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**REPORT OF THE DELEGATION TO MAURITIUS TO ATTEND THE 2ND ANNUAL
CONFERENCE OF THE INSTITUTE OF CERTIFIED PUBLIC SECRETARIES (ICS)**

15TH – 18TH AUGUST, 2018

*Clerk's Chambers,
Parliament Buildings,
NAIROBI.*

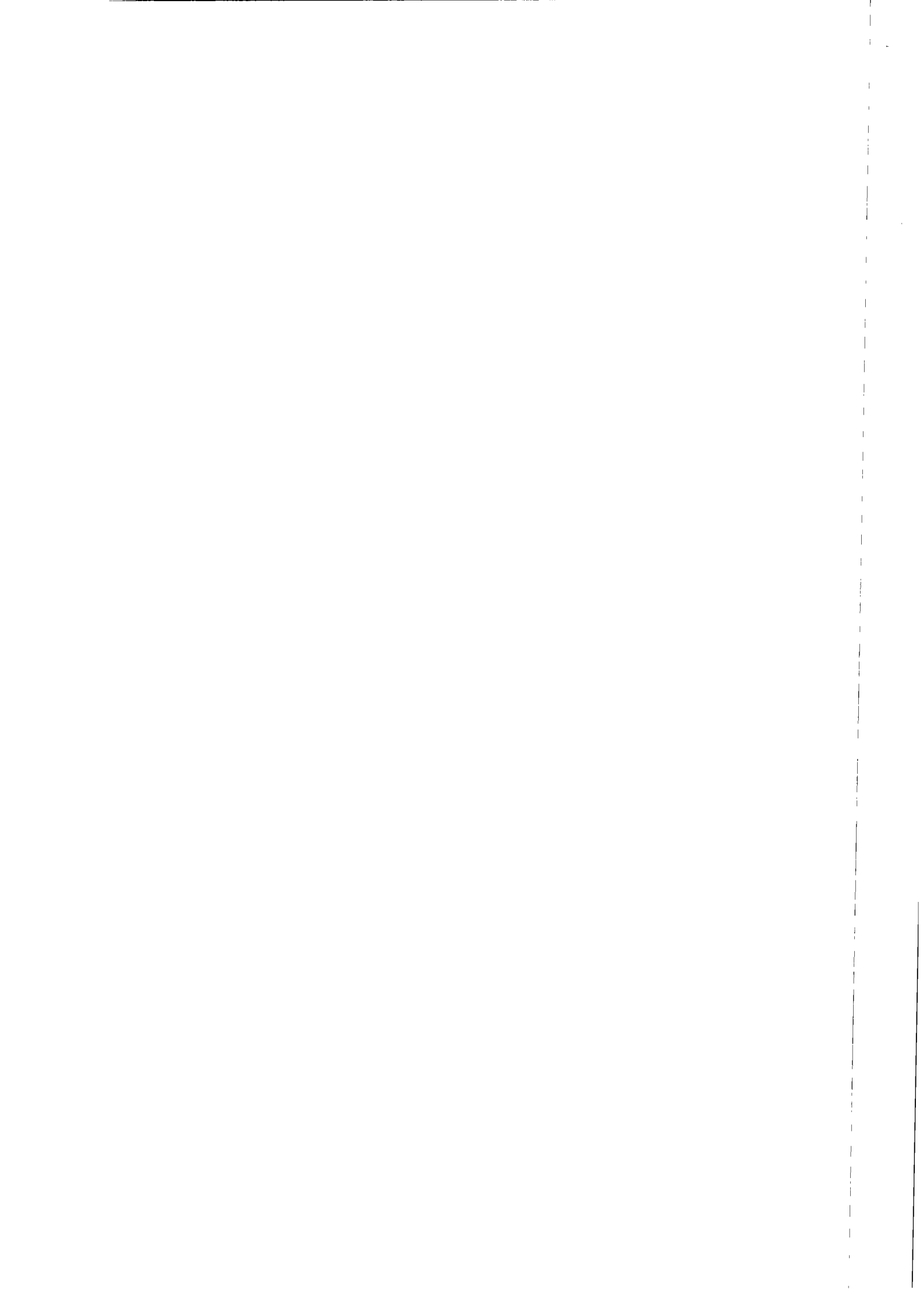
30TH OCTOBER 2018

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ANNEXES

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ABBREVIATIONS AND ACRONYMS

ANPAC	African Network of Parliamentarians against Corruption
ICS (K)	Institute of Certified Secretaries of Kenya
PoK	Parliament of Kenya
PIC	Public investment Committee
PAC	Public Accounts Committee
SFAC	Special Funds Accounts Committee



PREFACE

Mr. Speaker Sir,

The African Network of Parliamentarians against Corruption is a National Assembly Parliamentary Caucus whose main objective is to champion the fight against corruption from a legislative stand-point.

The members of the caucus attended the 2nd annual conference of the Institute of Certified Secretaries of Kenya [ICS (k)] held in Mauritius from 15th to 18th August 2018. The theme of the conference was “*Shaping the new Governance Agenda for sustainability*”.

Delegation Membership

The delegation was comprised of the following members—

1. Hon. Shakeel Shabir, MP (*Head of Delegation*);
2. Hon. Jimmy Agwenyi, MP
3. Hon. Joshua Kuttuny, MP
4. Hon. Millie Odhiambo, MP; and
5. Hon. Patrick Mariru, MP

The chairperson of ANPAC Hon. Shakeel Shabir outlined the milestones realized by ANPAC since establishment. He noted that ANPAC has made significant contributions to the fight against corruption in Kenya, the region and beyond. He also informed participants that ANPAC was an active member of the Global Network of Parliamentarians against Corruption (GNPAC).

He informed participant that network organises periodical round-table meetings on anti-corruption which may be of great interest to person with professional or scholarly interest in the anti-corruption discourse.

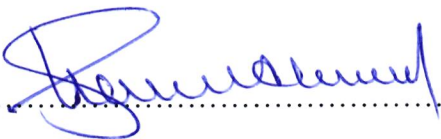


Acknowledgement

The African Network of Parliamentarians Against Corruption wishes to extend its sincere appreciation to the Offices of the Speaker and the Clerk of the National Assembly for the support extended to the delegation.

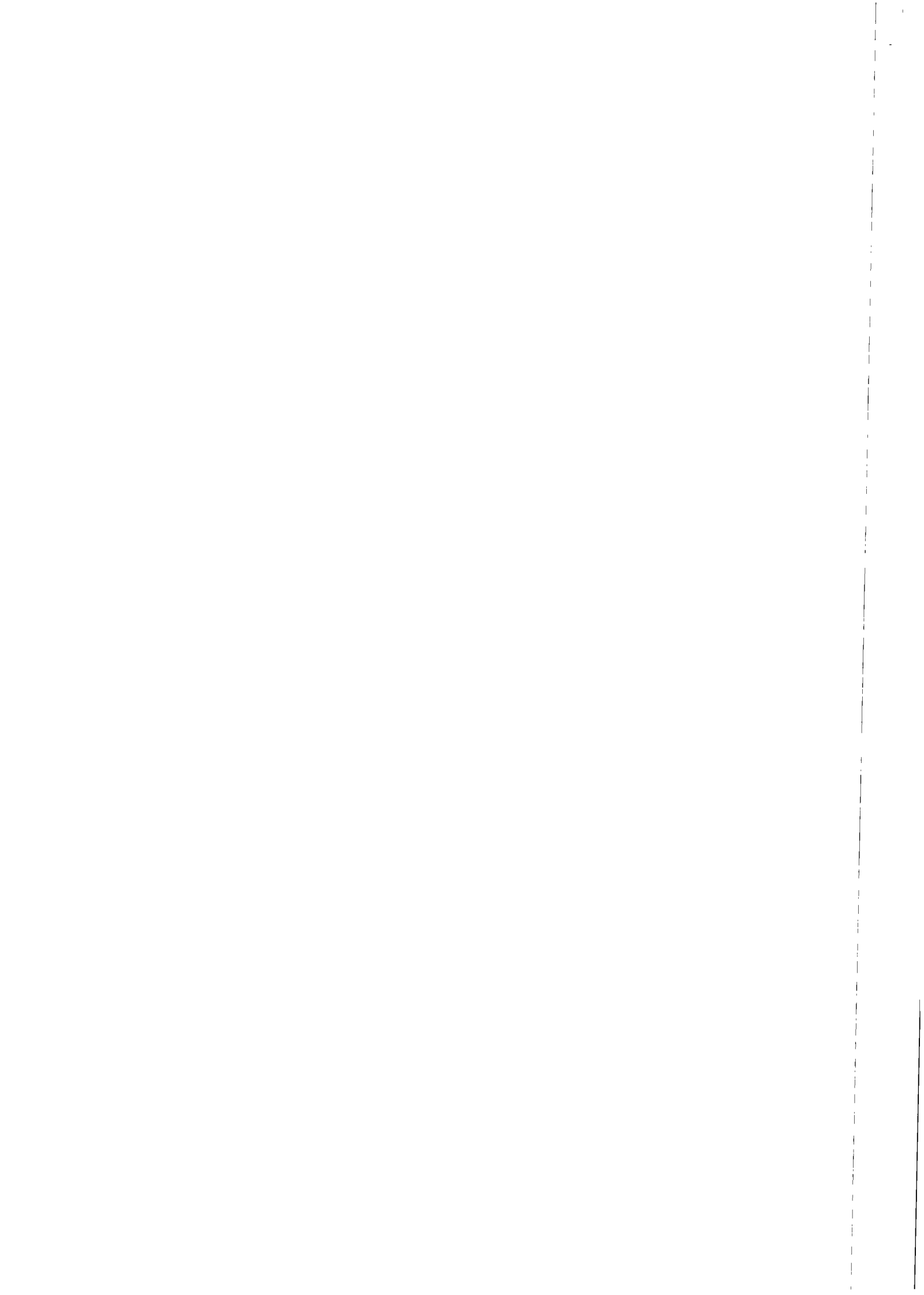
Mr. Speaker Sir,

It is now our pleasant duty, to present the Report of the fact finding delegation to South Sudan

Signed.....

Date.....*27th November 2018*

HON. SHAKEEL SHABIR, MP
Head of Delegation



CHAPTER ONE

EXECUTIVE SUMMARY AND KEY RECOMMENDATIONS

Executive Summary

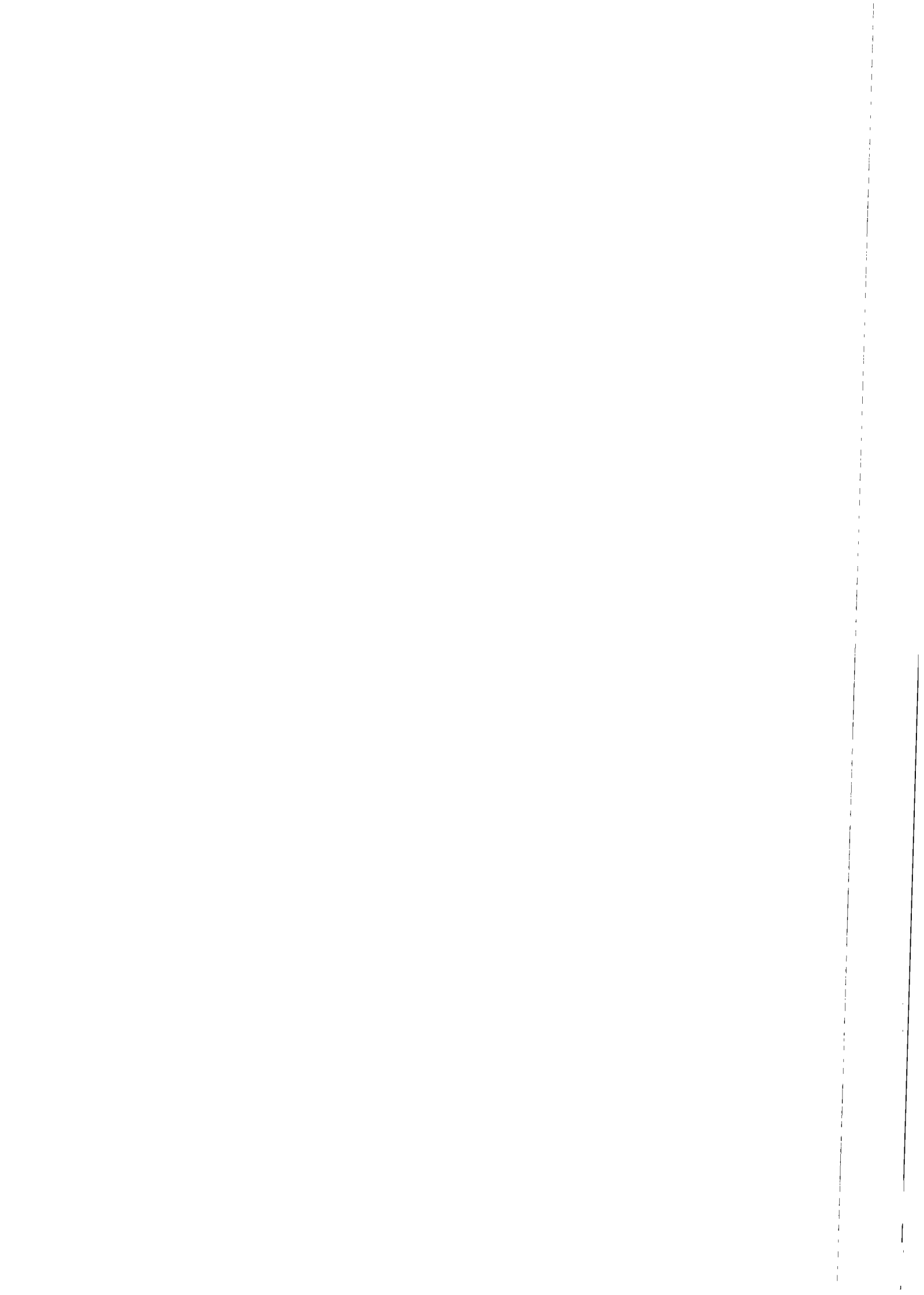
The African Network of Parliamentarian against Corruption (ANPAC) was invited to the 2nd annual conference of the Institute of Certified Secretaries of Kenya [ICS (K)]. The conference was held at La Pirogue Resort, Mauritius.

The conference was organized by the Kenyan Chapter of the Institute of Certified Public Secretaries in partnership with African Network of Parliamentarian against Corruption (ANPAC). The theme of this year's conference was "*Shaping the Governance Agenda for Sustainability.*"

The following thematic topics were deliberated during the conference—

1. Governance from a millennial leadership platform;
2. The role of the legislature/oversight committees in entrenching good governance and accountability at various levels of government;
3. Developing authentic leadership styles;
4. Effective stakeholder engagement;
5. Board room; dynamics; Board conflicts and independence;
6. Global convergence of governance codes and standards; and
7. Forging a united front in promotion of sustainable development and fight against corruption; the role of the legislature, regulators and professional bodies.

Participants at the conference included Members of Parliament, chief executive officers and directors of various government and private sector entities. Also present at the conference were persons drawn from various professional backgrounds including lawyers, accountants and auditors amongst others.



Representatives of county governments also attended the conference. The representatives were largely comprised of county chief executive officers (CEC) and persons working with the county government set-up in a range of different technical backgrounds and expertise.

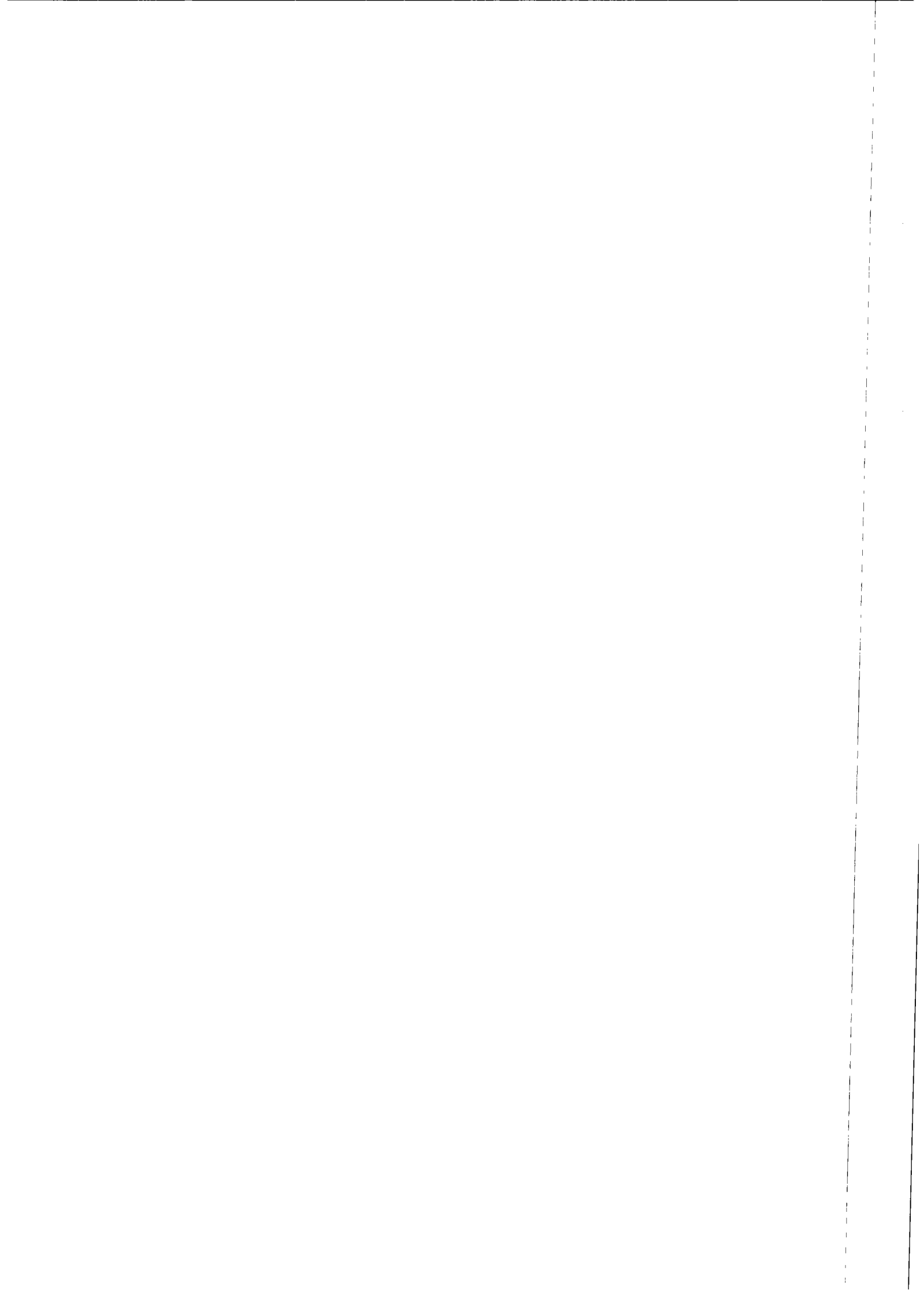
The participants observed that corruption had continued to cripple governance in public and private organizations. It was also noted that anti-corruption champions in the public and private sectors have continued to put up a spirited fight against corruption.

It was noted that a number of countries such as Ghana in Africa and Singapore in Asia had gradually elevated themselves to a status of “best practices on anti-corruption. Participants expressed concern over the endemic vice and more particularly, its normalization, more so, in developing economies.

Participants discussed the place of board dynamics in corporate governance and how it relates to the fight against corruption; it was observed that a corruption free organizational culture must be inculcated from the top.

Participants also discussed the critical policy challenges on corruption for state corporations. It was observed that there was a lacuna in entrenching anti-corruption in state corporations.

In sum, the conference observed that corruption was a vice of concern in both public and private sectors and that anti-corruption efforts should be targeted at both sectors as it would futile to arrest corruption on one front only. Participant agreed unanimously that corruption in the public sector has been the subject public lime light more than corruption in the private sector.



Summary of Key Recommendations

1. **THAT**, the institute should organize similar events to facilitate dialogue around the anti-corruption agenda in Kenya; noting that the war against corruption was gaining traction progressively in Kenya.
2. **THAT**, the institute should develop mechanisms for structured engagement with the public and private sector entities to facilitate sharing of experience and expertise in corporate governance matters.
3. **THAT**, the institute should work closely with the county governments to assist them develop county corporate codes of governance. This is necessary because county governments are at an early stage of development.
4. **THAT**, the institute should work in cohorts with sector partners to undertake a comprehensive audit of
5. **THAT**, the institute should benchmark on successful examples of corporate governance best practices in developing economies with the aim of championing dialogue on the subject and motivating Kenya and her citizens to work tirelessly towards riding the country of corruption and other associated vices.
6. **THAT**, the institute should join in the efforts by the government of Kenya to eradicate corruption in the country.
7. **THAT**, the institute should undertake a comprehensive legal audit of laws relating to governance and anti-corruption and propose provisions which should be amended to entrench a corporate governance in the management of public entities.



CHAPTER TWO

INTRODUCTION

Background

1. The Institute of Certified Public Secretaries of Kenya [ICS (K)] is the professional organization for Certified Secretaries. The Institute is established under the Certified Public Secretaries Act, Cap 534 of 1988. The institute is dedicated to the promotion, growth, development and regulation of the governance and corporate secretarial profession in Kenya.
2. The African Network of Parliamentarians against Corruption is a parliamentary caucus whose main objective is to champion anti-corruption efforts from a legislative standpoint.
3. The theme of this year's conferences was "Shaping a new the governance agenda for sustainability". The theme sort explore mechanisms of establishing sustainable governance practices in the face of the ever-escalating threats to sustainable governance such as corruption.
4. The Institute organizes technical seminars and conferences that attract participation from persons with different professional backgrounds. Professionals who have demonstrated keen interest in the affairs and events of the institute include accountants, lawyers and auditors amongst others.
5. The Council of the Institute is the top organ within the echelons of the Institute. The Chief Executive Officer doubles up as secretary to the Council.
6. The 2nd annual conference was held in Mauritius from 15th to 18th October 2018 at La Pirogue Beach Resort.



CHAPTER THREE

Conference Deliberations

2.1 Forging a United Front in the Promotion of Sustainable Development and Fight Against Corruption; The Role of Legislature, Regulators & Professional Bodies, Hon. Shakeel Shabir, Chairperson, APNAC Kenya

7. The facilitator informed the plenary that as one of the three arms of government Parliament is responsible for law making, representation and oversight of government ministries, departments and agencies.
8. He observed the doctrine of separation of powers play a vital role in this regard. It is through the doctrine of separation of powers that Parliament is able to discharge its mandate more effectively and accountably.
9. He noted that to achieve the requisite integrity, Parliament must like Ceasar's wife...be beyond reproach. That just governance must be at the heart of all members for Parliament realize its three-pronged mandate.
10. The presenter posed and discussed the following questions—
 - (a) Whether Parliament conduct itself with integrity?
 - (b) Does the need for political survival undermine opportunities for effective legislation?
 - (c) Whether Parliament has mechanisms of dealing adequately with allegations of impropriety?
11. The presenter unpacked the procedure of vetting of executive nominees with a particular inclination on whether external influences affect the process. He noted that this is a constitutional process which is well insulated by constitutional provisions and process.
12. He further observed that members of the public have the option of challenging the process in court. He cited a number of examples where members of the public have challenged the process in court. The court has entertained the applications and indeed pronounced itself in the matters.

13. The presenter further unpacked the concept of “ethical considerations” in the business of Parliament as it relates to the fight against corruption. He discussed the incidents of Public Accounts Committee in 2015 which lead to the disbandment of the Committee.
14. The facilitator proposed that to inculcate a culture of integrity create an environment where all undertakings are underpinned by integrity, revive, review and strictly enforce the Code of Conduct for Member of Parliament.
15. The presenter concluded by observing that the ethical tone of a country is shaped by the behaviour of Parliamentarians. Ethical leadership starts with them, as the manner in which they conduct themselves influences the ethical mode in the broader society.



2.2 Convergence of Governance Codes & Standards: Case Study of Mwongozo Code— Calvin Nyachoti

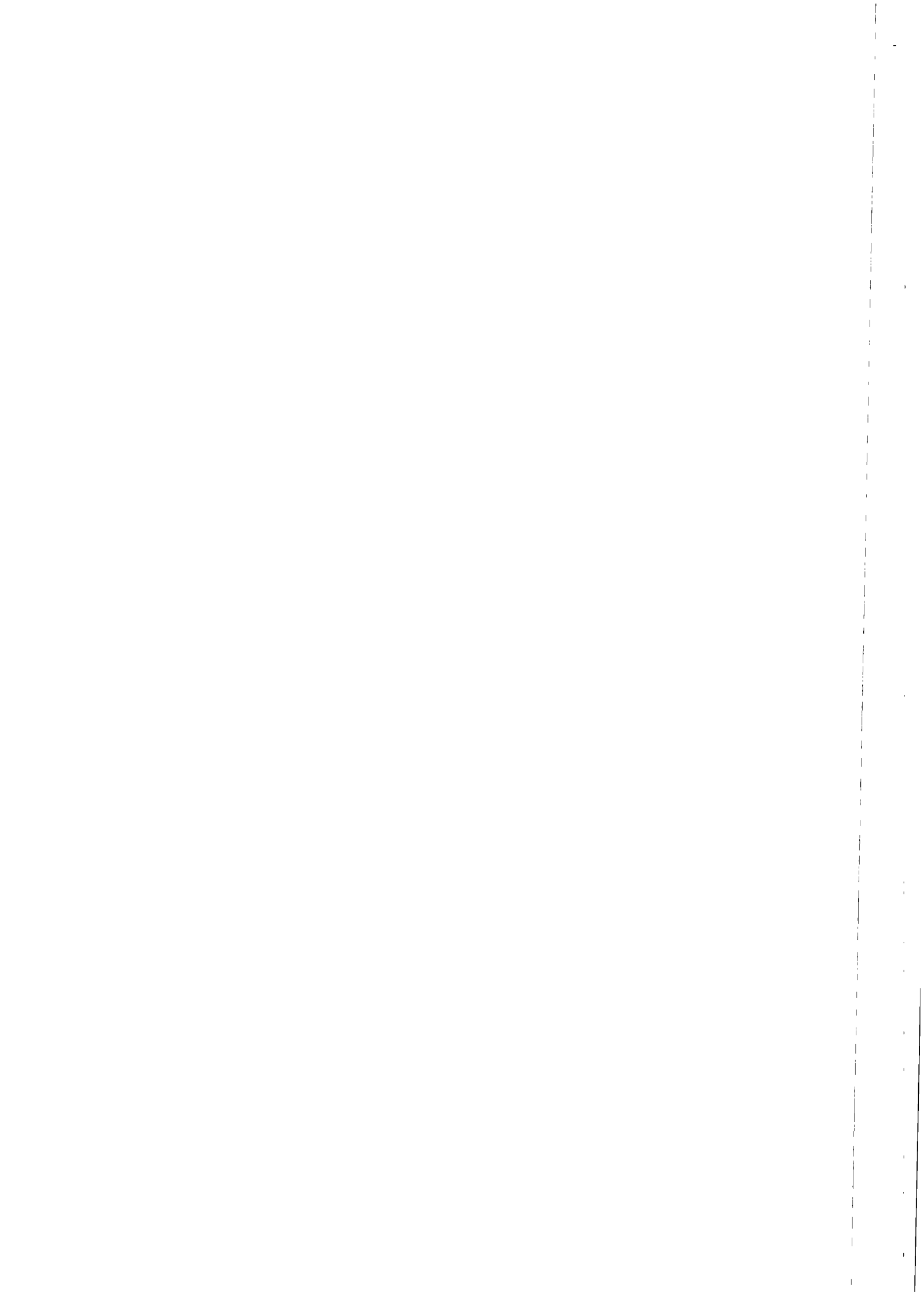
16. The objectives of the presentation were to—

- (a) Explore the structures, processes and value systems acceptable for the direction and control of corporates;
- (b) Discuss modalities through which corporates may ensure accountability to their stakeholders;
- (c) Unpack the roles and responsibilities of Boards;
- (d) The rights and responsibilities of shareholders;
- (e) Discuss corporate compliance with applicable laws and regulations;
- (f) Review best practices on corporate governance codes and standards including the ICPSK Code of Corporate Governance for private Organizations, the Organization for Economic Co-operation and Development (OECD), the United Kingdom Corporate Governance Code, the Australian Corporate Governance Principles and Recommendations, Canadian Corporate Governance Guidelines, the Commonwealth principles of Corporate Governance and the Mwongozo Code of Governance for government owned entities.

17. The presenter informed participants that corporate governance codes require institutions to have strong board practices and commitments, effective internal controls, transparent disclosure, adequately defined stakeholder rights and an accountability system for Directors.

18. Participants also heard that corporate codes of conduct mainly deal with Board appointment, composition, roles and responsibilities, accountability, risk management and internal controls, shareholders rights and responsibilities, sustainability and performance management and compliance with laws and regulations.

19. The presenter analysed the provisions of the Capital Markets Authority (CMA), Central Bank of Kenya prudential guidelines and the code of governance for non-governmental organization (*currently under development*).



20. Participants discussed the following ten critical challenges faced by state corporations—

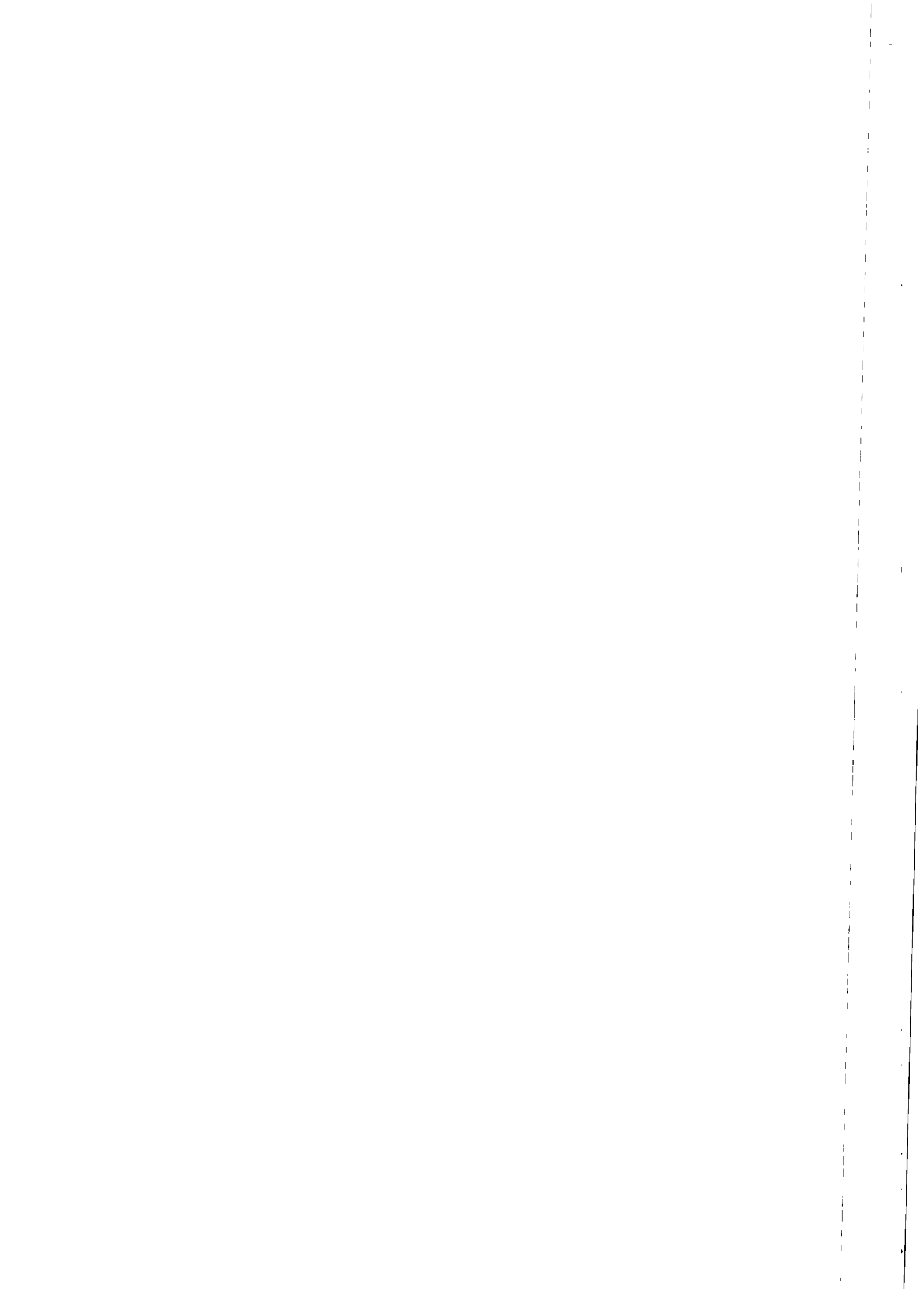
- (a) Poor coordination and multiplicity of the roles of state corporations;
- (b) Poor governance of state owned enterprises complimented by ineffective Boards;
- (c) Lack of clarity on the mandates of state corporations;
- (d) Poor linkage of state corporations to national development goals;
- (e) Conflicting definition of state owned enterprises in the Kenyan and the global market;
- (f) Inadequate performance management frameworks; and
- (g) Lack of clarity/abuse of the process of establishing and dissolving state corporations.

21. Participants heard that the following policy intervention have been put in place to address the challenges outlined above—

- (a) Development of a clear definition and classification framework;
- (b) A vented and updated inventory of state owned enterprises;
- (c) Clarity in the existing institutional arrangement;
- (d) Creating a facilitative business environment for state owned enterprises;
- (e) Strengthening corporate governance in state owned enterprises;
- (f) Establishment of a Sovereign Wealth Fund; and
- (g) Alignment of national development agenda;

22. Participants discussed Article 10, 73, 232 and chapter 6 of Constitution which are the constitutional basis of Mwongozo; the Kenyan Governance Code of Conduct. The forum observed that Kenya is among the League of Nations which have adopted a code of governance for state cooperation's and that the provisions of the code were being progressively incorporated into newly enacted laws.

23. The presenter also unpacked the provisions of the State Corporations Act, Cap. 446 and the Public Officers Ethics Act, Cap. 183 noting that the provisions of the two statutes as read together with the provisions of the Ethics and Anti-Corruption Act, No. 22 of 2011 were crucial in the fight against corruption in Kenya.



24. Participants heard that codes of governance stipulate three pronged approach to compliance as outlined below—

- (a) Comply or else, full compliance no exemption;
- (b) Comply or explain, full compliance or explanation in lieu; and
- (c) Apply or explain, full application of the principles behind the rules, not the rules.

25. It was noted that Mwongozo is more inclined towards the comply or explain model. This is in recognition of the fact that state corporations may be at different levels of compliance.

26. Participants heard that the following outcomes were imminent upon the successful implementation of Mwongozo—

- (a) Identifiable responsibility of government as owner;
- (b) Enhanced transparency and disclosure by SOE's;
- (c) Shareholders rights and obligations;
- (d) Strengthened sustainability and performance management;
- (e) Enhanced compliance with laws and regulations;

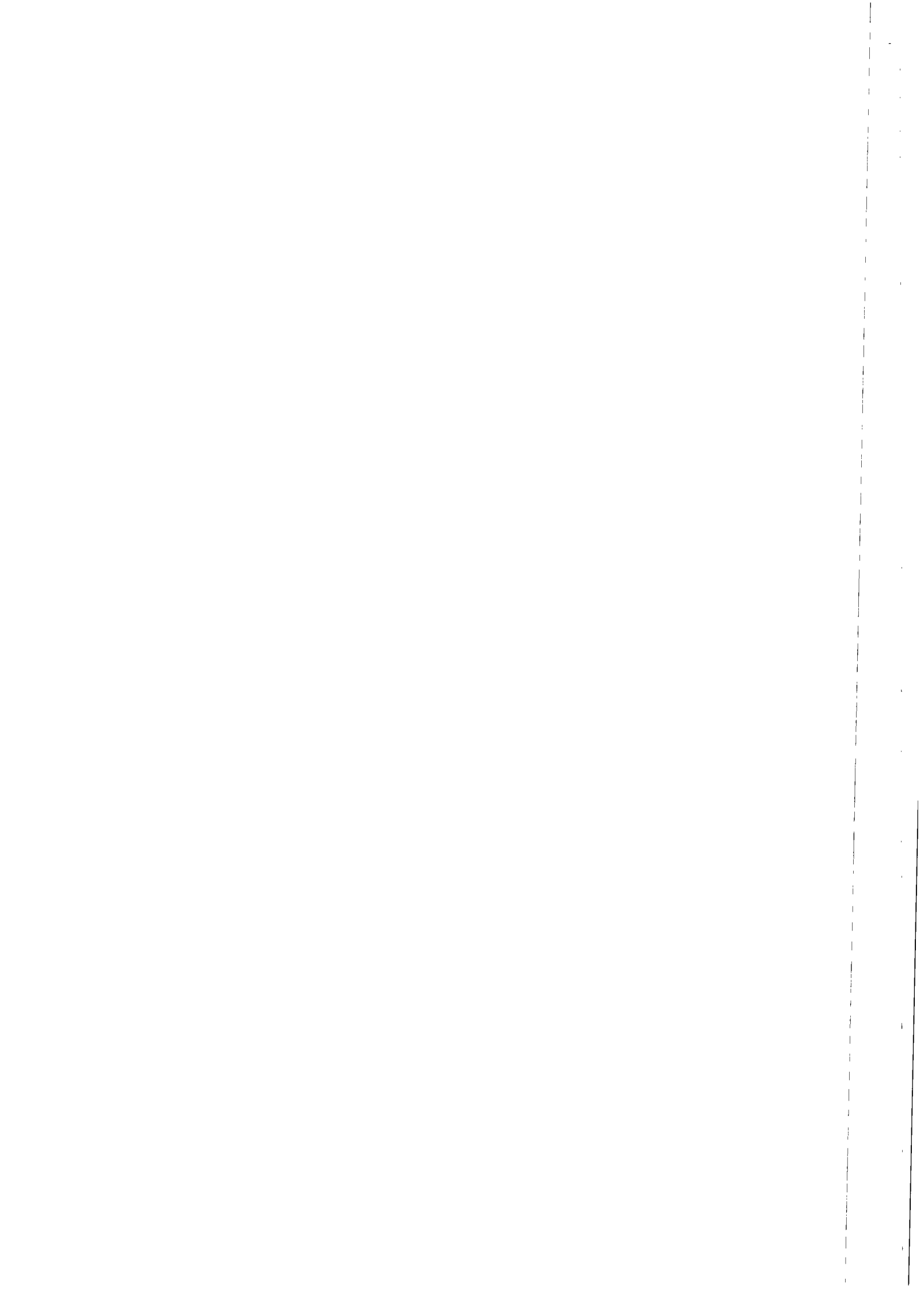
2.3 Global Corporate Governance Trends—Eddy M. Jolicoeur, Mauritius Institute of Directors

27. The objectives of the presentations were—

- (a) To examine the global transition as states gradually withdraw from economies; and
- (b) Discuss who replaces the state;
- (c) Examine whom corporations should be accountable to; and
- (d) Discuss how to engineer companies for success.

28. The presenter identified the following global governance trends—

- (a) Interaction with foreign entities; this facilitates sharing of corporate governance values across borders;
- (b) Technological advancement is a good thing but some aspects of technology are disruptive; there is a negative impact on the business environment; and
- (c) Growing consensus amongst investors on the need for corporate governance in the public and private sector.



29. The presenter further informed the meeting that most organization had reconciled themselves with the fact that the cost of poor governance outweighs the cost of compliance with the established governance codes.
30. He further discussed the subject of expanding shareholders rights noting that the United Kingdom and Canada were leading examples and that the two nations were progressively emerging as the best practices the expanding scope of shareholder rights.
31. He observed that shareholders expectations revolve around local benchmarks reflecting international standards, functional disclosure rules, strengthened laws and regulations and tax laws that are favourable to the value of shares held by shareholders.
32. The presenter concluded by observing that there was need for every organization to---
- (a) Prepare a corporate governance balance sheet;
 - (b) Incorporate new ideas, best practices and emerging standards into their corporate governance codes; and
 - (c) Collect relevant information pertaining to corporate governance and distribute to their stakeholders.

2.4 The Challenge of Our Time – Developing Authentic Leadership, Dr. Caesar Mwangi

33. The presenter launched his presentation by observing that “leader need to be authentic if they are to be great... and if they aspire to create impact.
34. He informed the audience it is always important to identified a role model who is widely acknowledged as a great leader and with whom one shares ideals of personal leadership. One should then tailor their individual leadership aspirations to fit into the leadership aspiration of their desired role model.
35. The forum identified the following individuals as great examples of personal leadership role models—
- (a) Barrack Obama;
 - (b) Martin Luther King (JR);
 - (c) Professor Wangari Maathai;
 - (d) Oscar Schindler;
 - (e) Nelson Mandela;

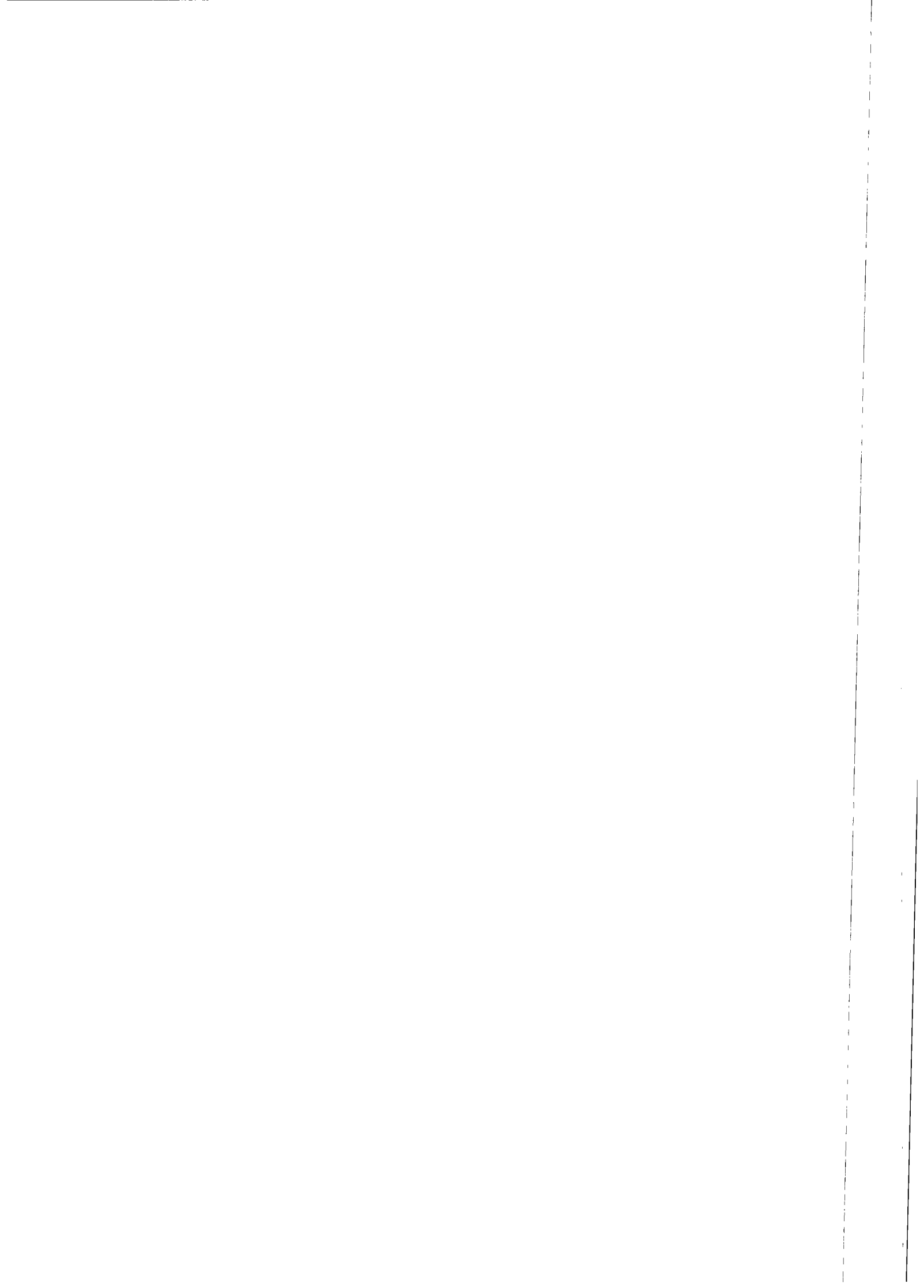
- (f) Mother Teresa; and
- (g) Bill Gates.

36. The forum agreed unanimously the leaders named above shared the following traits, they had a vision, they inspired many people, they were compassionate, they were trust worthy, they were ethical and they had a concern for others.
37. The presenter emphasised the need for all person to embrace the simple fact of life, which is that... a mind that knows itself, values itself and understands itself cannot be enslaved.
38. On understanding authentic leadership, the presenter noted that authentic leadership is never replicated. It is authentic in its very nature.
39. He stated that authentic leadership requires that one draw from the essence of the values, morals and life principles that they possess.
40. He further informed participants that one must trade off their weaknesses to attain authentic leadership. He observed that authentic leaders do not choose to be authentic whenever it suits them. It is a constant trait that they are required to demonstrate at all times.
41. He also observed that a high level of self-awareness is essential for authentic self-awareness. He pointed out that authentic leaders own-up to their mistakes.
42. He emphasised the need to commit to continuous learning. This helps authentic leaders reconcile their view of the world.
43. He emphasised the fact that authentic leadership demands humility, credibility, believability and trustworthiness.
44. He informed the audience that authentic leaders anticipate problems and device mechanisms of encountering the challenges.
45. The presenter informed members that authentic leaders have a ferocious tenacity for longer-term goals. They do not sacrifice long term gains for short term gains.
46. The presenter noted that organizational excellence helps an organization to succeed in all spheres of its organizational objective. It aides the organization in achieving and sustaining outstanding performance levels that exceed the expectations of the organizations clientele.



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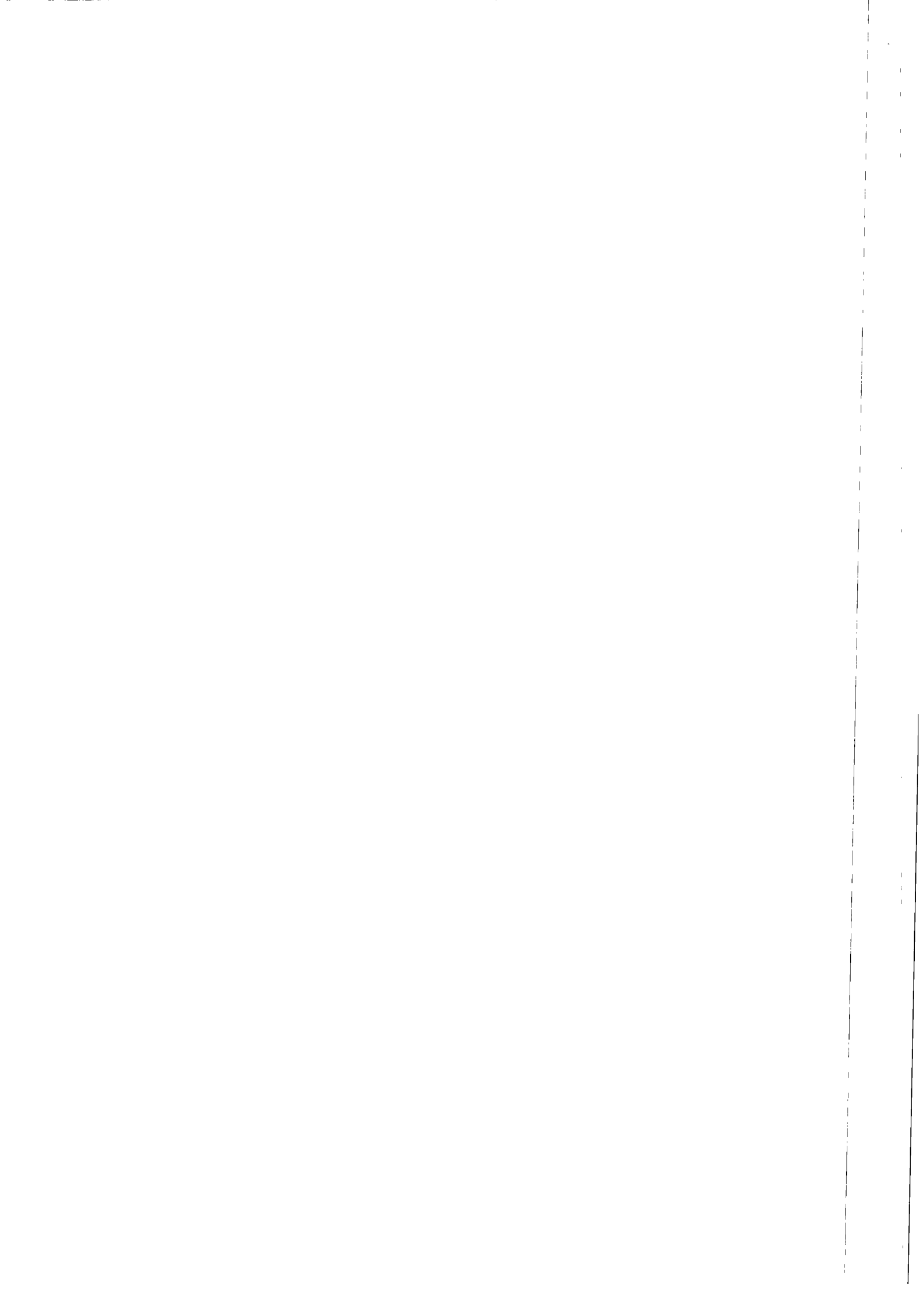
55. She gave various examples of field visit by the Public Accounts Committee which have exposed a contrary situation on the ground as opposed to that which had been alleged by the procuring entity.
56. She informed the participants that in proceedings of the Committee members work towards a common non-partisan objective. This enable the Committee to discharge its mandate more effectively.
57. The presenter also informed the plenary that the Committee works closely with the Office of Auditor General and the National Treasury and that these offices have attached liaison officers to the Committee due to the dynamic nature of engagement between Parliament and the offices.

2.6 Board Dynamics—Board Dynamics, Dr. Martin Oduor

58. The presenter informed the plenary that effective Board dynamics is a broad subject. The success or failure of Board operations is to a large extent dependant on the prevailing Board structures.
59. He informed the plenary the a combination of the following attributes must prevail for a Board to fully achieve its objectives—
 - (a) A competent Board composition;
 - (b) An inculcated culture of objective and respectful Board relations;
 - (c) Continuous review and assessment of the operations of the Board;
 - (d) Well sustained internal processes such as constant Board meetings;
 - (e) Documented outcomes such as reports of the Board, whether quarterly or annual reports.
60. He informed the plenary the an effective Chairperson of the Board must lead the Board effectively, provide accurate and timely information to members, accommodate the views of all Board members in decision making, be responsive to the development needs of Board members and inculcate a culture of succession planning within the Board.
61. The facilitator observed that a strong Board of Directors can only prevail in the face of the following—
 - (a) Broad scope – this entails going beyond the fiduciary to engage more deeply and objectively on strategy.

- (b) Deep sense of commitment – this requires investing more energy and synergy in the objective of the organization and exploring the most cost effective and productive way of achieving those objectives.
- (c) Clarity of responsibilities and mandate of Board members. He emphasises that it is critically important for Board members to be clear on their mandate so that they can be in a position to actualize their mandate.
- (d) A culture of trust – the facilitator also informed the meeting that the Board-room becomes chaotic in absence of trust. He state that in 2015, 88% of more effective board directors cited a culture of trust within the Boardroom.

- 62.** The plenary heard that the ingredients of independent non-comprisable directors are independence of thought, expertise, sufficiency of time and a working grasp of the tenet of corporate governance.
- 63.** The presenter noted that even the most effective Boards often have to contend with negative traits such as internal protests, disagreements, misunderstanding, internal conflict and incitement. He proposed amicable settlement of these challenges as the most viable option.
- 64.** The presenter suggested the definition of conflict as the dynamics that prevail when two or more people or organizations perceive one another as a threat to their need or interests.
- 65.** The facilitator shared with the plenary the five dysfunctions of a team according to Lencioni—
- (a) Inattention to results;
 - (b) Avoidance of accountability;
 - (c) Lack of commitment;
 - (d) Fear of conflict; and
 - (e) Absence of trust.
- 66.** The plenary heard that boardroom conflict may be addressed through effective leadership, commitment to learning, resolve to work together, rising above petty and partisan issues, commitment to changing with the times, team spirit, adequate and timely sharing of information and support for each other.



CHAPTER FOUR

3.1 Recommendations

The following recommendations were made by the 2nd bi-annual conference of the Institute of Public Secretaries—

67. **THAT**, ICS should explore mechanisms for broader sustained partnership with ANPAC to facilitate participation of members of the legislature in governance matters with a special focus on anti-corruption.
68. **THAT**, ANPAC Kenya should hasten its programme on engagement with professional bodies such as the Institute of Certified Accountants of Kenya (ICPAK), the Law Society of Kenya (LSK) amongst others.
69. **THAT**, the institute should explore modalities of organizing more similar events to stimulate and promote dialogue around the anti-corruption agenda in Kenya; noting that the war on corruption was progressively gaining traction in Kenya.
70. **THAT**, the institute should develop clear mechanisms for coordinated engagement with public and private sector entities. This facilitate sharing of expertise and experiences on matters relating to corporate governance.
71. **THAT**, the institute should consider working in cohorts with its sector peers to undertake a comprehensive constitutional audit of the gains of the Constitution to Kenya, 2010 to the nations citizenry since promulgation.
72. **THAT**, the institute should benchmark on working examples of best practices in the developing world and champion dialogue on the subject to encourage and motivate Kenya and her citizens to fight corruption relentlessly.
73. **THAT**, the institute should join efforts with the government to fight corruption and create public awareness on the ills of corruption.
74. **THAT**, the institute should develop custom codes of conduct for county governments to aide the corporate and administrative operations of county governments.
75. **THAT**, the institute should undertake a comprehensive legal audit of anti-corruption laws and propose possible areas for amendment with the objective of synchronising the country's fight against corruption with global best practices on anti-corruption.





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