



Commonwealth Parliamentary Association (CPA) Benchmarks for Democratic Legislatures – Report of Self-Assessment of the Parliament of Kenya

Background

In 2018 the CPA completed a consultation and review process that resulted in the adoption of updated *Recommended Benchmarks for Democratic Legislatures*. The benchmarks provide a minimum standard and a guide on how a Parliament should be constituted and how it should function. They play an important role in developing the effectiveness of parliamentary institutions across the 180 Parliaments and Legislatures of the CPA and contribute to the implementation of the Sustainable Development Goals (SDGs)¹.

In December 2019, the Parliament of Kenya became the sixth Commonwealth legislature to use the framework to conduct a self-assessment. The overall objective of the exercise was for local stakeholders to measure the progress of their parliament in achieving democratic and good governance standards by comparing their practices to the benchmarks that have been developed and adopted by the CPA.

The Self-Assessment was approved by the Chairperson of the CPA Africa Region, CPA Branch President and Speaker of the National Assembly, Hon. Justin B. N. Muturi, EGH, MP and organised by parliamentary staff. The actual self-assessment took place from 2-6 December 2019. In advance of the assessment, officials at the Parliament undertook a review of the technical and legal benchmarks. A consultant selected by the CPA Secretariat, Anthony Staddon, facilitated the self-assessment and met with over 20 local stakeholder including a range of majority and minority Members and Senators.

A review of key documents was also undertaken by the consultant including the Constitution of the Kenya (2010), Standing Orders of the National Assembly and the Senate, Annual Reports and sample committee reports as well as a general literature review.

The completed Benchmarks workbook is shown as Annex A and programme is shown as Annex B. Key findings are summarised below.

¹ In particular Goal 16.6 *Develop effective, accountable and transparent institutions at all levels* and Goal 16.7 *Ensure responsive, inclusive, participatory and representative decision-making at all levels*.

The main strengths of the Parliament as identified by the facilitated self-assessment are:

- The infrastructure, organisation and management of the legislature, including provisions for the immunities and privileges of parliamentarians, incorporation of the principles of Natural Justice, adequate physical infrastructure (to be further enhanced by the new building being built); a transparent parliamentary calendar in both houses; open and regular meetings; an effective committee system; and clear procedures for calling itself into regular and special session; structuring debate and determining the order of precedence of Motions. One weakness is the lack of an adequate library.
- Comprehensive procedures are in place to allow for the meaningful consideration of petitions (including use of committees for consideration and reporting). There is a very useful Petition Tracker Register for the National Assembly and the Senate accessible on the parliamentary website.
- Relations between the Majority and Minority Parties have improved considerably in the current Parliament. Adequate facilities and allocation of resources are provided for the Leader of the Minority Party in the National Assembly and the Senate and their offices. The Legislature has rules or laws that ensure oversight committees, including the Public Accounts Committee (PAC), provide meaningful opportunities for opposition and independent legislators to engage in effective oversight of government expenditures.
- Legislators have the right to initiate legislation and to offer amendments to proposed legislation. Legislation is referred to the appropriate departmental Committee for consideration and also reviewed by a Committee of the Whole House. Committees facilitate public participation on the Bill through appropriate mechanisms. Scrutiny of Statutory Instruments by the Committee on Delegated Legislation has improved in the current Parliament with many unnecessary regulations being nullified. Efforts are made to follow-up on legislation through the Committee on Implementation in the National Assembly. The Senate may wish to consider re-establishing its own Implementation Committee or exploring the possibility of a joint Committee handling the scrutiny of resolutions of the legislature.
- There are adequate mechanisms in place for the legislature to obtain information from the executive sufficient to exercise its oversight function in a meaningful and timely manner. Parliament receives an annual report from the President on the state of the security of Kenya and on the progress made in fulfilling its international obligations (including the SDGs). Most stakeholders agreed that the SDGs are becoming increasingly engrained in national policies and the executive agenda.
- The Parliament has been proactive in considering ways to strengthen its oversight responsibilities, for example by allowing questions to be answered by Cabinet Secretaries in the respective Committees. The Parliament will need to ensure that the committees have sufficient capacity to handle such questions alongside statements, petitions, budget and their normal inquiries. This is particularly an issue for the Senate given its smaller membership and the problems experienced with the non-availability of some Senators to participate in committee activity.
- Financial and budgetary oversight has been strengthened with a strong role for the Budget and Appropriations Committee, supported by input from the departmental committees and the widely respected expertise of the Parliamentary Budget Office (PBO). The Committee identified a number of concerns from the public hearing submissions on the 2019/20 budget including poor roads network, health, agriculture and water, sewage and drainage facilities. However, the two-month period provided for review of the budget may be insufficient as public participation becomes further established.

- The PAC has taken effective steps to clear the heavy backlog of unexamined audited accounts that it inherited from the 11th Parliament. The PAC has commenced examination of the audited financial statements for 2017/2018 – the latest to be submitted to the National Assembly by the Auditor General (AG). There is evidence that the PAC's work is impacting budgetary appropriations (for example the budget of the National Youth Service was cut by 8bn shillings because of issues highlighted by the PAC).
- The legislature is open to the public and the media, including the plenary sessions and committee meetings. There are live recordings of plenary sessions. Committee meetings are recorded and broadcast during public hearings.
- The Parliament is fully independent of the executive and determines and approves its own budget. MPs and Senators receive adequate and appropriate resources to enable them to fulfil their constituency/county responsibilities. The Parliamentary Service Commission (PSC) is responsible for the management of Parliament providing services and facilities to ensure the efficient and effective functioning of Parliament and members and staff are expected to respect the non-partisan and apolitical character of the Service. Rates of pay for parliamentary staff are higher than the rest of the public service attracting high quality persons to parliamentary service.
- Members, Senators and staff are fully engaged in various regional and international fora such as the East African Legislative Assembly (EALA), the Pan African Parliament (PAP), Inter-Parliamentary Union (IPU), CPA, African Caribbean and Pacific (ACP), European Union (EU), and Joint Parliamentary Association, Forum of Parliaments of the International Conference on the Great Lakes Region, among others. The CPA Kenya Branch is very active.

The main areas of challenge are as follows:

- Across the Commonwealth second chambers are often “contested institutions”, but the rift which has developed between the National Assembly and the Senate has gone beyond “sibling rivalry” and is making coordination and dispute resolution mechanisms increasingly difficult and fractious. The 2010 Constitution is silent on the question which of the two Houses is the “Upper House” in the widely acknowledged sense and the arrangements established by the 2010 constitution are very much *sui generis*.
- While the Constitution stipulates the process for addressing the question whether a Bill concerns County Governments, the extent of each House's legislative mandate is under question and cases are pending in the Supreme Court. A working inter-House cooperation committee should be considered to ensure a more effective and efficient legislature. The Parliament should also examine the question of duplication in the committee system. While it is likely that each House will continue to require similar committees, there are areas where a joint approach may be desirable e.g. Committee of Implementation and delegated legislation. The tension between the two Houses has also affected an otherwise very professional and respected parliamentary service.
- Most stakeholders accept the Independent Electoral and Boundaries Commission (IEBC) needs strengthening in order to restore public confidence. The IEBC needs the necessary resources to fulfil its mandate. Furthermore, The Election Campaign Finance Act 2013 and its accompanying regulations requires enforcement to ensure a level playing ground.
- There is a constitutional obligation (Article 27 (8)) for the State to take legislative and other measures to implement the principle that not more than two-thirds of members of elective or appointive bodies shall be of the same gender. The National Assembly has a total of 76 female

Members (47 women representatives, 23 elected women members and six nominated women members and the Senate has 18 nominated and three elected women senators (21 in total). In total therefore, 23.32% of Parliament are women which is below the prescribed constitutional threshold. The Representation of Special Interests Groups Laws (Amendment) Bill 2019 seeks to promote the representation of marginalised groups including women. This Bill is pending Committee stage and Third reading by the House. Other possible options include requiring political parties to use gender sensitive lists. Greater focus needs to be placed on mainstreaming gender across all functions of the legislature. There are no specific programmes within Parliament to sensitise men on gender issues. No formal equality impact assessments are undertaken on proposed legislation and budgets. The Parliament may wish to consider the *HeForShe* Advocacy Strategy adopted by other Parliaments in East Africa.

- While the commissions and the holders of independent offices are independent (for example the Office of the Controller of Budget and Kenya National Human Rights and Equality Commission (KNHREC)) and not subject to direction or control by any person or authority, Parliament must ensure that adequate funds are allocated to enable each commission and independent office to perform its functions. For example, the AG Office has experienced financial challenges in performing its mandate, thus affecting timely compilation of audit reports and the production of special audits.
- Article 118 of the Constitution of Kenya mandates Parliament to facilitate public participation and involvement in the legislative business of Parliament. Standing Order 127 of the National Assembly provides for public participation of all Bills by the Departmental Committees of the House through appropriate mechanisms including inviting submissions of memoranda, holding public hearings, consulting relevant stakeholders in a sector and consulting experts on technical subjects. The public has often challenged Acts passed by the House because of arguments that public participation should be akin to “civic education” or “Parliament agreeing on all proposals made by the public” perhaps suggesting the need for an elaborate framework to guide on these concerns. The Parliament is currently formulating and drafting a legislative guide to fully actualise the provisions of Article 118 of the Constitution on public participation in legislative processes. Parliament also has a key role to play in terms of supporting continuous civic education and improving public knowledge and support of the legislature. This is a need for more resources and programmes promoting the participation of under-represented groups.
- There are rules in place providing for financial integrity including the receipt of gifts or benefits and registration of Members’ Interests and financial declarations, but ethical governance is complex through overlapping legislation and needs to be streamlined and rigorously enforced. The proposal to establish a Standards and Office Commissioner should be re-considered. All ethical and wealth declarations should be made public.

It is hoped this report feeds into relevant national conversations and the Parliament of Kenya is encouraged to reflect on this assessment and use it as a basis to consider proposals for further technical and advisory assistance from the CPA Secretariat and other relevant bodies. The Parliament is encouraged to consult the following relevant CPA publications² as it considers further reforms:

- Recommended Benchmarks for Codes of conduct applying to Members of Parliament

The Parliament is also encouraged to undertake a further review of the Parliament against the Commonwealth benchmarks in the next Parliament to assess further progress, involving a similar range of Members from both Houses, in addition to input from civil society to monitor progress and address new and continuing challenges.

² All reports are available from the CPA website
http://www.cpahq.org/cpahq/Main/Resources/Document_Library.aspx

Summary of Main Findings

Political Context

1. The 2010 Constitution of Kenya replaced the previous parliamentary system with a presidential system with a clear separation of powers. The new Constitution provides for reduction of the President's power; abolition of the post of Prime Minister (after the March 2013 election); an expanded National Assembly; creation of a Senate with 68 members; significant devolution of power to new county authorities (overseen by the Senate); recognition of faith courts; a bill of rights; and creation of a supreme court, a new anti-corruption agency, and an independent land commission to promote land reform.
2. Chapter Eight of the Constitution establishes the Parliament of Kenya "which shall consist of the National Assembly and the Senate." Article 94 provides that the legislative authority of the Republic is derived from the people and, at the national level, is vested and exercised by Parliament.
3. The National Assembly represents the people of the constituencies and special interests and deliberates on and resolves issues of concern to the people. It enacts legislation; determines the allocation of national revenue between the levels of government; and appropriates funds for expenditure by the national government and other national State organs; and exercises oversight over national revenue and its expenditure. The National Assembly also reviews the conduct in office of the President, the Deputy President and other State officers and initiates the process of removing them from office; and exercises oversight of State organs. Finally, the National Assembly approves declarations of war and extensions of states of emergency.
4. The Senate represents the counties, and serves to protect the interests of the counties and their governments. It participates in the law-making function of Parliament by considering, debating and approving Bills concerning counties; determines the allocation of national revenue among counties, and exercises 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.
5. The 349 members of the National Assembly are elected by two methods; 290 members are elected by registered votes, 47 women elected by registered voters from the counties, 12 members nominated by parliamentary political parties to represent special interests of youth, persons with disabilities and workers, and the Speaker of the National Assembly. The 67 members of the Senate are elected by four methods; 47 are elected in single-member constituencies based on the counties by first-past-the-post voting. Parties are then assigned a share of 16 seats for women, two for youth and two for disabled people based on their seat share.
6. General elections were held in Kenya on 8 August 2017 to elect the President, members of Parliament and devolved governments. While the results of the parliamentary and local elections were declared valid and were broadly accepted, the results of the Presidential ballot, which indicated that incumbent President Uhuru Kenyatta was re-elected with 54% of the vote, were contested in the Supreme Court by his main opponent, Raila Odinga. The results were subsequently annulled and fresh elections held on 26 October 2017. However, the Opposition withdrew from the election. A handshake between President Kenyatta and Raila Odinga on March 9, 2018, symbolically ended the six-month long political stalemate and signified a declaration of peace between the two political leaders. The handshake was followed by the launch of the Building Bridges to a New Kenyan Nation Initiative (BBI) in May 2018 to enable stakeholders to discuss how to build lasting unity. A Building Bridges report was issued in October 2019 with debates on its contents still ongoing.

General

7. The 2010 Constitution provides for the establishment of an Independent Electoral and Boundaries Commission (IEBC). IEBC Commissioners are appointed for a six-year term on a full-time basis and not reappointed. Nominees must be approved by the National Assembly and then by the President. The Commission is responsible for conducting or supervising referenda and elections, including the regulation of the process by which parties nominate candidates; the registration of candidates for election; the facilitation of the observation, monitoring and evaluation of elections; the regulation of the amount of money that may be spent by or on behalf of candidate or party in respect of any election; and the development of a code of conduct for candidates and parties contesting Elections.
8. Stakeholders have queried the IEBC's independence; the lack of transparency in decision making and its communication strategy which they claim is contrary both to international standards and to Kenya's constitutional requirement that elections be transparent. Concerns have also been raised by independent election observers that the IEBC has the necessary resources to undertake audit and fulfil its mandate.
9. Political parties can receive up to Sh15 billion (USD\$150 million) in contributions, and individuals can make single contributions of up to Sh3 billion (about USD\$30 million). The Election Campaign Finance Act 2013 compels candidates and political parties to submit their financial details to the within a set deadline. However, despite the law's enactment, problems were identified with the regulations which had not been passed by parliament, meaning that the regulations were not used for the 2017 elections, weakening transparency and accountability. In practice, campaigns can receive contributions from large corporations and wealthy individuals without much scrutiny. There is concern whether IEBC has the capacity to implement all the new regulations and whether its oversight will be targeted at particular candidates and political parties.

Infrastructure, Organisation and Management

10. Article 117 of the Constitution provides that there shall be freedom of speech and the Parliamentary Powers and Privileges Act, 2017 provides for the immunities and privileges of parliamentarians. The independent Salaries and Remuneration Commission (SRC) adjudicates public pay which has caused disputes with legislators over their pay and allowances. A Socio-Economic Audit of the Constitution of Kenya 2010 under the auspices of the AG has concluded that the pay of MPs in Kenya is not out of line with international norms, but also noted that allowances alone, in some instances, tend to go beyond the basic pay in spite of the principle that the allowance paid to a State officer cannot be more than 40 percent of gross pay; and salaries cannot be more for 60 percent of gross pay.
11. The principles of Natural Justice have been incorporated into the rules and procedure of the Legislature. For example, the Committee of Powers and Privileges in the National Assembly has recently considered the issue of uniformity of punishment and made changes to the Standing Orders to remedy the unequal treatment for the same offence committed at different times during a parliamentary session.
12. The Legislature has adequate physical infrastructure to enable Members and staff fulfil their responsibilities although the lack of space for an adequate library is a weakness. A new 26-floor building is currently being built which will ensure all MPs and Senators have an office and it will also include provision for 12 committee rooms and a mini chamber.

13. While most stakeholders were satisfied that the legislature's rules of procedure reflect and support the actual practice and culture of the legislature, and are reviewed regularly, others argued the Standing Orders require further reform to reflect the presidential system introduced by the 2010 Constitution. Stakeholders from the Senate commented their rules had been established prior to its creation from the perspective of the National Assembly. The Legislature's rules, procedures and practice are accessible to Members and to the public, but there is a need for civic education and outreach programmes to ensure these are widely understood.
14. A Business Committee determines the parliamentary calendar in both houses (made available on the parliamentary website). The Legislature meets regularly and has clear procedures for calling itself into regular and special session. There is a provision for a joint sitting of the House where the Speaker of the National Assembly presides, assisted by the Speaker of the Senate (the Constitution is silent where this sitting should be held). A substantial proportion of the Legislature's time is set aside to consider business proposed by non-government members. There are clear procedures for structuring debate and determining the order of precedence of Motions. Plenary debates and votes are public. The legislature has the prerogative to debate and comment upon any subject, whether local, national, or international. The Senate's overall function is to protect the interests of the counties and their governments.
15. There are very comprehensive procedures in place to allow for the meaningful consideration of petitions. Two types of Petitions are admissible: a written petition to Parliament by any person requesting the House/Senate to consider any matter within its authority and a Petition for the removal of a member of a Constitutional Commission, governor or holder of an Independent Office. A Petition Tracker Register for both the National Assembly and the Senate is available on the parliamentary website. Petitions are referred to committees for consideration and reporting.

The Opposition/Minority and Party Groups

16. The Political Parties Act 2011 provides the institutional, legal and regulatory framework for registration, regulation and funding of political parties in Kenya, including rules on mergers and coalitions. Parties that receive at least 5 percent of the votes cast in a national election are eligible for public funds. This means that many smaller political parties do not receive any funding.
17. Article 108 states there shall be a Leader of the Majority Party and a Leader of the Minority Party. Adequate facilities and allocation of resources are provided for the Leaders of the Minority Party in the National Assembly and the Senate and their offices.
18. Stakeholders agreed that the Legislature has rules or laws that ensure oversight committees, including the PAC, provide meaningful opportunities for opposition and independent legislators to engage in effective oversight of government expenditures. For example, the Budget and Appropriations Committee has 27 Members including 17 MPs from the ruling party and 10 MPs from the minority party (there is also an attempt to ensure regional and gender balance). The PAC, the Public Investments Committee and the Committee on Implementation elect a Chairperson and Vice-Chairperson from amongst the members of the Committees nominated from a party other than a parliamentary party forming the national government. The Members of the Special Fund Accounts Committee elects a Chairperson and Vice-Chairperson from amongst (a) independent members nominated to the Committee; or the members of the Committee nominated from a party other than a parliamentary party forming the national government, in the absence of independent members.

Gender

19. Article 100 of the Constitution states that Parliament shall enact legislation to promote the representation in Parliament of (a) women; (b) persons with disabilities; (c) youth; (d) ethnic and other minorities; and (e) marginalised communities. There is a constitutional obligation (Article 27 (8)) for the State to take legislative and other measures to implement the principle that not more than two-thirds of members of elective or appointive bodies shall be of the same gender. The National Assembly has a total of 76 female Members (47 women representatives, 23 elected women members and six nominated women members) and the Senate has 18 nominated and three elected women senators (21 in total). In total therefore, 23.32% of Parliament are women which is below the prescribed constitutional threshold. The Representation of Special Interests Groups Laws (Amendment) Bill 2019 seeks to promote the representation of marginalised groups including women. This Bill is pending Committee stage and Third reading by the House.
20. Some male (and female) stakeholders are resistant to enacting the constitutional obligation because they feel women can gain election through competitive elective processes as compared to through nomination process. A possible solution could be to require political parties to use gender sensitive lists.
21. The Kenya Women Parliamentary Association (KEWOPA) is undertaking a mentorship and capacity building programme across the country and encourages more women to take part in politics and run for office in accordance to the constitutional provisions of gender balance in political leadership. It has trained over 300 women members of county assembly and community leaders on the gender responsive budgeting guidelines and political party participation under the National Democratic Institute Programme.
22. There is no formal program to ensure that women are represented at all levels of the administration, but every parliamentary employee is required to promote gender equality and respect for the rights and freedoms of others. Two Deputy Clerks are women and the Deputy Speaker in the 11th Parliament was a woman. The Parliament of Kenya provides KEWOPA with office space and technical expertise. However, there are no specific programmes within Parliament to sensitise men on gender issues. Some stakeholders commented that most public participation is conducted by men who have more flexibility to attend because of the kind of work they are involved in.
23. Every Bill is accompanied by a memorandum containing: (a) a statement of the objects and reasons of the Bill; (b) a statement of delegation of legislative powers and limitation of fundamental rights and freedom, if any; (c) an indication whether it concerns county governments; and (d) a statement of its financial implication and if the expenditure of public moneys will be involved should the Bill be enacted, an estimate, where possible, of such expenditure. Therefore, no formal equality impact assessment is undertaken although the National Gender and Equality Commission is required to monitor, facilitate and advise on the integration of the principles of equality and freedom from discrimination in all policies, laws, and administrative regulations in all public and private institutions. The PBO could also be tasked to undertake a review of the budget from a gender perspective.
24. Training has been implemented on mainstreaming gender in the budget process and these issues are also discussed in plenary and committee. KEWOPA's latest Strategic Plan includes the objective to make KEWOPA a principal influencer in legislative processes shaping and influencing debates and legislative processes and promoting gender responsiveness in all the legislations and policy frameworks. The Strategic Plan also advocates for gender responsive budgets and gender mainstreaming of all public and private institutions to increase access to opportunities by both genders in the light of achieving Vision 2030 together as a nation. However, this work is very much in its infancy and needs broader support within Parliament.

25. A Special Funds Accounts Committee has been established to scrutinise special funds allocated to women, youth and money given to constituencies, Judiciary and parties represented in parliament.

Committees

26. The legislature has the right to form permanent and temporary committees and most stakeholders agreed that the committee system is effective overall despite the problem of insufficient Committee rooms. The Standing Orders for both Houses state that every select committee shall meet at least once in two months (most meet more frequently). There are complaints of the frequent postponement of meetings because Cabinet Secretaries are unavailable because of their busy schedules. Towards this end, the Committees may have to regularly invoke the Standing Orders which allow them to sanction any Cabinet Secretary who fails to appear before it without a valid reason. Stakeholders noted that Cabinet Secretaries are expected to appear before committees in both the National Assembly and the Senate and there may be unnecessary duplication and/or insufficient coordination. In the Senate the non-availability of some Senators has also affected committee activity. There have been challenges on provision of funds to undertake field visits causing postponement of scheduled activities. This has impacted negatively on execution of the work plans of committees.
27. Committees enjoy and exercise all the powers and privileges bestowed on Parliament by the Constitution and statute, including the power to (a) summon any person to appear before it for the purposes of giving evidence or providing information; (b) enforce the attendance of witnesses and examine them under oath, affirmation or otherwise; (c) compel the production of documents; (d) request for and receive papers and documents from the Government and the public; and (e) issue a commission or request to examine witnesses abroad. Where a witness summoned does not appear, or appears but fails to satisfy the House/Senate or committee, the House/Senate or Committee may impose upon the witness a fine or order the arrest of a witness who fails to honour a summons for the purpose of compelling his or her attendance.
28. Public access to meetings of select committees is protected by the Standing Orders. Committees hear evidence in public. The Standing Orders also allows a Committee, with the approval of the Speaker, to engage such experts as it may consider necessary in furtherance of its mandate. In practice they often do so. Committees have legal counsel, fiscal analyst, clerk, research officer and a media relations officer.

Legislative Function

29. Parliament exercises its legislative power through Bills passed by Parliament and assented to by the President. Bicameral consideration of Bills is anchored in Articles 110-113 of the Constitution. Any Bill may originate in the National Assembly and a Bill not concerning county government is considered only in the National Assembly. A Bill concerning county government may originate in the National Assembly or the Senate. A Bill may be introduced by any member or committee of the relevant House of Parliament, but a money Bill may be introduced only in the National Assembly. There is a provision for Mediation to build consensus and concurrence on contended provisions of a Bill or the entire Bill, whose passage require consideration by both Houses of Parliament, with the intention of developing an agreed version of the Bill that can be passed by both Houses.
30. There is a process stipulated within the Constitution (Article 110(3)) for addressing the question whether a Bill concerns County Governments. Before either House considers a Bill, the Speakers of the National Assembly and Senate are responsible to jointly resolve any question as to whether it is a Bill concerning counties and, if it is, whether it is a special or an ordinary

Bill. However, there are tensions between the Houses with regard to the extent of each House's legislative mandate. For example, the National Assembly has claimed that the Senate is overstepping its mandate by originating legislation on areas that fall within the purview of the National Assembly. The Senate has claimed that the National Assembly regularly ignores the role of the Senate in the legislative process – and cite the example of the enactment of the Health Laws (Amendments) Bill, 2018 as an example. Health is largely devolved, but the National Assembly submitted to the President for assent the Bill without reference to the Senate. In July 2019, the Senate filed a petition at the High Court asking the Court to annul at least 26 Acts of Parliament that they say do not comply with the due process (a decision is pending).

31. Legislators have the right to initiate legislation and to offer amendments to proposed legislation. Legislation is referred to the appropriate departmental Committee for consideration and also reviewed by a Committee of the Whole House. In the Senate there are issues relating to the non-compliance of Standing Orders by Standing Committees on the reporting timelines especially for Bills. The Directorate of Legal Services is composed of legal counsel who specialise in legislative drafting and offer legal services to enable Members and Senators to fulfil their constitutional mandate of legislation, representation and oversight (prior to 2007, the National Assembly received legal services from the Office of the Attorney General). The Directorate of Legal services has the responsibility of scrutinising, preparing briefs and providing legal advice on statutory instruments.
32. The manner, procedure and criteria for considering statutory instruments is detailed in the Statutory Instruments Act, 2013 and the Standing Orders. The Committee on Delegated Legislation scrutinises statutory instruments referred to it and may, upon undertaking that scrutiny, resolve that the statutory instrument be acceded or not acceded to. Where a Statutory Instrument concerns counties, it is considered by both Houses. A Statutory Instruments Register/Tracker is available from the parliamentary website. Most stakeholders felt that scrutiny in the current Parliament had improved significantly with many unnecessary regulations being nullified over the last 2 years.
33. Article 115 of the Constitution grants the President a *qualified veto* power with an option of recommending changes to legislation passed by Parliament through reservations. The practice has been that whenever the President refers a Bill back to Parliament for reconsideration, he makes specific recommendations in the Memorandum for the relevant House to consider. The House may pass the Bill a second time and notwithstanding the President's reservations insist on its initial text, or pass the Bill a second time with amendments that do not fully accommodate the President's reservations. This requires a two-third majority of the House. Thereafter, Speaker presents the Bill again to the President for assent. A two thirds majority is also required in the Senate, if it is a Bill that requires the approval of the Senate.
34. Efforts are made to follow-up on legislation. There is a Committee on Implementation in the National Assembly which is responsible for determining whether legislation has been implemented and the status of implementation. The Committee also scrutinises the resolutions of the House (including adopted committee reports), petitions and the undertakings given by the National Executive. Within the Senate the Committee of Implementation was abolished as it was felt that departmental committees should follow through with implementation as they have interest and background in the subject matter. However, some Senators believe that the re-establishment of a Committee of Implementation is necessary as committees are overwhelmed.

Oversight

35. Since the change to a presidential system, there are no provisions in the constitution or law that the government can only fall based on a no confidence vote passed in the National Assembly.

The removal of a President by impeachment is governed by Article 145 of the Constitution and involves both the National Assembly and the Senate. At least two-thirds of all the Members are required to pass a motion for the impeachment of the President (a) on the ground of a gross violation of a provision of this Constitution or other law; (b) where there are serious reasons for believing that the President has committed a crime under national or international law; or (c) for gross misconduct. If at least two-thirds of all the members of the Senate vote to uphold any impeachment charge, the President shall cease to hold office.

36. Any Member of the National Assembly supported by at least a quarter of all the members, may move a motion requiring the President to dismiss a Cabinet Secretary. Standing Order 75 of the Senate also gives the Senate the authority to consider the removal of a governor of a County.
37. There are mechanisms in place to obtain information from the executive sufficient to exercise its oversight function in a meaningful and timely manner. Within sixty days of a resolution of the House or adoption of a report of a select committee, the relevant Cabinet Secretary under whose portfolio the implementation of the resolution falls must provide a report to the relevant committee. Stakeholders within the Senate complained of insufficient funds to conduct oversight and there is a desire on the part of the Senate to be more proactive in conducting oversight of funding projects in the counties.
38. Following the transition to the presidential system, the Parliament has tested different methods to replace the old system of Question Time. It was first replaced with Statements directed at Committee Chairpersons, but it was found that Chairpersons could not respond comprehensively or on behalf of the Executive. In 2014, a Committee on General Oversight was created but later suspended due to operational challenges and concerns about the constitutionality of the change. The process was further reformed so questions could be answered by Cabinet Secretaries in the respective Committees. Following amendments to the Standing Orders in August 2018, Questions are now asked on the floor then responded to before Committees. This has led to a substantial increase in the number of Questions asked of Cabinet Secretaries. However, there is a challenge in ensuring Cabinet Secretaries appear before committees to answer questions in a timely fashion. The other issue is the capacity of committees to handle questions as they are also handling statements, petitions, budget and normal inquiries and dealing with questions eats into their time. Some stakeholders also complain there are too many mundane and unnecessary questions.
39. Article 240(7) of the Constitution requires the National Security Council, headed by the President, to report annually to Parliament on the state of the security of Kenya. A Departmental Committee on Defence and Foreign Relations (Senate Committee on National Security, Defence and Foreign Relations) considers all matters relating to national security and foreign relations, disaster reduction and preparedness, home affairs, defence, immigration and international relations. The committees meet in public unless they are dealing with defence and intelligence matters.
40. A function of Departmental Committees includes the examination of treaties, agreements and conventions. The President is required, under 132 (1) of the Constitution to submit a report once a year for debate to the National Assembly on the progress made in fulfilling the international obligations of the Republic of Kenya (including the SDGs). Most stakeholders agreed that the SDGs are becoming engrained in national policies and the executive agenda. There is a parliamentary caucus on the SDGs.
41. The Constitutional Commissions are listed under 248 (2) of the Constitution as follows: KNHREC; the National Land Commission; the Independent Electoral and Boundaries Commission; the Parliamentary Service Commission; the Judicial Service Commission; the Commission on Revenue Allocation; the Public Service Commission; the Salaries and Remuneration Commission; the Teachers Service Commission; and the National Police Service

Commission. The independent offices are listed under Article 248 (3) as follows: the AG and the Controller of Budget.

42. The Commissions and the holders of independent offices are independent and not subject to direction or control by any person authority. Article 249 (3) states that Parliament shall allocate adequate funds to enable each commission and independent office to perform its functions and the budget of each commission and independent office shall be a separate vote. However, there are complaints that the commissions and independent offices receive insufficient resources to fulfil their mandate. For example, the Kenya National Commission on Human Rights (KNCHR) has called on Parliament to strictly enforce Article 249 (3) which obligates it to allocate adequate funds to enable the Commission to deliver on its Mandate.
43. The chairperson and each member of a commission, and the holder of an independent office are identified and recommended for appointment in a manner prescribed by national legislation; approved by the National Assembly; and appointed by the President. Article 254 of the Constitution states that as soon as practicable after the end of each financial year, each commission, holder of an independent office, shall submit a report to the President and to Parliament. Every report required from a commission or holder of an independent office under Article shall be published and publicised.
44. The Commission on Administrative Justice (CAJ), more commonly known as Office of the Ombudsman, has the mandate of tackling maladministration in the public sector. In this regard, the Commission is empowered to, among other things, investigate complaints of delay, abuse of power, unfair treatment, manifest injustice or discourtesy. The Commission now has the mandate of overseeing and enforcing the implementation of the Access to Information Act, 2016.
45. The KNCHR is an independent Human Rights Institution transformed into a constitutional Commission by the 2010 Constitution. The Commission is mandated to act as the principal organ of the State in ensuring compliance with obligations under international and regional treaties and conventions relating to human rights. The National Assembly has split KNHREC to three Commissions, namely the KNCHR, the CAJ and the National Gender and Equality Commission (NGEC).

Financial and Budget Oversight

46. The legislature determines and approves its own budget. The Public Finance Management Act, 2012 and the Standing Orders grant parliament power in regard to budget process and approval. During the Budget formulation stage, the National Assembly is required to approve the Budget Policy Statement (BPS), which provides the broad policy priorities that the government seeks to undertake within the financial year. Article 221 of the Constitution compels the Cabinet Secretary responsible for Finance to submit to the National Assembly estimates of revenue and expenditure of the national government two months before the end of financial year.
47. The budget is committed to departmental committees to review the budget in line with their various mandates. The committees are given 21 days to review to prepare reports in consultations with relevant government departments under their purview. The Budget and Appropriations Committee is mandated to investigate, inquire into and report on all matters related to coordination, control and monitoring of national budget. These recommendations are consolidated and presented to the National Assembly by the Budget and Appropriations Committee for adoption and approval. Upon approval of the estimates, an Appropriation Bill is introduced and approved by the National Assembly. Some stakeholders feel that the two months provided for review of the budget should be extended to three or four months in order for the budget review to be truly comprehensive and ensure more public input. Other stakeholders commented that the oversight of budget needs to go beyond monetary evaluation

to assessing outcomes and impact which will require further training to ensure Members move beyond a focus on outputs to assess the actual impact of programmes.

48. The public finance framework requires that public participation be integrated in the budget process. Members of the public can make submissions on the budget; or attend public hearings on the budget and the Finance Bill. The Budget and Appropriations Committee prepares and invites members of the public including individuals, groups or organisations to submit their written representations on the budget either via post, email or in forums conducted by the Committee across the country. It has adopted a framework through which all counties would host public hearings over a span of four financial years. The Committee identified a number of concerns from the public hearing submissions on the 2019/20 budget including poor roads network, health, agriculture and water, sewage and drainage facilities. Some stakeholders comment that there is little capacity building to enable citizens to engage in the process from an informed, structured and meaningful way.
49. In 2013 the Senate sought guidance of the Supreme Court over the legislative process of enacting the Division of Revenue Bill which divides national revenue between the national and county governments. The Supreme Court advised that the business of considering and passing of any Bill is not to be embarked upon and concluded before a meeting of the two Speakers. However, there was a further dispute between the Senate and the National Assembly in the 2019 Division of Revenue Bill. The Senate argued that the National Assembly and the National government violated the constitution by proceeding to determine the allocation to the national government independent of the enactment of the Division of Revenue Act and without an attendant allocation to the counties. The Supreme Court directed the Senate to appoint a mediation team to meet with National Assembly's team to resolve the revenue dispute. In the end the Senate agreed to a lower allocation than it had requested because it claimed the stalemate had threatened to affect operations in counties.
50. The Office of the Controller of Budget is expected to investigate the financial performance of a state organ or entity after which a report is prepared and presented to Parliament. There are also Quarterly Budget and Economic Review reports which are prepared by the National Treasury reporting on overall economic performance in terms of tax collection, expenditure and debt repayment. These two reports give committees and members of the National Assembly information to monitor performance of government departments. However, some stakeholders believe the Standing Orders do not provide explicit process of dealing with the reports from the Controller of Budget and question whether the office has insufficient capacity (in-year budget reports are received 2-3 months late). The reports are analysed by the PBO who refer issues to departmental committees and the budget committee as appropriate.
51. Article 226 of the Constitution states that the accounting officer of a national public entity is accountable to the National Assembly for its financial management. Moreover, within six months after the end of each financial year, the AG is required to audit and report, in respect of that financial year, on all accounts of national government. Within three months after receiving an audit report, Parliament debates and considers the report and takes appropriate action. These timeframes are not always met: the last PEFA report (2018) reported that the AG's report is always late and there is a delay of 2-3 months before the report is tabled as the House has to find time to table the report.
52. Kenya introduced a PBO in 2007 under the PSC and the 2009 Fiscal Management Act continued the trend of granting more powers to Parliament in the budgetary process. The PBO analyses the executive's budget, assists the parliamentary committees with their financial scrutiny, and provides annual economic forecasts in its MP Budget Watch Report. In addition, the PBO conducts budget-related research of its own initiative and proposes, where necessary, alternative scenarios for various macroeconomic variables in respect of any financial year. The PBO also establishes and fosters relationships with the Treasury and with other national and

international organisations, with interest in budgetary and economic matters. The PBO assists the Budget and Appropriations Committee in its work by providing timely and objective information and analysis in connection with the national budget and economy. The PBO's work has become widely respected.

53. The legal arrangements for the AG and his staff give them the necessary independence required by INTOSAI standards. However, in the execution of its mandate, the Office has experienced financial challenges, thus affecting timely compilation of audit reports. Many stakeholders agree the AG Office requires further capacity because reports are not produced in a timely way and requests for special audits are not adequately resourced.
54. The PAC is mandated to oversee expenditure of government ministries and departments and seeks to ascertain whether approved expenditure limits were complied with and whether funds were used properly to provide goods and services as approved in the budget. The PAC holds hearings in respect of every account on which the AG has issued a report. The PAC reviews and issues recommendations both at a general level – thematic issues that it identifies from its work – and in relation to each account on which the AG issues a report. In addition, the PAC reviews the recommendations from previous years when it receives evidence from accounting officers. In the review of the budget estimates, the Budget and Appropriations Committee asks departmental committees to check whether there are any adverse reports from the PAC to justify the allocation of further resources (for example the budget of the National Youth Service was cut because of issues highlighted by the PAC).
55. In the Senate, the County Public Accounts and Audit Committee has the mandate to exercise oversight over national revenue allocated to the counties; examine the reports of the auditor general on the annual accounts of the county government; examine special reports, if any, of the AG on county government funds; examine reports, if any, of the Auditor-General on county public investment and to exercise oversight over county public accounts and investments. The committee is currently investigating queries contained in county executive audit reports for the 2017/18 financial year, including alleged misappropriation of public funds in the accounts of Bomet County.
56. In 2016, the PAC was reconstituted after Parliament adopted the recommendations of the Powers and Privileges Committee to disband it after five members of the previous committee were sanctioned for failing to substantiate corruption allegations, causing its activities to be suspended. The current PAC has taken effective steps to clear the heavy backlog of unexamined audited accounts that it inherited from the 11th Parliament. In November 2019, the PAC reported on the AG's report on the financial statements for 2016/2017 and has commenced examination of the audited financial statements for 2017/2018 – the latest to be submitted to the National Assembly by the AG.

Representation, Accessibility, Openness and Engagement

57. Parliamentarians receive adequate and appropriate resources to enable them to fulfil their constituency/county responsibilities. A Constituency Development Fund (CDF) was established in 2003 initially to disburse 5% of the government revenue through CDF (later revised to 2.5%). The Act was amended in 2013 and in 2015 to reduce the powers of MPs to control the funds such that they are now ex-officio members exercising only the oversight role on projects.
58. Article 118 of the Constitution refers to public access and participation. It states that Parliament shall (a) conduct its business in an open manner, and its sittings and those of its committees shall be open to the public; and (b) facilitate public participation and involvement in the legislative and other business of Parliament and its committees. Parliament may not exclude the public, or any media, from any sitting unless in exceptional circumstances the relevant

Speaker has determined that there are justifiable reasons for the exclusion. Additionally, Parliament proceedings are open to the public through live streaming. The Standing Orders state that the proceedings of the House and Senate may be broadcast.

59. Members of the public are invited to submit written memoranda on proposed legislation. Committees facilitate public participation on the Bill through appropriate mechanisms which may include inviting submission of memoranda; holding public hearings; consulting relevant stakeholders; and consulting experts on technical subjects.
60. The public can participate in oversight activities by expressing their views on legislation, suitability or otherwise of public officers and provide grounds for their removal by petitioning Parliament. When the Parliament is considering Bills, statutory instruments, budget estimates or conducting an inquiry, the general public may make submissions on the subject matter. When conducting approval hearings or processing removal from office of State officers, the public is invited to present memoranda on the suitability or otherwise of the concerned public officer. Public forums also provide an opportunity of face-to-face engagement between parliamentarians and citizens through which instant feedback and observation of state of affairs can be received. Committees can undertake public hearings through meetings in and outside Parliament and inspection visits of projects. A major challenge for the Parliament is the cost of facilitating public input. A minimum of 7 days is normally given for public submissions, but this will depend on the legislation (a shorter time is given for financial bills because of constitutional timelines).
61. Article 118 of the Constitution of Kenya mandates Parliament to facilitate public participation and involvement in the legislative business of Parliament. Standing Order 127 of the National Assembly provides for public participation of all Bills by the Departmental Committees of the House through appropriate mechanisms including inviting submissions of memoranda, holding public hearings, consulting relevant stakeholders in a sector and consulting experts on technical subjects. The Parliament has been taken to court when various laws have been passed without adequate public participation. A Public Participation Bill is currently under consideration to define relationship between Parliaments and public and to provide a general framework for effective public participation. The public has often challenged Acts passed by the House because of arguments that public participation should be akin to "civic education" or "Parliament agreeing on all proposals made by the public" perhaps suggesting the need for an elaborate framework to guide on these concerns. The Parliament is currently formulating and drafting a legislative guide to fully actualise the provisions of Article 118 of the Constitution on public participation in legislative processes.
62. Parliament also has a key role to play in terms of supporting continuous civic education and improving public knowledge and support of the legislature. This is a need for more resources and programmes promoting the participation of under-represented groups.
63. The Parliament is generally accessible to people with disabilities. The law also allows for nomination of disabled persons in the National Assembly and the Senate. The legislature is open to the media and the Parliament has a media relations department and media centre within the Parliament. Most documents are available on the website. Parliamentary staff are available and accessible to respond to relevant requests from the public.
64. Some of the key tools and platforms for promoting understanding of the work of the Legislature include Hansard, Website, Parliamentary Broadcast, Public Hearings, social media and external media. A legislative information management system is also planned. The Senate Liaison Office (SLO) was established in 2013 to develop innovative means of engaging with counties that enhances the capacities of the county assemblies, interaction with county governments, better advance its interactions beyond county governments to include other actors and/or

stakeholders in ensuring that devolution is successfully implemented and visibility of the Senate.

65. The Legislature has a comprehensive website which is updated in a timely manner and contains some very useful material (including the calendar, FAQs, Bill and petition tracking, information about committee activity and links to live broadcasts). However, there are also queries about inadequate utilisation of documents provided on the parliamentary website including the Order Paper and Bills digest. Further work is needed is to ensure the website allows for citizen input into the work of the legislature.

Parliamentary Staff

66. A PSC, established by Article 127 of the Constitution, is responsible for: providing services and facilities to ensure the efficient and effective functioning of Parliament; constituting offices in the parliamentary service, and appointing and supervising office holders; preparing annual estimates of expenditure of the parliamentary service and submitting them to the National Assembly for approval, and exercising budgetary control over the service; undertaking, singly or jointly with other relevant organisations, programmes to promote the ideals of parliamentary democracy; and performing other functions (i) necessary for the well-being of the members and staff of Parliament; or (ii) prescribed by national legislation. The PSC is led by the Speaker of the National Assembly and the Clerk of the Senate acts as the Secretary.
67. The Parliamentary Service Act (2019) states that the Service shall be an institution of exemplary administrative and technical competence. Employees of the Service must not seek or receive directions from any external source. Every Member and Senator is expected respect the non-partisan and apolitical character of the Service and shall not seek to influence employees of the Service in the discharge of their functions. Rates of pay for parliamentary staff are higher than the rest of the public service attracting high quality persons to parliamentary service. One of the issues highlighted is the question and rationale for joint services (e.g. protocol, media officers) and whether these should be allocated to each house. Some stakeholders also spoke of insufficient researchers and the need to enhance the legal section. Others felt that the parliamentary Code of conduct for staff and members should be broadened to include a policy on harassment and clarify the rules on gifts.
68. Article 128 of the Constitution states that there shall be a Clerk for each House of Parliament appointed by the PSC with approval of the relevant House. The Clerk may be suspended or removed from office by the Commission for inability to perform the functions of his office (whether arising from infirmity of body or mind or from any other cause) or for misbehaviour. The Terms of office for the position of Clerk has been changed by law to 5 years term renewable once (previously the position was permanent).
69. The Hansard Report is typically expected to be published within forty-eight hours of a sitting of the House unless the Speaker is satisfied that its publication is rendered impossible by some emergency or any substantial mitigating factors. Hansard is available online although uploading committee reports is often a challenge. The Hansard department provides Hansard Services to some Committees of the National Assembly/Senate. It is not currently possible to provide services to all Committees because the department is currently understaffed. Committee meetings are not transcribed although audio recording is available.

Parliamentary Assistance, Networking and Diplomacy

70. The Parliament has the authority and power to negotiate, formulate and implement parliamentary assistance projects with development partners. Members, Senators and staff are

engaged in various regional and international fora such as the EALA, the PAP, IPU, CPA, ACP, EU, and the Forum of Parliaments of the International Conference on the Great Lakes Region, among others. The CPA Kenya Branch is very active.

71. Working with international partners such as CPA UK Branch, the legislature has taken measures to ensure newly elected parliamentarians receive induction training. Notably induction programmes now include consideration of the challenges of balancing parliamentary work with family life and managing finances and social issues (an Association of Spouses (current and past) has been established). The Centre for Parliamentary Studies and Training (CPST) is a capacity building arm of the Parliament of Kenya and produces a wide variety of useful learning materials/Manuals for parliamentarians and staff. Some stakeholders felt that training opportunities were poorly attended and should be made compulsory – particularly for ethical issues. Other stakeholders said training opportunities and courses are arranged too late.

Ethical Governance

72. Chapter 6 of the Constitution on Leadership and Integrity forms the basis upon which all other Laws or regulations on the conduct of MPs and Senators are derived. The Leadership and Integrity Act 2012 is designed to ensure that State Officers respect the values, principles and requirements of the Constitution (e.g. Section 12 provides for financial integrity; Section 14 provides for the receipt of gifts or benefits; and Section 16 requires state officers to declare conflict of interest in the course of discharge of their duties). The Anti-corruption and Economic Crimes Act provide for the prevention, investigation and punishment of corruption and economic crimes. The Ethics and Anti- Corruption Commission (EACC) bears the ultimate responsibility for overseeing the implementation of the Leadership and Integrity Act.
73. The Public Officers Ethics Act governs the conduct of members and provides a code of conduct and ethics for public officers. The Parliamentary Powers and Privileges Act, 2017 entrenches a Code of Conduct for Members of Parliament and Senators and prescribes penalties for breach of privilege and code of conduct. The Act also regulates admittance to and conduct within the precincts of Parliament, including sanctions for contravention. The Committee on Privileges is the responsible body for implementation of these Acts. The Speaker has ruled that criminal matters must be referred to appropriate bodies (the PAC also works closely with the EACC).
74. Registration of Members' Interests is regulated by the Leadership and Integrity Act and the Code of Conduct contained in the Parliamentary Powers and Privileges Act. Rule 6 of the Code of Conduct provides that Members shall register with the relevant Speaker all financial and non-financial interests that may reasonably influence their parliamentary actions; declare any relevant interest in the context of parliamentary debate or the matter under discussion before contributing to debate in the House or its Committees, or communicating with State Officers or other public servants; and observe any rules agreed of the House in respect of financial support for Members or the facilities of the House.
75. Many stakeholders feel the ethical regime is complex and opaque with overlapping legislation which requires streamlining alongside a collective will to enforce. Others argued rules about lobbying need strengthening and questioned whether the Committee on Powers and Privileges Committee is the appropriate body to investigate the conduct of their peers in Parliament (a proposal to establish a Standards and Office Commissioner was considered and rejected).
76. While Article 76 of the Constitution states that a gift or donation to a State officer on a public or official occasion is a gift or donation the Republic and shall be delivered to the State unless exempted under an Act Parliament, many stakeholders feel this is not always respected in practice. Furthermore many stakeholders said they are unaware of the interests of Members and Senators. Currently ethics declarations are made every two years to the Ethics and Anti-Corruption department through the Speaker. Declarations are not made public.

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77. The Whistleblower Protection Bill 2018, if enacted, would grant whistleblowers immunity from civil or criminal liability for disclosing confidential information in addition to being protected from reprisal. It is currently in prepublication stage and it is hoped that legislation, if enacted, will promote the public interest in upholding the national values and principles of governance by protecting whistleblowers.
 78. The President signed the Access to Information Act in August 2016, enabling citizen information requests and requiring disclosures on government contracts. Officials who improperly withhold information can face fines or prison terms. The law contains a broad exemption for national security matters and some stakeholders have called for the implementing regulations to be strengthened. The Commission for the Administration of Justice has oversight of the law.

ENDS