

**CENTRE FOR MULTIPARTY DEMOCRACY – KENYA
CMD (K)**

**AUDIT OF THE PERFORMANCE OF THE 9TH AND 10TH
PARLIAMENTS
(2003-2009).**

AND

**HIGH PROFILE CORRUPTION CASES IN THE POST KANU
ERA (2003-2009)**

PERFORMANCE OF THE 9th PARLIAMENT (2003-2007).

Having come from an oppressive rule; Kenyans were very hopeful of the 9th Parliament, the third parliament since the introduction of multiparty democracy in 1992, it was to serve as the true representative of the people but that was not to be.

The 9th parliament was widely expected to play a pivotal role in the fight against corruption and to facilitate economic recovery after the decades of misrule of the KANU government. At the end of its term, Kenyans had a unanimous verdict that the 9th parliament had done nothing much but to bring out the inexplicable greed in our MPs and also the fact that it had abandoned the national interest and converted its legislative authority and goodwill to the private interests of members of parliament as a whole.

It can arguably be said that this was one of the worst Parliaments when it comes to setting its priorities right.

After Members of Parliament were sworn in on January 9th 2003, the 9th Parliament's very first piece of legislative work was to move, in March 2007, an amendment to the National assembly Remuneration Act (Act No.9 of 1975) by introducing the National Assembly Remuneration (Amendment) Act (No.2 of 2003), for the purposes of enhancing the salaries and allowances of all members of Parliament about threefold on average from the hitherto existing levels.

The Act in its short title declared its purpose as follows:-

“An act of parliament to increase the salaries and allowances paid under the National Assembly remuneration Act.”

The amendments went through all four legislative stages in under a month and were assented to by President Mwai Kibaki on April 16th 2003.

Backdating of salaries and allowances

Parliament went against the law and defrauded the taxpayer a whole Ksh 52,386,136 resulting from the fact that the effective date of the new salaries and allowances was

stated as to be January 1st 2003; 8 days before the Members of Parliament were sworn in, and became eligible for allowances and salaries at all.

The effect of this retrospective act was to defraud the taxpayer of 8 days of salaries and allowances in respect of all the 224 elected, nominated and ex-officio members of Parliament. With monthly emoluments, at that time running to about Ksh 877,000 per month, this meant that a total of Ksh 52,386,136 was paid by treasury to persons who according to the constitution were not Members of Parliament.

The constitution is very lucid that the term of a Member of Parliament and for that matter the President, and runs from the date of swearing in and not the date of election.

A Huge pay hike and New Allowances:

The National Assembly Remuneration (Amendment) Act (No. of 2003) introduced a new first schedule to the National Assembly Remuneration Act, which raised the salary, parliamentary responsibility allowance, constituency allowance, mileage allowance and house allowance by various proportions. It also introduced a so-called extraneous allowance, an entertainment allowance and an attendance allowance as brand new heads of payment to members of parliament bringing their total individual emoluments to just below Ksh. 900,000 per month (US\$ 12,875) for backbenchers. By way of contrast, the members of the 8th Parliament (1997-2002) had to make do with total individual emoluments of Ksh 336,000 (US\$4,800), still a princely sum in a country where the per capita income is about Ksh. 25,000 (US\$ 360).

The members of the 9th parliament also voted themselves each a new car purchase grant of Ksh 3.3 million and a car maintenance allowance of Ksh 900,000 per year under Part II of the same schedule. Years later, in 2007, Parliament again controversially amended the same National Assembly Remuneration Act, to give every elected and ex officio member what has variously been called a "winding-up allowance" "*ex gratia*" "gratuity" and "severance allowance".

Learned Members of Parliament:

It is a widely acknowledged fact that head to head; the members of the 9th Parliament were better educated than their predecessors. In theory the better formal education

background of many MPs ought to have translated into better law-making, oversight and representation. Better educated MPs are able to understand and negotiate complex issues for the best interests of the public and the country. Learning facilitates the building of common ground, consensus and collaboration among parliamentarians. In short, it enables each Member of Parliament to do his or her job, and to do it well. But what is the job of a Member of Parliament?

Job Description - What the Law Says:

While the Constitution in section 34 and 35 outlines the basic qualification and disqualification of a Member of Parliament, it does not give the actual job description or work requirements of an MP so as to be qualified to carry out their constitutional duties, which are specified in the Constitution. However, it is possible to discern a job description from the law.

1. Law Making

Obviously, law making is one of the things Members of Parliament are meant to be able to participate in. Chapter III of the Constitution (Section 30-59) vests all national legislative power in the institution of Parliament. We quote Section 30

“The Legislative power of the Republic shall vest in the Parliament of Kenya which shall consist of the President and the National Assembly.”

This means that every Member of Parliament must be able to participate in the making of new legislation and understand why existing laws should be reviewed and/or repealed from time to time. Note, MPs need not be lawyers, and there is no evidence that suggests legal training makes a good parliamentarian.

2. Public Financial Management – Oversight

Another important duty of an MP is to be able to understand national finance in that Chapter VII of the Constitution deals with this aspect. We quote Section 99 in part:

“All revenues or other moneys raised or received for the purpose of the Government of Kenya shall be paid into and form a Consolidated Fund from which no money shall be withdrawn except as may be authorized by this Constitution or by an Act of Parliament (including an