



COFEK PRESS CONFERENCE ON AGITATION BY MP'S FOR HIGHER SALARIES HELD ON 7TH MAY 2013, PANAFRIC HOTEL:

Good morning ladies and gentlemen. We have called this press conference to address the ongoing agitation by members of the 11th Parliament, led by their Speaker Mr Justin Muturi, to unreasonably demand for higher salaries. In their combative and unjustifiable approach, they have threatened to disband the Salaries and Remuneration Commission (SRC).

From the outset, we must agree that salary is never enough for our respective problems and greed. But it can be enough for our upkeep based on the budgetary limitations and understanding that we must all live within our means. Our MP's are, therefore, no exception. In this context, we wish to address the fallacies and myths that have so far been propagated by MPs and their agents in their quest for higher pay;

1. MP's salaries are being reduced from what was paid to the 10th Parliament

The 11th Parliament is not an extension of the 10th Parliament. Apart from the changed times, the legal and other contractual dispensations are radically different not to mention the fact that we now have a Senate. There can be no tradition or justifiable reference to the 10th or previous parliaments, least of all on salaries and allowances for MP's whose term of office is strictly 5 years after every general election.

2. MP's will disband the SRC if it doesn't yield to their coercion

Accomplished trade unionists in civilized societies like Kenya do not engage in combative and destructive push of disbanding institutions in agitation for better terms. Instead, they enter into informed negotiations which eventually lead to Collective Bargaining Agreements. What if in worst case scenario, the SRC team was disbanded and other Kenyans in protest refuse to fill up the resultant vacancies, how far will the MP's go? Of course nowhere.

3. SRC is a creature of Parliament and that SRC can't gag Parliament

While we have no brief to speak for SRC, the Commission can't in any way gag an arm of Government. As an institution, the SRC and other Chapter Fifteen independent Commissions are a creation of the Kenyan people and not Parliament. After all, Article 1(1) of the CoK2010 says that "All sovereign power belongs to the people of Kenya and that it shall be exercised only in accordance with the Constitution".

4. That Parliament can disband the SRC

This is untrue. Article 251 is very clear on removal of independent Commissioners. Nothing has come to our knowledge to the effect that all SRC Commissioners could be bankrupt; incompetent; have physical or mental incapacity to perform their duties; have engaged

in gross misconduct or have committed any serious violations of the CoK2010, including provisions of Chapter 6.

While the anti-SRC petition will be successful in Parliament given the unity of greed demonstrated by members of the 11th Parliament, it will be futile. Even if the President appointed the Tribunal, it won't be of help to the MP's as there will be no basis of SRC Commissioners removal under Article 251(1). Article 236 of the CoK2010 also protects public servants from undue demotion and/or sacking without a fair hearing. Secondly, the President will under Article 251(4)(a) have no basis of suspending the Commissioners as the wording used is that of "may" and not "shall" suspend. Even under Article 251(4)(b), the President may use his discretion to delay appointment of such a Tribunal as there is no time limit of doing so.

What is more important is that while the SRC is either suspended or disbanded, there will be no organ to increase salaries and allowances of MPs. Besides, no self-respecting Judge of the High Court will have to hesitate in over-turning a decision of such a tribunal as evidenced by the various cases on the vetting of judges and magistrates. From the foregoing, the Clerk of the National Assembly and the Parliamentary Service Commission members, represented on the SRC, will be personally liable if they proceed to irregularly and illegally increase the MPs salary without the official seal and Gazette Notice of the SRC.

5. If the 349 MPs are thieves then all Kenyans who voted for them are thieves

This is the most irresponsible statement from someone who presents himself as Majority Leader of Government Business. If the Government side has people like Dujis MP Mr Duale as friends, then it needs no enemies. Reason, not all Kenyans branded MPs as “thieves” but for an MP to brand all Kenyans as “thieves” in whatever analogy is a gross misconduct, disrespect to the Kenyan people and for which an apology won’t be enough. The Oxford English dictionary defines a “thief” as “a person who steals another person’s property, especially by stealth and without using force or threat of violence”. If it is true that MP’s are taking away the taxpayers’ hard-earned cash, then the branding may not have been too misplaced and may remain a matter of public debate.

6. The current salary and allowances for MPs not enough for their commitments

No one really forces our MP’s to give out handouts. From our research, over 80% of the current MPs will not earn more than Sh532,000 in salaries if they left Parliament today to take up private sector positions. It is also true that less than 10% of the current MPs were earning or could be equated to earning such an amount from their previous engagements. This is not withstanding that the MPs will receive an additional Sh700,000 from allowances.

It is no wonder that one such MP who is the face of the agitation never went beyond Form Four, his small insurance business fell flat to the extent that to date he has a legal battle in which he was been sued for upkeep of a child fathered out of wedlock. Besides, MP’s

will have CDF, youth fund and women fund to (mis)manage. It is, therefore, baseless to say that an MP's role is to donate cash for funerals and other public needs.

Our Observations

1. MP's are employees and servants of the people of Kenya who elected them. As such, they must be sensitive to their wishes as well as remain responsible to them, all the time. Those going against this basic ethics are taking huge and uncalculated risk even if they are able to defeat attempts for recall in the public interest.
2. SRC is the only constitutional body mandated to review and set salaries of state and public officers. For MP's or anyone else to attempt to undermine the Commission in any manner is an affront at the Constitution.
3. The President on April 9, 2013 swore to protect the CoK2010 and when the Constitution is under a clear threat as it is at the moment, he must be at the forefront of rallying everyone to protect it against all odds. In fact, we would expect him to declare the continued agitation by MPs to disband the SRC as a national disaster.
4. The country's public wage bill, currently standing at 12%, is way too high from the allowable maximum of 7% of the Gross Domestic Product.
5. The actual take-home package for MP's is Sh1.3M inclusive of car allowance, constituency allowance, sitting allowance,

gratuity and a generous house loan at an equally pleasant interest rates compared with what is prevailing on the market.

6. Kenyans must start asking serious questions on why MP's are always united in greed about their welfare yet they remain polarized along partisan political, ethnic and other narrow lines on key matters of national interest
7. If MP's felt, and had convincing evidence which we highly doubt, that SRC had committed an unconstitutional act of commission or omission, the best approach for them was to either have their PSC negotiate directly with SRC or move to a Constitutional Court for interpretation. Their path so far taken is tantamount to taking the law into their own hands and conducting a senseless "mob-justice" of SRC made to intimidate them. We are proud of the Sarah Serem Commission for remaining strong against this Tsunami of greed.

Way Forward

1. President Uhuru Kenyatta must come out clearer and side with the people of Kenya. Like President George Bush once said on terrorism, one is either with us or with them. It is, therefore, high time the President became clearer and for avoidance of doubt cite whether he is with the people or the MP's on the matter of higher salaries.

We appreciate that the President diplomatically pointed towards this direction during the official joint opening ceremony of Parliament and Senate. It would equally help if the President will caution MPs to withdraw the petition against the SRC. If Dujis Mr Duale represents the President position in

Parliament on this matter, then the President should be ready for an unstoppable storm of civil servants prescribing their own pay. After all, if MPs are allowed to have their way then, a precedent would have been established to that effect.

2. Someone needs to also inform the House Speaker Mr Justin Muturi that he needs to avoid activism and playing to the MP's gallery. We need a decisive Speaker. To have to hit out on sections of the media for highlighting public outrage on MP's agitation for higher salaries casts him in bad light as a partisan Speaker. No wonder he has gone against tradition and moral question to Chair the parliamentary Appointments Vetting Committee where he will be tabling the report before himself. The doctrine of separation of powers, well known to him as a lawyer, requires him to guide MPs to avoid being judges in their own case.
3. The President should intervene and call for a national referendum on whether or not SRC ought to be disbanded merely because the Commission is not yielding to the coercion from MPs
4. If private sector, as demonstrated by the banking industry, is cutting salaries for its' executives then there would be non-justification for further increase of the public wage bill.
5. While COTU Secretary General Mr Francis Atwoli has his right to express himself, we wish to remind him that MP's do not have a union affiliated to COTU and as such it is unfortunate for him to use national events such as Labour Day celebrations to

purport to speak on MP's behalf, again on a subject matter he is ill-informed

6. We will, in the fullness of time, be partnering with the people of Igembe, Dujis and other affected Constituencies to work on a formula to have their current MP's recalled in the public interest
7. If the President allows MP's to have their way, Cofek will call on Kenyans to stop remitting their taxes to the Kenya Revenue Authority.
8. If the SRC is suspended or disbanded, we will call on Kenyans to engage in mass action until it is reinstated.
9. Finally, Cofek will be the first to institute a legal battle against the President and/or Tribunal so established if he proceeds to either suspend and/or establish a Tribunal to purport to investigate the SRC Commissioners for doing an excellent job within a very difficult environment characterized by intimidation.

Stephen Mutoro
SECRETARY GENERAL