



## HAS PARLIAMENT ALLOWED LEGISLATIVE 'MERGER' WITH THE EXECUTIVE?



*An Interview with Hon. David Musila, Deputy Speaker of the National Assembly of Kenya. In an interview with the Kenya Parliamentary Journalists Association (KPJA), he states that while Parliament is yet to be fully effective in the execution of its representation and legislation role it has made great strides over the years, and is currently more independent compared to 10 years back. Here are the excerpts*

**Has Parliament been an effective integrity pillar in Kenya today?**

Parliament is comprised of 222 members, and I would rather have members judged on individual performance.

Majority of MPs are men and women of integrity who serve their constituents and Kenyans at large faithfully, but there could be a few whose integrity might be in question.

That does not mean that the ninth Parliament as an institution has no people of integrity.

**What is the role of parliament after passing any law?**

The role of Parliament is to legislate, and once we make laws it is up to the Executive to ensure that the laws that we pass after the President has accented is then enforced, and of course if anyone goes against it the Judiciary is supposed to take care of this.

So, once Parliament passes a law and the President accents to it, it become law and that is the end of Parliament. After that, it is up to the Executive to execute the provisions of that law

Of course there are avenues where a Parliamentary Committee can enquire into matters by conducting hearings as to why certain provisions of the law are not being implemented by the Executive, but that is as far as Parliament can go.

***The role of Parliament is to legislate, and once we make laws it is upon the Executive to ensure that those laws are enforced ...***

## Is there a Parliamentary “Merger” with the Executive?

**How should Parliament conduct its role of checks and balances especially on the Executive?**

As you know, we are still agitating for reforms in our constitution which recommends that senior appointments by the Executive be approved by Parliament. This is one way of ensuring that the Executive is answerable to Parliament.

The Fiscal Analysis Bill will soon be republished. This bill will be very instrumental in changing the way the budget is presented to Parliament, and will help parliament oversee how the Executive utilises budgetary allocations, and general tax payers money. The Public Accounts Committee will also be revamped so that it has a bigger role.

**It has been claimed that bribery and corruption thrive in our Parliament especially when key issues come before the House?**

I have also heard those stories and of course I just take them as rumours because no one has ever presented evidence that money changes hands. But then that is neither here nor there, and I have no reason to believe as at times things are said out of malice.

When I take a position I might have my own reasons, but then people will say *alikula Kitu* (he was bribed). That has been said not only in this Parliament, but was also very common in the last Parliament.

**Is there procedure or a strategy on how parliament reports on use of devolved funds like the CDF, bursary and or public finance?**

Public funds are under the control of the Controller and Auditor General, and the MP is not a signatory, and so they should not be accused of exercising Executive power in the administration of these funds. If there has been misappropriation of these funds then it is the failure of the Controller and Auditor-General who is represented at the district by auditors, and they should be able to audit these funds and specify constituencies.

**Do you think the governance laws passed in the 9<sup>th</sup> parliament have been commensurate with zero tolerance policy?**

As I said, earlier Parliament has played its role to pass laws, but the Executive has not played its part in ensuring implementation.

I am particularly concerned about the anti-corruption measures; so many laws that we have passed, but we still see nothing coming out of them. Again Parliament has played its legislative role, and the back now stops with the Executive.

**Are Parliamentarians cosy with serving self-interest?**

To be honest, MPs are unfairly accused that they are lazy. In some areas we have been told that we work 97 days a year, and I want to tell you that I do not know of any class of people who work as hard as MPs. Let us not look at MPs as working in the plenary but in the committees, and besides in the constituency there is more work.

**How has defections and crossing the floor by MP's diminished electoral accountability?**

I think it is a very unhealthy situation brought about by the Inter Party Parliamentary Group (IPPG), where it was agreed that in order for your resignation to take effect you have to resign in writing.

**Has our parliament ensured free and fair elections or we have an administrative ‘merger’ with the ruling Executive and political parties functioning interchangeably-?**

That position has not changed very much. You have seen recently the Minister in charge of Internal Security going round and reminding the chiefs that they are in government and must support the party.

That is not an ideal situation because in civilised society the party in power is completely separate from the civil service. Public service is independent and non-partisan because the civil service continues even when there is change in the party in power.

Unfortunately, this has not been the case in Kenya since independence. We had hoped that there would be clear separation after Narc came to power, but unfortunately it has not happened.

My wish is that any future government must divorce Civil Service from political manipulation so that the Civil Service serves the government of the day without any question.

We must have a code for civil service that completely bars civil servants from engaging in politics, and also leadership of this country in future must be seen as leading political parties and not leading civil servants.

*....so many laws that we have passed, but we still see nothing coming out of them.*

# HAS PARLIAMENT BEEN EFFECTIVE IN ITS WATCHDOG ROLE?

By Patrick Mathangani

As the final year moves towards general elections, *Adili* set out on a mission to examine Parliament's performance as an integrity pillar.

It has been four gruelling years for legislators elected to carry out their role as watchdogs to the Executive, as well as to make laws. Kenyans have seen both the bright and ugly sides of sitting MPs, and one thing that seems to stick out like a sore thumb is the fact that immediately after they took office in 2003, MPs moved with unprecedented urgency, and passed for themselves, a fat pay cheques and handsome stipends. During a marathon session, they raised their monthly income to over Sh700, 000, making them amongst the best paid parliamentarians in the region.

Then, just as Kenyans celebrated the introduction of the Constituency Development Fund (CDF), strange things started happening.

Kenyans were dismayed that the very people elected to represent their interests were busy pilfering the funds by appointing their henchmen and relatives to take charge.

If there is one thing the ninth parliament will be remembered for, it is the pressure it has put on the government to stamp out corruption, especially in

the Anglo Leasing scandal in which Sh7 billion was nearly lost. Several anti-corruption laws, were also enacted to ensure accountability of government officers, and to reduce graft in public procurement.

However, several respected surveys published in the past year have shown that Kenyans view MPs as among the most corrupt public officers. Mr Gideon Ochanda, Executive Director of Institute for Civic Affairs and Development (ICAD), passes a guilty verdict against current MPs, saying they have not met the expectations of Kenyans.

Ochanda says that MPs have not performed their main role of making laws because they have spent most of their time doing things other than those meant for legislators. In its 2005 survey, ICAD posed: "Is it the role of MPs to buy constituents beer, tea, salt, sugar, khangas, or build schools, roads, and hospitals?"

The answer from majority of the respondents was a resounding no. He adds, during electioneering, MPs make promises that are outside their mandate, "MPs promise what parliament does not do, so they do not concentrate on their core business". Because of their pre-occupation with other issues, few bills are passed, said Ochanda. He cited the Sexual Offences Bill, sponsored by nominated MP Njoki Ndungu, which took

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## Has Parliament been effective in its watchdog role?

three years before it could become law.

While concurring that the current Parliament has managed to do little of its work, Kabete MP Paul Muite blames it on old laws which he says slow down the House. Muite, agrees that parliament has not been able to carry out its watchdog role and blames it on what he terms as "institutional difficulties:"

For instance, he said the various budget committees in Parliament have no access to the national budget in its drafting stage. He said if this was allowed, committees such as those on agriculture would scrutinize proposals before they are brought to parliament. The committee would ask, "how did you spend last year's allocation?" Then if there is no accountability, it would stop funds from being allocated, or even take action against wayward accounting officers," said Muite. He added: "Without such powers, Parliament is a toothless bulldog:"

The MP said due to too much control by the Executive, only eight out of 30 budgetary votes were debated by Parliament between June and October last year. Further, the current parliament has failed to check the Executive because according to Kenya's laws, members of the Cabinet are drawn from the House. Muite says the current parliament has been "significantly weakened" by movement of opposition MPs to the government benches.

However, there is more to MPs' shortcomings than just blaming others. ICAD surveys have shown that

*...they raised their monthly income to over sh700,000 making them amongst the best paid parliamentarians in the region.*

parliamentarians work for an average of 39 days in an entire year. That means they get paid their 12 months salary - in excess of Sh8 million per MP per year - for working for just one month and nine days! As the five-year parliamentary term expires, each of the 210 MPs will have worked for 195 days, and taken home a cool Sh40 million. That translates to more than Sh8 billion just to pay MPs salaries.

To ensure MPs live by the sweat of their brows, Ochanda recommends that Parliament should sit from Monday to Friday, and the quorum rules be strictly enforced. Currently, MPs sit for only three days in a week - Tuesday, Wednesday and Thursday - two of which are half days.

The MPs' laziness amid huge pay leads one to the question: Are they too cosy with themselves? The fat pay comes with its disadvantages for the common person. With this scenario, the main role of parliament as the peoples' representative risks being compromised as it becomes a place to seek riches.

However, Muite defends them against accusations that they are pre-occupied with thoughts about their welfare. He says the huge salary increase they awarded themselves in 2003 was not their own making, but they were implementing the recommendations of a committee on

MPs pay that had collated views from the public.

The committee was chaired by former Chief Justice Majid Cockar. "I'm not saying it was a good thing. The reality is that the salaries are way out of tune with our economy," said Muite.

## PARLIAMENT HAS PASSED WEAK GOVERNANCE LEGISLATION

By Cyprian Nyamwamu

### The Ninth Parliament in perspective

The 9<sup>th</sup> Parliament stands out as the only parliament that has seriously taken steps to address the issue of accountability and integrity in the management of public affairs in Kenya.

This parliament has managed to enact key anti-corruption laws and other accountability legislations that have offered the framework for the restoration of integrity in public affairs.

The passage of the Anti corruption and Economic

Crimes Act, Public Office Ethics Act and , Public Procurement and Disposal Act are some of the Laws that have been enacted with the aim of promoting good governance and fighting corruption.

Through these laws the Kenya Anti-Corruption Commission(KACC), and the National Anti-Corruption Campaign Steering Committee(NACCSC), were instituted to over see governance and anti corruption issues.

However, these laudable interventions by the 9<sup>th</sup> Parliament fall short of the necessary legal and governance framework through which good governance

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## Parliament Has Passed Weak governance Legislation

and integrity in the public sector may be resorted.

It should be recalled that parliaments legislative and representation roles have been hampered by a host of factors and reasons. If the 9<sup>th</sup> parliament alone is to be focused on, then, some of the following factors will feature as its key weaknesses.

### Enactment of Defective Laws

While Parliament has endeavoured to improve the governance climate through enacting progressive legislation, defective and weak laws have also been enacted. The Constituency Development Fund(CDF) Act for example has created a framework through which corruption and lack of integrity has climbed back into funds management at the grassroots level. The Act permits MPs to choose whomsoever they like into the funds committees, and this alone has locked out the participation of citizens in its management. This Act has also been cited as a bad piece of legislation which violates the constitutional principle of separation of powers between the legislature and the executive.

*....laudable interventions by the 9th parliament fall short of the necessary legal and governance framework...*

Further, there exist weaknesses in the Public Officers Ethics Act which makes the value of the whole Act diminished. In the Act, public officers are required to declare their assets and wealth without accounting for their sources. This is a fatal weakness of that Act. Even more worrying is the fact that such declared wealth is not made public for citizens to scrutinize. This lack of public exposure of the information therein has made the efforts to curb corruption, and rehabilitate the integrity in public institutions elusive. Progress can only be made if parliament remains unwavering in its efforts to make water tight laws that will hasten the consolidation of a good governance legislative climate.

### Lack of political good will

The refusal to give prosecutorial powers to the KACC, the lethargy by the Attorney General to assist in prosecuting cases related to corruption and emergence of sacred cows in the cabinet are some of the tale tell signs of lack of political good will to push the agenda of restoring integrity in public affairs.

Lack of good will has hampered the legislative role of parliament to enact laws that will strengthen the institutions of governance and restore accountability and end impunity in Kenya.

### The Executive control Parliament

The current constitution allows the President to appoint MPs from any political party to cabinet, and as assistant ministers. This aids government in its legislative agenda as these ministers are whipped into supporting the government agenda. The lack of independence of parliament has played the biggest role in stifling parliament in its legislative and representative roles.

### Weak Checks and Balances

The real mischief of our political system is the misuse of the imperial presidential powers to award politically correct constituencies.

This mischief can only be cured if checks and balances are instituted in the political system through appropriate constitutional interventions. The current parliament for instance suffers an acute constitutional capacity deficiency to carry out its oversight role over the executive. Similarly, the current constitution does not promote separation of powers and functions. MPs, including the President continue to serve as executive.

This self serving constitutional regime has made the legislative process in parliament severely curtailed, at least, as it concerns the agenda of restoration of integrity in public affairs in Kenya.

### The Kenyan Political Culture

Amidst all these weaknesses in the law and in the constitution, a major reason why the 9<sup>th</sup> and indeed all the other parliaments in Kenya have performed dismally is the retrogressive Kenyan political culture. The culture of supporting a communitys own politician has led to corruption and lack of accountability where suspects of corruption have been defended by the public against prosecution or punishment.

Parliament and indeed all institutions of public affairs can only perform if the public demand results and integrity. MPs do not pay much attention to their legislative and representative roles mainly because majority of their constituent do not value this as a key standard for rewarding their representatives politically. Identity and other less deserving standards have always been held by the electorate as more significant than performance by their MPS.

**The writer is the Chief Executive Officer of NCEC, and Governance specialist**

# International News Round Up

## CORRUPTION IMPEDES AFRICAN DEVELOPMENT : FORUM

An African forum opened in South Africa on 28/2/2007 took corruption as an obstacle to Africa's development because it can divert funds from priority areas such as health, education and social welfare for personal gains.

Addressing the Africa Forum on Fighting Corruption, South African Public Service and Administration Minister Geraldine Fraser-Moleketi said corruption undermined democracy, public order and the African value system.

"The losses that accrue from a culture of permissiveness with respect to corruption include a loss of revenue, trust, values, credibility, legitimacy, democratic ethos and impulse within institutions and organizations," she said.

The forum, held under the theme "Towards a Common Understanding of Corruption in Africa", brought together representatives of civil society,

public and private sectors from different countries to explore common ways to fight corruption in the continent.

In her detailed speech on the impact of corruption on the continent, the minister said this practice benefited the minority at the expense of many ordinary citizens.

"It [corruption] inhibits the ability of government to respond to citizens' needs and to utilize scarce resources in the most efficient way and effective manner," she noted. This also hampered the continent's efforts to instil sound political, socio-economic and corporate governance.

Commissioner for Political Affairs in the African Union (AU) Commission, Dolly Joyner said there was a need to strengthen the capacities of governments and the private sector to fight corruption in the continent.

*Source: Xinhua*

## ANC CONDEMNED FOR BUSINESS FEES

South Africa's ruling ANC party has been strongly criticised for a scheme charging fees to business leaders to meet senior government officials.

One analyst said the ANC was selling the government's political capital. The ANC is believed to have raised up to 10m rand (\$14m) in a year from the Progressive Business Forum (PBF).

But the ANC said it was standard international practice for businesses to pay political parties for access to ministers and top civil servants.

The ANC has confirmed that the scheme, headed by ANC's national co-ordinator of corporate liaison Renier Schoeman, had 2,000 members.

Membership fees are reported to vary between 3,000 and 7,000 rand with big corporations being charged up to 60,000 rand (\$8,500).

Among the benefits, PBF members are invited to functions addressed by senior ANC leaders and given the opportunity to talk to party leaders.

Institute for Democracy in South Africa spokesman, Richard Calland told the South African Sunday Times:

"Selling access to power merely serves to allow already privileged people to buy influence in a way the great majority of South Africans cannot."

However, he said, the information provided to PBF members was public information and apart from ANC leaders who were elected members of the executive or legislature, no government officials were invited to address functions of the forum.

Information about the forum's activities was available on the ANC's website and journalists were invited to report on its events, he said.

ANC spokesman Smuts Ngonyama said: "The information provided to PBF members is public information."

*Source: BBC*

## Nigeria: Ribadu Vows to Prosecute Corrupt Politicians

Chairman, Economic and Financial Crimes Commission (EFCC) Mallam Nuhu Ribadu vowed that he was ready to lay down his life to prosecute corrupt politicians even as he appealed to the citizenry to support the anti-graft crusade.

Mallam Ribadu who declared that the commission would ensure that corrupt politicians seeking elective political offices are not allowed to feed on the nation's resources, said it is high time Nigerians rose to stop corrupt political office seekers.

Speaking in Ile-Ife at a lecture organised by the Faculty of Law, Obafemi Awolowo University (OAU) in honour of Prof Gabriel Olawoyin, the EFCC boss said there is no hope for this nation as long as corrupt individuals are allowed to move freely.

In the lecture entitled, "Rethinking Democracy: Corruption and the Rule of Law in Nigeria", Ribadu declared that, "the nation would continue to plunge into economic mess as long as you allow crooks and gangsters to lead this country. So, we need to rise up and stop them.

This nation belongs to all of us and no individual or group of persons can hold us to ransom." The EFCC boss while denying the allegation of selective justice levelled against the commission said it was unfortunate that those making the insinuations were themselves being haunted by their past deeds.

"I stand before you here today to say that in spite of the noisy claim that the EFCC adopts arbitrary means

to ensure justice, it is not true, and it is all propaganda. We strictly adhere to the rule of law, because we are aware that without respecting legal order, we would lose," he said.

While noting that Nigerians must take a definite step in curbing the activities of corrupt political office holders Ribadu said corruption threatens the rule of law, democracy and human rights as well as undermine the heart of governance.

"Corruption threatens fairness and social justice, it distorts competition, it hinders economic growth and endangers the stability of democratic institutions and moral foundation of society"

"People have to take a clear position, and in doing so we must never discount the cost and consequences from the causes of the agency of corruption, To ensure that this balance is kept in view, the moral texture of public office holders must always come to effective and relentless scrutiny," he added.

Scoring EFCC high in combating corruption, Mallam Ribadu disclosed that the commission had recovered about \$5billion worth of asset and returned them to the source of crime.

"By the standards of global anti-corruption work, the EFCC has certainly scored modest goals," he stressed. Ribadu then charged all Nigerians to take the bull by the horn in ensuring that corruption is reduced to its barest minimum.

Source: Daily Champion (Lagos)

### Election Corner

*All Kenyans should enjoy the right to participate in elections free from violence, intimidation and administrative or political interference.*

*All Kenyans should enjoy the right to freedom of expression, associations and assembly.*

*The state and public servants should be neutral and not pick sides in the electoral process.*

*All qualified Kenyans should enjoy equal rights to vote and stand for election under the law.*

*There should be equal access to and impartial coverage of the electoral process by the media.*

*Elections should be free of bribery and corruption.*

*The law should be applied fairly and rigorously.*

*Elections should be administered impartially and openly.*

*Electoral boundaries should be fair.*

## Some indicators for assessing the performance of the Legislature as an integrity Pillar

- Are there clear and well understood conflict of interest laws which are an effective barrier to elected members of the legislature using their position for personal benefit?
- Are there arrangements for the monitoring of the private interests and personal incomes of elected officials and members of their immediate families?
- Do legislatures who oppose the government have a reasonable opportunity to express their views in the legislature? Are debates open to the public?
- Do select committees meet in public? Are their reports made public? Do they make a practice of hearing submissions from members of the public and civil society organization?
- Are the recommendations of the Public Accounts Committee generally accepted and acted upon by the Executive? Does the public Accounts committee have power to call officials (including ministries) for questioning? As a matter of practice or requirement is the chair of the Public Accounts Committee chaired by a member who is independent of the government of the day?
- Is the executive entitled to appoint members in addition to those who have been elected? Are they entitled to vote? If so, are the numbers such that they are likely to distort the broad will of the people as expressed at the polls?
- Are convicted criminals barred from running for election?
- Is the legislature generally ready to lift the immunity enjoyed by one of its members, regardless of the party to which the members belongs, where there are serious grounds for believing that he or she may be guilty of a serious criminal offence?

### Up coming Events

Fraud and corruption summit, 14<sup>th</sup>-16<sup>th</sup> March 2007  
Copenhagen, Denmark

12th Annual Money Laundering Conference, 19<sup>th</sup>-21<sup>st</sup> March, 2007  
Florida, USA

Freedom of Information: Achieving open Transparent Government, 19<sup>th</sup>-23<sup>rd</sup> March 2007  
Dublin, Ireland

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