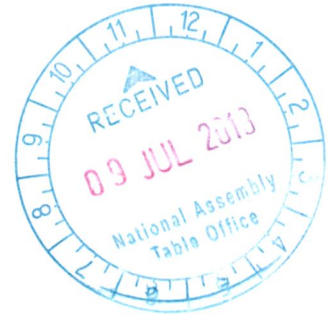
PARLIAMENT OF KENYA



THE NATIONAL ASSEMBLY

TWELFTH PARLIAMENT

REPORT OF THE POST ELECTION SEMINAR, HELD AT PRIDE INN PARADISE BEACH HOTEL, MOMBASA ON 4th – 8th MARCH, 2018

Clerk's Chamber

The National Assembly

Parliament Buildings

NAIROBI

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LIST OF ABBREVIATIONS

BPS	Budget Policy Statement
CIOC	Constitutional Oversight Implementation Committee
CPA	Commonwealth Parliamentary Association
DPP	Director Public Prosecution
EACC	Ethics and Anti-Corruption Commission
JSC	Judicial Service Commission
M&E	Monitoring and Evaluation
MDAs	Ministries, Departments and Agencies
MP	Member of Parliament
NDI	National Democratic Institute
NIS	National Intelligence Service
OAG	Office if the Auditor General
PAC	Public Accounts Committee
PES	Post-Election Seminar
PIC	Public Investment Committee
PWD	People with Disabilities
SAGAs	Semi-Autonomous Government Agencies
SDGs	Sustainable Development Goals
USA	United States of America
WFD	Westminster Foundation for Democracy

EXECUTIVE SUMMARY

This report covers proceedings of the three-day Post-Election Seminar (PES) for Members of the National Assembly, which was organised with the conjunction with the Commonwealth Parliamentary Association (CPA). The seminar was held in Mombasa on 4th to 8th March, 2018 and had a theme *'sharing our experiences to enhance good governance and continually safeguard the welfare of the nation'*.

The Seminar provided a platform for Members to learn and share experiences on diverse parliamentary practice and procedure. It also provided a better understanding of parliamentary and democratic systems and processes through the resourceful topics and presentations.

The seminar highlighted key areas and made resolutions on aspects that included: Sustained capacity building for both members and Staff; Respect for Separation of powers; nurturing bicameralism; need for cconsensus building in House affairs; Need to re-examine the position and place of the many constitutional commissions and independent offices in overall governance.

Other resolutions centered on continuous consultations between the Legislature, the Executive, and the Judiciary in order to create an environment for smooth operations of the Government; Parliamentary and Party leadership to continue strengthening political party culture and structure in Parliament; Party Caucus facilities; promoting Party discipline; and enhancing Parliamentary diplomacy.

The National Assembly was adviced to consider establishing an Ethics Committee with equal membership of both the Majority and the Minority parties in the House similar to the USA Congress model. Participants were requested to develop a culture that is in tandem with the expectations of the electorate and cultivate a national outlook in legislating.

Finally Members were urged to scale up the utilization of the rich technical resources held by staff in Committees especially the fiscal analysts to help them understand the budget process.

1.0 INTRODUCTION

1.1 Background

The Twelfth Parliament was inaugurated on 31st August, 2018 after which an Induction workshop of all Members was undertaken. In keeping with Parliamentary custom, the National Assembly organized a three-day Post-Election Seminar (PES) for Members of the National Assembly with a theme ***'sharing our experiences to enhance good governance and continually safeguard the welfare of the nation'***. The Seminar was organized in conjunction with the Commonwealth Parliamentary Association (CPA), which is an association of 185 Parliaments and Legislatures.

Among other purposes, the CPA aims to develop, promote and support Parliamentarians and their staff to identify benchmarks of good governance and to implement the enduring values of the Commonwealth.

The Seminar provided a platform for Members to deal and interact with matters of parliamentary practice and procedure and a better understanding of parliamentary and democratic systems and processes.

The re-introduction of a bicameral system of governance presented the need to relook at procedures and operations of Parliament. Indeed, the Eleventh Parliament saw the re-engineering of most of the operations to conform to the newly adopted systems. It was against this backdrop that the National Assembly conducted the seminar to offer an in-depth and comparative analysis of parliamentary and governance systems.

1.2 Objectives of the Seminar

The main objectives of the Seminar were to:

1. Disseminate information on diverse good practices in Parliaments and presidential systems of governance;
2. Promote an understanding of the way parliamentary procedures and practices can entrench good governance into a system;
3. Provide an avenue for interaction with global stakeholders in the parliamentary and governance sector; and

4. Understand how co-operation among parties in Parliaments can create an effective and functional Parliamentary environment.

1.3 Expectations of the Seminar

The expectations of the seminar were that Members ought to:

a) Have understood the principles of parliamentary traditions and practices and their implications on the Members' roles including legislation, representation and oversight;
b) Have better understood the workings of a legislature in a presidential system and harness the opportunities provided by the Constitution of Kenya to achieve set objectives,
c) Have appreciated the distinct functions of the arms of government and best practices in other jurisdictions;
d) Have understood the operational principles of a bicameral parliament and how to build synergies to accomplish mutual parliamentary business;
e) Have appreciated the budget-making role of Parliament and its implication in relation to their roles in the Constitution;
f) Have understood the concepts of ethics and accountability as applied to Parliament and Parliamentarians; and
g) Have recognized the role of political parties in parliamentary democracy.

1.4 Participants at the Seminar

The Seminar was for Members of The National Assembly. They were however joined by external facilitators and members of staff of Parliament. The full list of Participants is **annexed** to this Report.

2.0 OFFICIAL OPENING

The Deputy Speaker of the National Assembly Hon. Moses Cheboi, makes his remarks during the opening session of the Post-Election Seminar.

A summary of the proceedings that took place on the first day of the Seminar is as provided below.

2.1 Welcome Remarks and the Objectives of the Seminar,

Mr. Michael Sialai, EBS, Clerk of the National Assembly

The Clerk of the National Assembly, Mr. Michael Sialai, welcomed participants to the Post Election Seminar. He thanked the CPA for partnering with the Parliament of Kenya to come up with the Post-election seminar.

The presenter highlighted the scorecard of Members that by the time of the seminar, The National Assembly had passed three bills while fifteen (15) others had been read for the first time and were at different stages of public participation. The National Assembly had further passed two private member motions and approved Eight (8) Sessional Papers and key Executive appointments.

The presenter pointed out that the objective of the Seminar was to provide a platform for Members to interact with matters of parliamentary practice and procedure and a better understanding of parliamentary and democratic systems and processes.

2.2 Remarks by Guest Speaker

Mr. Karim Ulla Akbar Khan, Secretary General, Commonwealth Parliamentary Association

Mr. Karim Ulla Akbar Khan, the Secretary General of the Commonwealth Parliamentary Association (CPA) was invited to give his remarks on behalf of CPA. In his remarks, the presenter highlighted that the CPA always looks forward to work with Members of Parliament to deliver on the flagship Post Election seminar.

The presenter informed the participants that elections have the potential to bring a tremendous diversity of backgrounds to Parliaments. This necessitates the need for members to receive induction and development to enable them to get to grips with discharging their representative and constitutional functions. He added that over the past 20 years, the CPA has thus had the privilege of delivering close to 60 CPA Post-Election Seminars across the Commonwealth with the aim to enable Parliamentarians to gain a broader understanding of the principles of parliamentary democracy and to strengthen their skill sets.

The presenter further informed the participants that the Post-Election Seminar would provide an excellent opportunity and a forum to engage with colleagues from across the Commonwealth and to learn from their experiences and practices. He said that the seminar should be viewed as a one- way learning experience but should also serve as a reflection of the 'mutuality of learning' which is at the heart of the CPA mandate of connecting, developing and promoting a community of parliaments and parliamentarians who individually and collectively strengthen their commitment to democratic governance across the Commonwealth.

The presenter reiterated the words of the National Assembly Speaker, Honorable Justin Muturi EGH, MP that, "Parliament has an important role in engaging youth through

legislation in the areas of importance to youth to prevent radicalization, marginalization and exclusion".

Mr. Karim Ulla Akbar Khan, the Secretary General, Commonwealth Parliamentary Association (CPA), stresses a point when he made his remarks during the opening ceremony of the Post-Election Seminar.

The presenter noted that the theme of the seminar goes directly to the heart of the role as elected parliamentarians and to the responsibility of Parliament to promote peace and security at the national, regional and international levels. He added that Parliaments represent the daily lives of the people; as independent institutions sitting at the centre of a web of accountability reaching into the Executive and the other branches of government, to the public and political parties, they are well placed to set an example and lead change by mirroring gender equality and inclusion of all sections of our societies in their composition.

The presenter noted the challenge facing Parliaments across the Commonwealth is to embed good governance transparency and democracy in bid to ensure that an enduring relationship of trust exists and is nurtured between citizens and their Parliament.

The presenter informed the participants that in Commonwealth of Nations, respect for the separation of powers finds expression within the Latimer House Principles relating

to the relationship between the three branches of government. The Principles state clearly that both parliaments and judiciaries should 'fulfil their respective but critical roles in the promotion of the rule of law in a **complementary and constructive manner'**. He added that, the respect for the separation of powers contributes greatly not only to good governance but also to safeguarding the welfare of the nation.

The presenter further informed the participants that another vital aspect of safeguarding the welfare of the nation that finds expression in the Commonwealth Charter is open dialogue and the free flow of information, including through a free and responsible media that enhances democratic processes and democratic culture. He said that a vibrant civil society and free media are key facets of a healthy democracy.

The presenter informed the participants that Parliamentarians gain accountability from their ability to represent their citizens, and gain legitimacy when people trust that they are acting in their best interests. They gain effectiveness from their scrutiny of the Executive and are measured on their commitment to translate International, Regional and National commitments into practical and robust policies.

The presenter highlighted that CPA has undertaken numerous activities in bid to support and enhance the conduct of parliamentarians; and to promote the effective functioning of democratic legislatures to fully express the will of the people and involve them in governance. The CPA is collaborating with the Westminster Foundation for Democracy (WFD) to update the 2006 Benchmarks to incorporate the responsibilities for parliaments that arise from Goal 16 of the Sustainable Development Goals (SDGs), which calls for "effective, accountable and inclusive institutions at all levels".

The presenter concluded by noting that the CPA's approach is 'peer to peer' learning, bringing parliamentarians and parliamentary staff together to share best practice and to be part of an exciting knowledge transfer.

2.4 Remarks by the Leader of Minority Party

Hon. John N. Mbadi, CBS, MP

In his remarks, the Leader of Minority thanked his coalition for having entrusted him with the position in the House leadership and promised to serve diligently. He also underscored the importance of the seminar and urged Members to fully utilize the seminar to improve on their legislative experience of the 12th Parliament.

The presenter highlighted the events of the 2017 general elections and urged participants to guard against electoral malpractices witnessed last year and ensure that the heinous loss of lives and property, its resultant pain, injuries, scars and wounds inflicted and sustained by innocent Kenyans are healed and their causes fully and amicably resolved.

The presenter also urged the Country not to forget the Agenda 4 reforms that were started in 2011. He espoused a compelling need in the delicate socio-economic and political environment in which this country finds itself, to strive to nurture peaceful dialogue while embracing national healing and cohesion.

The presenter noted that while the people of Kenya continue to passionately demand constitutional and institutional reforms, he hopes for a candid discussion on how to isolate the 20% of the constitution that is stated across the political divide requires attention.

The presenter urged the Majority Party not to abuse their tyranny of numbers reminding them of the higher responsibility when it comes to law making. He urged them to continuously strive to promote democratic ideals both inside and outside Parliament.

The presenter noted that the institutional relationship between the Legislature with the Judiciary and the Executive is set to remain under intense scrutiny as the People of Kenya already defined the territory of the three arms of government and their interface with each other through the constitution.

While urging the House leadership to work together under the stewardship of the Speaker, he urged consensus discussions on certain contentious matters before they are discussed in the House Business Committee and eventually brought to the floor of the House. He urged the Speaker to provide space in parliament for parliamentary political parties to meet.

The presenter concluded his remarks by applauding the organizers and wishing the Members a fruitful engagement with the facilitators.

The Leader of the Majority Party, Hon. Aden Duale,(right, front row) makes a contribution during one of the seminar's sessions, as Australian Senator, Lucy Gichuhi (centre) and the Leader of the Minority Party, Hon. John Mbadi, look on.

2.5 Remarks by the Leader of Majority Party

Hon. Aden Duale, EGH, M.P

The Leader of the Majority Party, informed the participants that he would be interested in the topic on *"The Welfare of the Nation versus Routine Politics: Striking Optimal balance"*, because he felt that the Minority Party is leading the country to the path of unnecessary politics and creating unnecessary perception that the country is polarized. He said that he would also be interested in the discussion around the role of the speaker in a presidential system. The presenter said that he expects there to be a thin line between the Presiding Officer and his or her Political Party. He quoted instances where in the past, the Minority Party has had an opportunity to have their say but they proceeded to cause disorder to deny the Majority Party an opportunity to have their way.

The presenter noted that the Majority Party is committed to respect the constitutional provision on the Separation of Powers. He added that the Majority Party is specifically committed to ensure that there is mutual relation with the Judiciary. However, the Judiciary should also respect the Legislature. He opined that that some of the judicial orders issued in the last two years may appear to be whimsical and intended to prejudice the functioning of the Legislature. Indeed he wondered whether, the Judiciary should not have waited for the Parliamentary process to come to a conclusion before issuing the injunctions.

The presenter also talked about the Parliamentary Powers and Privileges. He said that he expects the Members of the National Assembly to have basic mastery of rules and procedures and what is expected of them under the Parliamentary Powers and Privileges Act of 2017. He specifically drew the attention of the members to section 17 subsections 3 and 5 which provide that certain misconduct may lead to loss of your seat of a Member of Parliament. In addition, Parliament has been given authority to impose a fine on certain misconduct or destruction of its properties. He added that while the Act provides for assembling, demonstration and picketing; the right to picket should not prejudice the right of Members of Parliament to access the House and indeed the precincts of Parliament.

The presenter informed the participants that he was also hoping to hear from Mr. Jerry Hartz on how to instill Political Party discipline and keep the flock together. In conclusion he said that he expects Parliament to offer oversight on the government which includes pointing out failures and offering suggestions. He also expects Parliamentarians to appreciate the positive things that the government does.

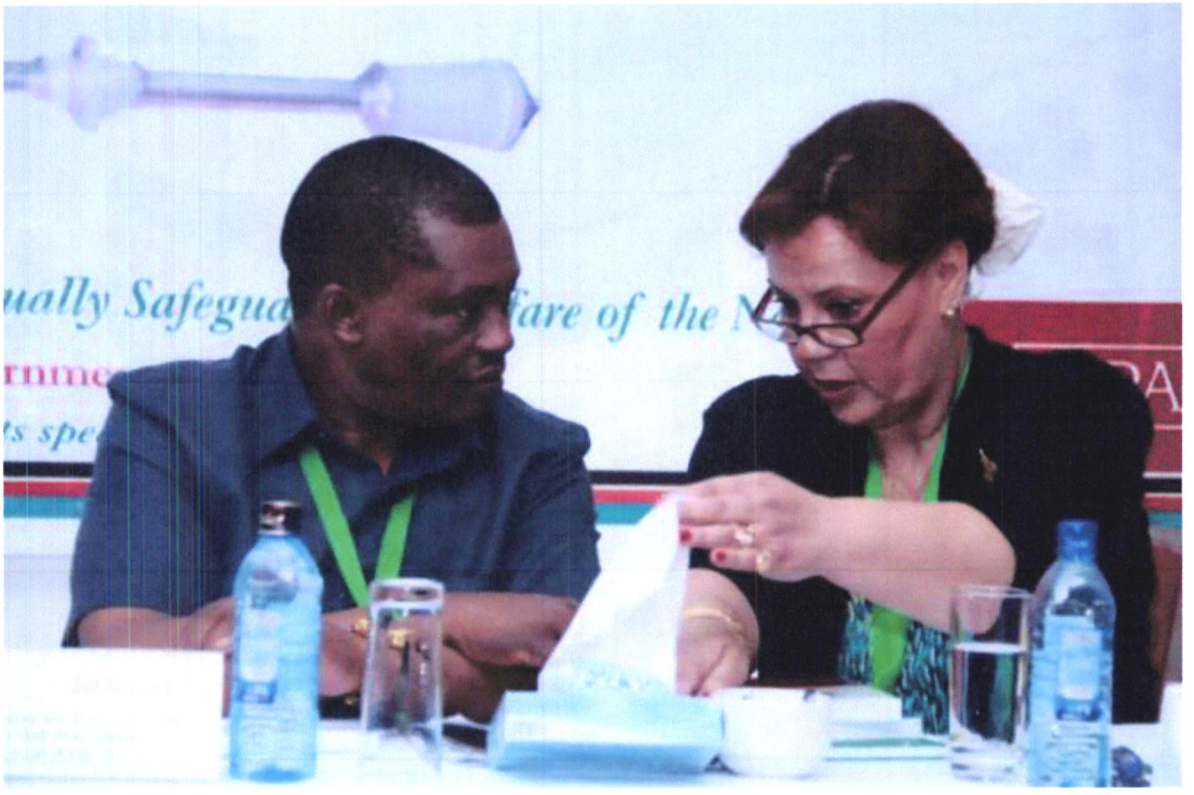
2.6 Keynote Address & Official Opening

The Hon. Justin B. N. Muturi, EGH, MP Speaker of the National Assembly

The key note address was delivered by the Hon. Justin B.N Muturi, the Speaker of the National Assembly. He began by reiterating that the Post- Election Seminar coming at the initial stages of the 12thParliament, would no doubt set the pace for the Members parliamentary political careers' in matters that relate to the tenets of good governance and continued advocacy of sustained democratic ideals for their beloved country for which they have been elected to uphold and cherish.

The forum he observed drew participation from diverse parliamentary jurisdictions within the Commonwealth of Nations. Further, the Speaker noted their shared similarities in the parliamentary traditions that have over time shaped their practices and procedures in their respective legislatures. The presenter appreciated the presence of invited guests from those jurisdictions among them, the Republic of Zambia, Canada, the United Kingdom, and Australia who had graced the Post-Election Seminar. Similarly, he appreciated the Commonwealth Parliamentary Association (CPA) and the National Democratic Institute (NDI) of the United States of America who were well represented at the Seminar.
He welcomed the distinguished guests to Kenya and encouraged them to find time to savor the rich and beautiful heritage that Kenya is renowned for worldwide.

The presenter noted that the Post-Election Seminar elicits a lot of interest as it accords Honorable Members the opportunity to build capacity and expand knowledge of parliamentary procedures and practice, learn from other commonwealth jurisdictions, and share emerging issues in the traditions, practices and procedures within the Commonwealth.



The Speaker of the National Assembly, Hon. Justin Muturi, confers with the Hon. Alexandra Mendes' a Member of the Canada House of Commons and CPA Vice Chairperson during the opening ceremony of the Seminar. Speaker Muturi made the Keynote address.

He reiterated that in Kenya's own institutional and governance context, it was an opportunity to reflect on the Country's performance as it has in the last few years experienced a complete paradigm shift in terms of the constitutional architecture. He stated that the rules of engagement governing the interactions between the executive, the judiciary, and the legislature had radically shifted with invaluable lessons to the Country's governance system. He emphasized that the National Assembly cannot conclusively deliberate on the agenda of the forum without interrogating on the various dimensions of Kenya's internal governance occasioned by bicameralism, the enhanced separation of powers, the presidential system, and political party structures in Parliament.

The presenter observed that the theme for the Post-Election Seminar was therefore quite appropriate, befitting and relevant to the present situation as a nation and as a new Parliament. Further, that Kenya having recently emerged from a very rigorous

electioneering period, the theme enjoins the Country to recognise the crucial role good governance plays in building strong societies that is the goal for the Commonwealth family of Nations - hence the need to safeguard the welfare of the Nation.

The presenter stated that the Commonwealth of Nations, with 53 member states, was indeed a unique global grouping, spanning every region of the world and including in its membership countries of all sizes and stages of development. He affirmed that the National Assembly was indeed proud to co-host the Post-Election Seminar with the Commonwealth Parliamentary Association (CPA).

The presenter reiterated that Parliaments remain an intrinsic component of the success that the Commonwealth has leveraged on to enhance democracy and propagate good governance. He applauded the commitment of the CPA Secretariat for partnering with the National Assembly to make the Post-Election Seminar a success. Through the Post-Election Seminar he stated, Members had the opportunity to reflect, learn and share experiences towards better governance of legislatures. Additionally, the Speaker noted that the Post-Election Seminars add impetus to the work of the Speaker and the party leadership who have to deal with largely new entrants (first term Members) into Parliaments, as well as political party issues that persistently remain alive in legislatures beyond the competitive electioneering period.

The presenter emphasized that any constitutional democracy worth its name must set aside time for reflection for it be able to forge into the future with confidence. Further, he observed that the invaluable lessons during the 11th Parliament, which baby sat the implementation of the Constitution, would be of immense significance to the performance of the 12th Parliament.

The presenter stated that for a start, governance institutions define who we are as a country. The foundations of Kenya's constitutional democracy are anchored on complete separation of powers. Admittedly, the Constitution of Kenya has fundamentally altered the relationship between the Judiciary, the Legislature and the Executive by making separation of powers a constitutional reality. However, these provisions will only benefit the citizens of this country if mechanisms are put in place and pursued in the practice of good governance.

Additionally, the presenter noted that the presidential parliamentary system enshrined in the Constitution has inevitably entrenched the independence of Parliament. During the 11th Parliament, proper execution of this provision saw the entrenchment of a vibrant committee system. However, he emphasized that these committees need the backing of strong secretariats to reclaim the balance of power likely to arise from the fact that the executive enjoys a huge bureaucracy that may not be available to Parliament. This is to say that Members need access to timely, accurate and concise information to undertake the oversight function. Capacity of both Members and staff must be sustained to equip and update them with knowledge in their areas of committee mandate and specializations respectively.

The presenter observed that bicameralism has also heavily weighed on the operations and practices of Parliament. He admitted that the rebirth of the bicameral Parliament in Kenya had its challenges in the 11th Parliament. Much of the initial discord oscillated largely around lack of concurrence on Bills that required consensus of either House as required under Article 112 of the Constitution, and especially the Division of Revenues Bill. The Speaker stated that provisions for Mediation Committees have however borne fruit and subsequent matters have been resolved amicably. Nonetheless, cooperation remains the overarching aim towards an efficient Parliament institution free from operational dissonance.

The presenter emphasized that political parties are the undisputable foundations in a multi-party democracy. They must have committed membership to thrive and effectively serve in the governance institutions of a country. Political parties he stated, transcend virtually all aspects of the parliamentary business and decision making, and exert immeasurable influence on its activities. Drawing from the experience of the 11th Parliament, and also the short stint of the 12th Parliament, the Speaker observed that it was evident that political party structures and engagement have taken root in Kenya's parliamentary operations and governance. Emerging from to this practice is that the much desired party discipline mechanisms is now strengthened. This he said can be attributed to much of the ensuing practice to the Constitution provisions that institutionalized party leadership offices in Parliament (*Article 108*). The structured manner of political party leadership in the House today deviates from the form and

practice of multi-party set up under the independence constitution. This he said not only sets the foundation for strong political party culture, but also reigns on errand Members who have the audacity of using political parties as vehicles to get elected only to abandon the sponsoring party upon election.

The presenter advised against blind pursuit of party position saying that it should not blur Parliament's bottom-line in terms of discharging the constitutional responsibilities in the 12th Parliament. He encouraged Members to cultivate mutually beneficial inter-party relations to drive House business. This he said is the ultimate challenge to political party leadership and Members of the 12th Parliament. Members must think and act beyond their political party interests to guarantee the electorate the governance they deserve.He emphasized to Members that their interactions beyond political party affiliations have the positive externality of building a cohesive society built on firm and independent democratic institutions

The presenter reiterated that the national values envisaged by the drafters of the Constitution will go far in shaping the oversight mandate of the 12th Parliament. The starting point however is the process that gets Members elected to Parliament, and which is anchored in our electoral laws. Further, those electoral laws must resonate with Kenya's national values and the Constitution. Elections he observed have the capacity to break or build the governance systems and institutions in a country. It is imperative therefore that electoral laws need to be subjected to review from time to time to respond to the emerging societal needs values, experiences, and national aspirations.

The presenter explained to Members that in his role as the Speaker of the National Assembly, he presides over the House business guided by the rules of procedure to ensure seamless flow of debate and adherence to parliamentary decorum. Additionally, that there is an implicit contract between Members and the Speaker based on a clear understanding that the considerable powers a House gives to a Speaker will not be abused, that no undue advantage or favoritism to one side or the other will be shown. He therefore encouraged Members to observe these sacrosanct values as they endeavor to transact House business be it in the chamber or at committees of the House.

The presenter admitted that he had on numerous occasions restrained himself from taking stern action against a Member(s) who consistently breach House rules. It was therefore incumbent for Members to get a good grasp of the rules of procedure for the efficient transaction of our noble constitutional responsibilities individually and collectively. These rules he stated have always been exercised to uphold the dignity of the august House. Further, he emphasized to the Members that serving in the 12th Parliament puts all of them in the enviable position of the custodians of the strong parliamentary tradition.

The presenter emphasized that Parliaments must remain an inspiration to the society. They must also carry the burden of actualizing these aspirations. Members, he stated are the bearer of this heavy responsibility. While they have a contract with the electorate for five years, it is the legacy that they leave that will live beyond the five-year period and perhaps determine the extension of the political contracts. This is what sets a fertile ground for good governance and democratic growth.

In conclusion, the presenter reiterated that it was time for in-depth soul searching and honest reflection as they endeavored towards creating a legacy and memorable political career in the 12th Parliament. The vast knowledge to be gained at the Seminar he stated would go a long way to unbundle the huge potential he had witnessed during the short period of the 12th Parliament.

The presenter once again welcomed Members and thanked them for attending the Seminar. Similarly, he appreciated the presence of distinguished resource persons from other jurisdictions, and the CPA Secretariat. He noted that the experience to be shared should be the unifying factor and lay ground for continuing dialogue in their shared understanding of the parliamentary procedures and practices, and governance.

Finally he declared the Post-Election Seminar officially opened and wished all participants fruitful discussions.

Members of the National Assembly follow through the proceedings during the opening session of the Post-Election Seminar.

3.0 LEGISLATURE IN GOVERNANCE

Session Chair: The Hon. John Mbadi, CBS MP, Leader of Minority Party of the National Assembly

Presenters: Mr. Karim Ulla Akbar Khan, Secretary General, Commonwealth Parliamentary Association

Hon. Justice Nzamba Kitonga, formally Chairman Committee of Experts on Constitutional Review for Kenya, 2010

Discussant: The Hon. Jeremiah Kioni, MP, Chairperson, Constitutional Oversight Implementation Committee (CIOC)

3.1 Pacesetter: The Development of the Commonwealth and the Role of the Commonwealth Parliamentary Association (CPA)

Mr. Karim Khan, the Secretary General, CPA began by observing that the orientation of the Post-Election Seminar was within the Parliamentary Values founded within the

Commonwealth Nations. He reiterated that the Commonwealth Parliamentary Association (CPA) was a voluntary Association of independent sovereign states. Nations come together based on their common ties. He explained that some of the countries within CPA are emerging nations, some are SADC countries, and others belong to the EU and are also members of the UN.

Further that there are fifty three (53) Member States with a population of over twenty four (24) Billion people globally who are members of the CPA this is about a third of the world's population. The presence of the commonwealth is within all areas of the globe particularly in Africa, India in Asia, Canada, South America, Caribbean, Australia and New Zealand. He described the CPA as a melting point because of its diversity in terms of the different nations, cultures and languages.

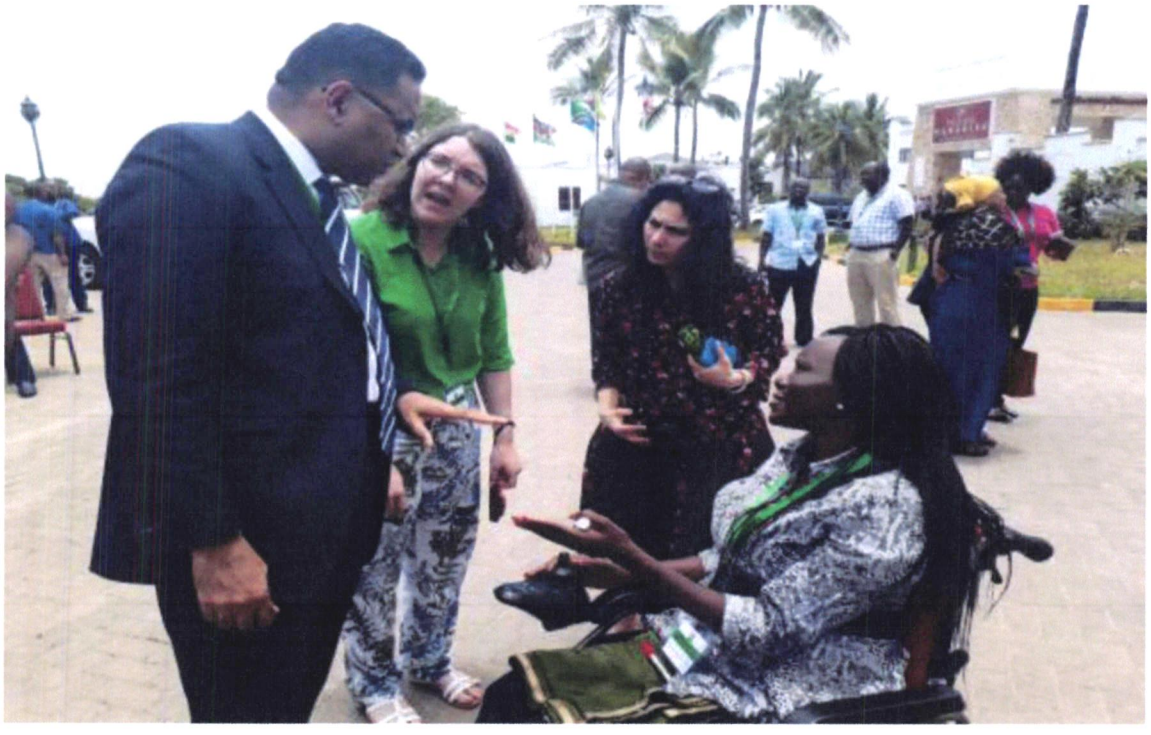
The presenter explained that the Commonwealth Charter 2013 is their Rule Book. The Charter he elaborated is a governmental document and it starts with the words, 'We the people of the Commonwealth.....' crystallizing that the efforts are geared towards improving the lives of the people. The Commonwealth family he emphasized is an ecosystem of organizations that exists to serve the society.

Further, that the Charter is a consolidation of values agreed by the Heads of nations over the years. These values he reiterated bring together these nations. Some of the values he enumerated were: International Peace and Security; Democracy; Human Rights; Tolerance, respect and Understanding; Separation of powers; and Rule of law

The presenter referred to a quote by the former British Foreign Secretary, Rt. Hon. William Hague who in 2011 stated that, "***In a world dominated by networks and not by power blocs of old, the Commonwealth is the ultimate network".*** The quote he explained affirms that diversity is the nations' strength.

The presenter explained that the CPA, an association of Commonwealth Parliaments and Parliamentarians was founded in 1911 thus, it is 107 years old. The Commonwealth Parliamentarians, who, irrespective of gender, race, religion or culture, being united by community of interest, respect for the rule of law and individual rights and freedoms,

and by pursuit of the positive ideals of parliamentary democracy, established the Commonwealth Parliamentary Association.



Mr. Karim Khan, the Secretary General, CPA (left) flanked by his CPA Secretariat staff, confer with nominated MP , Hon. Denitah Ghati (right) during a health break

The aims of the Association he reiterated are to promote knowledge of the constitutional, legislative, economic, social and cultural aspects of parliamentary democracy, with particular reference to the countries of the Commonwealth of Nations.

The presenter observed that the CPA is an international platform made up of 180 legislatures from 53 nations in 9 regions and that the CPA unlike the IPU (Inter Parliamentary Union) also includes states parliaments and regional parliaments. No other parliamentary organization includes regional parliaments. The CPA he said comprises of 17,000 parliamentarians. He proceeded to give examples of nations that had left the CPA but had since rejoined this included the Federal Parliament of Australia, Gambia among others.

The presenter enumerated some unique features of the CPA that include:

i. An international platform and network for change
ii. Focus on Commonwealth political values

iii. Peer to peer learning

iv. It is the only parliamentary organisation that reaches out to national, state and provincial legislatures

v. A range of viewpoints valuing national, state, provincial and overseas territories legislatures equally and extends this voice to parliamentarians from government, opposition and minority parties.

vi. The friendship and relationships formed at the CPA are critical for the members. Avenues for interaction exist like the Commonwealth games.

On CPA Programmes the presenter added that the organization has come up with new programmes that include:

i. **CPA Fundamentals Course on Parliamentary Practice and Procedure**; these are two training courses for Parliamentarians (one generic and one for Small Branches) and additional training courses for Parliamentary Staff. The programme is currently being delivered at McGill University in Canada and University of Witwatersrand in South Africa.

ii. **CPA Parliamentary Master classes**; focusing on key policy areas for Parliaments and which explore areas of parliamentary engagement. To date CPA Master Classes have been published covering the following topics: Trade, Gender, Mentoring, and the Separation of Powers and can be located on the CPA website and YouTube channel.

iii. **CPA Commonwealth Parliamentary Lecture Series**; focuses on establishment of a Renowned Persons Lecture Series annually

The presenter informed Members that the CPA organizes one of the largest annual gatherings of Commonwealth Parliamentarians to focus on key issues affecting the Commonwealth and Parliamentarians. Some of the recent themes for the gatherings include; *Democracy and its role to curb rising unemployment among countries; Adaption, engagement, and evolution of Parliaments in a rapidly changing Commonwealth* among others.

Additionally the presenter informed Members of the existence of the Commonwealth Women Parliamentarians (CWP) which works to increase **women's representation** in political institutions and highlighting gender issues and the representation of women.

Finally, he informed Members that the CPA has a flagship journal known as '***The Parliamentarian***' which is a journal of Commonwealth Parliaments published by the CPA quarterly both in print and online editions and has 17,000 circulations across 180 Parliaments. The articles therein are written by Members of Parliament for Members of Parliament. The journal focuses on key global themes affecting the Commonwealth. Mr. Khan reiterated that Members are invited to make their contribution to the journal and to take advantage of the many available resources on the CPA website.

3.2 Bicameral legislatures in a Presidential System Vis-à-vis the architecture of the Constitution of Kenya

3.2.1 Introduction

The topic intended to emphasize on the question of the governance system of Kenya (is it pure presidential, parliamentary or a hybrid?). It was also an opportunity to the participants to discuss the universal features and unique aspects of Kenya's governance system, Executive-Legislature-Judiciary linkages as envisaged by the drafters of our Constitution, explore ways of avoiding and resolving conflict amongst the institutions of governance and discuss candidly any other relevant ideals envisioned by the Committee of Experts (CoE) as compared to the reality today.

Mr. Nzamba Kitonga, the former chairperson of the COE which steered and drafted the Constitution of Kenya led the discussions seeking to create an in-depth understanding of the design and architecture of the Constitution and gave an insight full presentation.

The Hon. Jeremiah Kioni, MP, who is the Chairperson of the Constitutional Implementation and Oversight Committee which is responsible for overseeing the implementation of the Constitution and who also participated in the formulation of the Constitution as a Member of the Parliamentary Select Committee mandated to conduct the review Constitution in the 10th Parliament was the discussant.

3.2.2 Presentation by Hon. Justice Nzamba Kitonga

Mr. Nzamba Kitonga began by reflecting on the question of how Kenya ended with a pure presidential system. He noted that in terms of political leadership and intellectual thought Kenya has always been largely divided into two schools of thought – those who support a presidential system government and those who support a parliamentary system of government.

Further, he reiterated that Kenya started off with a Parliamentary System under the leadership of President Mzee Jomo Kenyatta. However, shortly thereafter Kenya moved to presidential leadership which had many facets of a parliamentary system of government like the official leader of the opposition and members of parliament could serve as Cabinet Ministers. The system had a powerful executive presidency which controlled all the arms of government including the appointment and dismissal of Judges.

The presenter reiterated that to accommodate these two competing schools of thought i.e. those in favour of a presidential system of government and those in support of a parliamentary system of government the Bomas draft reconstructed what is famously known as the ***Hybrid System of government***. Essentially this reconstruction captured the main attributes of both systems of government and blended them into one.

The presenter noted that in a hybrid system of government, at the apex would be an Executive President elected directly through universal suffrage. There would also be a Prime Minister appointed by the President but being the leader of the majority party in Parliament. The cabinet would be appointed from within and outside Parliament. There would be the office of the leader of the official opposition in parliament at the helm of the opposition party with the greatest number of seats in parliament.

The presenter also noted that the hybrid system was largely retained in the subsequent Kilifi/Wako drafts. However, the Wako draft had many negative attributes particularly in its handling of devolution. It was eventually rejected at the **referendum in 2005.**

Further, that the Committee of Experts which he chaired had a working document which was the **harmonized draft**. The word harmony was introduced to illuminate the fact that it attempted to blend all the positive and workable aspects of all the drafts. The harmonized draft was submitted to the Committee of the National Assembly on the Constitution – this is the famous Naivasha meeting. It was supposed to be a routine meeting to approve the final document to be submitted to the National Assembly for ratification and thereafter to the referendum.

In retrospect the presenter observed that the Naivasha meeting took a radical turn. It adopted a ***pure presidential system of Government***. It recommended a very weak senate. The COE then had to hurriedly research and construct a pure presidential governance system. This was in view of the strict timelines imposed by the Constitutional Review Act.

The presenter reiterated that the ramifications of a pure presidential system of Government were an executive that excludes members of parliament from the cabinet. It locks out the office of Prime Minister and his deputies. It also does not have the office of the leader of the official Opposition in Parliament. The leader of the Opposition who is actually the second in the presidential electoral contest is completely locked out of the government system. The weakened Senate has no oversight control over the National Assembly, however clauses exist in the Constitution that enable both Houses to form mediation Committees to arbitrate disputes during the passing of joint Bills.

The presenter observed that as expected, the implementation of the 2010 Constitution posed numerous ***challenges*** which he highlighted as:

1) There were conflicts between the National Assembly and the Senate at one time leading to judicial proceedings in the Supreme Court in the ***Supreme Court Advisory Opinion No. 2 of 2013. The Senate vs. National Assembly.*** In that case the National Assembly had passed a Revenue Allocation Bill concerning counties without reference to the Senate. The Senate challenged the constitutionality of that action. The National Assembly was overruled by the Supreme Court.

2) The Senate has constantly complained that the National Assembly has refused to allocate funds to facilitate the work of Senators and their expenses.
3) On its part the National Assembly has vigorously fought to retain the Constituency Development Fund. The High Court has ruled that certain provisions of the Constituency Development Fund Act are unconstitutional in so far as they contradict the oversight role of Members of parliament. This controversy is ongoing and the courts will ultimately resolve it.
4) The National Assembly enacted several pieces of legislation which were declared unconstitutional. These included some provisions of The Security Laws (Amendment) Act which were found to invade privacy. The Judicial Service Amendment Act had provided that the Judicial Service Commission should recommend three names to the President for appointment as Chief Justice and Deputy Chief Justice. The court upheld the position that under the Constitution only one name was to be forwarded to the President for appointment.
5) The court system found itself in trouble when the National Assembly passed a resolution recommending to the president that he constitute a Tribunal to look into the conduct of some of the Members of the Judicial Service Commission (JSC). In a subsequent court case the court ruled in favour of itself.

   The court ruled that the establishment of a Tribunal to investigate Members of the Judicial Service Commission was unconstitutional. The initial proposal by COE was that this Commission be composed of lawyers and members of the public from outside the Judiciary as happens in Uganda. The purpose was to protect the courts from perceived bias in favour of the Commission. It was also meant to instill greater confidence in the work of the Commission.
6) The National Assembly purported to pass motions to increase the salaries and emoluments of members of Parliament. This led to legal proceedings between itself, The Salaries and Remuneration Commission (SRC) and The Law Society of Kenya. The court restated the mandate of the SRC and declared the motion to be unconstitutional.

7) To cap the highlights is the famous **1st September 2017** decision of the Supreme Court to annul the Presidential election. It was a decision that annoyed many but also made many happy. Its merits or lack thereof will remain a matter of great legal and historical controversy. The presenter submitted that the decision made national history and it augured well for Kenya. It was a first for an African country and the fourth in the world. It affirmed the Independence of the judiciary and demonstrated that Kenya is a democracy governed by the rule of law. He however noted that subsequent events were rather sad and tragic. Lives were lost, a number of people were injured, property was destroyed and the economy suffered.

8) On the issue of the swearing in of the NASA leader Rt. Hon. Raila Odinga on 30th January 2018, the presenter reiterated that taking of an oath is at the core of the Legal Profession. Advocates, Magistrates and Judges take an oath when assuming office. They are also empowered by law to administer oaths. All witnesses in court proceedings take an oath. Members of Parliament, Senators, Speakers and Cabinet Secretaries take the oath of office. It is a matter of grave legal consequence and solemnity. The swearing in was therefore ultra vires. However the subsequent disobeying of court orders by the Executive was also ultra vires.

9) The apparent conflicts between the Executive – the Judiciary, Parliament and Independent organs have been a cause of concern. However these concerns are misplaced. Historically in all democracies these conflicts have always persisted. In the United States of America today many of President Donald Trump's executive orders have been stopped by the courts. What we regard as conflicts is in actual fact the coherent workings of the separation of powers among the three arms of government with checks and balances. However it should never get personal like threatening to slash the budget of the Judiciary.

10) This is what happened when the High Court declared some provisions of the Constituency Development Fund Act unconstitutional. Members of Parliament were also enraged when High Court nullified the motion to increase their salaries and emoluments. The rage was also very evident on the part of the executive after the Presidential poll was annulled.

11) Settling a constitution takes many years of litigation and eventually the courts settle every constitutional question for posterity and clarity. The American constitution is still under ligation today. So conflicts among the arms of Government are expected. The contrary is what should worry Kenyans. When the Executive, Parliament and the Judiciary are buddies-be very afraid.

As a ***way forward***, the presenter observed that the 12th Parliament should navigate the country to its next level. He recommended that Parliament to inter alia guide the Country in considering:

1) Whether the time has come to assess the efficiency and functionality of the constitution eight years after its enactment. Do we need to revisit the harmonized draft? Do we need an expanded Executive and the office of the leader of the official Opposition in Parliament? The President has created the office Chief Administrative Secretary probably to enhance inclusivity. Does this demonstrate the existence of a lacuna which needs to be filled?
2) The question of further electoral reforms in the light of our recent experiences. These include the creation of a separate body to supervise political party primaries and nominations. Political parties have shown that they cannot supervise their own primaries because the supervisors have vested interests in the primaries. Political parties also lack the resources and finances to conduct such primaries. This means that whoever is providing the finances becomes the owner of the political party.
3) The role of the Senate vis-à-vis that of the National Assembly. Areas of conflict or potential conflict may be looked into so as to create a seamless working relationship.
4) The composition of The Judicial Service Commission. It may be necessary to reconstruct the Commission so that sitting Judges are not members of the Commission.
5) Policies and legislation which enhance inclusivity and eliminate negative ethnicity both at county and national levels.
6) Policies and legislation to combat corruption. We need to hold errant police officers to account in terms of engagement in unlawful violence and corruption.
7) Policies and legislation which enhance the rights of women, youth the marginalized, minorities and the disabled.

8) Policies and legislation that deepen devolution by enhancing efficiency and combating wastage, theft, pilferage and corruption within county governments.
9) He urged participants to remember that Members of the National Assembly are elected not to be sycophants of their political parties and party leaders. They are elected leaders in their own right. It's their duty to maintain the separation of powers and the independence of Parliament from the Executive. For MPs he reiterated, there is no such thing as "***orders from the above***" because they are the above itself. They represent the entire collectively and diversity of Kenya.
10) Further, the presenter emphasised that the public elected each of the Members independently as a leader because of his/her leadership qualities. The public therefore does not expect Members to be captive to negative political interests, corrupt cartels and selfish commercial interests. Additionally the presenter reiterated that strong political parties that are well funded with a proper secretariat and structures are the way to go, it is however dangerous for political contestations to end up in lawlessness and break down of Constitutional order. The Constitution was designed to protect one from his own worst enemy if that enemy was in power it however did not envisage situations of blatant violations of the Constitution and Court Orders
11) In conclusion, the presenter quoted the words of a great philosopher Bill Russel: ***"The law is a social contract, the constitution assumes that the rulers and ruled are willing to abide by it."*** It is therefore the solemn duty of every Kenya to abide by the dictates of the constitution.

3.2.3 Discussant Presentation by Hon. Jeremiah Kioni, M.P

Hon. Jeremiah Kioni, the Chairperson of the Constitutional Implementation and Oversight Committee (CIOC) which is responsible for overseeing the implementation of the Constitution and who also participated in the formulation of the new Constitution as a Member of the Parliamentary Select Committee mandated to conduct the review Constitution in the 10th Parliament, was the discussant for the session and made his submissions as follows.

The discussant noted that the Parliamentary Select Committee mandated to conduct the review of the Constitution in the 10th Parliament was made up of 27 Members (13 Members from ODM and 14 Members from PNU) and met in Naivasha. In retrospect he observed that the committee was under very strict timelines as provided for in the Act of Parliament.

Further that the draft document had been produced by the COE and that the Parliamentary Committee did not vote on any of the articles but rather built consensus and agreed among them. The draft document by the COE was voluminous and therefore the team worked in smaller teams for efficiency in what they called "division corner". Additionally, the Senate was initially deleted until the last day of sitting when it was reinstated.

The Constitution he reiterated is a negotiated document and amending it cannot be done by any single person alone. Every article in the Constitution is a hammered political agreement. The COE was thereafter tasked to make sense out of the draft document legally after a lot of deletion by the Committee.

As per the Naivasha draft, it had been agreed that Senate would be meeting four (4) times an year and would be made up senior resourceful persons in the Country like the Rtd. President Daniel Arap Moi, Rtd. President Mwai Kibaki among others.

The discussant observed that the SRC was put in the Constitution to ensure that Members do not increase their salaries arbitrarily. The Political Parties were purposefully put in Constitution as well. The Committee then proceeded to Kenya Institute of Education (KIE), where there were 175 amendments to the draft. The Constitution he reiterated needs to be relooked in areas where there was contestation and that you need everybody on board for amendments to be successful.

The Presidential System he stated was agreed on by consensus, in order to avoid certain communities and regions that were under privileged being further sidelined from leadership.

As a ***way forward*** the discussant recommended that;

1) Amending the Constitution will require a collective approach. He warned against anyone trying it alone.
2) The process of amending the Constitution should start with the people. The constitutional is a product of negotiation.

3.2.4 Discussions in Plenary

During plenary the following questions were asked and responses given with specific interventions &observations made as outlined below:

Question/Issue	Response
The Senate is tightly tied with the devolution question, apart from sharing revenue, how can Senate be empowered legally to empower devolution? The formulation of the Senate in the Constitution was historical, to protect and defend the Devolution. Today the function of the Senate is well documented in the Constitution in Article 96. However the Senate can discuss anything outside their Schedule 4 mandate. There is therefore confusion between the roles of the Houses what is the way forward?	• The Senate powers are set in Article 110; hence dialogue between the two Speakers is important.
What is the role of Persons Living with Disabilities (PWDs) in the CPA?	Inclusion is important for the CPA. The CPA has in the recent past organised a PWDs conference that agreed that all barriers to entry to Parliament by PWDs should eliminated by Member states. CPA believes in inclusion that no one should be left behind
What are the areas that need to be revisited in the Constitution in the	• The Gender Constituency was very important at drafting but it lacked the

opinion of COE, especially on the 2/3 gender rule and where was the 2/3 gender rule borrowed from?	goodwill to proceed. The National Assembly has a role to ensure it proceeds. • On 2/3 gender rule, a 'Sunset Clause' was there as at Naivasha. The COE removed that clause, hence women representatives can be elected perpetually • Also the rule on 2/3 could not be drafted in Naivasha due to time, hence tasked to COE • Looking forward, the Constitution will need to further address issues of Gender rights, Youth, Marginalised etc.
Why is it that USA is not a Member of the CPA?	Belonging to the CPA, is an exercise of nations sovereignty as the will of their people and it is voluntary. For example nations of Gambia, South Africa, and Pakistan who had initially left the CPA have since returned. Others who were also not colonised have also joined e.g. Rwanda, Mozambique, Cameroon
The Constitution provides for ways for amending it in Article 255 e.g. Through Parliamentary Initiative or Popular Initiative. Can the 12th Parliament undertake to look at the proposal to improve on the Constitution?	Wide ranging dialogue is important when amending so that these ideas are then brought to experts
Representation through Universal Suffrage allows Parliament to do things on behalf of the people, why not elect a President in Parliament and not directly?	• Touching on one Article of the Constitution would have a ripple effect on other Articles while others would necessitate a referendum.
Interventions and Observations:	
• The Constitution passed as it is because of a collective approach and consensus building. The Church for example had to be brought on board by stating in the Constitution that life begins at conception and not at birth. This would have otherwise been an issue of litigation. • It is important for Members to familiarise themselves with the Hansard recording from	

the deliberations of the COE since a lot of the debate on the Constitution was done during the drafting and were settled both legally and politically.

- In Naivasha, there were two formations. One to protect and defend devolution and another presidential system. It was agreed to have a pure Presidential System. The Senate was given a role to protect devolution. Today the Senate has a role in everything, since there is nothing that does touch on Counties. The suggestion would be that the two speakers confer and agree on the Bills that relate to Counties or otherwise.
- Under Articles 96, 110 and Schedule 4 on the role and mandate of the Senate the opinion of the Supreme Court was divisive and has caused a lot of confusion. In a scenario where there is a dispute where the Majority controls one House and the Minority the other House, how would a dispute on revenue sharing be solved?

4.0 THE LEGISLATURE, OTHER ARMS AND THE PUBLIC

Session Chair: The Hon. Justin B. N. Muturi, EGH, MP Speaker of the National Assembly

Guest Speakers: The Rt. Hon. Justice (Dr.) Patrick Matibini, SC, MP, Speaker of the National Assembly of Zambia

The Hon. Lady Justice Philomena Mwilu, MGH, Deputy Chief Justice & Vice President Supreme Court of Kenya

4.1 Institutional Relationships between the Arms of Government (Legislature, the Executive and the Judiciary)

4.1.1 Introduction

The Constitution establishes the Legislature, Executive and the Judiciary in Chapter Eight, Nine and Ten respectively. As guiding fundamental constitutional principles, the three arms of government operate on a basis of separation of powers and independence of each other. However, just like in many other jurisdictions, on several occasions, issues arise that pose challenges to the comity expected of all the arms of government, especially on the judiciary-legislature relations.

With a backdrop of a new House of Parliament that commenced work after an intensely contested election with about 67% fresh membership, the discussion was intended to explore and propose ways of improving any perceived or existing differences and presented an opportunity for the judiciary to lay any legislative agenda that it may wish the House to consider.

In this regard, the Honourable Justice (Dr.) Patrick Matibini, the Speaker of the National Assembly of Zambia and the Honourable Lady Justice Philomena Mwilu, the Deputy Chief Justice and the Vice President of the Supreme Court of Kenya were the Guest Speakers.

4.1.2 Presentations by the Guest Speakers

The Rt. Hon. Justice (Dr.) Patrick Matibini, SC, MP, Speaker of the National Assembly of Zambia

In his presentation, The Hon. Justice (Dr.) Matibini examined the institutional relationships amongst the three arms of government by addressing various doctrines and related issues. These included; the character of the Constitution, the Doctrine of Separation of Powers, the Principle of Checks and Balances, Presidential and Parliamentary systems of government, the Doctrine of Exclusive Cognisance, parliamentary privilege versus the courts, the *sub-judice* rule, independence of judiciary and the judicial review of the executive action.

The presenter informed the participants that the Constitution addresses the distribution of powers amongst the arms of the government, as well as the procedures for the exercise of powers. Constitutional government connotes a government defined, regulated and limited by a Constitution. However, it should be clear that constitutional government is not the same as and need not be a democratic government. Constitutional democracy combines the notion of a constitutional government regulated and limited by a Constitution.

The Rt. Hon. Justice (Dr.) Patrick Matibini, SC, MP, Speaker of the National Assembly of Zambia makes his presentation on Separation of Powers.

On Separation of Powers, the presenter informed the participants that, Separation of powers is a political doctrine under which the Legislature, Executive and Judicial branches of Government are kept distinct to prevent abuse of power. In effect, the doctrine dictates that in order to prevent the accumulation of excessive power in one person or decision making body, there must be some separation of the three branches of government. The structure should also provide a system of checks and balances between or amongst the different branches, to ensure that no one body can monopolize power in order to abuse it. Checks and Balances refer to the various procedural rules that allow one branch to limit another, such as the authority to veto legislation passed. The system of checks and balances is designed to allow each branch to restrain the others. The presenter further informed the participants that the idea of having a Constitution and applying the Doctrine of Separation of Powers, as well as Checks and Balances, is to promote Constitutionalism.

The presenter informed the participants that, in democratic systems of governance, a continuum exists between a "Presidential Government" and a "Parliamentary Government". Separation of powers is a feature more inherent to presidential systems.

While "fusion of powers" is a characteristic of parliamentary system. "Mixed systems" fall somewhere in between, usually near the mid-point. In fusion of powers, one estate (invariably the elected legislature), is supreme and other estates are subservient to it. In a parliamentary system, when the term of the legislature ends, so too may the tenure of the executive selected by the legislature. In a presidential system, the executive's term may or may not coincide with the legislature's their selection is technically independent of the legislature.

The presenter further informed the participants that most modern democratic governments comprise three arms of government and all the three arms of government are creatures of the Constitution. The Executive branch is primarily charged with the responsibility of administering the laws of the country and formulating government policies and programmes. The Legislature makes laws; exercises oversight functions over the Executive branch of government and approves the budget. The Judiciary comprises a hierarchy of courts whose main function is to decide legal disputes, interpret the law and where necessary exercise checks and balances on the other two branches of government.

The presenter further highlighted what he considered as some of the major issues affecting the three arms of the government. He pointed out the Freedom of Parliament and the Parliamentary Privilege versus the Courts.

On Freedom of Parliament, the presenter said that, various Constitutions impose a variety of limitations upon the legislative power. He further informed the participants that there also exists a possibility of clashes to ensue between the legislature and the judiciary. Parliamentarians generally claim what is said and done in parliament is the exclusive domain of Parliament, while the Judiciary takes the view that they have power to interfere for violation of the law.

The presenter discussed the Doctrine of Exclusive Cognizance which refers to the freedom of the House to regulate its own affairs. Thus Parliaments retain the right to be the sole judge of the lawfulness of their own proceedings and to settle, or depart from, their own codes of procedure. He said that, the principle holds good even where the

procedure of a house or the right of its members or officers to take part in proceedings depend on statute.

The immunity of parliamentary proceedings from impeachment and question in the courts is in essence a safeguard of the separation of powers; it prevents the other two branches of the Government; the Executive and the Judiciary, calling into question or inquire into the proceedings of the legislature.

The presenter continued to inform the participants that another matter which has a bearing on parliamentary privilege is the issue of the *sub-judice* rule. *Sub-judice* refers to a situation where a matter is before a court, and as a result, cannot be subjected to debate in Parliament.

The presenter further discussed the independence of Judiciary. He informed the participants that the source of this independence emanates from the Constitutions which provide the qualifications of judges, their mode of qualification and security of tenure and generous remuneration. The meaning of this independence is in essence that; judges and magistrates are free from executive and legislative interference or other improper influences in deciding cases, the courts are accessible to the people and judges and magistrates alone are free to manage the courts including allocation of cases. The fruits of judicial independence will then be seen in the quality of justice administered; in upholding the Constitution and its values; in protecting human rights and in maintaining the balance between the individual and the state.

The presenter further informed the participants that judicial review is concerned with reviewing the decision making process and not the merits of the decision made. Judicial review ensures that an individual or an entity is given fair treatment by the authority to which he or she has been subjected to. Through the remedy of judicial review, the judiciary exercises checks and balances on both the Legislature and the Executive branches of Government

The Hon. Lady Justice Philomena Mwilu, MGH, Deputy Chief Justice & Vice President Supreme Court of Kenya (On behalf of the Chief Justice)

The Deputy Chief Justice started her presentation by informing the participants that to have a discussion on the institutional relationship between the Judiciary and the Legislature, the best place to start is at the foundational principle of the constitutional democracy, the Rule of law.

The presenter informed the participants that the Doctrine of the Rule of Law essentially means that, 'people ought to be governed by law'. In Kenyan context, the Doctrine of the Rule of Law is founded upon the supremacy of the Constitution.

The presenter informed the participants that, the Doctrine of Separation of powers, is a necessary condition for the rule of law in modern society and therefore for democratic government itself. The Constitution (Art. 1(3)) affirms this by expressly delegating sovereign power to Parliament and the legislative assemblies in the County Governments; the national Executive and the executive structures in the County governments; and the Judiciary and Independent Tribunals. However, the character of separation of powers under our Constitution is not of absolute or strict separation.

The presenter informed the participants that there are many areas of overlap, checks and balances and interdependence. Parliament plays a critical role in the appointment of the Chief justice, Deputy Chief Justice as well as some commissioners of the Judicial Service Commission. Parliament further exercises budgetary controls on the Judiciary and Judiciary is accountable to the Parliament in accounting for its use of public resources and the administration of funds. However, the preconditions of judicial independence are conditions that are necessary to enable both judges as individuals and the judiciary to carry out their adjudicative function in an independent manner.

Three features are central to this independence; Insularity, Impartiality and Authority. The presenter said, Insularity means, "judges should not be used to further political aims nor punished for preventing their realization" Impartiality means, "that judges base their decisions on law and facts and not on any predilections towards one of the litigants". While Authority means the courts are seen by other arms of the government

and by society as the legitimate body for the determination of right, wrong, legal and illegal.

The presenter informed the participants that, the judiciary should particularly respect the doctrine of separation of powers and especially that of legislative autonomy. The formulation and enactment of laws is the province of Parliament and no person or agency, or other governmental organ, may impede the legislature's autonomous discharge of that role.

The presenter further informed the participants that there is need for the heads of the three arms of the Government continue to deepen the constructive interdependence between their respective institutions and enhance their engagement as a way of resolving any differences that may arise between the three arms.

The presenter said that Court Orders must be respected by all persons and institutions including all state and public officers. She quoted the words of the former Chief Justice that, "Respect for court orders is not a favour the judiciary seeks but a duty that we all bear and one that has implications for peace, security, stability and economic development." The presenter further said that the exercise of judicial authority is delegated sovereignty of the people. No institution ought to have more respect and solemn consideration for all aspects of the sovereignty of the people of Kenya than Parliament.

Parliament is therefore legally enabled to summon, criticize, investigate and censure all those who purport to impair and diminish the Rule of Law.

The presenter further informed the participants that Judiciary is undertaking an extensive program of court proceedings through active case management and harnessing the ICT; and addressing case backlog through Judiciary service weeks, alternative dispute resolution and robust case backlog clearance strategies. The Judiciary has also established an Anti-Corruption division of the High Court and increased the number of judges and magistrates in the anti-corruption courts.

The presenter however regretted that the Judiciary funding by the Government falls below 1 % of the national budget, which is dismally low considering the national footprint of its work, and the best practice that recommends that the judiciary receives

2.5% of the national budget. She added that Judiciary requires Parliament to significantly increase the Judiciary's budgetary allocation.

In Conclusion, the presenter informed the participants that Members of Parliament should consider planning the State of the Judiciary and Administration of Justice (SOJA) report presented to Parliament by the Chief Justice in January 2018 as an item of debate. Through this report Parliament will appreciate the progress made by the Judiciary and the basis for the budgetary requests.

The presenter requested Parliament to consider the Judiciary legislative agenda once it is presented to them. These include; The Tribunal Bill, Judges Retirement Benefits Scheme, Judiciary Fund Regulations, and Miscellaneous Amendments to the Judicial Service Act.

4.1.3 Plenary Discussions

During the Plenary, the following questions were asked and the following responses given.

Question	Response
Is the Judiciary independent based on the recent events where some 'Rebel MPs' have lost their seats through petitions?	Ruling on the petitions is an Independent decision and the Judiciary is independent. The Judiciary is not threatened or influenced in any way.
Is the Judiciary obliged to interfere with the functions of Parliament especially during Law making?	Anyone aggrieved by the Law Making process can always seek redress through the Judicial Review
Can the Judiciary direct Parliament to make laws to cure some lacunae in the Law?	The function of Legislation is for the Legislature and therefore Parliament should be proactive.
Is there a program within the Judiciary that enables the 'poor and destitute to	There is a public Service orders alternative to prisons.

serve their sentences outside the jail?	
Does the Judiciary use third parties to research and write judgements?	No, Judicial Officers are always are always informed to follow the laid down procedures. Judges are expected to obey the Constitution and other set laws when making judgements.
What determines the Costs awarded and the bails for offenders by the Courts of Law?	The decisions on the Bails and the costs are awarded based on the discretion of the presiding judicial officers. However, each case is determined on its own facts and similar cases should be decided in similar way. Currently there is no law capping the costs; they are normally based on complexity of the case and the time it takes. Further Parliament has power to pass the law that caps costs
Is the Judiciary encroaching the space of the appointing authorities in the National and County Government by reinstating them whenever they are sacked or interdicted?	No, the courts orders reinstatement of the officers if the courts are of the opinion that they were sacked without the due process of the law being followed.
Is the Judiciary shielding the electoral officials involved in fraudulent activities?	No, the Judiciary does not move on its own motion. The courts must be moved.
Recommendations	
• The three Arms of the Government cannot exist in total separation and they are inextricably connected and cannot operate in isolation or independently. The respective heads should therefore create an avenue where they periodically meet and exchange views.	

• The National Assembly should consider placing the State of the Judiciary and the Administration of Justice (SOJAS) report presented to the Parliament by the Chief Justice in January 2018 for debate.
• Parliament should consider the Judiciary legislative agenda once it is presented at the floor of the Houses. These include; The Tribunal Bill, Judges Retirement Benefits Scheme, Judiciary Fund Regulations, and Miscellaneous Amendments to the Judicial Service Act.

5.0 LEGISLATURE IN GOVERNANCE: POLITICAL PARTY MATTERS & ETHICS

Session Chair: The Hon. Justin B. N. Muturi, EGH, MP Speaker of the National Assembly

Presenter: The Hon. Alexandra Mendes, MP Canada House of Commons and CPA-(Canada) Vice Chairperson

Discussant: Jerry Hartz, Director of Government Relations and Communications, the National Democratic Institute, NDI, USA

The Speaker of the National Assembly presents a token of appreciation to Director of Government Relations and Communications, the National Democratic Institute, NDI, USA, Mr. Jerry Hartz, after he made his presentation.

5.1 Political Party Organization in the legislature; Keeping the Flock Together while Maintaining Robust Party Structures – Commonwealth and Congressional Experiences

5.1.1 Introduction

The Constitution of Kenya recognizes the importance of political parties in governance. In particular, Articles 91 and 92 of the Constitution as read with the Political Parties Act No. 11 of 2011 provides for the formation and registration of political parties in Kenya. In the recent past, with various parties seeking to enhance party discipline, various political parties have often taken measures to discipline members either through de-whipping of Members or removal from various committee positions.

Participants were expected to benefit from experiences and practices from mature and comparable jurisdictions where parties play a critical role. To achieve this, Hon. Alexandra Mendes, a Member of Parliament in the House of Commons gave the main presentation. Mr. Jerry Hartz, a Director of Government Relations and Communications in the National Democratic Institute was the discussant.

5.1.2 Presentation by Hon. Alexandra Mendes

The presenter started by appreciating to be invited as a resource person for this session of the CPA's post-election seminar. As a Canadian Member of Parliament, She proceeded to give the experiences of Canada by discussing how party structure affects the way they work in Canada.

She explained that in 2017, Canada celebrated 150 years of Confederation. Under their Constitution, the Canadian Parliament is based on the Westminster system. Over time, however, they have adapted this system to the Canadian situation. She further intimated that in Canada's early years, there were two parties in the Canadian Parliament, namely; the Liberal Party and the Conservative Party which has dominated the federal political scene.

The presenter further informed the participants that from the 1920s, Canada became a multi-party system with the rise of new parties which included socialist parties, parties representing farmers, and regional parties. Some of those parties have since

disappeared, while others remain part of the Canadian political scene. She stated that today, five parties are represented in the House of Commons. However, only three of them – the Liberal Party, the Conservative Party and the New Democratic Party – are "recognized parties" for the purposes of parliamentary proceedings. This is because a party must have at least 12 members to be a recognized party.

The presenter explained that within Parliament, the caucuses of the various parties decide how to determine their membership, select their caucus chair and conduct leadership reviews. With 338 members of Parliament representing five parties, it can sometimes be difficult to maintain order and ensure that the legislative process goes smoothly.

The presenter informed the participants that the responsibility of keeping the flock together and maintain order falls on the **Party Whips** and their deputies. She noted that the important role they play in party discipline appears to differ slightly from their use in other Commonwealth countries. In their Westminster system, she explained, it's the Whip who is responsible, on a daily basis, for enforcing party discipline. He or she ensures that members attend committee meetings and are available to vote in the Chamber. The Whip also acts as a crucial link between party backbenchers and the leadership. The unity of the caucus depends on their skills.

She further went on to give the history of the origin of the word "whip" and explained that the term comes from the world of hunting. In Britain, a "whipper-in" had to use his whip to prevent hunting dogs from straying away from the pack.
When political scientists studied the role of Whips in Canada compared to their British counterparts, they noticed that while there were many similarities between the two, some major differences stood out.

The presenter informed the participants that unlike in Great Britain, Canadian Whips remain mostly unknown to the general public. In addition, in Canada, the Whips are not responsible for inter-party discussions, a role played instead by the House Leaders. The House Leaders of the recognized parties meet regularly to discuss the day-to-day business of the House.

The presenter further explained that, in recent years in Canada, there has been a certain amount of criticism about the role of discipline in political parties. According to some experts, Canada has some of the strongest party discipline in the world. In their view, Members of Parliament should be given more leeway when it comes to votes and debates.

The presenter noted that MPs are aware that the consequences of not voting with their party can be significant. For members of the government party, it can mean losing a crucial vote which could, in turn, force an election. This is, however, not a common occurrence. For members of the opposition, she explained that the consequences are less severe. However, as Whips have control over things such as committee assignments, going against the party line could mean losing those responsibilities.

On comparison with the Congressional system, she informed the participants that, the role of party unity in Westminster systems is much different from that in congressional systems, such as the United States of America. Canadian prime minister and his cabinet sit in the House of Commons and must hold its confidence in order to govern. In contrast, she noted that the American president cannot be a member of Congress, and neither are the members of his or her cabinet. The president and cabinet members do not introduce bills in Congress, nor do they appear before Congress to answer questions. Unlike their prime minister, the president does not rely on the support of the Congress to stay in office. On the other hand, the president does not have the power that their prime minister has to dissolve the legislature. As a result, the role of party discipline is much different in the United States.

The presenter noted that, party unity has not always been the Canadian standard. She said that historically, especially during the first Parliaments after Confederation, party unity was less important than it is today. Research indicates that party unity has become much more central to party politics since the 1980s. The increasing focus on party unity in Canadian politics has been attributed to multiple causes, such as the diversity of the electorate, changes in electoral practices and parliamentary incentives.

While concluding, she stated that over the years, the Canadian political scene has evolved and their Parliament has adapted to their country's particularities. She indicated that they have found their own ways to use political party structure to "keep the flock together." She indicated her eagerness to hear the perspectives of fellow parliamentarians on the topic of political parties and party unity.

5.1.3 Discussant Presentation:

Mr. Jerry Hartz, *Director of Government Relations and Communications, the National Democratic Institute, NDI, USA*

While discussing the topic, Mr. Hartz started by espousing that Democracy is very hard work, and commended Kenya's democracy which he noted is growing very fast. He noted that 70% of Kenyan M.Ps are new and stated that the U.S always had around 20% new Members in every election. He also explained that his institution the NDI operates in 54 countries.

The discussant informed the participants that the role of parties in U.S. Congress is two pronged. The first is Legislative where; it's a forum to discuss policy, Develop legislative tactics, Message talking points, Training and Create unity. The second role is Electoral where; Brand identity with voters is created, Fundraising assistance, Polling, Election volunteers and Unified ticket of candidates.

On the role of leadership and parties in building consensus, he noted that Strong leaders and disciplined parties succeed while Weak leaders and divided parties fail. Success starts at the top with effective party leadership and indicated that the Speaker is very powerful. He went further; to briefly state his experiences within the same party having displayed two styles of leadership: Between 1993-94 under Speaker Tom Foley and 2009-10 under Speaker Nancy Pelosi, whose term was very productive.

The discussant went further to state that successful leaders unite the party, united parties work for members and effective party members deliver for voters. Simply, party unity is everything as united parties are inclusive. He went further to indicate that such parties have real debate about policy and politics, hold weekly meetings with personal interaction being essential. They also sponsor retreats away from Parliament that provide useful information and services.

On how united parties connect with voters, he indicated that the Social media is very influential in the US. More than half of all Americans now get news from Facebook feeds, press conferences or media events that get on TV and radio and Town hall meetings. They also have synchronized events in every congressional district that focus on one issue: visit school, hospital, workplace etc.

The discussant discussed the party unity tactics in the U.S. Congress, stating that all major votes are whipped; "Votes of conscience" are a leadership consideration; Unity is rewarded while straying is punished; Chairs of Committees can even lose their seat; Members must pay dues to the political arm - up to $250,000 per year; Seniority system is respected and loyalty yields more power; and hard work gains respect and a rise up the ladder.

The discussant concluded the discussion with a call on the importance of including Minority Party in decision making. He stated that if your voice is being heard and respected, compromise is possible. He noted that Denial of political rights can lead to hopelessness and extremism as we are always stronger together than apart. He lauded the relationship between the Leader of Majority and the Leader of Minority as it's easy to tear down institutions but hard to build them up.

5.1.4 Discussions in Plenary

During the Plenary, the following questions were asked and the following responses given.

Question	Response
How to deal with party internal conflict as a Party leader and a Member of Parliament at the same time (how to handle indiscipline and acrimony from members)	There's need to reconcile the interests of the constituency and the needs of the party to ensure no conflict of interest.
What issues should the party whip members to support	In Canada 3 issues are a must for members to vote with the Party. That is 1. Budgetary 2. Campaign platform

	issues (manifesto) 3. International charter issues/obligations
How issues of gender and Persons With Disabilities (PWDs) have been handled in Canada?	There are less women elected in the Senate but numbers are checked through nominations
Does a Party Leader influence parliamentary business	The President and the Prime Minister do whip Members but do not dictate parliamentary business
Is there any redress mechanism before expelling Members from Parties	Punishment mostly involves denial of certain privileges but not expulsion.
Is there restriction on how long a person can be a member in a party before seeking party sponsorship in an election	No restriction
Why the Majority does not work with the Minority in the U.S	To maintain party ideology
Is there any provision in the books to guarantee freedom of speech?	There are provisions to guarantee freedom of speech
How does Canada handle review of boundaries	Redistribution of constituencies is based on population and can be added or subtracted
Recommendations	
• The Minority Party should learn to work with the majority Party on issues of national interest and common good.	

5.2 Codes of Ethics and Professional Values for MPs – Concept of accountability as applied to Parliamentarians

5.2.1 Introduction

In Kenya, the conduct of Members of Parliament is regulated by various laws which seek to uphold the dignity of their office and to enable smooth execution of the House's mandate. The Constitution provides for the responsibilities of leadership, conduct of state officers, financial probity of state officers, places restrictions on certain activities of state officers and establishes the ethics and anti-corruption commission.

In particular, Article 75 of the Constitution refers to the conduct of state officers and prescribes that office holders shall behave in manner that neither conflicts private with public interests nor demeans the office they hold. Article 76 refers to the financial probity of state officers and mandates that they may not operate bank accounts outside of Kenya or accept loans or financial benefits that may impeach their integrity. Further, the Leadership and Integrity Act of 2012, the Public Officer Ethics Act of 2003 and the Parliamentary Powers and Privileges Act, 2017 bolsters the constitutional principles on leadership and integrity for Members of Parliament. Indeed, the Parliamentary Powers and Privileges Act, 2017defines and outlines a specific Code of Conduct for Members of Parliament.

This discussion topic was paramount that participants share their experiences on the concept of ethics and accountability as applied to parliamentarians. To achieve this, the topic was canvassed by Hon. Alexandra Mendes, a Member of Parliament in the House of Commons as the main presenter and Mr. Jerry Hartz, the Director of Government Relations and Communications at the National Democratic Institute as the discussant.

5.2.2 Presentation by Hon. Alexandra Mendes

Honourable Alexandra Hon. Alexandra Mendes, a Member of Parliament in the House of Commons of Canada, makes her presentation during the Seminar

The Honourable Alexandra Hon. Alexandra Mendes, a Member of Parliament in the House of Commons of Canada picked up the presentation from the previous one she had made and submitted that in Canada, their code of ethics is an appendix to their Standing orders (S.O).

She indicated that all Members as public officers are required to fill in annual wealth declarations which answer financial questions of all your dependents. Of significance is that the code of ethics outlines the Members relations with staff. They also stipulate labour relations and include such provisions as the harassment code. The Sexual harassment code was included in 2013.

5.2.3 Discussant Presentation by Mr. Jerry Hartz

Mr. Jerry Hartz, the Director of Government Relations and Communications at the National Democratic Institute informed the participants that, each House in the U.S.A has prepared its own rules on codes of ethics. He stated that each arm of government has codes that are strictly adhered to, though all of them cover the basic principles of integrity.

The discussant submitted that there are various limitations in their ethics provisions like on gifts and payments, outside employment, and abuse of office among others, whose

enforcement is very strict. He presented that training on ethics and financial transparency were a must in the U.S.

The discussant indicated that the U.S. Congress has an Ethics committee with equal representation from both the Majority and the Minority and issues public guidance, advisory opinions and investigates any violations. The House ethics rules are well documented and available to all Members. He noted that every charge has to be reviewed before being admissible. Punishments vary depending on the offence and they include; reprimand, censure, expulsion or referral to criminal prosecution.

5.2.4 Discussions in Plenary

During the Plenary, the following questions were asked and the following responses given.

Question	Response
How parties plan and use funds allocated to them	The electoral side of parties determines the use of funds in the U.S
How Canada enforces implementation of legislated laws	They ensure enforcers are paid well to curb corruption
Are Members rewarded for good behaviour?	Yes they are rewarded.
Recommendations	
• The creation of an Ethics committee with equal number of Members from the Minority and the Majority to handle ethical issues of Members of Parliament	

6.0 HOUSE BUSINESS IN BICAMERALISM & BUDGET-MAKING

Session Chair: Hon. (DR.) Naomi Shaban, EGH, MP

Presenters: Sen. Lucy Gichuhi, MP, *The Senate of Australia*

The Hon. Mutava Musyimi, *Former Chairperson, the Budget and Appropriations Committee*

Discussants: Mr. Tom Duncan, Clerk, *Australia Capital Territory Legislative Assembly*

The Hon. Dr. Makali Mulu, M.P, *Member of the Budget and Appropriations Committee*

6.1 Marshalling Business in a bicameral system: The Experiences, Building Synergies and Overcoming the Challenges.

6.1.1 Introduction

The Constitution of Kenya, 2010 established a bicameral Parliament consisting of the National Assembly and the Senate. Looking at the 11th Parliament which was the maiden Parliament which oversaw the implementation the bicameral Parliament, several issues arose relating to the legislative processes touching on both Houses which arguably threatened the legislative agenda of Parliament.

This was largely due to lack of concurrence on Bills requiring the concurrence of either House of Parliament as required under Article 112 of the Constitution. In this regard, as the 12th Parliament takes off, it is paramount that it learns from the past experiences with a view of ensuring that both Houses are able to perform their functions effectively.

This session therefore focused on discussing how to marshal business in a bicameral system, sharing experiences on bicameral systems, building synergies and overcoming the challenges that exist.

6.1.2 Presentation by Sen. Lucy Gichuhi

Sen. Lucy Gichuhi began by conveying greetings and well wishes from the Australian Prime Minister Malcom Turnbull which were warmly received.

She continued to give a brief overview of her background and how she became a Senator in the Australian Parliament.

The presenter was born in Hiriga village, in Nyeri County. She was educated in Mugoiri Girls High School, in Muranga County and Lwak Girls High School, in Siaya County. She graduated with a Bachelor of Commerce from the University of Nairobi and proceeded to start work at Ernst and Young. She also worked at Postbank, Action Aid and Madison Insurance before migrating to Australia with her husband and three young daughters in 1999. In 2015, after going back to school to study law she worked as an assistant in a lawyer's office where she got involved in politics. Later she interned

for a Senator and was further exposed to politics when she became the running mate to the Senator.

Fast forward, in September 2016 it was starting to look like she was going to be the duly elected candidate to join the Federal Senate as the next South Australian Senator this is after the then Senator was declared bankrupt, and it was almost automatic that she would take the place of the Senator since she was the running mate, but unfortunately someone else wanted to take up the position a matter that had to go to the courts for the decision to be arrived at. Except that the issue of her citizenship was raised by the Australian Labor party which is currently in opposition.

The matter moved to the High Court, and the other candidate was ruled unqualified and she was the only candidate left standing. The matter was then left to the party machinery, which was also unwilling to let her have the ticket. The matter again went to the court. The Labour party went to court claiming that she was not even a citizen of the country. The high court was left to determine her citizenship.

Australian Senator, Lucy Gichohi, (right) is presented with a gift by the Parliamentary Service Commission Vice Chair, Hon. Naomi Shaban, after making her presentation at the seminar. She gave a moving account of how she rose to become a Senator.

Consequently, a Constitutional expert was called in to advice to her citizenship. The expert was Prof. Yash Pal Ghai who was at one time the Chairman of the Kenyan Constitution Review Commission. Prof. Guy did a report which stated that Sen. Lucy was born in pre-independence Kenya as a Briton. After independence persons born in Kenya became Kenyans. Prof. Ghai elaborated that all Kenyans unless whose father were Briton were Kenyans. The court finally determined that Lucy was a Kenyan Born Australian and she became a Senator.

The presenter explained that the Australian Senate has evolved to be a checks and balances of the lower House the Senate being the upper House. Sen. Lucy reiterated that the Senate in Kenya needs to be empowered as a checks and balances House. The Senate she observed should not be done away with. In Australia, Queensland Parliament removed the Senate but is now trying to reinstate it.

Finally, she encouraged Members to think and act for prosperity and wellbeing of the Country.

6.1.3 Discussant Presentation

Mr. Tom Duncan a discussant on the topic began by defining **bicameralism.** A bicameral legislature he observed divides the legislators into two separate assemblies or chambers. Further, that there are two reasons for the division the legislature into two Houses which he enumerated as;

1) The first is expressed by the term bicameralism, the principle that making and changing the laws should require the consent of two different bodies. The requirement for the consent of two differently constituted assemblies is a quality control on the making of laws.
2) Secondly, the division of the legislature into two Houses allows the central legislature of the nation to reflect and secure its federal nature, that is, it is a union of states in which the responsibilities of government are divided between regional state legislatures and national legislature.

The presenter observed that the federal bicameral legislature was invented by the framers of the Constitution of the United States of America in 1787 and has been followed around the globe and was followed by the framers of the Australian

Constitution. Further, that when the Australian Constitution was drawn up in the 1890s two principles were accepted by the framers of the Constitution as its foundations.

The presenter stated that Australia has 6 bicameral Parliaments and 3 unicameral Parliaments. The national Parliament where Sen. Gichuhi sits is a bicameral legislature with 150 Members in the Lower House/ House of representatives and 76 Members in the Upper House/Senate. The Australian model is at times referred to as the Wash-Minster Model (Washington and Westminster)

He observed that conflicts between the two Houses in Australia are not uncommon and neither are they unique to Australia. The UK and Canada have had similar conflicts between the two Houses.

The presenter reiterated some three key lessons that Australia has learnt about bicameralism which include:

1) There should be **good communication** between the Houses; regular meetings between the Speakers/ Presiding Officers and the Clerks are integral.
2) **Operations of the Committees in two Houses should be streamlined**; this avoids duplication in their work and wastage of resources. Australian Parliament has Joint Committees which work well. In the Australian Parliament the Upper House has 16 standing committees and 2 select committees while the Lower House has 8 Standing committees and 1 select committee. There are 20 joint committees, for example, the Public Accounts Committee is a Joint Committee in the Australian Parliament.
3) **Bicameral relations evolve over time.** The Committee system has evolved over time. When the Australian Senate was first formed in 1901 there were hardly any Committees, it was largely left to the House of Representatives. Now Committees play a major oversight role in the Senate. There are also 20 joint committees.

In conclusion the presenter observed that the Australian Constitution was adopted in 1901 and it has only been amended only 8 times since. No amendments have happened in the last 31 years.

6.1.4 Discussions in Plenary

During plenary the following questions were asked and responses given and interventions and observations made:

Question/Issue	Response
Why has it become difficult for students to get visas for to study in Australia especially for Diploma Courses?	Student Visa issues are controlled by the Migration Act, and a Students Country of origin is not a factor for consideration. In the recent past, longer degree courses have been preferred compared to short diploma courses.
Parliament has faced a lot of challenges in regards to Public Participation on Bills touching on Counties which have to pass through the two Houses targeting the same stakeholders hence expensive and time consuming how best can this be dealt with?	The solution would be to encourage stronger collaboration and mediation between the two Houses as well as Joint Committees.
On Budgeting how is the budget divided between the two Houses, is it based on the number of Members or the activities for each House?	Budget process is similar to the one in Kenya. The Presiding officers will defend the budgets of their respective Houses based on among others the number of Committees.
How are matters Environment considered in the Budget?	Environment and climate change issues are very integral in the legislative agenda. The coal mine in Queensland is facing a lot of contestations.
Is there a demarcation on the roles and legislation that can originate in the two Houses and what happens if there is conflict on a Bill between the two Houses? If the 2 Houses don't agree on a Bill what happens and do the two houses have the same power in legislation?	In Australia, a Money Bill cannot be introduced in the upper House/ Senate. Any other Bill can be introduced in either House and seek concurrence from the other House. The two Houses are equal in all respect. The Senate started out as a state House but has changed on to be a check and balances House. A senator in the Australian Parliament has

	about 7 committees. The senate opens at 8.30am to sometimes between 5.30pm to 11pm. Most Bills originate from the lower House to the upper House. 150 Bills are considered in the Senate in one sitting and it is so intense.
In Australia all states has equal number of Senators despite the population size. How does population play into representation?	Each of the states gets 12 senators, in spite the size which is in the Constitution, borrowed from the USA.
Are there Affirmative action laws and how are minorities represented in the Legislature?	A leader is a leader irrespective of Gender. It should be about your skills and abilities and not Gender. The Australian Constitution has no affirmative action clauses on Women or PWDs. However there is 56% representation of women in the Legislature. PWDs are represented in all legislatures across Australia.
Interventions and Observations	
• The Constitution in Australia was amended 8 times in the earlier years than in the later years. There have been no Constitutional amendments in the Australian Constitution for the last 31 years. Kenya's situation is therefore not unique in wanting Constitution amendments after a few years of existence of a new Constitution	
• Kenya is a unitary bicameralism and Australia is a federal bicameralism	
• It has taken the Australian Parliament over 100 years to achieve synchronisation between the 2 Houses, hence Kenya is still a young democracy and with time teething issues will be ironed out	
Recommendation	
• To acquire synchronization between the two Houses it is important to have communication and dialogue between the 2 Speakers and the Clerks. Parliament should also embrace joint committees for effectiveness. This ensures proper use of resources especially during public hearings targeting the same stakeholders.	

6.2 The role of the Legislature in Budget-making: The Budget process from a Member's Perspective, the intricacies, risks, balancing the numbers and politics

6.2.1 Introduction

Articles 220, 221, 222, and 223 of the Constitution bestow the budget-making role to the Legislature. In the National Assembly, the Budget and Appropriations Committee is the Committee mandated to investigate, inquire into and report on all matters related to the national budget, discuss and review the estimates and make recommendations to the House, examine the Budget Policy Statement, examine Bills related to the national budget including Appropriations Bills and evaluate tax estimates.

From past experiences of the 11th Parliament, it was observed that there is need to enhance the oversight role of Parliament by creating the necessary capacity for scrutiny of the national budget and the economy.

6.2.2 Presentation by Hon. Mutava Musyimi

The Honourable Mutava Musyimi who is the former chairperson of the Budget and Appropriations engaged the participants in discussing the role of the National Assembly in budget making process and shared his experiences on the process in the 11th Parliament with a view of identifying the opportunities that exist.

The presenter began by reiterating the role of a Member of Parliament in the Budget making process. The Constitution of Kenya he stated, grants a Member of Parliament an important role in the Budget making process for a variety of reasons namely:

i. The legislator is ***a representative of citizenry*** and the budget belongs to the people, thus, the legislator must present the views of his/her constituents by participating in the budget process;

ii. Secondly, the ***role of a Parliament is to legislate*** and one key law the Parliament enacts is the budget (the annual budget appropriation). It is important to note that the only instrument that funds can be withdrawn from the exchequer is through an appropriation law, Vote on Account or Supplementary Appropriation Act. To this end, the legislature must be able

to grant that authority only when he or she understands what those resources are meant for.

iii. The third reason relates ***to the mandate of oversight***. Many wars being fought today in the world are about resources hence the need to guard the available resource envelop by ensuring that they are raised and allocated in an efficient and effective manner.

The presenter emphasized that unlike the independence Constitution, the 2010 Constitution effectively transferred **"the power of the purse"** to the legislature. **Article 114** of the constitution transferred the authority to introduce Money Bills and Motions related to the mobilization and appropriation of public resources to the Speaker of the National Assembly. The Speaker he stated has to act in accordance with the advice given by the Budget and Appropriate Committee of the National Assembly. This committee is expected to have consulted the National Treasury before advising the Speaker. Previously he noted, this power was with the Presidency deputed to the Minister for Finance and that is why before 2010, as the Minister for Finance presented his budget, he referred to the fact he had the permission of the President to present the estimates to Parliament.

The presenter noted that besides matters of public finance being anchored in the Constitution (Chapter 12), the Public Finance Management Act of 2012 and the Regulations have adequately provided a legislative framework on the role of the executive and the legislature in the budget process, right from preparation, approval, execution and accounting for public resources. However, the sanctions to be applied when the executive does not take into consideration the recommendations from the National Assembly are not adequately provided for. Parliament may therefore need to put effect on Article 225 on expenditure control.

The presenter reflected on his experiences as the Chairperson of the Budget Committee in the 11th Parliament which he dealt with as below;

1) The relationship with Senate as far as the Budget process is concerned
2) The relationship with other Parliamentary Committees
3) The internal relationship within the Budget and Appropriations Committee
4) The reality at plenary/ floor of the House

On the relationship with Senate, the presenter observed that from the onset in FY 2013/2014 the Committee had two major challenges which were the Division of Revenue Bill which at the time the National Assembly did not involve the Senate. The Senate went to court and a ruling was given in favour of the Senate. The other challenge was a proposal to remove the money set aside for laptops to pay teachers in which the Speaker ruled the motion was not properly brought before the House.

Within the Committee itself, the presenter recalled an incident where through public participation Members allocated money to their constituencies a matter that was not well received by the rest of the Members who wanted to the Committee abolished and a new committee formed. For 6 months thereafter the committee did not exist. He cautioned Members of the Budget committee against such a mistake.

On relationships with other Committees, the presenter recalled there was an incident where a Committee recommended that money be moved from one vault to another. This was followed by a phone call from the Cabinet secretary in charge of the docket to the Chair of the Budget Committee asking the change be effected. The budget committee went against the recommendations of the committee and did not implement the change. This resulted to a cautious moment at plenary. This was later amicably resolved when all the ministries brought their budgets before the Committee.

The above experiences he reminisced taught him important lessons in the need to earn the public's trust as far as the 'power of the purse' is concerned as well as integrity and accountability. The relationship with the executive has to one based on principle i.e. principled coordination

The presenter enumerated some of the challenges in the budget making which included;

1) National Debt: National Debt has risen steadily. There is concern that there is need to connect the heavy investments to liquidity in the economy. The local contractor needs to also to be paid to avoid non-performing loans in the banks. The national debt situation need to be watched to avoid the economy grinding to a halt

2) The report on a medium term review of the constitution/ social economic audit was brought to the budget committee and tabled in the House by Hon. Mutava Musyimi. Results of the report revealed there is wastage and corruption and the wage bill continues to balloon. The role SRC therefore needs to be revisited. The report touches on the role of the Senate vs that of National Assembly, Composition of Independent Commission, Independence of Parliament and Place of the Member of Parliament.

The presenter concluded with lessons from the past. He reminisced on the democratisation of Kenya since the days of the attempted Coup in 1982, repealing of Section 2(a) to make Kenya a one party state. These experiences he remembered brought together the Church and Civil Society. In 1991 the Country went back to be a multi-party state and this was the start of clashes culminating into the election cycles of 1992, 1997 and the making of a new constitution began through popular initiatives e.g. Ufungamano. The point he emphasised was that, the country needs each other; and a time comes when the wise stop talking and we listen to each other. The Country will thrive through inclusiveness. It is time he observed that Kenya revisits the Constitution and reviews it.

The presenter ended with a quote from the book of Esther; "People in Power are often the last people to know what is happening in the Country."

6.2.3 Discussant Presentation

Hon. Dr. Makali Mulu, MP a discussant for the session began by reiterating that it was time for Parliament to ask itself some very key questions as far as the Budget process is concerned. Key among them:

1) As a legislature does Parliament have the capacity to engage in the budget making process effectively?
2) As a far as timelines are concerned are 14 days enough to interact with the Budget Policy Statement (BPS) for the Legislature. The Treasury on the other hand has 6 months to engage with the BPS. Hence raising the question whether Parliament and Treasury are at par and how effective Parliament can be in the short duration of time?

3) He also sought to inquire whether Members can put aside their party loyalty to address the critical points in the budget making process?

The discussant continued to explain that experience has shown that Members use the 1st year to enjoy there win. Half way through Members will start thinking of re-election hence the budget making process takes a back seat in the peeking order of priorities. Further, that Treasury has capacity of officers who have been interacting with the budget for over 20 years. Parliament he stated doesn't have this advantage and cannot interrogate the budget effectively. The devil he warned is in the detail especially given the fact that the budget making process is composed of various documents.

The discussant highlighted some of the challenges the budget process in Parliament has had in the future which include;

1) Individual vs National Motivations; Members tend to concentrate on their areas of representation more than national interests
2) Regional vs National Interests; Members tend to be motivated by their regional interests than national interests.
3) Public Participation; the process he observed is hijacked by vested interests in some regions or constituents. The ideal would be for Members to concentrate in a certain region for a number of years then move to another area for better impact.
4) Monitoring and Evaluation (M&E); He reiterated that Members need to factor M&E in the budget making process which is lacking. He inquired on the possibility of PIC (Public Investment Committee) and PAC (Public Accounts Committee) reports being tied to the Budget making process for accountability.
5) The presenter observed that the House makes resolutions which are not acted upon. The House therefore should be able to address, where resolutions are not implemented whether sanctions could be applicable.

The discussant emphasised on the need for the House to reduce monies allocated to state departments/ ministries when absorption of the resources is lacking. Additionally, he emphasised on the need to undertake ***Evidence Informed Budget Making***.

The discussant observed that the National Budget was about 2.2 Trillion Kenya Shillings. 0.9 of which was taken up by the Judiciary, 1.7 by Parliament and the rest to the Executive. Hence there was biased in sharing of resources between the arms of Government.

Finally, the presenter reiterated that the Chair of the Budget Committee is perceived as a super chairman because of the nature if the issues he is handling e.g. Budget Deficit.

6.2.4 Discussions in Plenary

During plenary the following questions were asked and responses given and interventions and observations made:

Question/Issue	Response
In the 11th Parliament, the budget was brought back to Parliament and the debt ceiling was increased. What can be done to tame the appetite for debt? What is the Budget Committee doing to address the high debts, borrowing/ Euro Bond?	Debt management is a major issue. There is a problem when one is not operating within the resources. This can be managed; Increase revenue generation, control expenditure, minimise wastage and proper project appraisal
MDA and Semi-Autonomous Government Agents (SAGAs) keep complaining of release of money. What is the work of the Controller of Budget?	The Constitution provides for the role of Auditor General (AG) and Controller Of Budget(COB) The Controller of Budget provides quarterly reports that are tabled in the house on the spending of SAGAs and MDAs.
Absorption capacities of MDAs and SAGAs what can be done?	There are international recommended ratios on allocations where Kenya is below those ratios. Parliament can work on the deficits and redistribute them across the MDAs and SAGAs
On feasibility studies, for a project to be	Start at the departmental level for ME. The

undertaken it is necessary for a feasibility study. What is the role of a feasibility study before a project is undertaken?	Reports should show the output of the funds spent
On balancing interests when does a need become a national need and not just a regional need	The Integrity chapter needs to be applied in order to deal with the skewedness of the resources Public Participation has been a challenge due to the lack of attendance by Members. Prioritization is important so that there is order on which counties benefit when
Interventions and Observations	
• Time to interrogate the Budget is a concern. Departmental Committees focus should be on policies by the Ministries Departments and Agencies (MDAs). Ministries should come to the House early on to engage on their budget priorities with the Departmental Committees.	
• There is need to change focus under Article 201. Budget should be prepared in an open manner. The demonstration needs to be done. Focus should be the bigger picture	
• Under Article 221 on Public Participation, the Budget committee has a responsibility to go the Kenyans for their opinions and views. The timeline is two months between April 30th and June 30th.	
• Members need to be placed in the right Committees in order to articulate issues correctly	
• Sanctions when/if applied should not be blanket but targeted on allowances and not essentials	
• Parliament should be blamed at the onset for the lack of Monitoring and Evaluation. All budgetary Committees are dealing with incremental budgets, yet some of the Ministries have had issues of accountability and absorption without any punitive measures.	
• Parliament in a Presidential System is a budget making House. Parliament should be able to amend the ceilings; a framework is needed on how amendments on ceilings can be done. Parliament cannot also amend anything without Treasury, hence the need for a framework so that Parliament is not just a rubber stamp.	

• On Division of Revenue the budget committee needs to come up with a legal framework, where only the National Assembly deals with the Budget. In instances where the two Houses are unable to agree and where mediation fails
• It was noted that the BPS has no mention of the 4 key Jubilee agenda
• Public Participation should be targeted where a County is invited for public participation and Members of Parliament in that County mobilise people to come. Unfortunately raising quorum has been an issue.
• A strong M& E process is critical to the process of Budget Making
• The Speaker noted that under Standing Order (SO) 216 the Committee is empowered to do all is necessary as far as their oversight role is concerned, hence the Committees are not taking advantage and maximising of these provisions.
• Incremental budgets have increased pilferage and theft in MDAs and SAGAs
• Debt Service is the bigger problem rather than wage bill
• The Auditor General should be empowered to focus on the output and not just what was disbursed and how it was used.
Recommendation
• Need for a Capacity Building Seminar on Budget Making • Members of Parliaments should tap into the expertise that exists in the technical officers in the Committees who include the Budget Officers, Legal Counsels and Researchers. The Budget office has come up with a budget making manual that could be helpful for Members. • Evidence informed budget making is integral in the process of Budget making • Departmental Committees are empowered by SO 216 which provides them with the opportunity to continuously engage with the SAGAs and MDAs and also do M&E. The Committees need to enforce this SO 216.

7.0 BEING A LEGISLATOR, WELFARE OF THE NATION AND CLOSURE

Session Chair: **The Hon. Aden Duale, EGH, MP** ***Leader of Majority Party in the National Assembly***

Presenters: The Hon. Dalmas Otieno, *former Member of Parliament*

Sen. Lucy Gichuhi, Senator, *The Senate of Australia*

Discussant: The Hon. Alexandra Mendes, MP *Canada House of Commons and CPA-(Canada) Vice Chairperson*

7.1 The Legislator in and outside the Legislature – My Expectations, the Reality and Lessons; the Experience of a Former Legislator

7.1.1 Presentation by The Hon. Dalmas Otieno, former Member of Parliament

During this session, Honourable Dalmas Otieno a former Member of Parliament shared his experiences with the participants on his life as a Member of Parliament. Hon. Dalmas Otieno has an in-depth and broad experience in Public Service which spans for over a period of Thirty years.

Hon. Dalmas Otieno served as a MP for Rongo Constituency since 1988 to 2017 when he was also able to serve in many other various portfolios. Between 2013 and 2017, he served as a Member of the National Assembly following promulgation of the New Constitution in 2010. In 2008, he was appointed a Cabinet Minister, Ministry of State for Public Service and he also served as a Chairperson of the Pan Africa Conference of Ministers of Public Service (2008-2012). Prior to that, he had served as a Cabinet Minister for Industrialization (1988-1991), Labour and Human Resource Development (1991), Transport (1991-1996). In 1997 he served as the Chairman of the Inter-Parties Parliamentary Group (IPPG) which oversaw the process of amending the 1963 Constitution to provide for minimum reforms necessary prior to 1997 General Elections.

Former Rongo MP, Hon. Dalmas Otieno shares his experiences as a former legislator during the Seminar.

The presenter took the participants through his thirty (30) years in Politics since 1987. He informed the participants that he ventured into Politics after having worked for about 15 years work experience. Before venturing into politics, he had consulted and learnt some valuable lessons from experienced politicians and elders, who cautioned him and counselled him about what to expect. His own father and the area Councilor advised him against getting into politics before attaining the age of Forty (40) years. They told him, "Politics is a tough practice and exit is like a rejection which could be ruinous to a young family".

The presenter informed the participants that as Members of the National Assembly, they need to continuously balance public interests and personal interests. The participants were informed that as Members of Parliament they are part of the power cadres and they will interact with the people who manipulate power even though they are not in power. One therefore needs to identify those who are hell bent to pick power and manipulate it for their advantage.

The presenter informed the participants how he started his political career. When he won his Parliamentary seat in 1988, he was appointed as the youngest Minister then at the age of Forty Three (43) at the Ministry of Industrialization. He set for himself an objective to increase the share of manufacturing to GDP from 13% to 15% in the following Five (5) years. He was going to review the Import Substitution and

Industrialization, Agro-Industries, Reform and Recapitalization of Sugar Industries, The Kenya Meat Commission among many others. However, there were vested interests everywhere and nothing would move. He got transferred to the Ministry of Manpower and Employment and later to the Ministry of Transport and Communications. That is how he started his political career.

The presenter informed the participants that, Political Power tends to attract all sorts of people to the MPs; they have to be careful, because one doesn't know who would like to bring them down. He further informed the participants that Politics is a high casualty career; the system is extravagant and wasteful. He added that with the new dispensation, the enhanced functions of the Parliament require experience and therefore the high turn-over is not healthy. He advised the participants to consult with the longest serving members.

The presenter informed the participants that Politics is a Game of Interests and therefore they should allocate enough time to deliver on their constitutional mandate. Quorum in the Plenary, Parliamentary Committees and the Committee of the whole is very important to achieve the best quality legislation. Members of Parliament also need to deepen the oversight functions of Committees. Each Committee is therefore expected to have both the long-term and short-term plans of the ministries and departments that they oversight. Members should have sufficient depth of ministerial functions to enable them oversight these ministries effectively.

The presenter advised the participants to be taking their Committee business seriously and expecting nothing in return to performing their mandate. They should regard themselves as the National leadership of Kenya and work to stabilize the country towards a direction where the welfare of the people is central.

Under the Presidential System, MPs are safer and should insist that Parliament plays it's cardinal roles without fear. Indeed, the Constitutional expectation is that the Legislative, Oversight and Representation mandates vested in the Legislature shall be exercised in a manner that; demonstrates respect for the people, brings honour to the nation and dignity to the office, promotes public confidence in the integrity of the

office, and that the responsibility vested in the members is to serve the people rather that to rule them.

He informed the participants that MPs are highly regarded by the members of public and therefore they must strive jointly and individually to live within the public and constitutional expectations. MPs have a duty to the past, current and future members. The good, the bad and the ugly that anyone does affects the images of all members (former and current) all over the country. He therefore advised the participants to take integrity seriously; what one says, what they do and what they want should mean the same thing.

While making his conclusion remarks, the presenter asked the participants to consider reviewing the County leadership structure in order to acknowledge the role and plane of various elected leaders in the County and especially the Members of National Assembly. There is need to define what role each of the main actors at the Constituency level plays in development, these are the Members of the National Assembly, the Sub-County Administrators and the Deputy County Commissioners (DCC). Parliament should also prioritize the debate on the Cyber Crime Bill.

7.2 The Welfare of the Nation *versus* Routine Politics: Striking Optimal Balance

7.2.1 Presenter: Sen. Lucy Gichuhi, Senate of Australia

The presenter started her presentation by informing the participants that Kenya is an autonomous nation with its own character, experiences, nature and achievements. Every Kenyan must therefore take pride in what Kenya is, has become and achieved to date. Kenya's Constitution has a bit of British system in it, bit of American System and bit of Kenyan system. Therefore, the country does not face constitutional crisis; it is an identity crisis.

The presenter informed the participants that having many tribes in Kenya are a strategic asset and the negative aspects of tribalism have no place in modern-day Kenya. The most important question to ask when one is choosing a public leader is "what is the

character and ethical track record of the person?" The second question should be, "is the person passionate about serving Kenyans and Kenya as a nation?"

The presenter requested the participants to ensure that they have strengthened the Separation of Powers among the three arms of the Government. She added that an empowered Judiciary, Executive and Legislature with clear and strict divisions between each of them means every Kenyan is free to dream to become whatever their mind and heart can imagine. The work of the Members of the Twelfth (12th) Parliament is therefore to create Kenya's success story. At the end of the term, members should therefore be glad to have been a part of the team that steered the country in the right direction to an all-inclusive democracy.

The presenter asked the participants to recognize and appreciate the opportunity, honor and privilege to be an elected public leader and contribute to the positive growth of the country with pride, thankfulness, hope and resolution. She added that the team for this term is already formed, campaigns are over and therefore all elected leaders should work as a team and make the difference. MPs should trust their capacity, character and achievements. They need to recognize their ability to handle and resolve conflicts because they are modern day Kenyan politicians.

As public leaders, Members of the National Assembly are entrusted by the people to govern the country, her adherence to the; Rule of Law and Separation of Powers. Democracy is not accidental; it is the result of generations of self-sacrifice, conscious hard work, sacrifice and contributions. The country needs courageous, intelligent, bold, humble, wise and confident members of Parliament.

7.2.2 Discussant: The Hon. Alexandra Mendes, MP *Canada House of Commons & CPA Vice Chairperson*

The discussant emphasized on the need to preserve the indigenous languages, culture and traditions in order to foster National Healing and Reconciliation. The Government and especially the Parliament should therefore be the protector of indigenous people.

The discussant further added that there is need to learn from different cultures especially on how they resolve and mediate during the times of conflicts. Further, we should always use our diversity as a source of our strength in order to face challenges of a globalized World.

7.2.3 Discussions in Plenary

During the Plenary, the following questions were asked and the following responses given.

Question	Response
In a Presidential system of Government, how do you maintain a balance between how the ruling Party works in the Executive and in the Legislature?	Members of Parliament should determine in their own free conscious whether their decisions are right and for the welfare of the Nation; Members should also have an avenue to revisit their decisions especially because they can backfire.
How can we defeat Ethnicity and Corruption in the Country?	The Political leadership of the Country should decide to defeat Ethnicity and Corruption; We need to strengthen the NIS, OAG, EACC, DPP and other Accountability institutions with resources and competencies to defeat corruption.
Do we need to devolve more resources and power to the Counties to dissuade clamor for positions at the National level?	Yes, The Constitution allows for more powers, functions and resources to County governments which do not require a new legislation to be enacted.
Is Parliament doing enough to publicize its work and change the culture and	There has to be a sustained Public Relations exercise to sustain the correct image of

perception out there?	Parliament.
Recommendations	
• The Parliament should consider passing the Amnesty Law in bid to fight corruption; • Parliament should prioritize the debate on the debate on the Cyber Crime Bill	

8.0 RECAP, VOTE OF THANKS AND CLOSURE

The Seminar proceedings were recapped by the Clerk of the National Assembly who gave highlights of the seminar as per the **attached appendix**. He proceeded to welcome the Speaker of the National Assembly to give a vote of thanks and officially close the seminar.

In his remarks, the Speaker of the National Assembly noted that the Seminar had canvassed various issues which related to their mandate as an institution and as individual Members on discharging their constitutional responsibilities. He lauded the valuable lessons and experiences shared which he hoped, will go a long way to inform democratic governance and understanding, consolidation and application of among others: The traditions, practices and procedures of Parliament; The presidential system, bicameralism and evidently the Doctrine of Separation of Powers; The political party structures and culture in parliaments, ideologies, and party discipline; and The Budget Making process.

He proceeded to thank the Commonwealth Parliamentary Association (CPA), all the distinguished panel of resource persons, session chairs, the National Assembly leadership, and Honourable Members for attending and facilitating the Seminar. He also thanked the Clerk of the National Assembly and his team of Staff for exceptional organising skills. He finally thanked the Media for exceptional coverage, the Kenya Police Service, the Pride-Inn Paradise Hotel, and the transport team for rendering exceptional services.

He finally declared the Post-Election Seminar, 2018 officially closed at 1300hrs.

Participants pose for a photo after the official opening of the Post-Election Seminar at the Pride Inn Resort, Mombasa County

APPENDIX 1: HIGHLIGHTS OF THE POST ELECTION SEMINAR, 2018

S/NO	TOPIC	RESOLUTION
1.	**Official Opening**	**Sustained capacity building** • The National Assembly to continue to provide Members with unique and continuous capacity enhancement to equip them with knowledge to deliver on their mandate.
		Respect for Separation of powers • Respect of Separation of Power is a necessity for democratic governance and the welfare of the society, therefore the three arms of government should work in comity.
		Bicameralism • National Assembly to continue to nature bicameralism. • Continually evaluate the role of each House in Kenya's bicameral Parliament.
2.	**Legislature in Governance**	**Parliamentary Governance course** • Members encouraged to pursue this course being offered by CPA in collaborating with two Universities, McGill (Canada) and Witwatersrand (SA) to offer CPA courses, some of which are online.
		Consensus building • Speakers of the two Houses to continually consult to build consensus on the roles of each House and business before the Houses of Parliament.
		Constitutional and Independent Commissions • Need to re-examine the position and place of the many constitutional commissions and independent offices in overall governance.
3.	**Legislature, other Arms and the Public**	**Separation of powers** • Embrace continuous consultations between the Legislature, the Executive, and the Judiciary in order to create an environment for smooth operations of the Government.
		Powers and privileges • Immunity of Parliamentary proceedings on impeachment and from court injunctions; Importance of the Doctrine of Exclusive Cognizance (Freedom of the House to regulate its own affairs).

4.	**Political Party Organisation in the Legislature**	**Party structures** • Parliamentary and Party leadership to continue strengthening political party culture and structure in Parliament.
		Party Caucus and facilities • Embrace political party caucusing to advance political party positions in the House. • Parliament to provide adequate space within parliament precincts for parliamentary Political Parties to caucus.
		Party discipline • Strengthen party discipline as a way of entrenching party structures and position in the House.
		Parliamentary diplomacy • The National Assembly to continue strengthening parliamentary diplomacy through friendships, partnerships and membership to parliamentary organizations.
5.	**Codes of Ethics and Professional Values for MPs**	**Powers and Privileges Act, 2017** • Members need to familiarize themselves with the provisions of the Powers and Privileges Act, 2017.
		Establishment of an Ethics Committee • The National Assembly to consider establishing an Ethics Committee with equal membership of both the Majority and the Minority parties in the House similar to the USA Congress model.
6.	**Marshalling Business in a Bicameral System**	**Joint Committees** • To be established as a means for conflict resolution on mandate and consensus building between the two Houses and to avoid duplication of roles between the Houses and support the nascent bicameralism.
7.	**Budget Making**	**Capacity building Seminar on budget Making** • Organize a Seminar on budget making process for Members of the National Assembly in order to enhance skills in interrogating the budget.
		Technical Support/Resources • Members to scale up the utilization of the rich technical resources held by staff in Committees

		especially the fiscal analysts to understand the budget process.
8.	**The Legislator in and Outside the Parliament**	**Quorum in the House** • Propagate the desired quorum at plenary, House committees, and Committee of the whole House in order to achieve unanimity and quality legislation.
		Financial discipline • The National Assembly to continually engage Members on essential personal finance discipline to stem financial stress that comes when a Member fails to retain their seat.
		Welfare of the Nation • Develop a culture that is in tandem with the expectations of the electorate. • Cultivate a national outlook in legislating.

APPENDIX 2: LIST OF PARTICIPANTS

No	NAME	CONSTITUENCY
1.	Hon. Justin Muturi, EGH, MP	SNA
2.	The Hon. Duale, Aden Bare , MP	Garissa Township
3.	The Hon. Cheboi, Moses Kipkemboi, MP	Kuresoi North
4.	The Hon. Abdi, Yusuf Hassan, MP	Kamukunji
5.	The Hon. Abdullah, Bashir Sheikh, MP	Mandera North
6.	The Hon. Abuor, Paul Odalo Mak'ojuando, MP	Rongo
7.	The Hon. Adagala, Beatrice Kahai, MP	Vihiga (CWR)
8.	The Hon. Adan, Safia Sheikh, MP	Marsabit (CWR)
9.	The Hon. Ahmed, Shakeel Ahmed Shabbir, MP	Kisumu East
10.	The Hon. Ali, Adan Haji, MP	Mandera South
11.	The Hon. Ali, Fatuma Gedi, MP	Wajir (CWR)
12.	The Hon. Ali, Sharif Athman, MP	Lamu East
13.	The Hon. Aluoch, John Olago, MP	Kisumu West
14.	The Hon. Amin, Rashid Kassim , MP	Wajir East
15.	The Hon. Amollo, Paul Otiende, MP	Rarieda
16.	The Hon. Angatia, Ayub Savula, MP	Lugari
17.	The Hon. Angwenyi, Jimmy Nuru Ondieki, MP	KitutuChache North
18.	The Hon. Arama, Samuel, MP	Nakuru Town West
19.	The Hon. Aramat, Lemanken , MP	Narok East
20.	The Hon. Arbelle, Marselino Malimo, MP	Laisamis
21.	The Hon. Atandi, Samuel Onunga, MP	Alego fUsonga
22.	The Hon. Bady, Bady Twalib, MP	Jomvu
23.	The Hon. Baya, Owen Yaa , MP	Kilifi North
24.	The Hon. Bowen, David Kangogo, MP	Marakwet East
25.	The Hon. Bunyasi, Sakwa John, MP	Nambale

26.	The Hon. Buyu, Rozaah Akinyi, MP	Kisumu (CWR)
27.	The Hon. Chege, Maitu Sabina Wanjiru, MP	Muranga (CWR)
28.	The Hon. Chepkoech, Joyce Korir, MP	Bomet (CWR)
29.	The Hon. Chepkut, William Kamuren Chirchir , MP	Ainabkoi
30.	The Hon. Chepkwony, Charity Kathambi, MP	Njoro
31.	The Hon. Cheruiyot, Gladwell Jesire, MP	Baringo (CWR)
32.	The Hon. Chesebe, Fred Kapondi, MP	Mt. Elgon
33.	The Hon. Chumel, Samwel Moroto, MP	Kapenguria
34.	The Hon. Duale, Mohamed Dahir, MP	Dadaab
35.	The Hon. Gaal, Ahmed Bashane , MP	Tarbaj
36.	The Hon. Gachobe, Samuel Kinuthia, MP	Subukia
37.	The Hon. Gakuya, James Mwangi, MP	Embakasi North
38.	The Hon. Gakuya, Mercy Wanjiku, MP	Kasarani
39.	The Hon. Ghati, Dennitah, MP	**Nominated**
40.	The Hon. Gikaria, David , MP	Nakuru Town East
41.	The Hon. Gimose, Charles Gumini, MP	Hamisi
42.	The Hon. Gitau, Faith Wairimu, MP	Nyandarua (CWR)
43.	The Hon. Githinji, Robert Gichimu, MP	Gichugu
44.	The Hon. Gogo, Lilian Achieng, MP	Rangwe
45.	The Hon. Gure, Anab Mohamed, MP	Garissa (CWR)
46.	The Hon. Guyo, Ali Wario, MP	Garsen
47.	The Hon. Hassan, Amina Gedow, MP	Mandera (CWR)
48.	The Hon. Hassan, Kulow Maalim, MP	Banissa
49.	The Hon. Hassan, Omar Mohamed Maalim, MP	Mandera East
50.	The Hon. Hassan, Rehema, MP	Tana River (CWR)
51.	The Hon. Hassan, Zuleikha Juma, MP	Kwale (CWR)
52.	The Hon. Hiribae, Said Buya, MP	Galole

53.	The Hon. Hulufo, Hassan Oda, MP	Isiolo North
54.	The Hon. Ibrahim, Ahmed Abdisalan, MP	Wajir North
55.	The Hon. Ibrahim, Nasri Sahal, MP	**Nominated**
56.	The Hon. Ichung'wah, Anthony Kimani, MP	Kikuyu
57.	The Hon. Kajwang', Francis Tom Joseph, MP	Ruaraka
58.	The Hon. Kaluma, George Peter Opondo, MP	Homa Bay Town
59.	The Hon. Kamene, Joyce, MP	Machakos (CWR)
60.	The Hon. Kamket Kassait, William, MP	Tiaty
61.	The Hon. Kanchory, Elijah Memus, MP	Kajiado Central
62.	The Hon. Kandie, Joshua Chepyegon, MP	Baringo Central
63.	The Hon. Karani, Christopher Odhiambo , MP	Ugenya
64.	The Hon. Kasalu, Irene Muthoni, MP	Kitui (CWR[1])
65.	The Hon. Katana, Aisha JumwaKarisa, MP	Malindi
66.	The Hon. Katana, Paul Kahindi, MP	Kaloleni
67.	The Hon. Kega, Mathenge James Kanini, MP	Kieni
68.	The Hon. Kiai, Anthony Githiaka, MP	Mukurweini
69.	The Hon. Kibeh, Annie Wanjiku, MP	Gatundu North
70.	The Hon. Kihara, Jayne Njeri Wanjiru, MP	Naivasha
71.	The Hon. Kihara, Peter Kimari, MP	Mathioya
72.	The Hon. Kilonzo, Charles Mutavi, MP	Yatta
73.	The Hon. Kimani, Francis Kuria, MP	Molo
74.	The Hon. Kimilu, Joshua Kivinda , MP	Kaiti
75.	The Hon. Kimunyah, Amos Muhinga, MP	Kipipiri
76.	The Hon. Kingara, Simon Nganga, MP	Ruiru
77.	The Hon. Kingi, Michael Thoyah, MP	Magarini
78.	The Hon. King'ola, Patrick Makau, MP	Mavoko

79.	The Hon. Kioni, Jeremiah Ng'ayu, MP	Ndaragwa
80.	The Hon. Kipkiror, William Cheptumo, MP	Baringo North
81.	The Hon. Kipkosgei, Joseph Tonui, MP	Kuresoi South
82.	The Hon. Kipyegon, Johana Ngeno, MP	EmuruaDikirr
83.	The Hon. Kirima, Moses Nguchine, MP	Central Imenti
84.	The Hon. Kiti, Richard Ken Chonga, MP	Kilifi South
85.	The Hon. Kivai, Ernest Ogesi, MP	Vihiga
86.	The Hon. Koinange, Paul , MP	Kiambaa
87.	The Hon. Konchela, Gideon Sitelu, MP	Kilgoris
88.	The Hon. Kones, Beatrice Pauline Cherono, MP	Bomet East
89.	The Hon. Korir, Generali Nixon Kiprotich, MP	Langata
90.	The Hon. Koros, Benard Kipsengeret, MP	Sigowet/Soin
91.	The Hon. Kosgei, Hilary Kiplang'at , MP	Kipkelion West
92.	The Hon. Kositany, Caleb Kipkemei, MP	Soy
93.	The Hon. Koske, Gideon Kimutai , MP	Chepalungu
94.	The Hon. Koskei, Dominic Kipkoech, MP	Sotik
95.	The Hon. Koskey, Florence Chepngetich, MP	Kericho (CWR)
96.	The Hon. Koyi, John Waluke, MP	Sirisia
97.	The Hon. Lekumontare, Lentoijoni Jackson , MP	Samburu East
98.	The Hon. Leonard, Yegon Brighton , MP	Konoin
99.	The Hon. Liza, Chelule Chepkorir, MP	Nakuru (CWR)
100.	The Hon. Lomorukai, Jeremiah Ekamais, MP	Loima
101.	The Hon. Lomunokol, Mark, MP	Kacheliba
102.	The Hon. Luyai, Caleb Amisi , MP	Saboti
103.	The Hon. M'mbaya, Justus Gesito Mugali, MP	Shinyalu
104.	The Hon. Maanzo, Daniel Kitonga, MP	Makueni
105.	The Hon. Mabonga, Moses Wekesa Mwambu, MP	Bumula

106.	The Hon. Makokha, Justus Murunga, MP	Matungu
107.	The Hon. Manje, Joseph Wathigo, MP	Kajiado North
108.	The Hon. Maritim, Sylvanus, MP	Ainamoi
109.	The Hon. Masadia, Alfred Agoi, MP	Sabatia
110.	The Hon. Masara, Peter Francis, MP	Suna West
111.	The Hon. Mawathe, Julius Musili, MP	Embakasi South
112.	The Hon. Mbai, Nimrod Mbithuka, MP	Kitui East
113.	The Hon. Mbalu, Jessica Nduku Kiko, MP	Kibwezi East
114.	The Hon. Mbarire, Cecily, MP	**Nominated**
115.	The Hon. Mbogo, Ali Menza, MP	Kisauni
116.	The Hon. Mboko, Mishi Juma Khamisi, MP	Likoni
117.	The Hon. Mboni, David Mwalika, MP	Kitui Rural
118.	The Hon. Mbui, Robert, MP	Kathiani
119.	The Hon. Mishra, Swarup Ranjan , MP	Kesses
120.	The Hon. Mlolwa, Jones Mwagogo, MP	Voi
121.	The Hon. Mogaka, Vincent Kemosi, MP	West Mugirango
122.	The Hon. Mohamed, Abdikhaim Osman, MP	Fafi
123.	The Hon. Mohamed, Asha Hussein, MP	Mombasa (CWR)
124.	The Hon. Mohamed, Mohamed Ali, MP	Nyali
125.	The Hon. Mohammed, Mohamud Sheikh, MP	Wajir South
126.	The Hon. Momanyi, Ben George Orori, MP	Borabu
127.	The Hon. Momanyi, Jerusha Mongina, MP	Nyamira (CWR)
128.	The Hon. Mose, Shadrack John, MP	Kitutu Masaba
129.	The Hon. Muchira, Michael Mwangi, MP	Ol-Jororok
130.	The Hon. Mugambi, James Gichuki , MP	Othaya
131.	The Hon. Muhanda, Elsie Busihile, MP	Kakamega (CWR)
132.	The Hon. Mukuha, Gabriel Kago, MP	Githunguri

133.	The Hon. Muli, Fabian Kyule, MP	Kangundo
134.	The Hon. Mulu, Benson Makali, MP	Kitui Central
135.	The Hon. Mulyungi, Gideon Mutemi, MP	Mwingi Central
136.	The Hon. Murgor, James Kipkosgei, MP	Keiyo North
137.	The Hon. Murugara, George Gitonga, MP	Tharaka
138.	The Hon. Murungi, Kathuri, MP	South Imenti
139.	The Hon. Musau, Vincent Musyoka, MP	Mwala
140.	The Hon. Mutai, Japheth Kiplangat, MP	Bureti
141.	The Hon. Mutua, Didmus Wekesa Barasa, MP	Kimilili
142.	The Hon. Mwadime, Andrew , MP	Mwatate
143.	The Hon. Mwakuwona, Danson Mwashako, MP	Wundanyi
144.	The Hon. Mwale, Nicholas Scott Tindi, MP	Butere
145.	The Hon. Mwalyo, Joshua Mbithi , MP	Masinga
146.	The Hon. Mwambire, Teddy Ngumbao, MP	Ganze
147.	The Hon. Mwangi, James Gichuhi, MP	Tetu
148.	The Hon. Mwashetani, Khatib Abdallah, MP	Lungalunga
149.	The Hon. Mwathi, Peter Mungai , MP	Limuru
150.	The Hon. Nakuleu, Christopher Doye, MP	Turkana North
151.	The Hon. Nanok, Daniel Epuyo, MP	Turkana West
152.	The Hon. Nassir, Abdullswamad Sheriff, MP	Mvita
153.	The Hon. Ndirangu, Isaac Waihenya, MP	Roysambu
154.	The Hon. Ngirici, Purity Wangui , MP	Kirinyaga (CWR)
155.	The Hon. Ng'ongo, Mbadi John, MP	Suba South
156.	The Hon. Nguna, Charles Ngusya , MP	Mwingi West
157.	The Hon. Ngunjiri, Onesmas Kimani, MP	Bahati
158.	The Hon. Njagagua, Charles Muriuki, MP	Mbeere North
159.	The Hon. Njagua, Charles Kanyi, MP	Starehe

160.	The Hon. Njiru, Jane Wanjuki, MP	Embu (CWR)
161.	The Hon. Njomo, Jude L. Kangethe , MP	Kiambu
162.	The Hon. Njoroge, Mary Wamaua Waithira, MP	Maragwa
163.	The Hon. Nuh, Junet Sheikh, MP	Suna East
164.	The Hon. Nyamita, Mark Ogolla, MP	Uriri
165.	The Hon. Nyamoko, Joash Nyamache, MP	North Mugirango
166.	The Hon. Nyikal, James Wambura, MP	Seme
167.	The Hon. Nyoro, Samson Ndindi , MP	Kiharu
168.	The Hon. Nzengu, Paul Musyimi, MP	Mwingi North
169.	The Hon. Obo, Ruweida Mohamed, MP	Lamu (CWR)
170.	The Hon. Ochieng, Pamela Awuor, MP	Migori (CWR)
171.	The Hon. Odanga, Geoffrey Makokha, MP	Matayos
172.	The Hon. Odege, Tom Mboya, MP	Nyatike
173.	The Hon. Odhiambo, Elisha Ochieng, MP	Gem
174.	The Hon. Ogolla, Gideon Ochanda, MP	Bondo
175.	The Hon. Ogutu, Zadoc Abel, MP	Bomachoge Borabu
176.	The Hon. Okuome, Andrew Adipo , MP	Karachuonyo
177.	The Hon. Ole Kenta, Richard Moitalei, MP	Narok North
178.	The Hon. Ole Metito, Katoo Judah, MP	Kajiado South
179.	The Hon. Ole Sankok, David, MP	**Nominated**
180.	The Hon. Ombaki, Ezekiel Machogu , MP	Nyaribari Masaba
181.	The Hon. Omuse, Geoffrey, MP	Teso South
182.	The Hon. Omwera, George Aladwa, MP	Makadara
183.	The Hon. Ongera, Janet, MP	Kisii (CWR)
184.	The Hon. Onyiego, Silvanus Osoro, MP	South Mugirango
185.	The Hon. Oundo, Wilberforce Ojiambo, MP	Funyula
186.	The Hon. Owino, John Walter, MP	Awendo

187.	The Hon. Owuor, Joshua Aduma, MP	Nyakach
188.	The Hon. Oyioka, John Oroo, MP	Bonchari
189.	The Hon. Oyoo, James Onyango , MP	Muhoroni
190.	The Hon. Oyula, Joseph H. Maero, MP	Butula
191.	The Hon. Passaris, Esther Muthoni Rosanna, MP	Nairobi City (CWR)
192.	The Hon. Pukose, Dr Robert , MP	Endebess
193.	The Hon. Ramadhani, Suleiman Dori, MP	Msambweni
194.	The Hon. Raso, Dido Ali , MP	Saku
195.	The Hon. Robi, Mathias Nyamabe, MP	Kuria West
196.	The Hon. Rono, Daniel Kipkogei , MP	Keiyo South
197.	The Hon. Serem, Cornelly, MP	Aldai
198.	The Hon. Serem, Joshua Kutuny , MP	Cherangany
199.	The Hon. Seroney, Sammy Kipkorir, MP	**Nominated**
200.	The Hon. Shaban, Naomi Namsi , MP	Taveta
201.	The Hon. Shamalla, Jennifer, MP	**Nominated**
202.	The Hon. Shimbwa, Omar Mwinyi, MP	Changamwe
203.	The Hon. Shinali, Benard Masaka, MP	Ikolomani
204.	The Hon. Shollei, Gladys Jepkosgei-Boss, MP	UasinGishu (CWR)
205.	The Hon. Shurie, Abdi Omar, MP	Balambala
206.	The Hon. Simiyu, David Eseli, MP	Tongaren
207.	The Hon. Sitienei, Janet Jepkemboi, MP	Turbo
208.	The Hon. Sunkuyia, George Risa, MP	Kajiado West
209.	The Hon. Tandaza, Kassim Sawa, MP	Matuga
210.	The Hon. Tayari, Benjamin Dalu Stephen, MP	Kinango
211.	The Hon. Teyiaa, Janet Marania , MP	Kajiado (CWR)
212.	The Hon. Theuri, George, MP	Embakasi West
213.	The Hon. Thuku, Zachary Kwenya, MP	Kinangop
214.	The Hon. Tobiko, Peris Pesi , MP	Kajiado East

215.	The Hon. Tomitom, Lilian Cheptoo, MP	West Pokot (CWR)
216.	The Hon. Tongi, Richard Nyagaka, MP	Nyaribari Chache
217.	The Hon. Tonui, Ronald Kiprotich, MP	Bomet Central
218.	The Hon. Tuitoek, Daniel Kamuren, MP	Mogotio
219.	The Hon. Tum, Tecla Chebet, MP	Nandi (CWR)
220.	The Hon. Tuwei, Vincent Kipkurui, MP	Mosop
221.	The Hon. Tuya, Roselinda Soipan, MP	Narok (CWR)
222.	The Hon. Wachira, Josphat Kabinga, MP	Mwea
223.	The Hon. Wahome, Alice Muthoni, MP	Kandara
224.	The Hon. Wakhungu, Chrisantus Wamalwa, MP	Kiminini
225.	The Hon. Wamacukuru, James Githua Kamau, MP	Kabete
226.	The Hon. Wambugu, John Munene, MP	Kirinyaga Central
227.	The Hon. Wambugu, Martin Deric Ngunjiri , MP	Nyeri Town
228.	The Hon. Wamuchomba, Gathoni, MP	Kiambu (CWR)
229.	The Hon. Wamunyinyi, Athanas Misiko Wafula, MP	Kanduyi
230.	The Hon. Wandayi, James Opiyo, MP	Ugunja
231.	The Hon. Wangaya, Christopher Aseka, MP	Khwisero
232.	The Hon. Wanjala, Raphael Bitta Sauti, MP	Budalangi
233.	The Hon. Wanyonyi, Ferdinard Kevin, MP	Kwanza
234.	The Hon. Wario, Qalicha Gufu , MP	Moyale
235.	The Hon. Waruguru, Catherine Wanjiku, MP	Laikipia (CWR)
236.	The Hon. Washiali, Benjamin Jomo, MP	Mumias East
237.	The Hon. Waweru, John Kiarie, MP	Dagoretti South
238.	The Hon. Wehliye, Adan Keynan, MP	Eldas
239.	The Hon. Were, Charles Ong'ondo, MP	Kasipul
240.	The Hon. Wetangula, Timothy Wanyonyi, MP	Westlands
241.	The Hon. Yussuf, Adan Haji, MP	Mandera West
242.	The Hon. Richard Onyonka, MP	Kitutu Chache South

APPENDIX 3: PROGRAMME

Saturday, March 03, 2018 - Advance teams check-in

DAY I:
Sunday March 04, 2018

Participants' arrival at the Venue
(All day)

DAY II:
Monday March 05, 2018

SESSION 1: OFFICIAL OPENING
Session Chair: The Hon. Moses Cheboi, *MP, Deputy Speaker of the National Assembly*

8:30 – 9:00 am : **Registration/Entertainment**
(Mr. Clement Nyandiere, *Director General, Parliamentary Joint Services*)

9:00 –9:45 am : **Welcome Remarks and the Objectives of the Seminar**
Mr. Michael Sialai, EBS, *Clerk of the National Assembly*

Remarks by Guest Speaker
Mr. Karim Ulla Akbar Khan,
Secretary General, Commonwealth Parliamentary Association

Remarks by: The Hon. John Mbadi, CBS, MP.
The Leader of the Minority Party

Remarks by: Hon. Aden Duale, EGH, MP.
The Leader of the Majority Party

9:45– 10:00 am:**Keynote address & Official Opening**
The Hon. Justin B.N. Muturi, EGH, MP,
Speaker of the National Assembly

10:00-10:15 am:**Health Break and Photo Session**

SESSION 2: LEGISLATURE IN GOVERNANCE

Session Chair: The Hon. John Mbadi, CBS, MP *Leader of the Minority Party*

10:15-10:45 am: **Pacesetter: The Development of the Commonwealth and the Role of the Commonwealth Parliamentary Association (CPA)**

Presenter: **Mr. Karim Ulla Akbar Khan,** *Secretary General, Commonwealth Parliamentary Association*

10:45-12:00 pm: **Discussion Topic I: Bicameral legislatures in a Presidential System Vis-a-Vis the architecture of the Constitution of Kenya**

- ✓ *Key universal features and unique aspects of Kenya's case o Is ours a pure presidential or a parliamentary system?*
- ✓ *Executive and Judiciary link to the legislature, o the ideals envisaged by the CoE v/s the reality,*
- ✓ *Avoiding and resolving institutional conflict*

Presenter: **Mr. Nzamba Kitonga, S.C, M.CLArb, M.B.S, E.B.S,** *Former Chairman, Committee of Experts on Constitutional Review.*

Discussant: **The Hon. Jeremiah Kioni, MP,** *Chairperson, Constitutional Oversight Implementation Committee (CIOC)*

11:30-1:00 pm: **Plenary Discussion and Presenter's/Discussant's reactions**

1:00-2:00 pm: **LUNCH BREAK**

SESSION 3: THE LEGISLATURE, OTHER ARMS AND THE PUBLIC

Session Chair: The Hon. Justin B.N. Muturi, EGH, MP *Speaker of the National Assembly*

2:00-4:00 pm **Discussion Topic II: Institutional Relationships between the Arms of Government** (Legislature, the Executive and the Judiciary)

GUEST SPEAKERS:

- **The Rt. Hon Justice (Dr.) Patrick Matibini, SC, MP.** *Speaker of the National Assembly of Zambia*
- **The Hon. Lady Justice Philomena Mwilu, MGH** – *Deputy Chief Justice &Vice President Supreme Court of Kenya (On behalf of the Chief Justice)*

4:00-5:00 pm **Plenary Discussion and Presenter's/Discussant's reactions**

5:00 pm **Health Break and end of day's programme**

6:30 pm **Speaker's Reception -** *(Separ*

End of Day II

DAY III:
Tuesday, March 06, 2018

9:00-10:30 am: **Discussion Topic III: Political Party Organizat**
Legislature; Keeping the Flock Together while Maintaining Robu
Structures – Commonwealth and Congressional Experiences

- ✓ *How parties organize their own Members;*
- ✓ *The role of Members within their parties;*
- ✓ *Co-operation between parties to create an effective and functional parliamentary environment*
- ✓ *Employing Political diplomacy*

Presenter: **The Hon. Alexandra Mendès, MP**
Canada House of Commons and CPA Vice Chairperson

Discussant: **Mr. Jerry Hartz,** *Director of Government Relations &Communications, the National Democratic Institute, USA*

10:30-11:15 am **Plenary Discussion and Presenter's/Discussant's reactions**

11:15-12:30 pm: **Discussion Topics IV: Codes of Ethics and Professional Values for MPs - Concept of Accountability as Applied to Parliamentarians.**

Presenter: **The Hon. Alexandra Mendès, MP**
Canada House of Commons and CPA Vice- Chairperson

Discussant: **Mr. Jerry Hartz,** *Director of Government Relations and Communications, the National Democratic Institute, USA*

12:30-1:15 pm Plenary Discussion and Presenter's/Discussant's reactions

1:15-2:15 pm **Lunch Break**

SESSION 5: HOUSE BUSINESS IN BICAMERALISM & BUDGET-MAKING

2:15-3:00 pm **Discussion Topic V: Marshalling business in a bicameral system: The Experiences, Building Synergies and Overcoming the Challenges**

Presenter: **Sen. Lucy Gichuhi, MP** *Senate of Australia*

Discussant: **Mr. Tom Duncan,** *Clerk, Australia Capital Territory Legislative Assembly*

3:00-3:30 pm: **Plenary Discussion and Presenter's/Discussant's reactions**

3:30-5:00 pm **Discussion Topic VI: The Role of the Legislature in Budget making: The Budget Process from a Member's Perspective, the Intricacies, Risks, Balancing the Numbers and Politics**

Presenter: **The Hon. Mutava Musyimi, CBS** *Former Chairperson, the Budget and Appropriations Committee*

Discussant: **The Hon. Dr. Makali Mulu, MP,** *Member of the Budget and Appropriations Committee*

5:00-6:00 pm: **Plenary Discussion and Presenter's/Discussant's reactions**

7:00 pm: **Gala Dinner** - *(Separate programme)*

End of Day III

DAY IV:
Wednesday, March 07, 2018

SESSION 6: BEING A LEGISLATOR, WELFARE OF THE NATION AND CLOSURE

Session Chair: The Hon. Moses Cheboi, MP - *Deputy Speaker of the National Assembly*

9:00-10:00 am: **Discussion Topics VII: The Legislator in and Outside the legislature - My Expectations, the Reality and Lessons -** *The Experience of a*

Former Legislator

Presenter: **The Hon. Dalmas Otieno, EGH -** *former Member of Parliament*

10:00-10:45 am: **Plenary Discussion and Presenter's/Discussant's reactions**

10:45-11:00 am: **Health Break**

11:00-12:15 pm: **Discussion Topic VIII: The Welfare of the Nation Versus Routine Politics: Striking optimal balance**

- ✓ *Gentle Vs ruthless politics, nurturing healthy politics*
- ✓ *Mechanisms of calming the political tide;*
- ✓ *Putting the nation ahead of politics; and,*
- ✓ *Effects of Politics on governance, international perception, national growth;*

Presenter: **Sen. Lucy Gichuhi,** *Senate of Australia*
Discussant: **The Hon. Alexandra Mendès, MP** *Canada House of Commons & CPA Vice- Chairperson*

12:15-1:00 pm: **Plenary Discussion and Presenter's/Discussant's reactions**

1:00-1:30 pm: **Vote of Thanks and Closure**
(Speaker of the National Assembly)

1:30-2:30 pm: **Lunch Break and end of Seminar Programme**

End of Day IV

DAY V:
Thursday, March 08, 2018

Departures