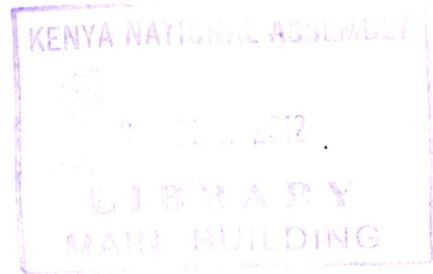


REPUBLIC OF KENYA



KENYA NATIONAL ASSEMBLY



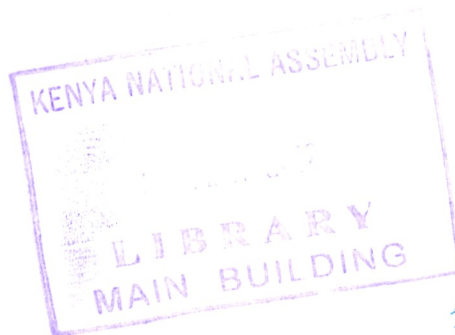
THE KENYA LEGISLATIVE DEVELOPMENT CONFERENCE

Theme: Reflecting on Institutional Change and the Future of Parliament

Windsor Golf Hotel & Country Club, Nairobi

March 29-30, 2012

CONFERENCE PROGRAMME



Conference Secretariat

Patrick G. Gichohi, CBS (Clerk, Kenya National Assembly)

Fred Matiang'i (Country Director, SUNY Kenya)

DAY ONE

MARCH 29, 2012

SESSION 1: STRENGTHENING PARLIAMENT AND PROMOTING DEMOCRACY

Moderator: Hon. Kenneth Marende, EGH, ACI Arb, MP (Speaker, Kenya National Assembly)

11.00 am Promoting Parliamentary Democracy

Mr. Martin Chungong (Director, Division of Programmes, Inter-Parliamentary Union)

Increasing the Effectiveness of Legislative Institutions: A Review of Parliamentary Strengthening Programs

Mr. Tim Colby (First Secretary-Development, Canadian High Commission)

Leading Africa's Fastest-Emerging Democratic Parliament: Assessing Parliament's past and present institutional character.

Hon. Farah Maalim, EGH, MP (Deputy Speaker, Kenya National Assembly)

The Progress towards Parliamentary Democracy in Kenya

Hon. Oloo Aringo, EGH (Member, Salaries & Remuneration Commission and former Vice-Chairman, Parliamentary Service Commission)

12.00 pm Plenary

1.00 pm Lunch Break

SESSION 2 CONTEXTUALIZING PARLIAMENTARY DEVELOPMENTS IN KENYA

Moderator: Hon. Gitobu Imanyara, MP

2.00 pm Political & Institutional Development of Kenya Parliament 1963-2012:
Political Development Panel: *Hon. Martha Karua, EGH MP; Hon. Paul Muite; Hon. Joseph Lagat*

Institutional Development Panel: *Dr. David Ndii (Economist); Mr. Kennedy Masime (Executive Director, Centre for Governance & Development)*

3.00 pm Plenary

SESSION 3 COLLABORATION BETWEEN PARLIAMENT AND OTHER ACTORS

Moderator: Hon. Ekwee Ethuro, MP

3.30 pm Roundtable A: Parliament's Relations with the Judiciary and the Executive

Presenter #1: *Mr. Gichira Kibara, EBS (Ag. PS, Ministry of Justice, National Cohesion & Constitutional Affairs)*

Presenter #2: *Mr. Nicholas Okemwa (Legal Counsel, Judiciary)*

Presenter #3: *Mr. Jeremiah Nyegenye (Director, Legal Services, Kenya National Assembly)*

Facilitator: Mr. Peter Owino Omollo (Senior Deputy Clerk, Kenya National Assembly)

Roundtable B: Parliament and Political Parties - Opportunities under the Constitution of Kenya, 2010

Presenter #1: *Hon. Mohammed Abdikadir, MP (Chair, Constitutional Implementation Oversight Committee)*

Presenter #2: *Mr. Patrick G. Gichohi, CBS (Clerk, Kenya National Assembly)*

Presenter #3: *Dr. Mary O'Hagan (Senior Country Director, NDI Kenya)*

Presenter # 4: *Ms. Njeri Kabeberi (Director, Centre for Multi-party Democracy)*

Facilitator: Mr. Felix Owuor (Country Director, EISA)

Roundtable C. Parliament's Relations with Donors and CSOs

Presenter #1: *Ms. Sheila Karani (Democracy & Governance Advisor, USAID)*

Presenter #2: *Mrs. Phyllis Makau (Director, Parliamentary Budget Office, Kenya National Assembly)*

Presenter #3: *Mrs. Waceke Wachira (Deputy Director, SUNY Kenya)*

Presenter #4: *Mr. Kwame Owino (Chair, Parliamentary Initiatives Network)*

Facilitator: Mr. Martin Oloo (Governance Consultant)

Roundtable D: Parliament's Relations with the Private Sector & Fourth Estate

Presenter#1: *Mr. Kwendo Opanga (Media Consultant)*

Presenter #2: *Ms. Carole Kariuki (Executive Director, Kenya Private Sector Alliance)*

Presenter #3: *Hon. Nicholas Gumbo, MP (Chairman, House Broadcasting Committee)*

Facilitator: Mr. Tom Mshindi (Managing Director, Nation Newspapers Division)

4.30 pm Roundtable Reports

Presentation of Group Reports by Session Rapporteurs and Plenary Discussion

5.30 pm Participants' Cocktail

Host: Hon. Kenneth Marende, EGH, MP (Speaker, Kenya National Assembly)

DAY 2

MARCH 30, 2012

SESSION 4 REFLECTING ON ACHIEVEMENTS, MEASURING IMPACT

Moderator: Hon. Amina Abdalla, MP

8.30 am The Challenges of Measuring Impact: Beyond Numbers

Presenter #1: *Prof. Njuguna Ng'ethe (Institute of Development Studies, University of Nairobi)*

Presenter #2: *Prof. Robert Nakamura (Vincent O'Leary Professor and Senior Fellow, CID Rockefeller College of Public Affairs, University at Albany, SUNY)*

Presenter #3: *Prof. Joel D. Barkan (Center for Strategic & International Studies)*

9.00 am Plenary Discussion

10.00 am Break

SESSION 5 2012 AND BEYOND: FUTURE DIRECTIONS FOR KENYA'S PARLIAMENT

Moderator: Hon. Mohammed Abdikadir, MP

10.30 am Kenya's New Constitutional Dispensation: Whither Parliament?

Presenter #1: *Mr. Charles Nyachae (Chair, Commission for the Implementation of the Constitution)*

Presenter #2: *Mr. Wachira Maina (Constitutional Lawyer)*

Presenter #3: *Mr. Clement Nyandiere (Director, Information & Research Services, Kenya National Assembly)*

11.00 am Plenary Discussion

SESSION 6**CONCLUDING SESSION**

Moderator: Hon. Dr. Joyce Laboso, MP

12.00 pm Summary of Opportunities and Challenges for Legislative Development in Kenya

Hon. Ekwee Ethuro, MP

1.00 pm. *Hon. Kenneth Marende, EGH, ACI Arb, MP (Speaker, Kenya National Assembly)*

To invite the Chief Guest to make Closing Remarks

Closing Remarks

H.E. Stephen Kalonzo Musyoka, EGH, MP (Vice-President and Minister for Home Affairs)

1.30 pm *Lunch Break*

End of Conference

KENYA'S NEW CONSTITUTION DISPENSATION:WHITHER PARLIAMENT

CHARLES NYACHAE

CHAIRPERSON

*COMMISSION FOR THE IMPLEMENTATION
OF THE CONSTITUTION*

What is the Constitutional Character of Parliament

- **The Passage of the new Constitution fundamentally altered the character of Parliament**
- **In both composition, role and relationship with other state organs and the people of Kenya.**
 - › **From a unitary parliament that straddles the legislature and executive with MPs serving as ministers to**
 - › **A Bicameral System of Parliament with the National Assembly and the Senate and devolved government with the establishment of county assemblies – county matters to be decided at the County level.**

Character of Parliament

Some transformative Provisions-

- Composition:

Parliaments will be expected to manifest the diversity of the nation. To this end, there are specific provisions to ensure that there is representation of women, the youth and persons with disabilities. In the there were no affirmative action provisions to ensure such representation.

The Constitution and Role of Parliament

- **The Constitution of Kenya embodies of the sovereign will of the people of Kenya and aptly recognizes in Article 1**

that sovereign power belongs to the people of Kenya.

- **Article 1 further provides that the sovereign power may be delegated to state organs including Parliament . It must however be exercised in accordance with the Constitution.**

The Constitution & Parliament

Article 2

The Constitution is the supreme law of the Republic and binds all persons and all state organs at all levels of government

The Constitution & Role of Parliament

- The change in composition and mandate gives parliament a pivotal role in the Constitution which mandate must be exercised in such a way that the delicate balance is maintained between different houses and levels(national assembly, senate, county assemblies).

The Constitution & Role of Parliament

The Constitution calls for accountability and integrity by members of Parliament. MPs are state officers and therefore expected to.

- Meet the Leadership and Integrity as provided for under Chapter Six of the Constitution, these include: conduct that brings honour to the nation and the office, discipline and commitment in service to the people and honesty in the execution of public duties.
- Uphold national values and principles which include rule of law, democracy and participation of the People.

The Constitution & Parliament

- What is the role of Parliament?
- Legislation
- Expenditure allocation for government
- Resource allocation
- Review of conduct of president and other state officers
- Exercise oversight of state organs

The Constitution & Parliament

- How does Parliament discharge legislative mandate together with other state organs e.g. Article 261(4) outlines the procedure for the development of legislation for implementation of the Constitution.
- However, we have the Two Finance Bills passed in August, 2011 without consultation with CIC.

The Constitution & Parliament

- The substance as well as process must be constitutional. What does parliament do about Acts with unconstitutional provisions? The CIC Audit of Acts reports needs to elicit action to amend the laws.
- There is need to establish how rights of private members to initiate Bills can be implemented within Article 261(1 & 4)

The Constitution & Parliament

- How does Parliament and its various Committees *discharge their oversight role*. A **balance must** be struck between oversight and interference which is **unconstitutional for independent state organs**.
- How the oversight be more effective for bodies which issue regular reports, (e.g CIC, such reports should be the basis for engagement through constructive feedback and debate (No feedback on 4 CIC reports)

The Constitution & Parliament

New Frontiers in Legislative development

- Public Participation in the legislative and policy making process Article 119 and Article 118. Public participation is distinct from delegate authority given to MPs
- Article 2(5) Ratified treaties are part of the Law. What is the implication when read with Article 94 on the legislative power of Parliament?

What should we do

- **Anticipate** challenges that may arise due to the transition process and **plan for them.**
- Ensure that systems are in place to help Parliament play its role while at the same relooking at its internal mechanism to make them meet the constitutional threshold. The PSC should discharge its mandate as a body distinct from Parliament
- **MPs should manage politics in such a way that it does not derail the Constitution implementation process.**
- Parliament should rise above political divergences to keep constitution implementation on track.

Opportunities for Parliament in Legislative development

- ▶ **Parliament should:**
- ▶ **Leverage on Parliamentary independence to carry out its mandate in the Constitution responsibly.**
- ▶ **Appreciate constitutional role of other state organs and establish long lasting synergies with those organs.**
- ▶ **Identify mechanisms that ensure the people of Kenya get value from the manner in which Parliament discharges its mandate and relates to other organs and the people of Kenya**

Food for Thought

› ... every single person became subject, to those laws, which he himself, as part of the legislative, had established; nor could any one, by his own authority; avoid the force of the law, when once made; nor by any pretence of superiority plead exemption, thereby to license his own, or the miscarriages of any of his dependents.** No man in civil society can be exempted from the laws of it: for if any man may do what he thinks fit, and there be no appeal on earth, for redress or security against any harm he shall do; I ask, whether he be not perfectly still in the state of nature, and so can be no part or member of that civil society; unless any one will say, the state of nature and civil society are one and the same thing, which I have never yet found any one so great a patron of anarchy as to affirm.'

› John Locke, The Second Treatise of Government, 1690

END

› THANK YOU

Kenya National Assembly

ICTs FOR MPs IN PARLIAMENT

Kenya Legislative Development Conference
Windsor Golf Hotel, 29th - 30th March, 2012

By Clement Nyandiere
Director, Research & Information Services

1. Introduction

- ICTs= computers, networks, telecommunications, broadcasting and related technologies
- ICTs are propelling rapid change in political, economic, social, and administrative areas; affecting every institution including Parliament.
- ICTs are pushing reforms in political activities, processes, and institutions: e-voting, e-democracy, e-participation, online campaigning, and e-parliament.
- ICTs useful in support of core functions of parliament as well as support to administrative processes.
- **Focus:** Increased efficiency, rapid communication, no time and space limitations.

2. Services to MPs 2008 to date

1. **Order Paper online:** Order paper updated on website day House Business Committee approves.
2. **Parliamentary info online:** Most information of interest in including Bills, Motions, Questions, past Hansard reports available on Parliament website.
3. **Hansard Production:** Hansard system allows production of daily report of the proceedings.
 - Hansard production from two days to less than 3 hrs.
4. **Research online:** With reliable Internet services, MPs can afford to carry out research for matters of interest to them available on the Web.
5. **Hardware support:** Computers, UPS, Printers

... Services to MPs

6. **Enhanced communication:** With unlimited access to Internet and Parliamentary email services, MPs now communicate with their constituents and other persons with ease. Many are using social media- Facebook, twitter, LinkedIn, YouTube to communicate.
7. **Broadcasting services:** Broadcast of plenary sessions has been ongoing since 2008.
8. **ICT Skills Development.** Training centre at Parliament Buildings
9. **Administrative support services-** payroll, processing payments.

3. Looking ahead... Future plans

- Infrastructure development
 - Digital PABX, structured cabling, Video conferencing.
 - Wireless network access in the Chambers.
 - Parliamentary YouTube channel and interactive websites.
 - Admin systems (ERP- Enterprise solutions).
 - i-Pads for chamber operations/ Committee chairs.
- Implementation of systems:
 - Electronic Voting System for Senate.
 - Parliamentary Legislative Processing System.
 - Integrated security management system.
- Broadcasting services:
 - Fully implementing broadcasting services through.
 - Live webstreaming of Parliamentary debates/ committees.

5

4. From the top...

- **"In the history of American democracy, there was a time when a message could travel only as fast as a horse could gallop or a ship could sail. Today, a message from the American people to their representatives in Congress travels as fast as a citizen can twitter, blog, or post to Facebook."** *Speaker Nancy Pelosi, during official opening of the 2nd World e-Parliament conference, Washington DC December 2009.*
- **"My desire is to leave a legacy of a modern Parliament, where MPs are facilitated to undertake their core mandate and deliver services. ... ICT development and broadcasting of Parliament will be my priority projects."** *Hon. Kenneth Marende, MP newly elected Speaker of the National Assembly, 15th January 2008*

- Matching towards a fully e-parliament.

6

KENYA LEGISLATIVE DEVELOPMENT CONFERENCE

29-30 MARCH, 2012

WINDSOR GOLF AND COUNTRY CLUB

**SESSION 2: CONTEXTUALIZING PARLIAMENTARY DEVELOPMENTS
IN KENYA**

POLITICAL DEVELOPMENT PANEL

DISCUSSION TOPIC: POLITICAL DEVELOPMENT OF KENYA

PARLIAMENT 1963-2012

By:

**Hon. Martha Karua, Member for Gichugu,
Chairperson Narc-Kenya**

FROM A COMPLACENT TO AN ASSERTIVE PARLIAMENT

From dysfunctional to functioning committees
From days of having no infrastructure to support the work of parliamentarians to days of building the support infrastructure

To date we need to improve that infrastructure to meet needs of today's parliament which must have capacity to make budget not merely pass it, capacity to balance the need of the various arms of government in the allocation of resources. A parliament that can hold the executive and the institutions under it to account from an informed position

Parliament must transit from an institution that is wanting in matters of integrity to a parliament that conducts its affairs in an open and transparent manner one that can offer leadership to others , one that has enforcement for members and staff who fail to uphold the law, an institution that can therefore vet others on suitability for office with regard to their integrity

An institution whose expertise matches that in the executive and one that recognizes expertise within in when committees of parliament are composed

ATTEMPT TO REFORM PARLIAMENT

1977 onwards

1997 onwards

1997 Minimum reforms under the auspices of the **Inter-Parties Parliamentary Group (IPPG)** and constitutional reform initiative

1999 In **1999** Constitutional amendment. The Legislature amended section 45 of the constitution, thus resulting in the delinking of Parliament from Executive. This culminated in the establishment of the Parliamentary Service Commission.

THE PARLIAMENT IN THE NEW CONSTITUTIONAL DISPENSATION

In the new Constitution dispensation, article 93(1) under Chapter Eight stipulates that: "there is established a Parliament of Kenya, which shall consist of the National Assembly and the Senate". After the next General Elections, Kenya will have a pure presidential system of government whose main features will comprise the following:-

- (i) The President of Kenya and all his or her Cabinet Ministers/Secretaries will no longer be Members of Parliament;
- (ii) The President of Kenya may not come from a Party with majority seats in one of the, or in both Houses of Parliament;
- (iii) The traditional ceremonial Budget Day will be no more; and
- (iv) The Attorney General will not be a Member of Parliament either.

Consequently, the constitutional provisions on the Legislature will affect the Standing Orders to-be and the administration of Parliament in the following manner:-

- (i) The Question Time in the House will be no more
- (ii) There will be no Ministerial Statements or Government Time in the Order Paper, neither will there be a Leader of Government Business or Leader of the Official Opposition Party;
- (iii) The Office of the Legal Counsel and the Parliamentary Budget Office will be strengthened to enjoy sufficient capacity so as to be at par with their corresponding equivalents in the Executive in terms of technical competence, professional experience and availability of resources at their disposal to execute their mandates.
- (iv) Parliament, i.e., the two Houses, will manage its business, especially when interacting with Executive agencies, through their Committees. Committee Chairpersons will therefore be very powerful people whose support will often be sought to drive any legislative agenda in the House. Any Bill including one brought by the Executive could very well die in a Committee without ever reaching the floor of the House;
- (v) Parliament will be in charge of its own annual calendar.
- (vi) The House shall strictly operate on the basis of Majority Party (hence the Majority Leader) and the Minority Party (hence the Minority Leader). The Speaker, of course, will come from the Majority Party. All Committee Chairpersons will be individuals from the Majority Party. The agenda for debate in each of the two Houses will be set and determined by the Majority Party whether that Party is in Government or not.

THE SENATE IN THE NEW CONSTITUTION

Chapter eight; Article 93 provides for the establishment of the bicameral legislature that consists of the National Assembly and the Senate, to form the Parliament of Kenya. Each of the two Houses will perform its respective roles and functions in accordance with the constitution.

Role of the Senate

The role of the Senate is to represent the counties, and serve to protect the interests of the counties and their governments. The Senate is also to participate in the law-making function of Parliament by considering, debating and approving Bills concerning counties. The Senate is further charged with the duty of determining the allocation of national revenue amongst counties. It is also to exercise oversight over national revenue allocated to the county governments.

The Senate participates in the oversight of state officers by considering and determining any resolution to remove the President or deputy President from office.

Composition of the Senate

The Senate will be composed of 47 members elected by the registered voters of the counties, each county constituting a single member constituency. It will also comprise of 16 women members who shall be nominated by political parties according to their proportion of members of the Senate. The Senate will also have two members one man and one woman representing the youth. In addition, two members one man and one woman will represent persons with disabilities. There shall also be a Speaker, who will be an ex-officio member.

NATURE OF ENVISAGED RELATIONS BETWEEN THE NATIONAL ASSEMBLY AND SENATE

Although the Senate and the National Assembly will carry out their mandates as two independent Houses, they however are interrelated in various ways. The elections of members of the two Houses will be held on the second Tuesday in August every fifth year. They both consist of members who have been elected by registered voters of single member constituency and other members nominated by Parliamentary political parties according to their proportion of members in accordance with Article 90.

The two Houses complement each other as they both review the conduct in office of the President, the Deputy President and other State officers and initiate to remove them from office in accordance with Article 145.

In addition, before either House considers a Bill, the Speakers of both the National Assembly and the Senate shall jointly resolve any questions as to whether the Bill concerns counties, and whether it is special or an ordinary Bill. When a Bill has been passed by one House, the Speaker of that House will refer it to the Speaker of the other House.

If both Houses pass the Bill, the Speaker of the House in which the Bill originated will refer the Bill to the President for assent within seven days. Both Houses will exercise their legislative powers through passing Bills which will then be referred to the President for assent.

If one House passes an ordinary Bill concerning counties and the other rejects, the Speakers of both Houses shall appoint a mediation committee

PUBLIC FINANCIAL MANAGEMENT

The new constitution has given Parliament a more expanded role in the budget making process. The new dispensation has changed the role of Parliament from a budget approving legislature to a budget making one.

Indeed, it has strengthened separation of powers and ensured fiscal parity between the three Arms of Government. Under the new framework, the Judiciary and Legislature shall submit their expenditure proposals to Parliament to be considered on equal basis with Executive proposals.

Overall, the legislature has an enhanced role which includes the ability to decide on resource mobilisation, allocation, monitoring and control.

Provisions of Chapter 12 of the New Constitution have significantly altered the Public Financial Management (PFM) landscape. In particular, management of public resources is now based on key principles of transparency or openness, accountability and public participation.

Equally, the Constitution provides that public resources be managed to an extent that it promotes equitable resource distribution in society, in addition to fair taxation.

To this end, these principles require new institutional arrangements that ensure consistency between policy formulation and practices. Specifically, the new dispensation rearranges PFM institutions by allocating Parliament more authority than it was the case previously.

The drama of carrying the "briefcase" and reading the budget speech by the Cabinet Secretary in charge of Finance (Minister for Finance) will not happen in the new dispensation. Instead, much of the work of processing

consisting of equal numbers of members from each chamber to attempt to develop a version of the Bill that both Houses can pass. Moreover, the Senate and the National Assembly may establish joint committees consisting of members of both Houses and may jointly regulate the procedure of those committees. The National Assembly and the Senate determine the allocation of national revenue and exercise oversight over the allocation.

the budget has shifted and focus is entirely on Parliament's Budget Committee. The Committee has the overwhelming task of giving strategic directions with regard to the allocation of Government resources between the Executive, Judiciary, and Parliament. In undertaking its mandate, the Budget Committee will be required to liaise with other departmental committees as well engage the public through hearings.

Based on these crucial functions, the Budget Committee will require technical support and hence the need for a strong Parliamentary Budget Office (PBO).

The Budget Process

Article 221(1) of the constitution spells out that the Cabinet Secretary responsible for finance shall submit to the National Assembly estimates of revenue and expenditure of the national government. The estimates shall be considered together with those from the Judicial Service Commission as well as those presented by Parliamentary Service Commission. The provision further provides that the estimates shall stand committed to the Budget Committee. The Committee shall seek views from other Departmental Committees and make recommendations to the House for consideration. It is important to state that since Cabinet Secretaries will not be Members of the House, then technically speaking the budget speech is not feasible.

Another deviation from the old paradigm is that Parliament has the powers to amend the budget and make substantial changes both at the committee

level as well as on the floor of the House. Thus, as mentioned earlier, Parliament has been turned into a budget making organ as opposed to budget rubber stamping fora.

What happens on passing of the amended Budget? The immediate step is the preparation of the Appropriation Bill. But who moves the Appropriation Bill? Given the obvious fact that Cabinet Secretaries of the respective ministries will no longer be Members of the House, the probable person could be the Chair of the Budget and Appropriations Committee. It is important to point out that the Government of the day will need to ensure that the Chair of the Budget Committee must be in support of Government agenda since technically speaking, he/she is the de- factor "Minister for Finance".

Of great concern, however, is that Kenya is signatory to trading block such as the East Africa Community (EAC) and hence it will be practical for the Cabinet Secretary to pronounce the revenue measures on the same day as other EAC partners. Thus, since the Budget day for the partner states has not changed, the revenue measures shall be announced on this day.

On the other hand, since the Estimates shall be approved before the commencement of the financial year, there is a high likelihood that there will be no Vote on Account as has been the tradition. In procedure terms, the Committee of Supply will be constituted before the Committee of Ways and Means. This is a departure from what was the case where the Committee of Ways and Means preceded.

The approval of the budget before the commencement of the financial year is critical since it allows the various agencies of Government to execute their projects as planned and in so doing, Parliament can hold them accountable.

RULES OF PROCEDURE

Focus is on matters that require changes of the rules of procedure and the way Parliament conducts its affairs. There will be rules of procedure for adoption by the Senate, as soon as it is constituted.

The two Houses will have to mutually agree on procedure, particularly in matters that require approval of both Houses. In the proposed Presidential System, the role of Parliament will be immense and crucial.

Some of the areas being examined in terms of procedure include-

- (i) Extension of Term of Parliament when Kenya is at war. When Kenya is at war, the Motion seeking to extend the Term of Parliament will require support of two-thirds of all members of each House. The Motion may originate from either House. The new rules will have a procedure to guide each of the Houses when considering such a Motion.

This also applies for the Motion seeking to extend a declaration of State of Emergency

- (ii) Each House will also establish committees and regulate their procedure. Moreover, there will be establishment of a relevant committee to hear cases of absence of members and related matters and establishment of procedure for the Committee to report the facts to the relevant House.

- (iii) Since candidates for Election of the Speaker will be persons other than Members of Parliament, commonly referred to as "strangers", the Standing Orders will provide for Procedure on Election of the Speaker of each House. There is still debate whether the candidates will be allowed to address the House prior to elections as seen in several other jurisdictions.
- (iv) The Standing Orders shall also establish precedence and protocol in the conduct of House business in recognition of the new roles accorded to the Leader of the Majority Party and the Leader of the Minority Party.
- (v) Joint Sittings of the Houses according to Article 107(2) shall be presided over by the Speaker of the National Assembly assisted by the Speaker of the Senate and the sittings shall be governed by Standing Orders.
- (vi) Related to this is the legislative procedure and establishment of a process to govern, whether a Bill concerning county governments is a Special or an Ordinary Bill. The Standing Orders will also provide for originating and referral of Bills concerning County Governments from one House to the other whilst avoiding repeated back and forth referral, popularly referred to as "ping pong". This is where the mediation committee comes in.
- (vii) Participation by members of public is no longer an issue of rules of procedure but a constitutional requirement. In this regard the team working on the Standing Orders will be proposing suitable provisions to ensure public participation. This may also be accompanied by special rules to govern the conduct of members of public when participating in parliamentary affairs.
- (viii) Related to this, is incorporation of Kenyan sign language as an official language of the House.
- (vii) It is also worth noting that, Quorum in the National Assembly has been increased to 50, while that of the Senate will be 15. Further, during voting the Speaker has no vote, in case of a tie, the question is lost. Also, on Voting and declaration of interest, the

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procedure will determine the fate of the results of a question where a member has voted on a matter that he has interest as well as on recourse or punitive measures on the member.

Similarly, it is worth noting that, voting in the Senate on a matter that affects Counties, will be by way of delegations and the head of the County delegation will cast one vote on behalf of the County. It is envisaged that the new electronic voting procedure will be in place in the new Houses and will also be entrenched in the Standing Orders. In the event of failure or confusion in the electronic system, a roll call voting procedure akin to one used in the US Congress may also be applied. This will save on time that is ordinarily used during divisions.

- (viii) The Standing Orders will also provide the procedure to deal with Motions relating to impeachment of the president and removal of president and deputy presidents on grounds of incapacity.
- (ix) It is noteworthy that the constitution sets varying thresholds for not only passing of such Motions but also support of the moving of such Motions. Further, the Senate has no role on removal of president and deputy president on grounds of incapacity.
- (x) The National Assembly may also pass motions for removal of cabinet secretaries who may thereafter be accorded an opportunity to be heard by the Assembly. These provisions will have far reaching effects on the procedure on such special Motions.
- (xi) Other special Motions to be provided for may include those relating to approval of the person nominated by the President, in replacement of a deputy president, motions for approval of deployment of Defence Forces for restoration of peace and those for approval of criteria of allocation of national revenue in counties.
- (ix) The Standing Orders or relevant statutes may also provide for procedure to be followed when the House is approving proposals for appointment to constitutional and other offices. These will include, Cabinet Secretaries (Ministers), Ambassadors, the

Secretary to the cabinet, Principal Secretaries, Chief Justice, Deputy Chief Justice, and the Auditor-General.

(x)Of importance to the new Standing Orders will be the new financial procedure that will govern how parliament will appropriate and approve the budget. The budget committee has an enormous task of guiding the process.

In addition, the new Houses' Procedures will take into account gender issues in committees, process of review of the conduct of State officers and the President, address by the Head of State, freedom of the Media, Access to information, requirement for Persons with Disabilities, Minorities and Marginalized Groups and Older Members of the Society.

The Challenges of Measuring Impact: Beyond Numbers

PRESENTATION MADE AT THE KENYA LEGISLATIVE
DEVELOPMENT CONFERENCE
WINDSOR GOLF AND COUNTRY CLUB
29TH -30TH MARCH, 2011, NAIROBI, KENYA
PROF. NJUGUNA NG'ETHE
INSTITUTE OF DEVELOPMENT STUDIES, UNIVERSITY OF
NAIROBI

Part A.

Demonstrating Results of Legislative Development Work

Parliamentary Strengthening Program Objectives- Recap

- **Improve** KNA **effectiveness** in law-making
- To **improve** the **effectiveness** of the Kenyan Parliament in its oversight function
- **Enhanced** internal transparency and **accountability**
- To **improve** the Kenyan Parliament's **responsiveness** and oversight regarding Devolved funds
- Note the keywords which are highlighted

Outputs, Results and Common Methods- New emphasis on quantifiable and regular results

- Mid Term and summative evaluations
- Questionnaires
- Data collection matrices
- Case studies of key departments and pieces of legislations

Mid-term and summative evaluations

- Offers possibility of combining quantitative and qualitative data
- Quality of the evaluation dependent on quality of data stored
- Does not provide monitoring
- Very useful in providing overall picture and insights
- Offers good possibility of capturing results

Questionnaire- SUNY Experience

- Provides solid quantitative data
- Serious logistical problems (Parliamentary calendar; MPs priorities/ time; large teams of enumerators)
- Overall not a good monitoring instrument for capturing short term results
- Good instrument for capturing medium to long term results if administered several times at logical intervals (beginning, mid-term, end of project)

Note: Problem of MPs turnover/ institutional memory

Characteristics	Members of Parliament (N = 59)		Parliamentary Staffers (N = 70)	
	Freq.	%	Freq.	%
Gender				
Male	55	93.2	46	65.7
Female	4	6.8	24	34.3
Year first elected to Parliament				
1992	2	3.4		
1997	2	3.4		
2002	6	10.2		
2007	48	81.4		
2010	1	1.7		
Year(s) of service				
1 - 5	49	83.1	22	31.4
6 - 10	7	11.9	34	48.6
10 - 15	1	1.7	2	2.9
16 - 20	2	3.4	7	10.0
21 - 25	0	0	3	4.3
26 - 30	0	0	1	1.4
31 - 35	0	0	1	1.4

Monitoring Matrix- SUNY Experience

Metric 2: Improve KMA effectiveness in law-making
Objective 1: Improved legislative and policy making process
Result 1: Improved legislative and policy making process
Indicator 2: Number of bills passed
Baseline: Annual (October 2010 - October 2011)
Data source: Hansard, SUNY Bill-tracker

Year	Month	Number of bills presented to parliament	Number of bills passed	Number of bills reported	Of the bills, how many were transferred?	If transferred was it done on time? (Y/N)	Description of bill	Type of bill (Private/Government)
2011	Jan	2	2	0	2	Y	The bill provides for the voting of Judge and Magistrate as provided for under clause 28 of the Sixth Schedule of the Constitution and for related matters.	Government
						Y	The bill makes provision for judicial services and administration of the judiciary.	Government
	Feb	1	0	0	-	-	A Bill for an Act of the Parliament to provide for procedures for parliamentary approval of constitutional and statutory appointments and for connected purposes.	Private
	Mar	1	0	0			Tabled by Minister of Finance during the last quarter of the financial year for each parliament's approval to finance budget activities that are not covered by the Appropriation Bill.	Government

Monitoring Matrix- SUNY Experience

- Main advantage is that data is continuously captured and analysed
- Captures changes continuously (going beyond the bill tracker)-matrices beginning to capture changes
- Problem of determining numbers and type of indicators for each objective
- Problem of harmonizing records with the data collection instruments
- Labour intensive
- Note 1: Results might not appear at intervals required e.g. By development partners

Note 2: Problem of capturing quality (for example, quality of transitional legislation.)

Case Studies

- Not yet tested with regards to Kenya National Assembly
- Two potentially fruitful areas-
 - Key departments of Parliament (e.g. PBO, PSC, Research department)
 - Specific pieces of legislation

B. SUMMARY OF KEY ISSUES

- Explaining results of KNA changes- internal vs. external factors (new Constitution, Public Service Commission, Parliamentary Budget Office)
- Reporting results- requirements vs. institutional realities
- The issue of assessing results- what? when/ how often? and how? In the context of different stakeholders (project beneficiaries, implementing agents, funding partners)
- Problem of the attribution (multiple partnerships and styles; institutional dynamics and environment)



KENYA NATIONAL ASSEMBLY
Department of Research Services

TALKING NOTES ON
PARLIAMENT RELATIONS WITH PRIVATE SECTOR AND
THE MEDIA

PRESENTED BY:
HON. (ENG.) NICHOLAS GUMBO, MP- CHAIR, HOUSE- BROADCASTING
COMMITTEE

DURING
THE KENYA LEGISLATIVE DEVELOPMENT CONFERENCE
DATES: 29TH - 30TH MARCH 2012
VENUE: WINDSOR HOTEL, NAIROBI

1.0 INTRODUCTION

The Private sector, where in a wider sense, much of the Media fraternity belongs, is without doubt an essential pillar for achieving the goal of sustained economic growth and poverty reduction in Kenya. The Kenya private sector in general has over the years substantially contributed to the country's economic development process. According to the **Kenya economic Update 2010**, private sector contributes **over 80% of GDP**, around **90 percent** of all economic activity is created by the private sector, as are nine out of every **10 jobs**.

The media in particular has been on a growth trajectory with the number of FM stations increasing ninety fold in the past 10 years from 1 to over 90. Currently Kenya boasts of up to **14 non-subscribed television stations** and diverse print media ranging from well-respected newspapers and magazines to an expansive tabloid press, thanks to the liberalized economy investors in this country continue to enjoy. More than **100 applications for radio and television licenses** are pending before the Communication Commission of Kenya (CCK), the independent regulatory authority for the communications industry in Kenya.

The private sector is therefore a conduit through which investment, innovation and faster economic growth can be achieved. As such, Private sector development will need to be driven by increased competitiveness and an enabling policy environment. Achieving competitiveness will require taking actions which increase productivity by innovatively deploying human, financial and other resources around the Country. Parliament is a key player in creating the conducive legal, institutional and policy framework to accelerate the growth of investments and employment creation in Kenya. Priority need to be given to actions which contribute to: -

- i. Removing the impediments to investment in the Private sector including Media
- ii. Promoting investment in people, skills and new ideas
- iii. Improving the efficiency with which resources are deployed in the region.

These include the following:-

- i) Improving business environment with a view to reducing the cost of doing business.
- (ii) Building the capacity of market support institutions and promoting good governance.

- (iii) Advocating for development of high quality basic infrastructure services to facilitate investment- including through public-private partnerships.
- (iv) Facilitating access to requisite resources needed for private sector development; Access, availability and quality of support services vital to building firms' capacity to compete regionally and internationally
- (vi) Economic empowerment of vulnerable groups in the private sector

Looking at the above action areas likely to boost the expansion of the private sector, the role of parliament cannot be overemphasized. This can be achieved through the three critical functions of Parliament: Oversight, Legislation and Representation.

Parliament as the premier national democratic institution must be in the forefront of efforts to increase the public's right to access to information. Additionally, the media or Members of the Fourth Estate, as they are commonly referred to, act as a conduit for information about Parliament and the legislative process to the public and are expected to facilitate and play their role in ensuring parliament provides the necessary leadership.

Indeed, in furtherance of requirements of the **Constitution of Kenya 2010-Article 118** on public participation in legislative affairs, I see a big role for the media in creating platforms and linkages for this to effectively take place.

Martin Luther once stated: *Power properly understood is nothing but the ability to achieve purpose. It is the strength required to bring about social, political and economic change.*

Both parliament and the media are powerful forces for national development, innovativeness, and unity. The reverse is also true that both can destroy a nation depending on how they play with their inbuilt power. This is the challenge facing us as we implement the constitution, transit to a new dispensation, and face the first elections under the new Constitution.

2.0 PARLIAMENT AND MEDIA: THE RELATIONSHIP

Parliament and media are two essential actors necessary for an effective and vibrant democracy and economy. Along with parliament, the media;

- i. Share a responsibility to contribute to political, economic and social development in ways consistent with democratic norms and principles through carrying out objective and substantiated reporting. Economic development is best achieved and sustained in societies that are democratic and well-informed.
- ii. The media maintains a strong link between the parliament and the public by helping to expose the weaknesses of the Country's democratic system and how they can be fixed. Often, the media struggle hard to unearth the lapses of the Government and its shortcomings, and also give expression to public grievances and difficulties and report on how policies are being carried out.
- iii. Often called an extension of parliament given their pivotal role in strengthening democracy, they fulfill a great need felt alike by the Members of Parliament and the public. It is through the newspapers and other mass media where parliament enjoys so much publicity and gathers information that helps it to effectively supervise and exercise control over the executive
- iv. Provides a conduit through which public opinion is transmitted to Members of Parliament. This creates a two-way channel for information, which should be recognized as valuable. Accurate and objective reporting is a channel for public feedback that assists MPs to legislate and scrutinize government performance. Hence, political leaders must not seek to stifle the airing of opposing views and should, rather, pay attention to diverse opinions as expressed through the media;
- v. Contribute to national unity and respect for diversity and respect for human and legal rights of the wider populace in public interest

3.0 THE ROLE OF PARLIAMENT AND THE MEDIA

3.1 What Parliament can do?

- a. Encourage the enforcement of Article 33, 34 and Article 35 of the 2010 Constitution on Freedom of Expression and Right to Information respectively. Parliament should work to develop a culture to protect the media, as the presence of a free media is vital for a functioning democracy and good governance.
- b. Recognize the value of an independent media in contributing towards the development of a well informed society through its exposure to a wide range of well-articulated views.
- c. Facilitate more coverage of Parliament by opening the proceedings of select and other committees to the media.
- d. Respect the media as a legitimate reflection of public opinion, public concerns and social problems and reactions to policies and programmes.
- e. Provide more training opportunities and information for journalists on Parliamentary practice and procedure
- f. Ensure diversity within media ownership to prevent private monopoly and state control. Here, it may be necessary to look at how existing laws can be strengthened, or new laws made, that discourage borderless dominance of one media house over the others.

3.2 What the media can do?

- a. Gain a comprehensive knowledge of, and respect for, the role and position of Parliament and Parliamentarians.
- b. Provide fair and factually accurate coverage of Parliament as the duly elected voice of the people while providing constructive criticism.
- c. Develop more imaginative and attractive ways to enhance parliamentary coverage so that the people are encouraged to take greater interest in their society's principal democratic forum.
- d. Expose the public more to the battle of ideas by providing balanced coverage of Parliament and paying attention to views expressed by opposition and all MPs.
- e. Run programs that promote national unity and cohesion.

- f. Avoid conducting relations with Parliaments in an adversarial manner or in a way which unfairly degrades Parliaments and their Members. The key is to develop a strong professional relationship between the journalists and the parliamentarians, based on mutual respect and recognition, as both play a pivotal role for an effective democracy. The MPs as people's representatives possess ultimate legitimacy, while media assist the community in taking decisions about whether to give their continued support to their representatives.
- g. Highlight cases where the other arms of government attempt to encroach on, or demean, the role of Parliament [IEBC].

4.0 GOING FORWARD THEREFORE;

1. A strong and efficient statutory framework is a prerequisite for creating an environment that protects the rights of the media while also ensuring that the public interest and individual rights are not breached by their activities. The challenge is to interplay and balance between legislation, regulation, consumer choice, the interests of citizens and the promotion of quality in the media.
2. It is the responsibility of the media to set and supervise their professionals within ethical standards when reporting Parliamentary proceedings. There should be development of professional and ethical standards for Parliamentary reporting.
3. As the democratic embodiment of the public's political views, Parliament must respect the right of individuals and particularly the media to constructively criticize its role, integrity and performance. Further, to assist in the information flow, Parliaments should embrace the fast growing Information Technology so as to provide information emanating from parliament in Real Time and in an interactive manner.

5.0 CONCLUSION

As I conclude, allow me to briefly talk about a very fundamental development in Kenya this week, a development that necessarily ought to make Parliament, the Media and the Private Sector mutually reinforcing actors to lend synergy for a common good. But the same development could also (from time to time) make these three actors work at cross-purposes from time to time. Ultimately, however, it is my prayer the interest of Kenya, and the People of Kenya, will always prevail of narrow sectarian interests.

Ladies and gentlemen, I am talking about the announcement on Monday that oil had been discovered in Turkana. This is such big news that those of us who woke up on Tuesday morning thought all Kenyan newspapers would, once in a long time, splash the same headline simply reading "OIL AT LAST!", or something to that effect. But we do not control the thinking of the editorial boards of major newspapers, and that is why some of them chose to headline the mini-cabinet reshuffle instead, a by-far smaller event with next to nil potential for adding more bread on the tables of Kenyan house-holds!

Heated debates are expected in Parliament as MP's scrutinize contracts signed between government and private sector/international companies. The media will play a crucial role in conveying such debates to the Kenyan public in as objective a manner as possible, always conscious of the fact that in Africa, in particular, oil has been both a blessing and a curse.

In handling this new reality, Parliament, the Media and the Private Sector would do well to always remember the following:-

- i) Africa is fantastically rich in natural resources. Paradoxically, it is also one of the most economically poor places on earth. Do we regard this as Africa's challenge or the world's challenge?
- ii) Oil is both a blessing and a curse. Over-dependence on resource rents can lead to poverty, corruption, conflict and weak democratic accountability.

- iii) The monumental environmental and social challenges that oil extraction brings with it, particularly management of effluent, waste and spillages from oil operations.
- iv) Trade and investment policies and rules should be formed to ensure the investment contributes to sustainable development of those living in the immediate neighbourhoods of the oil wells.
- v) Sharing of the money generated from the oil operations.
- vi) The need for strong governance practices to provide energy security and prevent “deprivation amid plenty”
- vii) Avoid over-reliance on oil and gas revenues. For instance Sudan used to be the largest producer of cotton, but over-reliance on oil has nearly wiped their cotton industry.
- viii) The need to build local capacity to be able to understand the complicated financial transactions in oil extraction and marketing, leading to equitable sharing of oil revenues.
- ix) Deliberate programmes must be developed to manage people’s expectations (Turkana case).
- x) Parliament, the Private Sector and the Media must lead the way in making Kenya follow in the success stories of countries like Botswana and Mauritius who have managed to utilize their natural resources not only to improve the lives of their people, but also to advance peace and harmony in their countries.

Ladies and gentlemen, allow me to close by giving you the story of two countries, going by almost similar names; Nigeria and Algeria, which both discovered oil around about the same time, 1956.

Algeria

- Today third largest supplier of natural gas to Europe
- Youth un-employment – currently stands at around 21%
- Population – around 37 million
- GDP per Capita - \$ 5,245
- HDI – 0.698

Nigeria

- Population: around 170 million
- Largest oil producer in sub-saharan African with about 32% and 34% of Africa's oil and gas reserves respectively.
- 5th largest exporter of gas and oil in OPEC.
- 5th largest oil exporter to the US.;
- Oil-related insurrections started in 1967.
- The Biafran War of 1967 – 1970 led by the late Odumegwu Ojukwu largely attributed to disagreements over sharing of oil revenues.
- Oil-related conflicts are still being experienced in the Niger delta, most recently by a movement calling itself MEND (Movement for the Emancipation of the Niger Delta).
- Niger delta is estimated to have claimed about 1000 people per year between 1999 to 2004 due to oil-related conflicts.
- GDP per capita stands at around \$1541
- HDI – 0.459
- In 2000, 70% of Nigerians were estimated to be living under poverty line!

Parliament, the media, and the private sector have a duty to work together in ensuring laws are made that protect the interests of Kenya and her people, ensure transparency in the extractive industry, scrutinizing all agreements signed by government, capacitating Kenyans, and disseminating information to the people of Kenya.

Because, never ever should oil be a curse to the people of Kenya. Never ever should Kenya go the way of Nigeria on account of oil, because in the end our oil should help improve the lives of our people, and not cut short the lives of our people.

Hon. Eng. Nicolas Gumbo, M.P.

Rarieda Constituency and

Chairman, House Broadcasting Committee



KENYA
PRIVATE SECTOR
ALLIANCE

PARLIAMENT'S RELATIONS WITH THE PRIVATE SECTOR: A BLOOMING PARTNERSHIP

A Presentation at

THE KENYA LEGISLATIVE DEVELOPMENT CONFERENCE

By

Ms. Carole Kariuki, CEO – Kenya Private Sector Alliance (KEPSA)

At Windsor Golf Hotel, Nairobi, 29 – 30 March, 2012

Introduction

A **parliament** is a legislature whose power and function are similar to those dictated by the Westminster system of the United Kingdom. More generally, "parliament" may simply refer to a democratic government's legislature. It acquired its modern meaning as it came to be used for the body of people (in an institutional sense) who would meet to discuss matters of state. (<http://en.wikipedia.org/wiki/Parliament>).

The Role(s) of Parliament

The primary roles of parliament include legislation oversight and representation. Legislation is about passing the laws which constitute a country's legal framework. Oversight is about keeping an eye on the activities of the executive, and – on behalf of citizens – holding the executive to account. A particularly important element of oversight concerns the budget; checking that spending decisions are in line with national priorities. Representation is about collecting, aggregating and expressing the concerns, opinions and preferences of citizen-voters. Parliaments also provide an arena for dialogue in which citizens' **disparate** and varied interests can be discussed.

In present times, Parliaments especially in developing countries have to go beyond their conventional roles to be the new champions for reforms by recognizing and becoming more responsive to the dynamics of private investors. This is because Legislators play a vital role in creating an enabling environment for private sector development especially in Africa so as to enhance economic growth and job creation. They have to liaise more closely and regularly with domestic and foreign investors and redefine their roles as regulators, promoters and developers of the private sector since it is the highest tax payer that provides revenue that runs government operations.

Relationship between Parliament and Private Sector in Africa

Parliaments themselves often lack the institutional capacity to perform their roles effectively (UNECA, 2005, pp.201-2). Parliamentary rules and procedures may be poorly developed, parliamentary committees may be weak or non-existent (Burnell, 2002; Rahman, 2005).

Basic infrastructural problems are also common place including inadequate or non-existent accommodation, a lack of access to information, information technology, and library facilities, a lack of parliamentary staff to assist in the administration of parliamentary affairs and in particular in carrying out the research which is needed for parliaments to hold the executive to account.

Fundamentally, such challenges result from the fact that parliaments receive insufficient funding which is controlled by the Executive anyway. Additionally, parliaments often lack the independence, knowledge and resources to perform their functions, especially in poor countries.

But things are changing. Specifically, Sub-Saharan Africa is implementing reforms to improve business environment at the fastest pace. Out of the top 12 reformers this year, there are four African Countries: *Sao Tome and Principe, Cape Verde, Serra Leone and Burundi*. Over all 78% of African countries implemented at least one reform last year. Africa has realized that failure to implement reforms is expensive as it undermines credibility, efficiency and effectiveness of governments, crowds out more socially productive investments and worsens delivery of services, especially to the poor who need them most.

An African Best Practice: The Case of Rwanda

Rwanda needs no introduction in terms Business Reforms. It has been a top performer in the recent years. *The Economist* magazine issue of February 2012 refers to Rwanda as 'business friendly' and 'free of red tape'. In terms of legislation, it has realized that legislators play a vital role in creating an enabling environment for private sector development.

Just this month, in a conference in Kigali on *Private Sector Development in Africa – Cornerstone for Sustainable Growth* held on 14th – 16th March 2012, President Kagame confirmed that Rwanda has constructive dialogue with the Executive, Legislature, Judiciary, Investors, Civil Society and Development Partners with the aim of shaping the policies and regulations that impact business.

He stressed that the joint work has paid off by maintaining macro-economic stability, the country is successfully privatising government assets within a fully liberalised economy and it has implemented significant reforms in taxation, the business climate and in the Judiciary.

Kagame reiterated that the legislative arm of the government remains an indispensable partner with the key roles of developing a modern and appropriate legal and institutional framework that directly meets the interests of business, employees and consumers in a fair, transparent and time manner. The other equally important role is for legislators to go beyond reacting to realities, and instead be more proactive in projecting future needs and adequately preparing for them.

He said the successes the Parliament of Rwanda has realized in this regard include introducing or reforming up to 14 Commercial laws in the last few years that include the

Company Law, Law of Secure Transactions, Law of Arbitration and the Intellectual Property Law.

Over 100 Members of Parliament (MPs) from 40 African countries were present and they were in agreement that Africa should step up efforts to improve the business environment on the continent by reviewing legislation linked to governance, trade barriers, and regional infrastructure in a bid to strengthen sustainable growth in the private sector development in Africa.

The MPs discussed how they could boost macroeconomic stability by promoting legal and regulatory reforms to encourage productive and sustainable private investments, necessary to boost growth and create jobs in Africa. They went on to discuss the reforms needed to enable Small and Medium Enterprises (SMEs) to flourish as growth engines; and examined steps Africa's parliaments can take to promote inclusive growth through sustainable private sector development.

It is equally important to note that this conference was an initiative of *The Parliamentary Network* on The World Bank & International Monetary Fund confirming the need for legislators to network among themselves so as to learn from each other. And KEPSA was an active participant making a presentation on *Development in Africa: Reforms which enable SMEs flourish*.

Why KEPSA chose to engage with Parliament

KEPSA is the umbrella body of the private sector associations in the country and provides a single inclusive voice for the private sector in public policy and dialogue, hence providing the framework for public-private sector partnership.

In Economics, the **private sector** is that part of the economy, sometimes referred to as the citizen sector, which is run by private individuals or groups, usually as a means of enterprise for profit and is not controlled by the state. By contrast, enterprises that are part of the state are part of the public sector. (wikipedia.org/wiki/Private_Sector).

KEPSA's partnership with the Legislature began in 2008 during the National Accord deliberations after the Post Election Violence where it worked with the speaker to mediate on arising issues as the Accord was discussed.

To strengthen this engagement further, in 2009, KEPSA realized that there lacked a formal and structured mechanism of engagement between the private sector and the legislative arm of government, yet the legislature has a very important role to play in determining the business environment due to its law making and oversight roles. This led to a disconnect in policy formulation and law making with Parliament passing some laws that did not have the desired positive impact on the business environment.

The glaring gap was felt more so because KEPSA had already established mechanisms of engagement with the Executive arm of government through three main forums: The Ministerial Stakeholders Forum, the Prime Minister's Round Table meetings with Private Sector and the Presidential-Private Sector working forums.

To remedy the situation, KEPSA therefore approached the leadership of the House and raised these concerns. In due course, an inaugural joint conference was held to deliberate and achieve a consensus on the future working relationship between the private sector and parliament and develop clear mechanisms of how they would engage henceforth. It was a

formal meeting of the Members of the Kenyan Parliament and the private sector and the first of its kind in the country. It was attended by over 200 delegates among them Members of Parliament led by H.E. the President and the Speaker of the National Assembly, cabinet ministers, business executives, development partners, East Africa Legislative Assembly (EALA) Members of Parliament and former European Parliamentarians.

Some of the Outcomes of that joint conference included:

- Establishment of a formal partnership with the Kenya National Assembly with Parliament remaining open to engage with private sector on any issues that require legislative intervention
- Various parliamentary committees meet with respective KEPSA sectors to develop a program of how they will engage for the common good of the country
- Committees work with KEPSA members in identifying laws that need harmonization and those that require amendments or areas where new laws need to be made
- KEPSA sector members who have laws they wish introduced in Parliament prepare drafts and forward to the Speaker of the National Assembly for drafting and publication by the Parliamentary Legal Department
- Parliamentary Committees notify KEPSA members in case there are any Bills before parliament that have an impact on private sector inviting them for discussions on the same
- KEPSA members attend budget parliamentary committee meetings and help the Members to understand the sector allocations and therefore inform the interrogation of the budget

Impact of the Engagement to date

KEPSA has given its input to Parliamentary Departmental Committees that has informed debate in Parliament on Bills that have a direct impact on Business.

KEPSA has used the provision of introducing Private Member's Bills in Parliament with the example of the MSE Bill 2011 which is a Private Member's Bill awaiting its second reading in Parliament.

KEPSA has also used the engagement to advocate and lobby for Bills that could be with the Executive arm of government to proceed to the Legislature.

Some of the key Bills that KEPSA has given input into include:

- The Anti-Money Laundering Bill
- The Prevention of Organized Crimes Bill
- Tea Bill
- The Draft Constitution
- The Private Security Industry Regulation Bill
- National Land Policy
- Tourism Act
- Sports Bill 2010
- Labour Institution (Amendment) Act
- National Integrated Transport Policy
- Devolved Government Bills
- Review of National ICT Policy
- The Business Regulatory Reforms Bill 2011
- The Energy & Communications Amendment Bill
- The Industrial Court Act
- Traffic & TLB (Amendment) Act
- Review of the Education Act

- The Company's Bill 2012
- The Insolvency Bill 2012
- The Public Private Partnership Bill and Policy 2011
- The VAT Bill 2012

From the above stated the following have since become law:

- The Anti-Money Laundering Bill
- The Prevention of Organized Crimes Bill
- The Draft Constitution
- The Police Service Bill
- The Police Service Commission Bill

KEPSA has also held meetings with various Parliamentary Departmental Committees to discuss sectoral legislative and policy issues that impact on business. These include:

1. Education
2. Transport
3. Environment
4. Information Communication and Technology (ICT)
5. Security
6. Land and Natural Resources
7. Finance planning and Trade

Way Forward: Best Practices for Parliamentary and Private Sector Cooperation

The active participation of Private Sector in realization of Vision 2030 cannot be over emphasized since about 60% of the funds for implementation of the Vision will be provided by the Private Sector. This is the more reason why Vision 2030 should be incorporated in the country's Legislation irrespective of the changes in Political Regimes. The Private Sector also has to be pro active by supporting Parliament in realizing Vision 2030 through offering advice on the laws and government policies that needed to be put in place to operationalize some of the flag ship projects under the Vision.

As an example, Parliament and Private Sector should partner in combating climate change so that relevant Bills and Policies that aim at preserving the environment and promote use of green energy are given proper scrutiny on the floor of the house with practical legislation. A good example could be legislation to subsidize solar power so that Kenyans use it as an alternative in order to reduce carbon emissions to the atmosphere.

Parliamentary Departmental Committees need to exploit existing technology so that they open up to private sector and other stakeholders so as to be seen as relevant and full of initiative. Having their working programmes or schedules on the parliamentary website will give others a chance to know what the Committees will be doing at whatever time and whether or not members of the public and other stakeholders are invited at the meetings. The committees should also seek internal consensus on any issue discussed so as not to go to plenary in parliament or to the public with conflicting opinions.

Kenya is a big player in the East Africa Community (EAC) and there must be deliberate effort at the regional level by the EALA to enhance public private partnerships. There has been some good progress with EALA allowing the private sector through the East Africa Business Council (EABC) to send submissions on issues of concern to it and that it consults

the region's private sector regarding any laws it is making. These efforts must be enhanced further.

Changes that have been introduced to improve public accessibility to parliament, such as 'live' coverage of Parliamentary proceedings are commendable and should be continued. Translating budget and audit documents into common man language would enable greater participation of MPs and the public in debates about the budget and changes to the legal framework.

The Executive arm of government should allocate adequate resources to parliament so that it keeps abreast with the latest technology for information dissemination as well as getting 'real time' feedback from all stakeholders. Rwanda is a good example to follow where legislators have access to laptops with parliament buildings having access to the internet for more efficiency in service delivery. Use of the Social Media will create the needed comments and suggestions on Bills on the floor of the house.

Recurrent training and other capacity-building exercises on the legislative process, including topics like how to introduce private member bills, evaluate proposed legislation and assess the existing policy framework, should be made available to MPs and parliamentary staff. This could be exploited in form of Public Private Partnerships where the Private Sector can provide the services on Consultancy basis.

As Kenya forges forward with the new constitutional dispensation of county governments and their linkage with the central government, time is ripe for parliament and private sector to work together to ensure legislation that is put in place will be conducive for business so that Kenyans across the country can feel and see the benefits of a decentralized government in 'money terms'.

The Kenyan Parliament could borrow from the Bunge Foundation Concept from Tanzania which runs the National Assembly Fund whose aim is to facilitate consultations among parliament, donors and civil society representatives. Ideally, the three parties would exchange information and review government spending, thus strengthening parliament's ability to perform its oversight function. The Kenyan version can include the Private Sector as the fourth player.

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September 2009



KEPSA MEMBERS

A. BUSINESS MEMBERSHIP ORGANIZATIONS (BMOs)

1. African Women in Agribusiness Network – Kenya Chapter (AWAN)
2. Agrochemicals Association of Kenya (AAK)
3. American Chamber of Commerce of Kenya (ACCK)
4. Artist Forum International (AFI)
5. Association of Consulting Engineers of Kenya (ACEK)
6. Association of Fashion Designers (K) – AFAD (K)
7. Association of Gaming Operators – Kenya (AGOK)
8. Association of Growth Oriented Enterprises (AGOE)
9. Association of Insurance Brokers of Kenya (AIBK)
10. Association of Kenya Insurers (AKI)
11. Association of Micro Finance Institutions (AMFI)
12. Chartered Institute of Arbitrators (K) – (CIARB)
13. Computer Society of Kenya (CSK)
14. Courier Industry Association of Kenya (CIAK)
15. East Africa Cement Producers Association (EACPA)
16. Eastern Africa Association (EAA)
17. Eastern Africa Grain Council (EAGC)
18. Eastern Africa Network for Gender & Enterprise Development Trust
19. Federation of Kenya Employers (FKE)
20. Federation of Women Entrepreneurs Associations (FEWA)
21. FEWA SACCO
22. Fresh Produce Exporters Association of Kenya (FPEAK)
23. Institute of Certified Public Accountants of Kenya (ICPAK)
24. Institute of Certified Public Secretaries of Kenya (ICPSK)
25. Institute of Quantity Surveyors of Kenya (IQSK)
26. Institution of Engineers of Kenya (IEK)
27. Kenya Alliance of Resident Associations (KARA)
28. Kenya Association of Air Operators (KAAO)
29. Kenya Association of Independent International Schools (KAIIS)
30. Kenya Association of Manufacturers (KAM)
31. Kenya Association of Stockbrokers and Investments Bank (KASIB)
32. Kenya Association of Women Business Owners (KAWBO)
33. Kenya Association of Women in Tourism (KAWT)
34. Kenya Association of Youth Entrepreneurs (KAYE)
35. Kenya Auto Bazaar Association (KABA)
36. Kenya Bankers Association (KBA)
37. Kenya Booksellers and Stationers Association (KBSA)
38. Kenya BPO and Contact Centre Society (KBPO)
39. Kenya Chamber of Mines (KCM)
40. Kenya Fish Processors & Exporters Association (AFIPEK)
41. Kenya Flower Council (KFC)
42. Kenya Healthcare Federation (KHF)
43. Kenya HIV/AIDS Private Sector Council
44. Kenya ICT Federation (KIF)
45. Kenya Institute of Supplies Management (KISM)
46. Kenya International Freight & Warehouse Association (KIFWA)

47. Kenya Landowners Association (KELA)
48. Kenya Livestock Producers Association (KLPA)
49. Kenya National Chamber of Commerce and Industry (KNCCI)
50. Kenya National Federation of Agricultural Producers (KENFAP)
51. Kenya National Federation of Jua Kali Associations (KNFJKA)
52. Kenya Private Schools Association (KPSA)
53. Kenya Property Developers Association (KPPDA)
54. Kenya Publishers Association (KPA)
55. Kenya Security Industry Association (KSIA)
56. Kenya Shippers Council (KSC)
57. Kenya Tourism Federation (KTF)
58. Kenya Water Industry Association (KWIA)
59. Marketing Society of Kenya (MSK)
60. Matatu Owners Association (MOA)
61. Matatu Welfare Association (MWA)
62. Media Owners Association (MOA)
63. Micro & Small Enterprises Federation (MSEF)
64. Motorist Association of Kenya (MAK)
65. Nairobi Stock Exchange (NSE)
66. National Association for Technology Transfer and Entrepreneurial Training (NATTET)
67. Outdoor Advertising Association (OAA)
68. Pan African Agribusiness & Agroindustry Consortium (PANAAC)
69. Petroleum Institute of East Africa (PIEA)
70. Pharmaceutical Society of Kenya (PSK)
71. Private Sector Youth Federation (PSYF)
72. Protective Security Industry Association (PSIA)
73. Public Relations Society of Kenya (PRSK)
74. Roads & Civil Engineering Contractors Association (RACECA)
75. Safaricom Dealers Association (SDA)
76. Telecommunications Network Operators Kenya Limited (TNOK)
77. Telecommunications Service Providers of Kenya (TESPOK)
78. The Co-operative Alliance of Kenya Limited (CAK)
79. United Business Association (UBA)
80. We Can Do It Society (WCDI)
81. Women Entrepreneurship Development & Gender Equality Programme (WEDGE)


B. **CORPORATES** – in excess of 80,000.

Parliament's Relations with Donors and CSOs

By
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A Presentation to the Kenya Legislative Development Conference
Reflecting on Institutional Change and the Future of Parliament
Windsor Golf Hotel & Country Club, Nairobi
March 29-30, 2012



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Outline


- Does Parliament need partners?
- Background to bilateral and multilateral interest in Parliament
- Engagement model is critical : Partners, not Donors: Paris Declaration on Aid Effectiveness
- Partnership agenda: Answering the relevance question
- Engaging Partners- Which partners?
- Going forward



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Does Parliament Need Partners?

- The trend in international development assistance is moving rapidly towards foregrounding best practices in governance institutions
- Sharing information and experiences is the path forward in the discharge of governance responsibilities
- Countries belong to community of nations and cannot act/develop in isolation (memberships in UN, AU, EAC, CPA, IPU etc)
- Capacity development in legislatures a necessity and best happens in situations of constant interaction.



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Why Interest in Parliament?

- Parliament truly a directive organ of government- where 'the people' are most directly involved
- In most of Sub-Saharan Africa growth of democracy has been best evidenced in political pluralism, development of legislative culture the hallmark of which is the growing quest to hold the executive branch to account.
- Growth of a parliamentary culture and democracy in Africa focus of great interest
- Correlation between economic and democratic



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Engagement model: Partners, not Donors:

- Focus is to make partners' support more effective and useful to the cooperating countries
- Strengthening partner countries' national development strategies and associated operational frameworks
- Alignment of aid with partner countries' priorities, systems and procedures and helping to strengthen their capacities
- Enhancing donors' and partner countries' respective accountability to their citizens and Parliaments for their development policies, strategies and performance



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Partners, not donors cont...

- Eliminating duplication of efforts and rationalizing donor activities to make them as cost effective as possible
- Reforming and simplifying donor procedures to encourage collaborative behaviour
- Defining measures and standards of performance and accountability of partner country systems



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What Partners?

- Identify credible, relevant and useful partners (Foreign does not automatically connote quality)
- Various Partners for various needs
- International research institutions- for training staff
- Other legislatures- for experiential development and further knowledge acquisition
- CSOs and local think tanks for knowledge mining and research support e.g. PIN
- Pay attention to and develop sustainable relations with local institutions



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Partnership Agenda: Answering the relevance Question

- Partnerships defined variously but many are targeted at capacity building through a range of methods.
- There are various challenges to understanding the agenda of partnership between Parliament and actors outside of itself
- Parliament is best placed to set and lead the agenda of partnerships (Parliament understands its needs better)
- Parliament needs to set up a framework for collaboration at all times but remain sufficiently accommodative to the imperative of international cooperation and best practices



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Going Forward : Effective Engagement

- PSC should develop an institutional mechanism to facilitate the engagement with external partners e.g external resources mobilization mechanism to mobilize and coordinate external resources into Parliament.
- Time to develop partnership map?
- Develop priorities from time to time
- Develop a system of measuring the impact of partnership (Some sort of M&E) and effectively track the partnership support

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Going forward Cont...

- Keep an eye on sustainability and institutionalization of Partnership activities
- Aggressively seek opportunities (time to see a solid research proposal from Parliament?)
- Focus on institutional memory and strong staff culture
- Very strong coordination of partnership activities to avoid partners' confusion, duplication, wastage etc

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Kenya Legislative Development Conference
29-30 March 2012
Parliament and Political Parties

Opportunities and Challenges
Presented by Kenya's Constitution
Mary O'Hagan, NDI Kenya

Overview

- The role of political parties
- The legal framework for political parties in Kenya
 - Before 2010
 - Since 2010
- Strengthening links between political parties and parliament under the new constitution
 - Implications within parties
 - Cross-party implications

What is the role of political parties?

- The classical role political parties play in a democracy is often described as that of a *transmission belt*, linking citizens and government
 - In other words, parties are the means by which the aspirations of citizens are translated into political action
 - This is the role that the new constitution and the legislation flowing from it envisages for political parties in Kenya
 - 1st point in Code of Conduct: *Promote policy alternatives responding to the interests, the concerns and the needs of the citizens of Kenya*
- In order to fulfill this role, parties have several difficult, but *indispensable*, functions:
 - Aggregating and representing interests
 - Developing leaders
 - Presenting policy alternatives
 - Providing meaningful electoral choices for voters

The Legal Framework for Political Parties in Kenya – Before 2010

- Political Parties Act 2007:
 - Based on a classical understanding of the role of parties in a democracy
 - Introduced a new regulatory framework for political parties, imposing new conditions for party registration and membership:
 - National character
 - Representative role
 - Internal democracy
 - Party discipline
 - Public funding
 - Transparency and accountability
 - Unusually, the ills which the Act sought to cure are set out in Article 14.1
 - Describes (and bans) parties that divide people along sectarian lines and seek to gain power by force

Section 14 (1) PPA 2007

- The Registrar shall not register a political party which—
 - (a) is founded on an ethnic, age, tribal, racial, gender, regional, linguistic, corporatist, professional or religious basis or which seeks to engage in propaganda based on any of these matters;
 - (b) uses words, slogans, emblems or symbols which could arouse ethnic, age, tribal, racial, gender, regional, linguistic, corporatist, professional or religious division;
 - (c) has a constitution or operational ethic that provides in any way for discriminatory practices contrary to the provisions of the Constitution or of any written law;
 - (d) accepts or advocates the use of force or violence as a means of attaining its political objectives;
 - (e) advocates or aims to carry on its political activities exclusively in one part of Kenya; or
 - (f) does not allow regular, periodic and open election of its office bearers.

What did the 2007 Act Achieve?

- Parties were now operating within their own regulatory framework for the first time
- Seen as public institutions, also for the first time
- Standards were set for their performance, based on fundamental democratic principles
- A framework for enforcement was created

But How Close Were We to Creating the Transmission Belt?

- To what extent are they in touch with citizens?
 - Do they really perform a representative role?
- Whose interests do they serve?
 - Are they open and accountable in their funding?
 - Are they overly-dependent on particular donors?
- How internally democratic are they?
 - Do parties create leaders or do leaders create parties?
 - What is the role of party members in decision-making?
 - Are they inclusive in their operations?
- What is the basis of their appeal to voters?
 - Policies? Ideologies? Values? Personalities? Something else?
- What connection is there between the promises parties make and their performance in government or in opposition?
 - Essential in delivering meaningful choices to voters at election time
 - The key to accountable governance
 - Crucial in determining whether citizens regard parties as assets or not

The 2010 Constitution

- Articles 91 and 92 use much of the same language as the 2008 Act
- Article 92 gives Parliament the power to enact legislation on the regulation, roles, functions, registration and funding of political parties
- The Constitution also made political parties public institutions for the first time
 - It is now possible for a party to sue or be sued
- Implementation of the Constitution has resulted in the 2011 Political Parties Act
 - Based on a thorough review of the operation of the 2007 Act and inter-party agreement

Political Parties Act 2011

- Several important reforms made, including:
 - Tougher thresholds for registration
 - Increased public funding
 - Strengthened Office of the Registrar
 - Mandatory Inter-Party dialogue with the Election Commission
 - A new Code of Conduct:
 - Promotion of policy alternatives responding to the needs of Kenyans
 - Consensus-building on issues of national importance
 - Promotion of inter-party relations
 - Respect for party constitutions and rules
 - Party discipline
 - Inclusive decision-making
 - Sharing and devolution of power and resources
 - Leadership and integrity
 - Policy formation and implementation
- *It is inevitable that, over time, these reforms will change the relationship between political parties and Parliament*

What could the 2010 Constitution and the 2011 Act Achieve?

- It is not only the legal framework that will bring about change
- Spirit of partnership, consultation and public participation
 - Higher expectations (party members, under-represented groups at all levels, constituents)
- Issue-based politics
 - Legal requirement
 - Provides the glue to hold party/coalition representatives together in government, parliament and county structures
- Party discipline
 - New legal framework
 - Essential in inter-institutional and inter-party negotiations
- Devolution
 - Profound effect on political parties and the legislature
 - New role for party branch structures
 - New context for parties to play a representative role
 - New role for party representatives in county governance structures
 - New legislatures within which different combinations of parties may need to co-operate
- Separation of the Executive and the Legislature
 - Designed to ensure that Parliament as a whole, and Parties in Parliament, provide more effective checks and balances
 - Likely to result in greater institutional independence for the Legislature which could translate into a new moral authority
 - However, this requires cross-party co-operation
 - Which in turn will require more inclusive decision-making within the parties

Strengthening the Links between Parties and Parliament : Implications within Parties

- Implications for internal party decision-making
 - If unity is required prior to conducting external negotiations, how can this be achieved?
 - How can the party leaders inside and outside parliament co-ordinate their positions?
 - What role does the central party have in decisions made at the county level?
 - What role can party/parliamentary /county assembly group rules play in making this work?
- Policy-driven decision-making
 - How can policy provide the glue that holds the party together in government, parliament and the counties?
 - What role should the Manifesto play after the election?
 - Is there a case for county manifestos?
- Party Discipline
 - What rules are needed for Whipping members?
 - What role does the central party have in decisions taken at the county level?
- Bicameralism
 - Will there be a need for joint meetings of the party groups in both Houses?
 - How will elected members of the same party (from both Houses, and from the counties) relate on the ground?

Strengthening the Links between Parties and Parliament: Cross-Party Implications

- Coalition government will be a thing of the past but inter-party agreements are more likely than before
 - Different permutations are possible at different levels
- Majority and Minority Factions
 - Might these include more than one political party?
 - Will the factions need an agreed political program for the term of the parliament?
 - What role will the Parliamentary Groups play?
 - How can the new Standing Orders help this process?
 - How will this work at the county level?
- Separation of Legislature and Executive
 - Might this foster cross party agreements on oversight issues?
 - Will the risk of gridlock place a higher priority on inter-party and inter-institutional agreement?
 - Might Parliament be able to exert moral authority over the Executive if it is united as an institution?

**PARLIAMENT'S RELATIONS WITH
THE JUDICIARY AND THE
EXECUTIVE**

PRESENTATION MADE AT THE KENYA LEGISLATIVE
DEVELOPMENT CONFERENCE
WINDSOR GOLF AND COUNTRY CLUB
29-30th SEPTEMBER, 2010, NAIROBI, KENYA

J.M. NYEGENYE
DIRECTOR OF LEGAL SERVICES
KENYA NATIONAL ASSEMBLY

OUTLINE

2

- The doctrine of Separation of Powers
- Experiences with Separation of Powers under the former Constitution
- Separation of Powers in the Tenth Parliament
- Separation of Powers in the Constitution of Kenya, 2010
- Possible Challenges for future Relations of the Three Organs of Government
- Prognosis

THE DOCTRINE OF SEPARATION OF POWERS

3

“When the legislative and executive powers are united in the same person or in the same body of magistrates, there can be no liberty; because apprehensions may arise, lest the same monarch or senate should enact tyrannical laws, and then execute them in a tyrannical manner. Again, there is no liberty, if the judiciary power be not separated from the legislative and executive. Were it joined with the legislative, the life and liberty of the subject would be exposed to arbitrary control; for the judge would be then the legislator. Were it joined to the executive power, the judge might behave with violence and oppression.”

Montesquieu

**THE DOCTRINE OF SEPARATION OF POWERS -
APPROACHES**

4

First: a strict, traditional approach that focuses on the distinctness and separateness of the organs of Government.

- ❖ Each arm has a distinct and separate function which it performs to the exclusion of the other arms of government.
- ❖ This approach has been criticized because a strict interpretation of the doctrine would lead to inefficient administration and increased conflict between the diverse arms of government.

Second: Focuses on checks and balances

- ❖ Recognition of Government as an organic unity with its various parts are closely interwoven. Absolute separation of powers is both impossible and undesirable.
- ❖ The various arms, though separate and distinct, are closely interlinked and have an oversight role over each other which can only be exercised by investigating and questioning the actions of the other branches.
- ❖ **The more pragmatic approach to the doctrine is that each branch, checks and limits the powers of the other, yet none of them can exercise its powers without the cooperation of the others.**

THE DOCTRINE OF SEPARATION OF POWERS -
CRITICISM

5

Strict pursuit of the theory of separation of powers leads to isolation and disharmony in Government.

- ❖ Understanding and cooperation are best achieved end when the organs work together.
- ❖ When the organs are separated to carry on exclusive work of their branch they become arrogant and refuse to work with other branches of Government giving rise to administrative difficulties.

The theory of separation of powers is based on wrong assumptions:

- ❖ Not all organs of Government can mutually check each other.
- ❖ The three branches of Government are not equally powerful
- ❖ Relationship between public liberty and separation of powers is not very significant.

Yet, it is broadly agreed that the theory of separation of powers is important if used judiciously to bring about a balance between the actions of the state and the enjoyment of liberty by the people. Separation of powers is not an end in itself.

SEPARATION OF POWERS UNDER THE FORMER CONSTITUTION -
RELATIONS WITH THE EXECUTIVE

6

The Executive as mirrored in the Presidency exercised immense powers and resulted in an uneven relationship between the Executive and the Legislature. Some of the powers were that the President-

- ❖ Was responsible for creating and abolishing all offices in the public service. Prior to 1999, this extended to the Secretariat of Parliament.
- ❖ Exercised a pervasive prerogative of mercy
- ❖ Had power to summon, prorogue and dissolve Parliament at any time.
- ❖ Assented to all Bills passed by the National Assembly before they could become law and possessed a limited veto power over legislation
- ❖ Appointed Electoral Commissioners
- ❖ Could enhance the numbers on the Government side by the power to nominate twelve members

SEPARATION OF POWERS UNDER THE FORMER CONSTITUTION -
RELATIONS WITH THE EXECUTIVE

7

Additionally:

- ❖ The Govt. could not be removed by a No Confidence Motions in the Government,
- ❖ Size of Cabinet and Government was unlimited
- ❖ Executive was resident in House and drew its members from the House
- ❖ The Executive's power of (subsidiary) legislation was unchecked by the Legislature.
- ❖ No legislation with financial implications on public funds could be prosecuted in the House without the approval of the President.
- ❖ The budget process was tightly controlled by the Executive.
- ❖ Until 2008, a private member of the National Assembly could not bring a Bill without the Leave of the House on a Motion

Result: The antithesis of separation of powers, checks and balances. Near complete fusion of the two organs of Government to the detriment of the Legislature.

THE DOCTRINE OF SEPARATION OF POWERS UNDER THE FORMER
CONSTITUTION - RELATIONS WITH THE JUDICIARY

8

- ❖ Relations were in large measure informed by the lopsided relationship between the Legislature and the Executive.
- ❖ The recruitment of the Judiciary by the Executive and the general patronage over it led to a situation where the independence of the Judiciary was severely eroded.
- ❖ The deference of the Judiciary to the Executive was vicariously extended to the Legislature, mostly owing to the fusion of the Legislature into the Executive.
- ❖ Judiciary pursued what can be described as 'harmonious construction' entailing an attitude of avoidance of confrontation and extreme judicial restraint.
- ❖ On the whole, the Judiciary did not question the wisdom or policy or legislative authority of Parliament in enacting laws.
- ❖ There was some reciprocity from Legislature to the Judiciary: Until 2008, the Standing Orders of the National Assembly provided for a broad-sweeping sub-judice rule and the conduct of judicial officers was generally not discussed on the floor of the National Assembly

THE DOCTRINE OF SEPARATION OF POWERS IN THE TENTH PARLIAMENT
- RELATIONS WITH THE JUDICIARY

9

Relations between the Legislature and the Judiciary have mainly revolved around four propositions:

- ❖ the National Assembly will deal with any matter whether or not it is pending in court unless it can be shown that doing so will prejudice the due administration of justice;
- ❖ The National Assembly is solely responsible for the determination of its own procedures and for how it is to proceed in any matter.
- ❖ The courts can neither direct the House on how to proceed nor prevent the House from proceeding in any particular matter.
- ❖ The National Assembly considers that the courts should decline jurisdiction or dismiss in a preliminary manner any suits whose effect is to question the House's conduct of its constitutional mandate, rather than the product of that conduct.

SEPARATION OF POWERS IN THE TENTH PARLIAMENT - RELATIONS WITH THE JUDICIARY

10

"The view that it can fall to another organ whether the Executive or the Judiciary to determine for Parliament a matter before Parliament is, to my mind, constitutional heresy....

.....in so far as a constitutional question arises before the House, within the conduct of the business of the House, it is the constitutional duty of the Speaker to interpret the Constitution to that extent and for that purpose alone so as to enable the House to proceed with its constitutional functions. It is not fathomable and it would be a grave negation of the Constitution that the House should adjourn or otherwise suspend its business and seek the directions of another body or organ before it can proceed..."

"The Judiciary can review the constitutionality of legislation or other actions taken by the National Assembly if challenged and can indeed declare a law or other action taken by the House to be unconstitutional and to be a nullity..... what the Judiciary cannot do, under our Constitution, is to stop or prevent the National Assembly from undertaking its constitutional functions. Neither can the Judiciary compel any action to be undertaken by Parliament... No one outside Parliament, not the Executive and not the Judiciary, tells Parliament, in a compulsive manner, what to do or not to do, when to do it or how to do it."

Speaker of the National Assembly

SEPARATION OF POWERS IN THE TENTH PARLIAMENT - RELATIONS WITH THE JUDICIARY

11

".... the sub judice rule is not one to be invoked lightly. A claim of likelihood of prejudice of the fair determination of a matter is similarly not to be invoked without circumspection. gagging this house and preventing it from discharging its constitutional mandate requires tangible reasons to be advanced. The danger of prejudice to the due administration of justice must be clearly shown.... where the public interest is for an open and detailed discussion of a matter, the Speaker will invoke standing order 80 (5) to overrule any objections founded on the sub judice rule.

"The orders of the High Court or of any other Court, in whatever form they may be worded must be construed to have been made with the intention to abide by the Constitution and will be so interpreted by the Speaker, for the purposes of this House.the Orders of the High court.... are not addressed to this House and were not intended to, and have no effect on the exercise by this House of any of its constitutional functions.... The orders have no effect on the work of this House or its Committees..."

Speaker of the National Assembly

SEPARATION OF POWERS IN THE TENTH PARLIAMENT - RELATIONS WITH THE EXECUTIVE

12

In Parliament's dealings with Executive, the following principles are discernible:

- ❖ The Executive is and must remain accountable to the Legislature
- ❖ It is not the responsibility of the Legislature to solve or intervene in disputes within the Executive
- ❖ In matters before the House, and while they remain before the House, the House itself must be the sole determinant on questions of legality and constitutionality
- ❖ There are clear separate responsibilities as between the Executive and the Legislature and neither should seek to encroach on or usurp the domain of the other.

"I said then and I repeat now that the office of the Speaker of the National Assembly is singularly ill-equipped to advise or determine for the Executive arm of Government, and, for that matter, political parties, how they shall run their affairs. I further stated that the Speaker will limit himself to questions of constitutionality, statute and the Standing Orders, but only so far as these relate to the business and affairs of this House. I do not wish to traverse territory that is outside the province of my office"

Speaker of the National Assembly

SEPARATION OF POWERS UNDER THE CONSTITUTION OF KENYA, 2010 –
RELATIONS WITH THE EXECUTIVE

13

Separation of powers has been enhanced as follows:

- ❖ The Executive and the Legislature are now separate and distinct.
- ❖ Members of the Cabinet are appointed only with the approval of the National Assembly and the size of the Cabinet is limited by the Constitution.
- ❖ Parliament has power to cause the removal from office of the President, the Deputy President and members of the Cabinet
- ❖ The Parliamentary Service Commission and the Parliamentary Service are continued and enable Parliament to be responsible for its own staffing, services and facilities.
- ❖ The legislative authority of the Republic at the national level vests in and is exercised by Parliament
- ❖ Parliament has a fixed life and is in control of its own calendar during that life
- ❖ The President assents to Bills before they become law and has a limited veto power over legislation, but a Bill becomes law even if the President fails or refuses to assent to it.
- ❖ Parliament must approve the appointment of most constitutional office-holders.
- ❖ Parliament is now fully responsible for the budget making and approval process.
- ❖ Parliament must sanction certain key executive actions such as declarations of war and extensions of powers of emergency.

SEPARATION OF POWERS UNDER THE CONSTITUTION OF KENYA, 2010 –
RELATIONS WITH THE JUDICIARY

14

Relations between the Legislature and the Judiciary have also changed particularly because of the following:

- ❖ The recruitment of the Judiciary is now more transparent and accountable making the Judiciary a more equal partner
- ❖ The composition of the Judicial Service Commission is from relevant stakeholders in the judicial process and requires the approval of Parliament before appointment.
- ❖ The financial independence of the Judiciary is facilitated by the establishment of a Judiciary Fund
- ❖ The security of tenure of judges is guaranteed and the provisions on the independence of the Judiciary are part of the entrenched provisions of the Constitution which cannot be amended without a referendum.
- ❖ The President, Deputy President, Cabinet Secretary, Member of Parliament, Judges and Magistrates are all recognized as "State Officers" upon whom high standards of ethics and integrity are imposed under Chapter 6 of the Constitution.

POSSIBLE CHALLENGES IN FUTURE RELATIONS – WITH THE JUDICIARY

15

- ❖ The *sub judice* rule may come under greater scrutiny and possible strain.
- ❖ Challenges may continue to the doctrine of the Speakers' role in "functional" interpretation of the Constitution.
- ❖ It may be some time before the Judiciary concedes that courts have no jurisdiction in the internal workings of Parliament.
- ❖ Suits against Parliament or the Speaker questioning the legality of decisions taken by the House or by the Speaker or seeking to have the Court order Parliament to act or desist from acting in a particular manner, show no signs of abating.
- ❖ A more robust and independent Judiciary will be alert and is likely to nullify Acts passed by Parliament in contravention of the letter and spirit of the Constitution.
- ❖ Courts will be called upon to adjudicate on the meaning, scope and requisite thresholds for public participation in the Legislature
- ❖ Will the Judiciary rule a House of Parliament to be improperly constituted if it does not abide by Article 81(b) of the Constitution? If it does, what then?
- ❖ Article 105 of the Constitution could see the courts significantly alter the composition of Parliament within the first six months after elections.

POSSIBLE CHALLENGES IN FUTURE RELATIONS – WITH THE EXECUTIVE

16

- ❖ Without a strong coalition, a Government that does not have a majority in both Houses will find it very hard to govern. Coalitions may be here to stay
- ❖ The process of approval of the Cabinet and other public appointments in the House may be protracted and controversial.
- ❖ The process by which Government sponsored legislation will be drafted, published and navigated through either House until passage is not very clear and needs to be carefully thought out.
- ❖ The Executive will need to get used to the new budgetary process controlled by the Legislature.
- ❖ The Legislature will require to get used to new means and devices of ensuring Executive accountability to Parliament even when the Executive is out of Parliament.
- ❖ There will need to be keener scrutiny by each House of delegated legislation
- ❖ Need to consider the dynamics of possibility of Speaker as acting President
- ❖ The processes antecedent to treaty ratification will need the Executive and the Legislature to work in close concert.
- ❖ Under Article 95 (6) of the Constitution, it is the role of the National Assembly to approve declarations of war and extensions of states of emergency. To secure its concurrence in such acts, the Executive will need to work very closely with the Assembly.

PROGNOSIS

17

- ❖ The Constitution is predicated on the assumption that all organs of Government and the persons who serve in them will be guided by utmost good faith and the public interest; that the Constitution itself will be interpreted in a manner promotes its purposes, values and principles.

Checks and balances and separation of powers will prevail and result in efficient Government when there is-

- ❖ **RECOGNITION** – each arm of Government must recognise the other arms of Government
- ❖ **RESPECT** – each arm of Government must respect the constitutional mandate of the other arms of government
- ❖ **RESTRAINT** – each arm of Government must exercise some measure of restraint in dealing with the other arms of Government so as to avoid undue antagonism.
- ❖ **REVIEW** - At regular intervals, there must be (institutionalized) opportunities, such as the present Conference for the organs of Government to meet separately as well as together and reflect on and review their interactions and interrelationships and chart the way forward.

**THE KENYA LEGISLATIVE DEVELOPMENT CONFERENCE
MARCH 29-30, 2012**

THE RELATIONSHIP BETWEEN PARLIAMENT AND THE JUDICIARY

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JUDICIARY

INTRODUCTION

- ▶ Under the new Constitution, all sovereign power belongs to the people who have then delegated this power to various specialized bodies, principally the Legislature, Executive and the Judiciary.
- ▶ Each of these specialized bodies is restricted to the power expressly granted to it, which it must exercise in accordance with the Constitution.
- ▶ This separation of powers is mainly to provide a system of checks and balances. With checks and balances, each of the three branches of government can limit the powers of the others. Each branch "checks" the power of the other branches to make sure that the power is balanced between them and no one branch becomes too powerful.
- ▶ The Judiciary's role in this system is validating the constitutionality of the actions of the Executive and the Legislature in addition to its Constitutional mandate to interpret and enforce the Constitution.

INDEPENDENCE OF THE JUDICIARY

- ▶ The independence of the Judiciary in the system of Government exists to ensure impartiality in judicial decision-making and is fundamental to the constitutional balance under the Constitution and to the principle of legality that underlies it. Judges when adjudicating should be subject only to the law.
- ▶ This is well recognized principle in democratic countries and has also been enunciated in international documents such as the United Nations Basic Principles on the Independence of the Judiciary (1985), and the International Covenant on Civil and Political Rights (1976).

- ▶ The independence of the Judiciary is a cornerstone, not only of respect of the rule of law, but also for human rights and has been provided for under the Constitution vide Chapter Ten.
- ▶ There are two types of judicial independence: Institutional independence means the judicial branch is independent from the Executive and Legislative branches.
- ▶ Decisional independence on the other hand is the idea that judges should be able to decide cases solely based on the law and facts, without letting the media, politics or other concerns sway their decisions, and without fearing penalty in their careers for their decisions.

INTERACTIONS BETWEEN JUDICIARY AND PARLIAMENT

- ▶ Independence does not prevent interaction between the various branches. For example, the Executive may consult with the Judiciary on policy and legislative proposals which impact upon judicial administration.
- ▶ There are also practical issues where the perspective of Judges can be of help to the Executive. Some examples of comments by the Judiciary to the Executive on policy and legislative proposals include the Vetting of Judges and Magistrates Act and the Judicial Service Act 2011.

Key Interactions

- ▶ Parliament is the source of Legislation
- ▶ Courts may rely on Hansard or records of House proceedings to identify intention of Parliament regarding a piece of legislation
- ▶ Test of Constitutionality of Legislation
- ▶ Judicial " Law Making"
- ▶ Chief Registrar now tables budgetary estimates to the House for approval

PARLIAMENTARY PRIVILEGE

- ▶ Parliamentary privilege is the sum of peculiar rights engaged in each house collectively and by members of each house individually, intended to protect the proceedings of the House as an institution and to provide what may be described as "parliamentary service immunity".
- ▶ The underlying reason is the need to ensure so far as possible that member of Legislature or witnesses before the various Committees freely without fear that anything they say will be later used against them in court.
- ▶ However criminal acts committed within the confines of Parliament are subject to the court's jurisdiction except where it relates to the aforementioned instances.

- ▶ The phrase 'proceedings in Parliament' has been the subject of judicial consideration in various Commonwealth Parliaments which have imported the concept of parliamentary privilege into their constitutional arrangements. A scholar, Erskine May opined as follows:

"The primary meaning of proceedings, as a technical parliamentary term, which it had at least as early as the seventeenth century, is some formal action, usually a decision, taken by the House in its collective capacity. This is naturally extended to the forms of business in which the House takes action, and the whole process... by which it reaches a decision".

- ▶ Question: Does the privilege attached to statements made by Members outside the chambers but within the precincts of Parliament and are unrelated to business of the House?

EXCLUSIVE COGNISANCE OR CONTROL BY PARLIAMENT OVER ITS INTERNAL AFFAIRS

- ▶ Parliament has the right to provide for its proper constitution and to judge the lawfulness of its own proceedings.
- ▶ The power to regulate the behavior of its Members and to discipline them if necessary is based on the second aspect of privilege, which also underpins the right to compel witnesses to attend and give evidence.
- ▶ If a matter is considered within the scope of parliamentary privilege, then the courts will not intervene. Once again, problems of definition and scope may apply. 'Internal affairs' is potentially wide ranging.

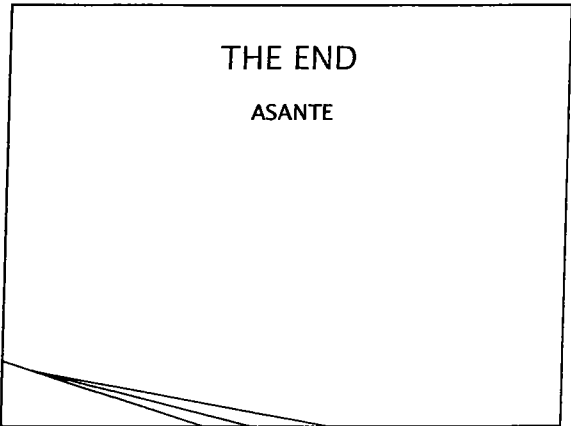
SUB JUDICE RULE

- ▶ This is a long established Parliamentary and Court principle that safeguards the cardinal principle of separation of powers between the Legislature and the Judiciary. It seeks to avoid prejudicing a case that is pending for determination before a court of law.
- ▶ This principle is provided for under paragraph 80 of the new Standing Orders and prohibits reference to any matter which is sub judice or secret. The rule then states that a matter is to be considered to be sub judice when it refers to active criminal or civil proceedings and the discussion of such matter is likely to prejudice its fair determination.

- ▶ Like in the UK position, the Standing Orders vest the Speaker with power to allow reference to a matter even if it is sub judice or secret, thus overriding the rule. Unlike in the UK, the circumstances under which or the justification for such a decision the part of the speaker is not addressed in the Standing Orders.
- ▶ The court in *Jayne Mati & another v Attorney General & another [2011] eCLR*, stated that, any finding which purports to encroach on a decision of Parliament which is made within its constitutional mandate would be unconstitutional and the courts should be at the forefront of avoiding any possible constitutional conflicts in all their undertakings.

CONCLUSION

- ▶ The promotion of the Rule of Law and the due administration of justice require the concerted effort of the three institutions of the government acting within constitutional principles of separation of powers and with mutual respect between the institutions for the constitutional function of each institution.
- ▶ The Commonwealth (Latimer House) Principles on the Accountability of and the Relationship between the Three Branches of Government provides under clauses I and II that:
 - I. Each commonwealth country, parliaments, executives and judiciaries are the guarantors in their respective spheres of the rule of law, the promotion and protection of fundamental human rights and the entrenchment of good standards of honesty, probity and accountability.
 - II. Relations between Parliament and the judicial should be governed by respect for Parliament's primary responsibility for law making on the one hand and the Judiciary's responsibility for the interpretation and application of the law on the other hand. Judiciaries and Parliaments should fulfill their respective but critical roles in the promotion of the rule of law in a complementary and constructive manner.



COLLABORATION BETWEEN PARLIAMENT AND OTHER ACTORS

Gichira Kibara,
Ag Permanent Secretary

Ministry of Justice, National Cohesion & Constitutional Affairs

I. BRIEF HISTORY

- The Primary Roles of Parliament:
 - Representation
 - Legislation
 - Oversight
- The past 15 years have seen tremendous changes in the relationship between the Executive and the Legislature

BRIEF HISTORY

- Parliament has become more independent and effective in its functions;
 - Select Committees & Departmental Committees are active and robust
 - New Standing Orders
 - Provision for Public Participation
 - Fixed term of Parliament

2. STRENGTHENING OF PARLIAMENT: OPPORTUNITIES/CHALLENGES

A . DEPARTMENTAL COMMITTEES

<u>OPPORTUNITIES</u>	<u>CHALLENGES</u>
<ul style="list-style-type: none"> • Efficient Working System 	<ul style="list-style-type: none"> • Political Competition • Limited Resources eg Library

A . DEPARTMENTAL COMMITTEES

<ul style="list-style-type: none"> • Specialized Investigation into Issues • Specialized Support for Committees • Powers to Summon/ Compel Attendance 	<ul style="list-style-type: none"> • Limited Technical Know-how • Inadequate Professional Support/ HR • Limited Committee Time • Undue Influence from Lobbyists
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B. COMMITTEE OF THE WHOLE HOUSE

<u>OPPORTUNITIES</u>	<u>CHALLENGES</u>
<ul style="list-style-type: none"> • Open and Transparent way to Conduct Government • Accountability to the Nation 	<ul style="list-style-type: none"> • No Political Party Policies/ Clear Positions • MPs Act as Individuals • Influence from Lobbyists/ Power Brokers • Populist Stand • Limited Knowledge of Policy Issues • Conflict of Interest • Disconnect with Public Expectations

C. CENSURE MOTIONS

OPPORTUNITIES

- Check on Actions and Decisions of the Executive

CHALLENGES

- Limited Knowledge of Executive Functions
- Executive may ignore censure
- Partisanship by MPs
- Political Considerations may Cloud Decisions

D. VETTING OF EXECUTIVE NOMINEES

OPPORTUNITIES

- Public Participation
- Greater Scrutiny & Less Patronage
- Buy-in by wider society in Government decisions

CHALLENGES

- New Practice
- Inadequate Legal & Administrative Framework
- Lack of Technical Capacity to Assess

3. THE LEGISLATURE : NEW CONSITUTION, ENHANCED ROLES

- Hybrid system of governance with a shift to a presidential system of government
- Bills will now be introduced through Committees of the House and through the Public (Right to Petition Parliament)
- Bills may also be generated through Executive Communication

NEW CONSITUTION, ENHANCED ROLES

- The Executive (President, Cabinet Secretaries) are now expected to make regular reports to the Legislature
- The Legislature may pass a motion requiring the President to dismiss a Cabinet Secretary
- The Legislature has an enhanced role in the budgetary process
- Parliamentary proceedings are now public

4. POSSIBLE CHALLENGES IN THE RELATIONSHIP BETWEEN EXECUTIVE & LEGISLATURE

- Executive decisions may be constrained especially where the President's party does not command a majority in either or both Houses
 - Difficulties in pushing government agenda
 - Delays / Rejection of Executive nominees
 - Budgetary process may be delayed

POSSIBLE CHALLENGES cont'd

- Fundamental reforms require quick decisions and efficient implementation
- Risk of Legislative process being captured by industry, lobbyist/ sectarian interests
- President (from Minority Party) may be compelled to enter into arrangements with other parties thus conceding on policy, ideology & key state appointments

5. CONCLUSION

- Parliament has transformed itself into an independent and effective arm of Government
- The Constitution provides greater accountability and transparency in Government
- There is now a fairly clear separation of the three arms of Government
- Executive action may be unnecessarily encumbered at great cost to the nation

THANK YOU!

Why is it Necessary to Measure the Impact of Legislative Development?

Prepared for the
Kenya Legislative Development Conference
Nairobi, Kenya
March 28 - 30 2012
Robert Nakamura
Vincent O'Leary Professor and Senior Fellow
Center for International Development, SUNY

Who wants to know and why?

- Governments and Donors want to be "smart buyers"
 - Performance indicators to justify budgets to citizens mistrustful of foreign aid or legislative assistance (Value received)
 - Results based frameworks and decision making (How to buy)
 - (An international trend toward the US model of program evaluation)
- MPs and Stakeholders want to know what they are getting
 - Benefits to individuals (human capital, knowledge and power, perspective/context)
 - Benefits to the institution (national standing/role, international legislative standards movement)
- Program implementers need information to perform
 - Diagnostic for internal program management (How are they doing? What should be altered?)
 - Indicators as incentives to perform (focus on meeting specified goals). Monitoring and evaluation as donor management tools.
 - Credit/blame/reputation as social capital (impact)

Some Basic Distinctions

- Variables/Indicators (What do you want to measure?)
 - Inputs (cost of capacity building activities)
 - Outputs (changes in targeted capacities)
 - Outcomes (utilization of acquired capacities)
 - Impacts (improvements in society)
- Program Evaluation (What do you want to find out?)
 - Probity/fidelity (Were resources spent as promised?)
 - Efficiency (Were implement/tool choices wise?)
 - Effectiveness (What were the behavioral results?)
 - Adequacy (How much of the problem is solved?)

What Gets Measured in Program Evaluation and Why

What gets measured	How (evaluation tasks increase in difficulty)	Why
Inputs	Conformity to prescribed process (law, plan, process). Relatively easy to do.	Probity/fidelity
Outputs	Compare inputs to outputs. Enhanced capacity. Ease depends on choices of tools and output goals.	Efficiency
Outcomes	Relate outputs to outcomes. Utilization combines capacity with motivation. Difficult due to external factors.	Effectiveness
Impacts	Relate outcomes to impacts. High demand but valid and reliable indicators are difficult to define and collect. And attributing causes for variation is difficult (multiple causes, delayed effects, etc.)	Adequacy

Which Legislative Impacts?

- Impacts on the power of legislature (power over what and whom?)
- Broad impacts on quality of democracy from better performance of legislative functions (which functions? representation, lawmaking, oversight, constituency service)
- Narrower impacts of more functional legislatures on particular societal/donor goals (recent emphasis areas: reduction of conflict, poverty, corruption; improvements in quality of governance)

COLLABORATION BETWEEN PARLIAMENT AND POLITICAL PARTIES

Kenya Legislative Development Conference
29th March, 2012
By
Ngũgĩ Kabelembi
Executive Director
CMD Kenya

Venstre; The Liberal Party of Denmark

- Venstre; The Liberal Party of Denmark is a partner of the CMD-Kenya supporting development of communication party strategies and youth participation in political parties.
- In February 2012 a CMD-Kenya delegation visited the party Headquarters in the outskirts of Copenhagen and we were amazed at the strong relations between the party and their members of parliament.

Most interesting was the confirmation from the Secretary General and separately by members of parliament that the Secretary General with other party officials either meet physically or via tele-conference with their members of parliament every morning before a day in parliament begins to analyze any bills that are being presented in the day, deciding the parties position and deciding who will take the lead in what matter.



I have been working with political parties in Kenya for the last eight years and I can comfortably and without fear of contradiction confirm that this does not happen in Kenya. In-fact, parties are mostly shunned by members of parliament and are seen not to offer any idea once the MPs have landed their seats.

IDEAL POSITION

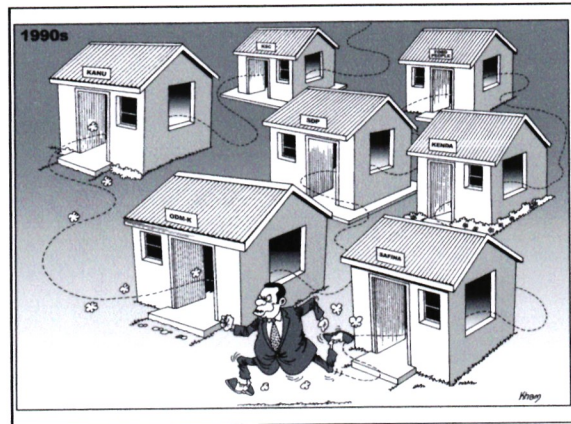
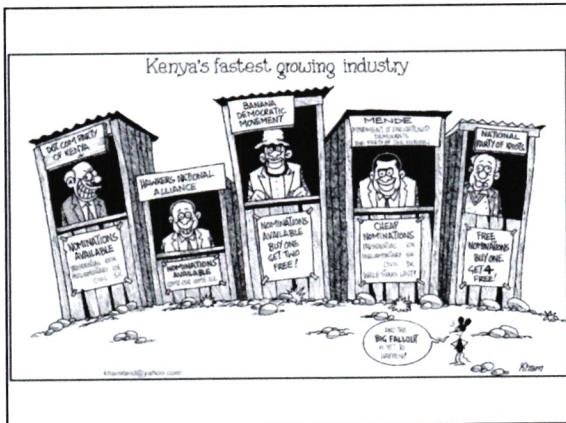
*The strengthening of democratic governance requires more than well functioning elections, parliaments, an independent judiciary and other institutions and processes – important though these are. It also calls for a strong culture of democracy, in particular, robust, transparent, internally democratic and **accountable political parties**. Political parties represent a keystone of democratic governance. They provide a structure for political participation; serve as a training ground for future political leaders and seek to win elections in order to enter government. Whether inside or outside of government, political parties exist to transform aggregated social interests into public policy. **In the legislature, political parties play an important role in shaping the relationship between the executive and the legislature and in prioritizing the legislative agenda.***

Kemal Dervis – UNDP, a handbook on working with political parties

How Kenyans view our current political parties

The description of the “political party and the political party leader” by one Antony Kagiri

‘Our political parties are in a shambles. They are a theatre of all the bad things. From suspected drug lords, high level corruption suspects and the Hague watch list, not forgetting the daily squabbling and threats of splitting. Looking on any of the 47 registered political parties to give us a good leader is probably a pipe dream. We are likely to recycle the old guard who control the nomination process. Whereas political parties are meant to be institutions with ideals and values on which leadership shall be based, ours are simply political vehicles created to ascend to power. They are easily identified with “their” owners. It is not surprising that the top leaders are the undisputed presidential candidates.’



THE 'NEW KENYA' POLITICAL PARTY

- Chapter Seven(7) of the Kenya Constitution 2010, under articles 91 and 92 recognizes the political party. In the past political parties were not recognized under our old constitution and were registered under the Societies Act.
- A special law has since been put in place to regulate, manage and finance political parties; the Political Party Act -2011

Ideology

A political party's ideology differentiates the party from a mere lobby group and also gives it a distinctive character different from other political parties in the same country. An ideology is basically a philosophy or set of principles that underlies a political programme. It consists of the shared beliefs, attitudes, and assumptions that cause a certain group of people to join together and develop and advocate specific political programmes.

IDEOLOGY CONTINUED

For example, socialist parties hold the ideology that the good of the community is more important than the interests of individuals, whereas parties that support capitalist or free-market policies have their basis in the opposite ideology. Liberalism is an ideology founded on a belief in progress and tolerance of difference, whereas conservatism grows out a belief that society should be unified and stable.

An ideology is therefore a view of the world that produces, at least in theory, consistent approaches to a range of specific political and social issues.

The Party Manifesto

A political party's ideology is a set of principles that leads to a certain set of policies, sometimes called the party "platform." The ideology and the policies that flow from its principles are put down in writing in a party manifesto (or blueprint or action plan). This manifesto is a statement of the goals and principles the party promises to pursue if voted into power.

MANIFESTO CONTINUED

As a contract with voters, the manifesto spells out the party's perception of the country's problems and states how the party proposes to address problems and help achieve the collective aspirations of the nation if elected. The manifesto sets out the measures which the party proposes to take in order to improve public services such as health, education, and transportation, promote national development in such areas as trade, industrialization, employment, and address public concerns in areas such as technology, the environment, and crime.

MANIFESTO CONTINUED

However, for a responsible and effective political party, it is not enough to propose policies. A credible party manifesto must also justify the party's plans and prove its commitment to them, and persuade the public that these plans *are* feasible. Political parties that have had previous experience in government can do this by spelling out their achievements and accounting for their failures. However, a party's abilities and the efficacy of its policies can only be fully tested when it forms the government and attempts to implement its programme.

The Road to Kenyatta's One-Party State

A small but significant leftist opposition party, the Kenya People's Union (KPU), was formed in 1966, led by Jaramogi Oginga Odinga, a former Vice President. KPU was banned shortly thereafter and its leader arrested in 1969, after which Kenya became a de facto single party state. Following Kenyatta's death in August 1978, Vice President Daniel Arap Moi succeeded him as Kenya's second President.

The Moi Era

In June 1982, Kenya was officially declared a one party state by the National Assembly and the constitution was amended accordingly. Parliamentary elections were held in September 1983 under a single party system for the first time since independence and the 1988 elections reinforced the one party system. However, in December 1991, Parliament annulled the one party section of the constitution. New parties were formed in early 1992 and in December of that year, multiparty democracy was restored and elections were held with several parties participating. *Amidst divisions in the opposition and claims of mass rigging*, Moi was re-elected for another 5-year term, and his KANU party retained a majority in the legislature. Due to Inter Party Parliamentary Group (IPPG) reforms in November 1997, political rights were expanded, which led to an explosion in the number of political parties. Again, Moi won re-election as President in the December 1997 elections, *presumably* because of a divided opposition. KANU won 113 out of 222 parliamentary seats, but, it linked up with the National Democratic Party to forge a working majority.

A New Democracy in Kenya: President Mwai Kibaki

In October 2002, a coalition of opposition parties joined forces with a faction which broke away from KANU to form the National Rainbow Coalition (NARC). In December 2002, the NARC candidate, Mwai Kibaki, was elected the country's third President. President Kibaki received 62% of the vote, and NARC won 59% of the parliamentary seats (130 out of 222). It is presumed that there is more political freedom in President Kibaki's era than any other time on Kenya's political history; democratic space was opened up so that there is visibility of more coalition politics and an enhancement of multi-party democracy.

CONCLUSION

- It is apparent that future political parties in Kenya which should be registered by the deadline of 30th April, 2012 will be significantly different in law and in behaviour;
- The party manifesto, reflecting the political parties position is articulated and implemented at legislative and executive level – how then if the MPs are not accountable to the political party and not faithful to the party manifesto?
- To continually strengthen the party, the relationship between the members of parliament and the party need to be enhanced and accountability systems reflected on both sides.

POLITICAL AND INSTITUTIONAL DEVELOPMENT OF KENYA PARLIAMENT: 1963 – 2012

A Paper Presented by P.K. Muite, S.C. at the International Conference organized by The Kenya National Assembly at the Windsor Golf and Country Club: 29th to 30th March 2012

The Political and Institutional Development of Kenya Parliament is well captured in several books and articles including the excellent book, **The Price of Freedom, the story of Political Resistance in Kenya**, by the Hon. Wanyiri Kihoro, former Member for Nyeri Town.

Almost immediately on attaining full independence in December 1963, the Executive moved to consolidate power and to subjugate the Legislature and all other Institutions of State including the Judiciary, the Public Service and the Police, to itself. The over-reaching Imperial Presidency was that early put in place. Pio Gama Pinto, a Member of Parliament, was silenced though the gun in February 1965. He had questioned the Land Policies and tabled a motion of 'No Confidence' in the Government. Over the years, through a combination of strategies; constitutional amendments which dismantled the Independence Constitution, intimidation, the use of detention law, the Courts and the Police, the Institution of Parliament was reduced to a tool in the hands of the Executive to enact laws which the executive wanted enacted and to be a lynch mob for those the executive wanted lynched. While recognizing and honouring the few gallant Members of Parliament who, even in the face of intimidation and repression continued to rear their heads over the years 1964 to 1991, it is fair to say that the

first six Parliaments were hardly effective in the core business of Parliament which is, besides legislating, to be a check on the Executive and to be the public watchdog on use of public funds. The repeal of the infamous Section 2 “A” passed in Parliament in record time in 1982 on a motion proposed on the floor of the House by the Hon. Mwai Kibaki, then Vice-President and seconded by the Hon. Charles Njonjo, then Attorney General, left intact all the structures of the one Party monolithic dictatorship. KANU, the Baba na Mama Party continued to have its sway albeit now under siege from the opposition and the Kenyan People who besides being denied basic freedoms including speech and assembly had been greatly impoverished through high level corruption, incompetence and wrong economic and social policies.

How has the 7th, 8th, 9th and now the 10th Parliament fared in checking the Executive and being the peoples watchdog on public expenditure?

By and large, these Parliaments have acquitted themselves well on the 1st issue. The Executive now knows that the Institution of Parliament is independent and assertive. It is no longer business as usual. Even in Legislation, bills are scrutinized on substance, not passed merely because the Executive wants them passed. The Speaker sent a powerful message when on promulgation of the New Constitution; he did not take his Oath of Office under the New Constitution at Uhuru Park but in Parliament. Internally through the Parliamentary Service Commission and Standing Orders, Parliaments autonomy is now near complete. The robust Committee System has taken Parliaments effectiveness to new levels. Parliament is now financially independent and employs its own staff. While we celebrate this autonomy, let us bear in mind the responsibility and restraint, which must go with it. There are murmurings in the public domain of the goings on at the

Parliamentary Service Commission including composition of its membership. Allegations of impropriety whether true or false need transparent investigations. There have also been serious concerns raised on corruption with some of the Members owning up to money changing hands in order to influence debates and votes in particular directions. Such allegations are not unique to Kenya. We are all aware of the impropriety on false claims by Members of the House of Commons. The difference is with impunity. In England and other Legislatures, allegations of corruption and other forms of financial impropriety are promptly transparently investigated. Members of Parliament take responsibility. How can Parliament be expected to check corruption in Government while it, itself is being accused of the same vice? If Kenya's Parliament is to continue enjoying public confidence, sooner than latter, the Speaker will have to act and act decisively.

On Parliaments watchdog role on public expenditure, the 7th – 10th Parliaments could have done better. In order to be effective in this role, Parliament needs to know in advance the loans being borrowed or guaranteed, from who and for what purpose. Time is opportune in that Parliament is currently debating The Public Financial Management Bill, 2nd reading. This Bill when passed will repeal the Contingencies Fund and County Emergency Fund Act, No. 17 of 2011 and The National Government Loans Guarantee Act, No. 18 of 2011 both of which were amongst those hurriedly passed by Parliament sitting late into the night to beat the 27th August deadline and which the Attorney General had tabled in Parliament without the input from the Commission for the Implementation of the Constitution. Incidentally, a Law only becomes a Law when it receives Presidential Assent. These Bills were assented to after expiry of the deadline meaning in effect the deadline was in any event not met despite the rush! When debating the Public Financial Management Bill, Parliament will need to look at, contextualize and

harmonize the Bill with The External Loans and Credit Act, Cap. 422 of the Laws of Kenya and the provisions of the Central Bank of Kenya Act, which authorizes Government borrowings from the CBK. Parliament will also need to take greater interest in bailouts of State Corporations. Pan Paper, Telkom, the Refinery and many others come to mind. Besides being a drain on taxpayers, these bailouts have the potential of being conduits for siphoning off public money. With regard to past loans, a cleaning up exercise through a forensic audit of the debt registers, external and internal is an absolute necessity. Despite the much-publicized Resolution of the House for the forensic audit, not much has been heard several years down the road.


The 9th and more so the 10th Parliament have been effective in vetting important Constitutional and key Public Sector appointments. Balancing the demands of merit and accommodation of Kenya's regional diversity is an issue needing greater consideration. Take Commissions; Article 250(1) provides that each Commission shall consist of at least three, but not more than nine members. Routinely, we have appointed Commissions of 9, one representing each region, although in fact regions are no longer Constitutional entities and in any event, even within particular regions, there is wide diversity, Eastern, Coast and Nyanza are examples. Is it time perhaps to move away from representative Commissions to Professional Commissions? DRC's Electoral Commission has three members but a large Secretariat. Commissioners on for example "IEBC" when appointed serve Kenyans, not the region from which they come. To my mind, this is an issue calling for more debate and consensus building. Let us not entrench ethnicity in the name of regional diversity. Commissions in my view should deal with policy. Execution and Implementation of that policy should be by a Secretariat manned by able Kenyans under the Supervision of the Commissioners. The Secretariat is

where you need numbers, not at the level of Commissioners. Is the need for jobs on Commissions and the pecks that go with it overshadowing service to ones country? Parliament faces particular challenges in vetting key Constitutional and Public Sector appointments because of ethnic, political, partisan and parochial interests. Some way of overcoming this will need to be found.

As we move forward to the 11th Parliament with the Senate and the National Assembly, the inter-play between the two Houses on the one hand and with the Executive, which will not be part of the Legislature on the other hand, will usher in an interesting and exiting new era. My sense of it is that although undoubtedly the National Assembly remains the *de jure* domain of most Constitutional and Legal powers, the Senate is likely to be a major *de-facto* wielder of power. Bear in mind that there will be Senators from the densely populated Counties being elected with more than a million votes. Such a vote confers great legitimacy, clout and authority. The relatively small number of Senators compared to the National Assembly also means easier consensus building in the Senate. When the Senate, then on a consensus basis takes a position on an issue of public interest or importance, contentious or otherwise, the Senate will be more likely to be listened to by the Kenyan people and will thus shape public opinion and direction. This power inter-play will not be lost on the Executive.

P.K. Muite, S.C.

Centre for Governance and Development




CGD - Kenya

The Evolution of the Institution of Parliament in Kenya: 1906 – 2012

By Kennedy Masime,
Executive Director, CGD

The Kenya National Assembly International Conference on 'Kenya's Legislative Development' 29 - 30th March 2012, at the Windsor Golf and Country Club, Nairobi

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


CGD - Kenya

0. Introduction

- This presentation is divided into three sections:
- Section one clarifies the key concepts.
- Section two identifies and discusses the milestones in the evolution of the institution of Parliament.
- Section three is the conclusion.

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


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1. Clarification of Concepts

- The **legislature** is "generally referred to as an official body, usually chosen by election, with the power to make, change, and repeal laws; as well as powers to represent the constituent units and control government" (Lafenwa 2009: 5). It plays three **basic functions**: rule making, representation, and oversight.
- The legislature is the soul of democracy. The rallying call for the American revolution was 'no taxation without representation'. Indeed, the institutionalization (or institutional development) of the legislature in Kenya is synonymous with the country's struggle for democracy.

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


CGD - Kenya

Concepts Ctn.

- Samuel P. Huntington defines **institutions** as, "stable, valued, recurring patterns of behavior" (Huntington 1969: 12). He further defines **institutionalization** (read institutional development) as, "the process by which organizations and procedures acquire value and stability" that is, become adaptable, complex, autonomous and coherent (Ibid).
- A legislature is **autonomous** when it is not subordinated to any other institution or social or political forces.
- Coherence** signifies synergy among an organization's component structures and unity of purpose among its members. It is enhanced by internal democracy which in the case of the legislature include how it is elected.

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


CGD - Kenya

Concepts Ctn.

- Complexity** is acquired through elaboration of functions and sub-units. Complex decision-making processes, brought about by multiparty politics, elaborate committee system and standing orders helps limit the domination of individuals or groups and hence potential arbitrary excesses. Complexity is also a function of internal democracy as the more interests a legislature represents the complex its decision-making process as all these needs to be balanced.
- Adaptability** allows parliament to effectively respond to changing socio-economic and political milieux and/or new demands.

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
CGD - Kenya

2. The Evolution of Parliament in Kenya

- There are four distinct phases in a democratic transition: Pre-transition, political liberalization, political transition, and democratic consolidation (Bratton 1994: 10).
- Kenya has gone through two cycles of democratic transition. The first cycle involved liberalization from colonial authoritarianism, the (democratic) transition to independence and, finally, the unfortunate reversal of democracy and the consolidation of authoritarianism. The second cycle entails political liberalization in the early 1990s and the ensuing (protracted) democratic transition which is still ongoing.
- The institutional development of Parliament can be assessed along the two circles of democratization.

6

The First Cycle




CGD - Kenya

- Kenya was declared a Protectorate by imperial fiat in 1895. In 1897 an East African Order in Council (E.A.O.C.) asserted British jurisdiction over the Protectorate and set up the office of Commissioner.
- E.A.O.C. of 1902, among other things gave the Commissioner the power to enact 'Ordinances' (legislation).
- In 1902, the European settlers started demanding their 'ancient' democratic rights through the Colonist Association.
- E.A.O.C. of 1906 established the Legislative Council (Legco) and an Executive Council. Members of Legco appointed by Commissioner. Its power to make ordinances was subject to the Governor's veto and assent of His Majesty the King.

7

First Cycle Ctn.




CGD - Kenya

- Legco passed a battery of laws to ensure Africans availed themselves for labour in the large European settler farms at the least cost possible and to preserve the settlers' privileges as well as their security.
- Kenya (Annexation) Order in Council of 1920 changed Kenya from a Protectorate to a Colony.
- In 1924 Legco enacted the Legislative Council (Amendment) Ordinance of 1924 providing for the election of five representative of the Indian community and one from the Arab Community. Rev. J.W. Arthur was nominated to represent African interests.

8

First Cycle Ctn.




CGD - Kenya

- In October 1944 Eliud Mathu was nominated to represent African interest in Legco.
- In 1948, African representation was increased to four. First Speaker elected to replace the Governor as the presiding officer of Legco.
- In 1954 the Lyttelton constitution was pronounced to provide for election of Africans into the Legco. The majority Africans remained minority in the Legco. Highly restricted vote. Upon their election African members rejected the Constitution.

9

First Cycle Ctn.




CGD - Kenya

- A commission was appointed in 1955 to address African grievances about disenfranchisement. Consequently, the Legislative Council (Amendment) Ordinance of 1924 was amended to provide for election of eight Africans to Legco. The elections happened in March 1957 bringing Oginga Odinga, Ronald Ngala, Lawrence Oguda, Daniel arap Moi, James Muimi, Masinde Muliro, Benard Mate and Tom Mboya into Legco.
- In 1958 the Lennox-Boyd Constitution was promulgated. It increased African representation to position of parity with Europeans. African rejected it on account that franchise was restricted and also there was no democratic equity as there were 6 million Africans and 50,000 Europeans in the colony.

10

First Cycle Ctn.




CGD - Kenya

- The Macleod (or the First Lancaster House Constitution) was pronounced following the constitutional conference in 1960 following intense lobbying by Africans. It gave Africans 33 out of the 65 seats created.
- Second Lancaster House Conference convened in April 1962 to thrash out independent negotiations.
- It replaced Legco with two houses: Senate and the House of Representatives. There were 41 senators from the 40 districts plus the Nairobi Area. The House of Representatives comprised of 117 elected members and twelve specially elected members chosen by the House sitting as an electoral college plus two ex-officio members – the speaker and the Attorney General.

11

First Cycle Ctn.




CGD - Kenya

- Senate was established to protect the interest of regions and equality of the vote was taken into consideration. No constitutional amendments would take place without majority approval of the senate. Entrenched clauses such as citizenship, senate provisions, regional structure, and the judiciary could only be amended through a 90% approval by the Senate. Other amendments required 75% approval of the senate.

12

First Cycle Ctn.




CGD - Kenya

- From the foregoing, it is clear that the ability of a Legislature to play its representation, rule making and oversight roles is a function of its coherence, complexity, autonomy and adoptability.
- It is because of coherence that African elected members, through the African Elected Members Organization (AEMO) rejected the Lyttelton constitution upon their election under the same constitution in 1957. Also, coherence manifested when in January 1959 all the African elected members, joined by their Asian counterparts and one White representative stormed out of LEGCO and formed the Constituency Elected Members Organization (C.E.M.O.) to push for powerful legislature.

13

Second Cycle




CGD - Kenya

- The independent Kenya government inherited substantial resources from the departing colonialist and KANU's control over the resources enabled it to buy out KADU. Through patronage and intimidation KADU members were pressured into crossing the floor and joining KANU.
- This gave Prime Minister Jomo Kenyatta the required majority to change the independent constitution.
- Several constitutional amendments eroded the power of parliament and amassed the same on the Executive.

14

Second Cycle Ctn.




CGD - Kenya

- Act No. 28 of 1964 abolished the office of the Prime Minister and created the office of Executive President who became head of state, head of government and commander-in-chief of armed forces.
- The Constitution of Kenya (Amendment) Act No. 14 of 1965 reduced the threshold for constitutional amendments by the senate for the entrenched clauses, from 90 per cent to 65 per cent, and from 75 per cent to 65 per cent for other clauses.
- Act No. 40 of 1966 Amalgamated the senate and House of Representatives to establish a single National Assembly. Act No. 7 of 1982 effected the insertion of section 2A turning Kenya from a *de facto* to a *de jure* one party state.

15

Second Cycle Ctn.




CGD - Kenya

- Act No. 14 of 1986 abolished the post of Chief Secretary within the Civil Service and removed the security of tenure of offices of the Attorney General and the Controller and Auditor General.
- Other amendments transferred the power to appoint the 12 special members from Parliament to the president.
- In addition, Section 58 and 59 allowed the president to prorogue and dissolve parliament at will.
- Parliament was dependent on the Attorney general for drafting legislation, the Minister for Finance for money and the Public Service Commissions for personnel.

16

Second Cycle Ctn.




CGD - Kenya

- Extra-legal mechanisms were also employed. The KANU Disciplinary Committee could recommend expulsion of MPs who could lose their seats.
- Queue voting introduced. It Gave leeway for provincial administration officers to influence election results. The provision allowing those who got 70 per cent and above in the queue vote automatic election to Parliament disenfranchised non-KANU members.

17

Second Cycle Ctn.




CGD - Kenya

- Following the push for re-introduction of multiparty politics. Act No. 12 of 1991 Reinstated multi-partyism by repealing section 2A
- KANU, however, behaved as if the opposition did not exist even after the 1992 multiparty elections. President Moi induced the defection of opposition legislators, compromised others through cash handouts, and also harassed them by breaking rallies and arresting individual legislators on trumped up charges.
- With increasing competition the cabinet became even larger.

18

Second Cycle Ctn.




CGD - Kenya

- ❑ Following the IPPG agreements, the Constitution of Kenya (Amendment) Act No. 9 of 1997 came into effect changing various sections of the constitution to facilitate multi-party democracy in the country. It, among other things, the amendment of the Kenya Broadcasting Corporation Act to compel the organization to give a balanced coverage to all candidates, and provided for the inclusion of 10 opposition representatives in the Electoral Commission and the sharing of the 12 nominated seats between political parties according to their numerical strength in parliament.
- ❑ Constitutional Amendment No. 3 of 1999 to establish the Parliamentary Service Commission (PSC), as well as enabling the enactment of Parliamentary Service Act of 2000.

19

Second Cycle Ctn.




CGD - Kenya

- ❑ These, among other things, gave Parliament administrative and financial autonomy, hence professionalization of staff; revitalization of Committee system, increased remuneration for legislators and development of strategic plan.
- ❑ Establishment of the Office of Fiscal Analysis.
- ❑ the Public Audit Act of 2003
- ❑ Constituency Development Fund Act 2003, and the other devolved funds e.g. constituency bursary funds; roads maintenance levy fund.
- ❑ Fiscal Management Act 2008.
- ❑ Overhaul of Standing Orders in 2008.

20

Second Cycle Ctn.




CGD - Kenya

- ❑ Votes of no confidence on the ministers for Finance and Foreign Affairs over the sale of the then Grand Regency and an Embassy house, respectively, on the strength of committee reports.
- ❑ The new Constitution of Kenya 2010 provides for clear separation of powers. Empowers Parliament to convene itself and thus determine its calendar. The president no longer has the power to dissolve or prorogue Parliament. Legislators can now impeach the president without firing themselves. Parliament has a greater role in public financial management and also vets presidential appointees.

21

Second Cycle Ctn.




CGD - Kenya

- ❑ Like was the case, during the first cycle of democratization the ability of Parliament to undertake its role increased in tandem with its coherence, complexity, adaptability and autonomy.
- ❑ The coherence of the Legislature was severely compromised once it became clear the country was going to become independent. Cleavages in the ranks of African elected members led to the breakup of CEMO into Kenya National Party (KNP) in July; and Kenya Independence Movement (KIM) in August 1959. All KNP leaders later formed Kenya African Democratic Union (KADU) while those of KIM formed Kenya African National Union.

22

Second Cycle Ctn.




CGD - Kenya

- ❑ Following the First Lancaster House Conference and the removal of restriction on nation-wide political parties. European settlers fearing for their future ownership of land began to incite the smaller ethnic groups. Immediately after the Conference, Group-Captain Briggs and his United Party approached leaders of smaller ethnic groups urging them to form an alliance with the Europeans to counter Kikuyu-Luo domination. It is these divisions that the executive played upon to dismantle the elaborate provisions on the independent or Lancaster Constitution.

23

Second Cycle Ctn.



CGD - Kenya

- ❑ The key gains during the second cycle of democratization process in Kenya can also be attributed to the coherence of the legislature. These, among others, include the enactment Constitution Amendment Act No. 3 of 1999 (the Aringo Bill); the Enactment of the National Accord and Reconciliation Act of 2008 and the Constitution of Kenya 2010. One can speculate on the motives but there was consensus among the legislators that these changes were good for the country.

24

3. Conclusion



In conclusion, the institutionalization of the legislature is a positive indicator for democratization in the country. But it is constantly under threat from hegemonic ethnic forces. The increased complexity, autonomy and adaptability of Parliament through the reforms instituted during the second cycle of democratization will go along way in ensuring its further institutionalization and increase its capacity to perform its representation, rule making and oversight roles. But a disunited legislature may just create the fault lines through which the gains can be gradually eroded, thereby, aborting the second cycle of democratic transition.

25

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- Huntington S. P., *Political Order in Changing Societies*, (London: Yale University Press, 1972).

26

Centre for Governance and Development



Thank You

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27

REMARKS BY THE VICE CHAIR, PARLIAMENTARY SERVICE COMMISSION HON. ADAN KEYNAN, MP DURING THE INAUGURAL SESSION FOR THE KENYA LEGISLATIVE DEVELOPMENT CONFERENCE HELD AT THE WINDSOR GOLF HOTEL AND COUNTRY CLUB

Rt. Hon. Prime Minister of the Republic of Kenya;

Hon. Speaker of the National Assembly;

Hon. Deputy Speaker of the National Assembly;

Ministers and Assistant Ministers present;

Members of Parliament;

Distinguished Guests;

Ladies and Gentlemen;

It gives me a great pleasure to address this distinguished congregation. Allow me to make the following few remarks. The holding of this auspicious Conference could not have come at a right time given the Constitutional dispensation that was ushered in when we promulgated the new Constitution on 27th August, 2010.

Our Parliament has had a chequered history since Independence in 1963 and has witnessed profound changes making it an active Parliament. Every Parliament has been remarkably different from a previous one. On our part, the establishment of the Parliamentary Service Commission (PSC) in 1999 which was borne of hard bargains between the Parliament and the Executive, marked a watershed in the running of the Institution of Parliament and ensured that Parliament was empowered to effectively provide a check and balance on governing processes.

The Parliamentary Service Commission in close collaboration with the Executive has availed requisite facilities and services to the legislature and will continue to do so in preparation for the new dispensation.

In readiness for the two Chamber Parliament and increased number of Members of Parliament from 222 to 418, the PSC is currently involved in giving face lift to facilities like the rehabilitation of the Chamber, acquisition of the Protection House, the intended renovation of the Old Chamber for Senate use and refurbishment of offices in the main Parliament buildings, review of the Human Resource and the drafting of Rules of Procedure for both Houses of Parliament to face the challenges of a bicameral system and an expanded mandate of the legislature.

However, I hasten to add that we have budgetary constraints as well as lack of adequate space to accommodate both members and staff. We are calling upon the Government to give us the necessary support. We are also asking our Donor partners whom we have worked closely to lend us their hands when need arises.

I wish to assure you that the Commission is up to the task and will deliver as expected.

Some of the issues to be deliberated during this Conference include impacts of the new Constitution, identification of new opportunities for the legislative development and how to address the emerging challenges for a more successful legislative development. The ideas and outcomes of this Conference will guide the Commission in expediting the necessary preparations for the next Parliament and beyond.

I once again thank you for finding time to come for the Conference and assure you of our continued support and cooperation.

Thank you.

HON. ADAN KEYNAN, M.P.,
VICE-CHAIR, PARLIAMENTARY SERVICE COMMISSION

**Institutionalizing Democracy in Africa?:
Comparative Findings from the African
Legislatures Project (ALP)**

**Kenya Legislative Development Conference
Windsor Golf and Country Club
March 29-30, 2012**

Joel D. Barkan, Robert Mattes, Shaheen Mozaffar

**Why Institutionalization Is Important
for Democracy in Africa**

- Elections alone do not a democracy make -- all but two African countries have held multiparty elections - many for the third or fourth time, and some for a fifth.
- But African political systems run the gamut from failed and politically closed states to consolidated democracies.
- The holding of "free and fair" elections is thus a necessary but insufficient condition for democracy and democratization.

**Why Institutionalization Is Important
for Democracy in Africa including Kenya**

- Democratization is a process of establishing mechanisms for holding rulers accountable to the ruled.
- Besides elections (vertical accountability), this requires the establishment of *strong institutions of countervailing power* that limit executive authority between elections and insure that such authority is exercised in a transparent and accountable manner (horizontal accountability).

**Why Institutionalization Is Important
for Democracy in Africa**

- The legislature is *one* such potential institution of countervailing power (others include, the judiciary, civil society, the press, independent commissions such the electoral commission, the public service commission, ombudsman, etc.).
- But legislatures have a privileged position – they are the *sine qua non* of representative democracy.
- There is a growing body of evidence that suggests that high growth African countries and those that have reduced poverty the most are the most democratic ones (Radelet 2010).

Institutionalization and Legislative Functions

- All democracies have legislatures whose members perform four core functions
 - Law-making
 - Oversight
 - Representation
 - Constituency Service
- BUT: *These four functions exist in constant tension with each other*, because they are very different in terms of what they require from members of the legislature (MPs).
- MPs must wear multiple hats!

- The four functions thus pose difficult choices for MPs in terms of how they allocate their time. For example, legislators who devote more time to legislating have less time to devote to oversight or constituency service and vice versa.
- Different subsets of members of the legislature thus pull the body in different directions and make it difficult for the institution to perform all four functions well.

- The African Legislatures Project seeks to understand why and how legislators perform these four functions by comparing the experience of MPs in 17 African countries.
- The study began in 2009, and is funded by DfID, USAID, the Heinrich Boll Foundation and the World Bank.
- Based at the University of Cape Town

ALP Countries

- | | |
|----------------|----------------|
| • Benin | • Namibia |
| • Botswana | • Nigeria |
| • Burkina Faso | • Senegal |
| • Ghana | • South Africa |
| • Kenya | • Tanzania |
| • Lesotho | • Uganda |
| • Malawi | • Zambia |
| • Mali | • Zimbabwe |
| • Mozambique | |

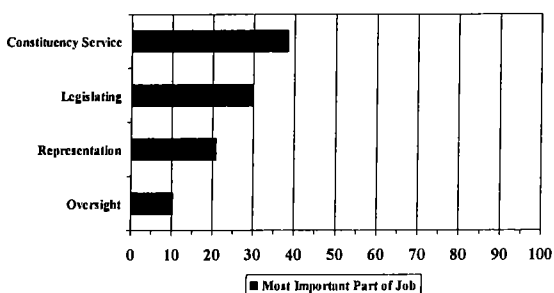
How ALP Gathers This Evidence

1. Coding of Constitutional Powers
2. Analysis of Leadership, Rules, Committees, Legislation, MPs
 - Expert Observation of Parliamentary Structure and Behaviour
 - Key Informant Interviews
 - Bill-Tracker: Tracking all bills for last five years
 - Committee Activity
 - Legislative Calendar
 - MP Rosters
3. Surveys of random samples of 50 MPs in each country.
4. Relevant Afrobarometer Survey Data

Today's presentation limited to an overview of MP role Orientations to see how the Kenya National Assembly and Kenyan MPs compare to their colleagues across the African continent.

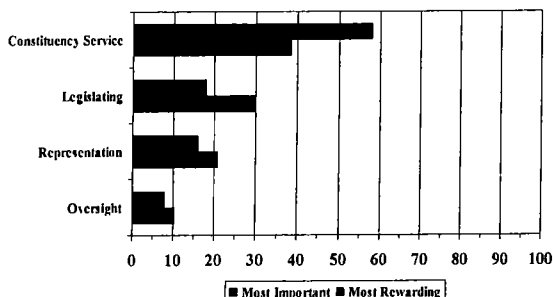
Data for Kenya is for the 10th Parliament, and based on a survey conducted in 2009 and 2010.

**MP Role Orientations:
Focus of Activities (All Africa)**

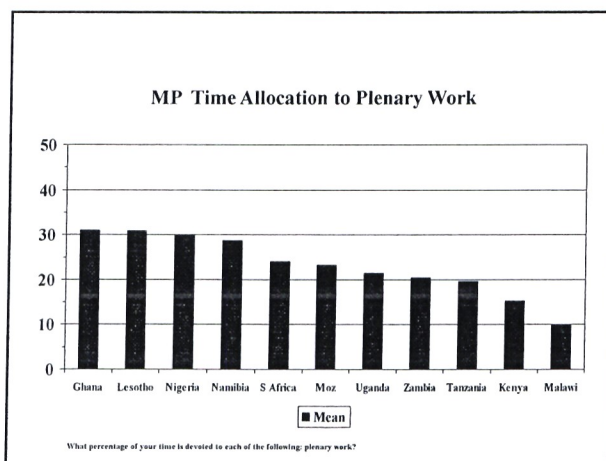
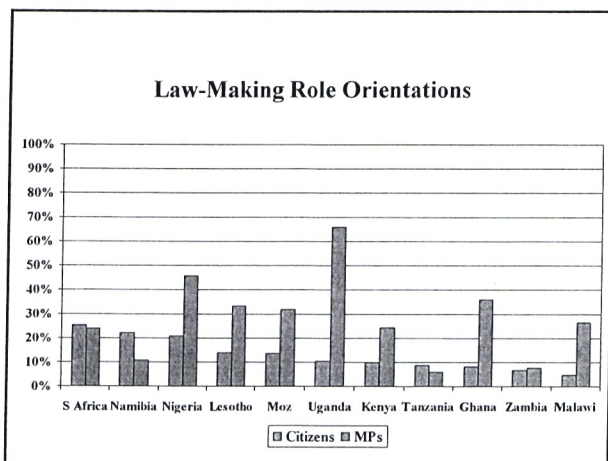
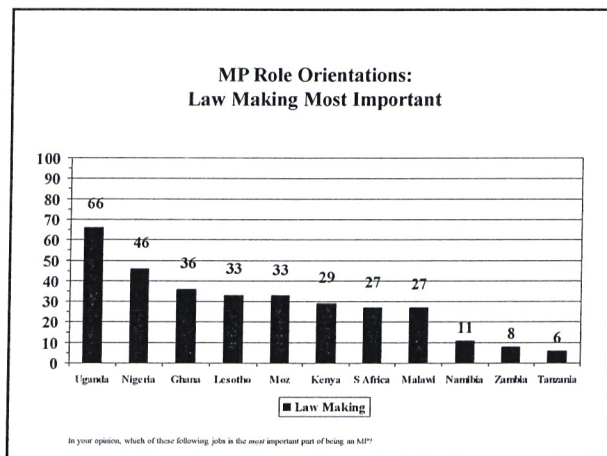
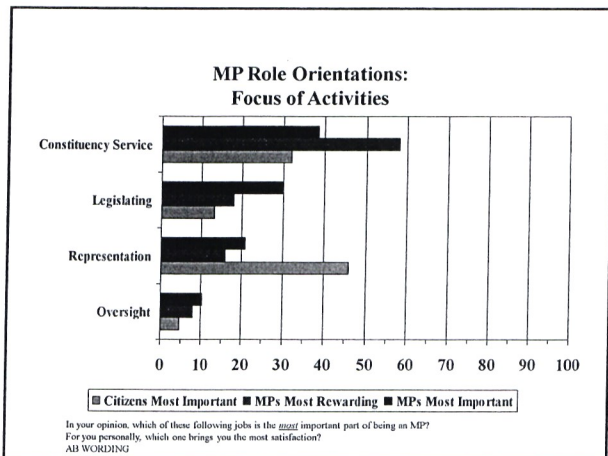


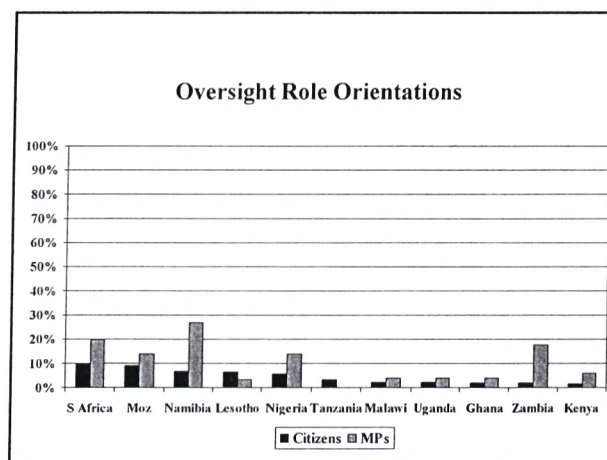
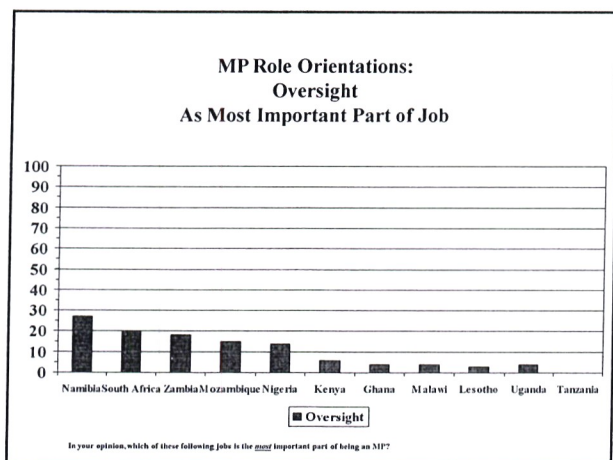
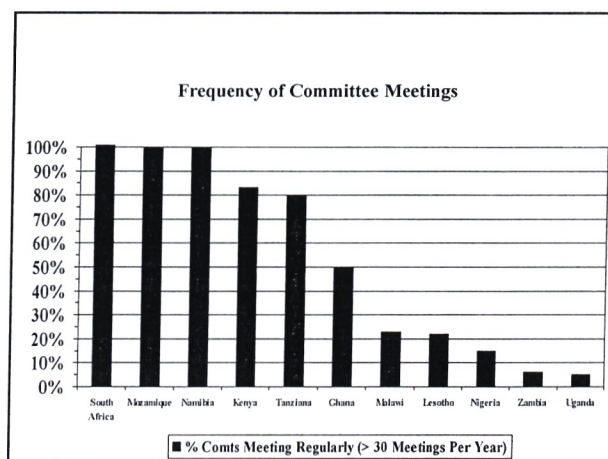
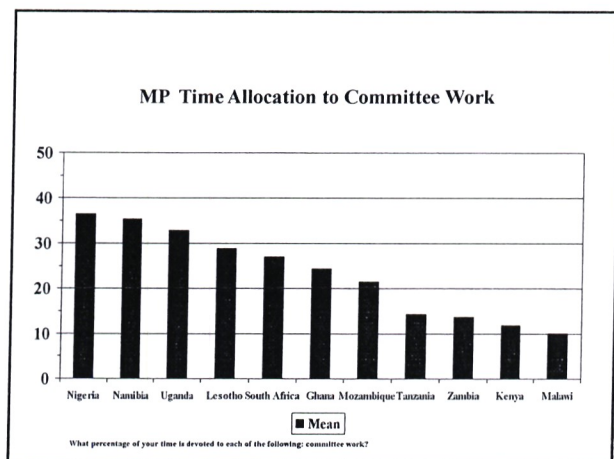
In your opinion, which of these following jobs is the most important part of being an MP?

**MP Role Orientations:
Focus of Activities**

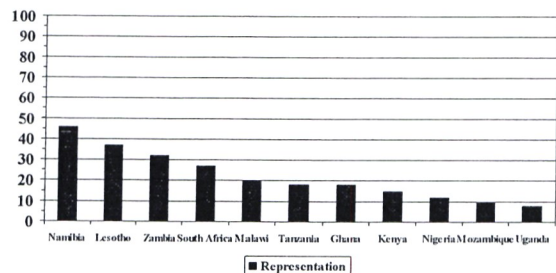


In your opinion, which of these following jobs is the most important part of being an MP?
For you personally, which one brings you the most satisfaction?



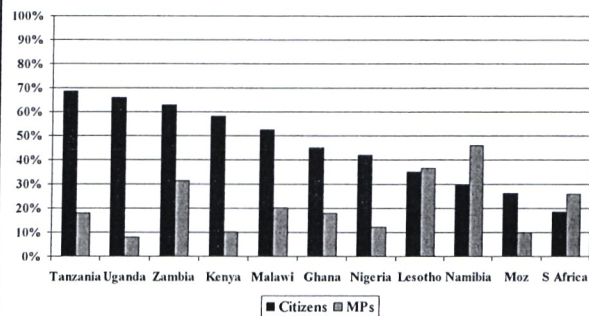


**MP Role Orientations:
Representation As Most Important Part of Job**



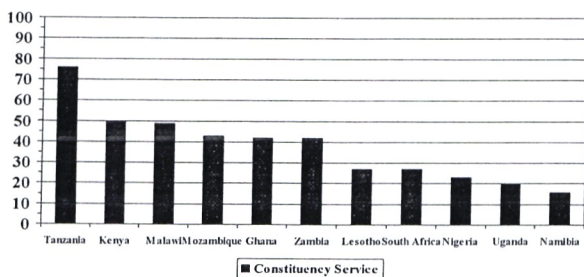
In your opinion, which of these following jobs is the *most* important part of being an MP?

Representation Role Orientations



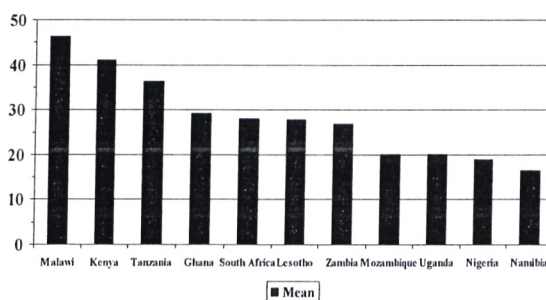
■ Citizens ■ MPs

**MP Role Orientations:
Constituency Service
As Most Important Part of Job**

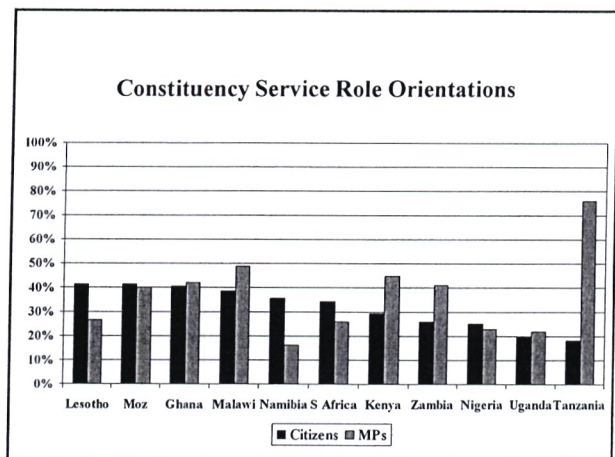


In your opinion, which of these following jobs is the *most* important part of being an MP?

MP Time Allocation to Constituency Work



What percentage of your time is devoted to each of the following: constituency work?



Conclusions

- African citizens and MPs stress representation and constituency-service at the expense of focusing on legislating and oversight—two critical functions that must be performed if the legislature is to become a true “institution of countervailing power.”
- This tendency is particularly true in countries, including Kenya, where MPs are elected from single member districts rather than by proportional representation.

- Both MPs and citizens are also more likely to emphasize representation and constituency service in countries where political parties are weak.
- MPs are, however, more likely to stress lawmaking with some preference for oversight than members of the public.

- MPs are under constant pressure from the public to devote time to representation and constituency service, but MPs emphasize constituency service while members of the public want MPs to listen to their concerns and represent these concerns in the legislature.
- Kenyan MPs spend more time engaged in constituency service than their constituents demand!
- Kenyan MPs also devote more time to constituency service than their peers in other African parliaments.

Conclusions

- The Kenya National Assembly has made great progress in building capacity and establishing itself as an independent branch of government.
- This progress has been lead by a small group of activists and reformers within the National Assembly such as Peter Aloo Aringo and others, and supported by the present speaker and clerk.
- However, many MPs have yet to take advantage of the new enabling environment.

- The Hons. Maalim and Abdalla stated yesterday that the National Assembly should continue to be “a thorn in the side of the executive” if it was to do its work and hold the executive to account.
- But our data suggest they, and other MPs who share their perspective, still face a major challenge of persuading many of their colleagues to do the same.

Thank You

www.africanlegislaturesproject.org

KEYNOTE ADDRESS BY THE SPEAKER OF THE KENYA NATIONAL ASSEMBLY, THE HON. KENNETH MARENDE, EGH, MP DURING THE KENYA LEGISLATIVE DEVELOPMENT CONFERENCE ON 29TH -30TH MARCH 2012, WINDSOR GOLF HOTEL, NAIROBI

**Rt. Hon. Raila Odinga, MP, Prime Minister of the Republic of Kenya,
Deputy Speaker, Hon. Farah Maalim, M.P
Hon. Members of Parliament
Distinguished Guests
Resource persons
Ladies and Gentlemen**

We are here assembled together at this Conference to do an honorable and decent thing, namely take stock of the legislative Development in Kenya under the leadership of the 10th Parliament. We are accorded an opportunity to reflect on the strides we have made towards entrenchment of democratic traditions and practices. And further, more significantly, an opportunity to recommit ourselves to leverage on the new constitutional dispensation to confer upon Kenyans a country fully reconciled by law, action and deed – a confident Nation with enduring democracy.

Ladies and gentlemen,

By our presence this morning, we re-emphasize the important place of the Legislature as an organ of governance and the might of its tripartite mandate to **legislate, represent** and **oversight**. I am particularly gratified that this conference comes at this time when the country is getting up for general elections.

Though our journey so far has seemed long and difficult, the **Fifth and Sixth Schedules** to the **Constitution of Kenya 2010** remain our critical compasses. Members of Parliament, the Executive, the renewed Judiciary and the Kenyan public have commendably risen to the challenges that have confronted them in the implementation of the constitution despite their diverse opinions and persuasions. The most important goal, one Kenyan Nation, has been apparent and prevailed. Together, the Kenyan people have disabused the notion that a truly good constitution can be generated, mid-wifed and matured in peacetime. I urge that we Parliament constituting the core of the third pillar under Vision 2030 remain ever so determined and continue to perform to preserve our pride of place in the African continent as a Nation.

Hon Members and Distinguished guests

Going back to promulgation of the new Constitution just about two and a half years ago, the participation of Kenyans in public affairs has dramatically blossomed and noticeably so in Parliamentary Business in line with **Article 118**. Symbolically, the referendum was the elixir that provided the turning point so much so that I arguably opine that the Kenyan public will never be the same well into the future. Those among us that therefore aspire for public office note.

Ladies and gentlemen

On 9th February 2009, watching CNN, BARACK OBAMA said the following during a press conference;

“The strongest democracies flourish from frequent and lively debate, but they endure when people of every background and belief find a way to set aside smaller differences in service of a greater purpose”

In the Kenyan context, the following encouraging characteristic trends are discernible;

- (i) The maturing of democratic rule “government of the people, by the people, for the people” with Parliament clearly in the forefront. Leaders are privileged to have the opportunity to serve in whatever positions the people entrust them to. Indeed, Parliament’s supremacy stems from the fact of its being comprised of people’s elected representatives and are thus trustees of the Peoples Sovereignty, supremacy and power – see **Articles 1, 94, 95 and 96 of the constitution of Kenya.**
- (ii) A paradigm shift in Governance –**the governed want to be present, to hear, see and contribute in the making of decisions to govern them”**. The Speaker is obligated by the constitution, statute and standing orders to see to facilitation of the changing respectful political dynamics. The holder of the Office of Speaker, the Clerk and all support staff in the legislature are under compulsive duty to comply with the changing political landscape.
- (iii) Increased and stronger Parliamentary Oversight of the constitutional, statutory and procedural provisions (*As at Articles 1, 10, 35, 118, 119, 129, 195 and 196, and 232 the respectively and Standing(Revised 2008) Order 180; the National Assembly (Powers and Privileges) Act, Cap 6, Laws of Kenya*, in Kenya which narratively include:-
 - (a) Sovereignty of the People;
 - (b) National Values and Principles of Governance;
 - (c) Access to Information;
 - (d) Public Access and Participation;
 - (e) Right to petition Parliament;
 - (f) Principles of Executive Authority;
 - (g) Public Participation and County Assembly
 - (h) Powers, Privileges and Immunities;
 - (i) Values and Principles of Public Service.

Hon Members, Ladies and gentleman

For the past four (4) years going to five (5) the Kenyan Nation has, without a shred of doubt, added to international experience best practice in the management of a coalition government. Our detractors were cynical and waited for failure but it has been long coming and is unlikely any time soon. We are, and must remain awake to the reality of the National Accord and Reconciliation Act and its constitutional factual being. We learnt our lessons well out of the debacle of the MOU of yesteryear. In a nut shell therefore we are all obligated to uphold our constitution in letter, spirit and intend as we work at enacting legislation to implement the constitution. None of us, nay group or Political Party, as at where we are, will succeed alone.

Hon Members,

To actualize a new dawn for Kenya, all of us individually, jointly and collectively must co-operate and join hands to build strong institutions, sustainable and democratic practices that embrace and respect healthy political competition through free and fair polls. Give dialogue, negotiation and accommodation and/ or tolerance a chance for the common good. We need to take deliberate measured steps to replace the norm of **zero sum game** or **winner takes it all** with a determination to have Kenya win. And for this to happen, Parliament is the best leader. The true test for whether or not a given law is good is does it help Kenya address her challenges better.

Hon Members, distinguished participants

As I conclude, I am aware that achieving complete harmony from a range of varied opinions is no mean feat. I am however optimistic that the topics and issues that shall be discussed at this Forum will give us a clear sense of direction and unity of purpose and organize our priorities in the formidable task of fully implementing the Constitution. Our role as leaders shall remain ever so critical in this endeavor and cannot be gainsaid. It is my sincere hope and plea that a most desirable output of this assembly shall be an agreed framework for consensus building so us to expedite the legislative process for the remainder of statutes due in the residue of the life of the 10th Parliament irrespective of our perceived political differences and diversities real as they may be, the greater duty ought to prevail.

Finally, **Hon Members, Ladies and Gentlemen**, let us seize and address ourselves to the importance of being patriotic and transforming from pure politicians to political statesmen. Kenya is our motherland and we must, as a priority, do all that is humanly possible to safeguard the citizens' collective needs and well being at all times. I urge all leaders present here to be selfless and develop, nurture and sustain mechanisms for regular consultation and accelerate the process of implementation of the constitution of Kenya, 2010. We all are obligated to remember to play our respective roles to the optimal level. If it is your role to whip, by all means, do so with all the whips you can garner! As leaders, let us exercise leadership for a worthy cause by setting aside self interest. Kenya is after all greater than every one of us, yet together we can make Kenya a truly great country. It all depends on our political discipline, mindset and attitudes. Other nations have done it and so can Kenya. Party leaders, lead your parties, more so Parliamentary Political Parties. How I wish and long to hear political parties have their members sing one party tune that progresses Kenya.

Allow me thank the organizers of this historic conference and resource persons who have accepted our invitations to share their experiences and knowledge.

It is now my honour and privilege to declare the Kenya Legislative Conference officially open.

Thank you and God bless Kenya.