
NAIROBI

Dear

REQUEST FOR BACKGROUND INFORMATION ON ALLEGED ILLEGAL
ALLOWANCES PAID TO FORMER PARLIAMENTARY SERVICE COMMISSIONERS

I refer to your letter dated 15th June, 2009, requesting for the above background information.

The Parliamentary Service Commission of the 9th Parliament did hold its ninetieth meeting on 2nd October, 2006, when the issue of allowances paid to various office holders was discussed. The meeting noted that the Executive was paying its office holders' Ministerial allowances at various rates. Assistant Ministers were being paid a monthly ministerial allowance of Kshs. 100,000/-, Ministers Kshs. 200,000 per month and the Vice-President Ksh. 300,000/- per month. The then Commission therefore resolved that Parliamentary office holders be paid a Parliamentary office holders' allowance at the following rates:

- (i) Commissioners, members of the Chairman's Panel, official Opposition Whip and Deputy Government Whip Kshs. 100,000/- per month.
- (ii) Leader of Official Opposition, Government Chief Whip and Deputy Speaker Kshs. 200,000/- per month.
- (iii) The Speaker/Chairman of the Commission Kshs. 300,000/- per month.

In arriving at this decision, the Parliamentary Service Commission of the 9th Parliament was guided by the spirit of the Cockar Tribunal Report that all public officers at the same level be accorded similar remuneration and facilities. A Miscellaneous Amendment Bill was introduced in Parliament by the Government in 2006 with a view to amending the law to recognize the payments to Parliamentary office holders. The Bill was however withdrawn by the Government in order to facilitate further consultations after a disagreement arose between the Executive and some Members during the debate.

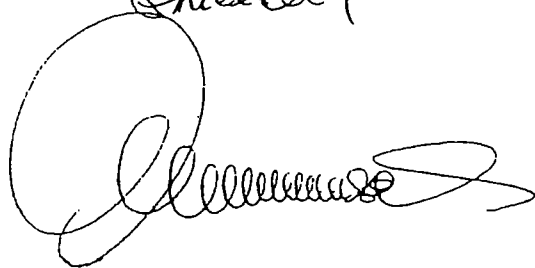
Payment of these allowances commenced as per the Parliamentary Service Commission's resolution but were stopped after a few months as various issues emerged. The main issue was

that the allowances needed to be sanctioned by law through an amendment to the National Assembly Remuneration Act, Cap. 5 of the Laws of Kenya. To date these allowances are not being paid to Parliamentary office holders. It is however noteworthy that the Office Holders' Allowances for Ministers have continued to be paid by the Executive through an administrative decision.

The Kenya Anti-Corruption Commission has subsequently, in the light of the foregoing, filed civil suits against the various Parliamentary office holders seeking a refund of the Parliamentary office holders' allowances paid. The matter is pending before the courts for resolution. The Kenya Anti-Corruption Commission's cause of action in the suits is that the allowances were illegally paid as Parliament did not authorize the same via an amendment to the National Assembly Remuneration Act. The Defendants have filed defences raising various issues. One of the defences has pleaded that Parliament authorised payment of the allowances as the monies were expressly provided for in the 2007/8 budget, which Parliament passed.

As the matter is pending before the courts, I am unable to give you my opinion on whether the allowances were regularly paid to avoid prejudicing the decision of the court. I, however, trust that this background information shall be useful to you in compiling the Tribunal's report specifically with respect to payment and quantum of allowances to Parliamentary office holders.

Yours

Sincerely


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