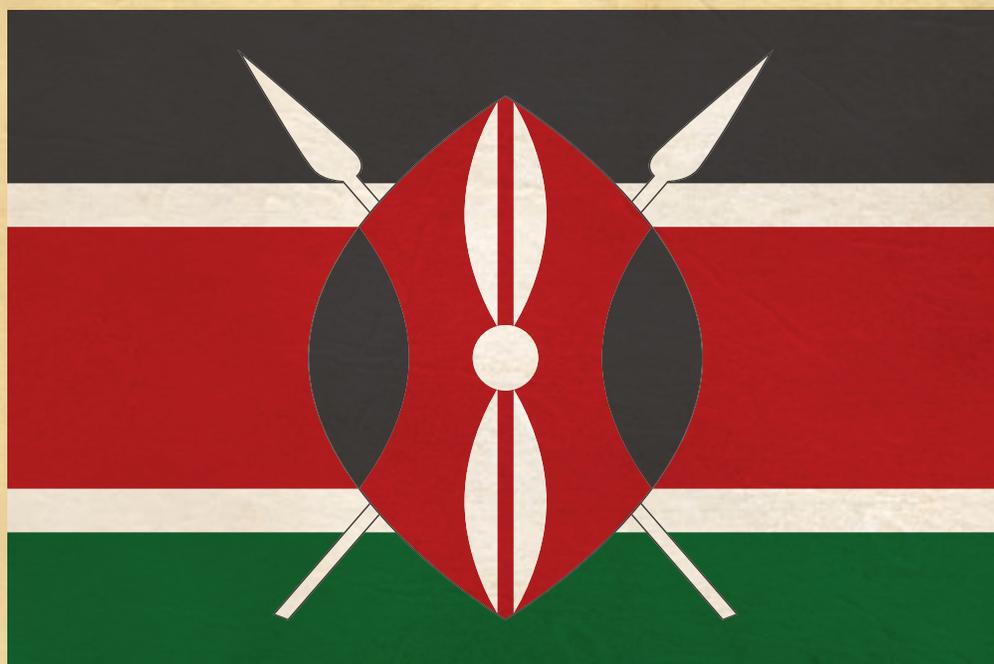


# THE AFRICAN PARLIAMENTARY INDEX (API) 2012



SUMMARY COUNTRY REPORT  
NATIONAL ASSEMBLY OF KENYA

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## ACRONYMS AND ABBREVIATIONS

AG	Auditor General
API	African Parliamentary Index
APSP	African Parliamentary Strengthening Programme
APNAC	African Parliamentarians Network Against Corruption
BPS	Budget Policy Statement
CB	Controller of Budget
CIDA	Canadian International Development Agency
CDF	Constituencies Development Fund
CPA	Commonwealth Parliamentary Association
CRA	Commission on Revenue Allocation
CSO	Civil Society Organizations
EAC	East African Community
FMA	Fiscal Management Act
ICA	Independent Country Assessor
KENAO	Kenya National Audit Office
KNA	Kenya National Assembly
MDAs	Ministries, Departments and Agencies
MDGs	Millennium Development Goals
MTEF	Medium Term Expenditure Framework
MP	Member of Parliament
NSIS	National Security Intelligence Services
PAC	Public Accounts Committee
PBO	Parliamentary Budget Office
PC	Parliamentary Centre.
PIC	Public Investments Committee
PFM	Public Finance Management
SPSS	Statistical Package for Social Scientists
NDI	National Democratic Institute
WBI	World Bank Institute

## EXECUTIVE SUMMARY

The Kenya National Assembly traces its existence as a Legislative Council of Kenya back in 1906. By independence in 1963, the Colonial Legislative Council was in its Tenth Council when it was dissolved to pave way for the first independence Parliament. The Council was created to represent the British citizens who were farmers, business people, missionaries and civil servants of the colonial government of Kenya. Thus, throughout its life of nearly sixty years of existence the Legislative Council made no pretence of being a representative institution of the majority of the African people. The Council remained an all-white council which progressively incorporated the Indians and the Arabs until 1943 when the first African was nominated by the governor to represent the majority Africans.

Upon independence in 1963, the membership and the composition of the National Assembly and the Senate changed because the majority electorate achieved African dominant representation in the bicameral parliament. Most of the other aspects of parliament were carry-over of the colonial legislative council. This status became an immediate concern of the African members and the urge to reform parliament became the carry-over of the nationalist struggle to gain total independence and repudiate colonial practices. Prior to 1964 there was only one functional committee known as the standing committee. There were no provisions for the backbench members to introduce bills, thus their role was only limited to reacting and reviewing the business as set out by the executive. The rise and growth of the imperial presidency and the continued executive dominance further marginalized parliament. The developments such as *de facto* one party state between 1964 and 1969, the abolition of the senate in 1967 and the enactment of numerous amendments to the independent constitution consolidated the powers of the executive. Members were therefore unable to advance proposals geared at serving the interest of the electorate. This situation meant that, for a long time, parliament carried out its traditional mandates of representation, legislation and oversight with fewer powers as it was more or less a branch of the executive. Gradually, voices of reform started emerging progressively during the second, third, fourth and fifth parliaments in the period

of 1970 to 1990. These changed the status quo resulting in reintroduction of multi party politics in 1991 since it was first abolished early in the political history of Kenya in 1967.

The struggle for parliamentary reforms witnessed in 1980s and 1990s by members wanting to participate in the management and administration of parliament finally resulted in the formation of Parliamentary Service and Service Commission in 1999, a situation which made parliament autonomous and freed it from the direct control of the executive. Sustained pressure for more parliamentary reforms handed parliament more and more roles especially in the budget process particularly during the current Tenth parliament (2008-2012). Standing Orders were changed in 2008 and a new law, Fiscal Management Act was enacted giving parliament more leverage in the budget process.

The Constitution 2010 finally altered the public financial landscape (PFM) by distributing the budget making roles between executive, parliament and independent offices such as Commission on Revenue Allocation and Controller of Budget. This is a complete departure from the former constitution which vested the whole PFM roles in the executive while leaving parliament to do some formality approvals.

The Africa Parliamentary Strengthening Program (APSP) for Budget Oversight aims to enhance partner Parliaments' ability to carry out their legislative, financial, oversight and representative functions in ways that engender good governance and the values of accountability, transparency and participation, especially in the budget process. The African Parliamentary Index (API) is a core component of the APSP. It seeks to measure budget oversight responsibilities performance of seven African programme countries namely: Senegal, Benin and Ghana in West Africa region; Kenya, Uganda and Tanzania in the Eastern Africa region; and Zambia in the Southern Africa region. The index is a set of indicators that shows the level of engagement of these selected Parliaments in the budget process in their respective countries. These indicators were derived from a series of variables and combined into an index to measure cross-country variation in legislative budgeting.

The Kenya assessment was organised in two forms, beginning with self assessment by parliamentarians with the support of parliamentary staffers from the Budget Office and Research departments in May 2012 and facilitated by an independent country assessor. This was followed by a Civil Society Organization (CSOs) assessment/validation workshop which sought to assess the perceptions of citizens groups about the performance of Parliament.

On assessment findings, Legislators verdict was that the Oversight Function with regards to Public Accounts Committee, other Oversight Committees and the Audit process indicators was being realised almost to the desired levels. They rated these indicators 5.4, 5.33 and 4.5 respectively out of the possible scale of 6. The Financial Function comprising indicators such as the budget review and hearing, budget act and budget office, and periodic review of the budget was equally assessed favourably by Legislators. They rated them 5.0, 4.40 and 4.67 respectively out of the possible scale of 6. Representation and legislative functions were rated 4.33 and 4.5 respectively. Legislatures were concerned that the Legislature has not put sufficient mechanisms to promote public understanding of the work of the Legislature. They were equally concerned that the existing mechanism the National Assembly put in place to track legislations that have been enacted is largely dormant. The indicator on financial and material resources was favourably assessed by Legislators at 5.0 while concerns were raised on the issues of human resources with Legislators rating it 2.5 and noting that they were not satisfied with the recruitment process. Finally, the transparency and integrity thematic area was rated 3 by Legislators. In their judgement, they did not agree that effective mechanisms exist to detect and prevent corrupt practises among MPs and legislative staff and to bring to justice any person engaged in such activities.

The following specific recommendations were made:

- Design clear strategies to promote citizens understanding of the role of the Legislature.

- Operationalize clear policy to guide the process and operations of public hearings as provided by the Constitution.
- Reactivate by clear focus the Implementation Committee of the House to track legislations that have been passed for implementation.
- Professionalize recruitment of staff by utilizing a credible human resource firm to recruit skilled and experienced staff.
- Fast track legislation to operationalize Chapter six of the Constitution on Integrity to be used together with a vetting process to guide aspiring public officers including MPs.
- Strengthen APNAC operations in parliament to motivate MPs to participate in its activities together with any other Anti-Corruption movements.
- Design a procedural requirement to enable MPs disclosure business interest in addition to declaring assets and liabilities.
- Promote citizens knowledge and understanding of the role of Members of Parliament in the budget process by use of relevant channels.
- Design a coordinated structured way to engage Civil Society Organizations and other forms of stakeholders.

# CHAPTER 1: INTRODUCTION

## *1.1 About the Legislature in Kenya*

### **1.1.1 History of Kenya Parliament**

The Kenya National Assembly was formed during the colonial era as a Legislative Council of Kenya and had its first sitting on 17<sup>th</sup> August 1906. The first independent parliament was formed fifty seven years later on June 11th 1963 when the colonial legislative council was in its Tenth Council. During all this period of colonial council, there was no representation of the majority of African people. The council was just a representative of the British citizens who lived in Kenya as missionaries, civil servants of the colonial government of Kenya, business persons and farmers. The legislative council was therefore to fulfill the rights of every British citizen. Thus, throughout its life of nearly sixty years of existence the Legislative Council made no pretence of being a representative institution of the majority of the African people. The Council remained an all-white council which progressively incorporated the Indians and the Arabs until 1943 when the first African was nominated by the governor to represent the majority Africans. The council was anchored in the Westminster parliamentary model with the structure of the legislative building, the decorum, etiquette, dress code of the speaker and that of the members, the procedure of the House replicating those of the House of Commons. The clerk was appointed by the governor while the rest of the staff were civil servants. Other issues such as security, accommodation and above all the budget were controlled by the colonial government.

On attainment of independence in 1963, the membership and composition of the bicameral parliament, National Assembly and Senate, changed since the majority of the electorate achieved African dominant representation in the bicameral parliament. However, most of other aspects of parliament remained as they were during the colonial legislative council. The Speaker<sup>1</sup>, who was the head of parliament and having assumed speakership in 1960, also remained in office until his retirement in 1970. As would be

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<sup>1</sup> The Speaker referred to was Sir Humphrey Slade during whose term Kenya attained independence.

expected, he could not effect radical changes in the administration, procedures of the House and the Standing Orders. This, together with the rise and growth of the imperial presidency and the continued dominance of the executive further marginalized parliament. The rise and growth of the imperial presidency and the continued executive dominance further marginalized parliament. The developments such as *de facto* one party state between 1964 and 1969, the abolition of the senate in 1967 and the enactment of numerous amendments to the independent constitution consolidated the powers of the executive. Members were therefore unable to advance proposals geared at serving the interest of the electorate. This situation meant that, for a long time, parliament carried out its traditional mandates of representation, legislation and oversight with less powers as it was more or less a branch of the executive. Gradually, voices of reform started emerging progressively during the second, third, fourth and fifth parliaments in the period of 1970 to 1990. These changed the status quo resulting in reintroduction of multi party politics in 1991 since it was first abolished early in the political history of Kenya in 1967. The parliamentary reform process continued resulting in amendment to the constitution to create the Parliamentary Service Commission and the Parliamentary Service in 1999/2000. This change was fundamental as it delinked parliament from the control of the president and the parliamentary service from the control of the public service. With the change also came the budgetary autonomy which now allowed parliament to engage in the development of the institution of parliament.

The general elections of December 2002, in which the incumbent government was replaced, resulted in the formation of 9<sup>th</sup> elected parliament in January 2003. This parliament continued with the capacity enhancement programmes for both Members and staff in line with the Strategic Plan that was put in place by the Parliamentary Service Commission upon its formation in year 2000. The 10<sup>th</sup> parliament sworn in on January 15<sup>th</sup> 2008 after the general elections of December 2007, though unique in the sense that there is no official opposition party due to the negotiated coalition government, has achieved some remarkable developments including the promulgation of a totally new constitution for the country. With these developments the beacons and roadmap are

sufficiently in place to enable Kenyan parliament to become a transformative Legislature to achieve the aims of participatory democracy.

### **1.1.2 Recent Developments in Kenya Parliament**

The current Kenyan Parliament has made history in a number of ways. First and foremost, it was inaugurated during the Kenya's worst post elections violence which erupted immediately after the December 2007 general elections. The ensuing Peace and Reconciliations Accord which was signed between the two major political parties to restore order resulted in a Grand Coalition Government with no official opposition since the return of multi party politics in Kenya in 1991. Part of the political deal in early 2008 was a number of reform agreements including a new constitutional order. Parliamentarians seized this reform opportunity to make significant changes to the budget process. Thus the 10<sup>th</sup> Parliament (2008 - 2012) has made significant changes in the budget process through legislation, Standing Orders, the new Constitutional dispensation and practice. Prior to the year 2008, attempts had been made to reform the budget process with little success rate.

The Kenyan budget process has been undergoing reforms more so from 2008 when parliament enacted Fiscal Management Act. The new law introduced Budget Policy Statement (BPS) and required that the same be tabled in Parliament by the Minister for Finance by March 21<sup>st</sup> of each year. Through the BPS, Parliamentarians got a way to know the intentions of the Government in the coming budget;-something which, prior to 2009, was a top Executive secret. The same law also provided for the Minister of finance to publish on a monthly basis in the Kenya Gazette, actual revenues collected as well as actual exchequer releases to ministries and government departments. This means that the budget process was slowly opening up and what was hitherto considered only an executive secret could now be known to Kenyans. The same law created a Budget Committee in Parliament with the sole mandate of dealing with budgetary issues. Also created was Parliamentary Budget Office which is the secretariat to the Budget Committee. The Office is mandated to provide timely and non-partisan economic and budgetary information to National Assembly.

The next major opportunity to further transform the budget process came with the enactment of a new Kenyan Constitution in 2010. The drafters of the new constitution ensured that the Institution of Parliament was given enhanced roles and responsibilities in the budgeting process. Indeed, the Kenya Constitution 2010 has drastically reduced the Treasury (read executive's) sole dominance in the budget process and distributed it to Parliament and other independent state organs namely Commission on Revenue Allocation and Controller of Budget. A requirement of public participation in the budget process has also been entrenched in the constitution.

### ***1.2 The Budget process in Kenya***

Budget is the single most important policy document that any government uses to transform lives of its citizens. The Parliament's power of the purse is a key democratic principle and progressive parliaments have transformed lives of their citizenry and nations by correctly utilising their budgetary influence to make oversight and monitor their budgets. By doing so, they ensure that the limited resources are applied in the programme and projects with maximum returns for the benefit of the society in general and poverty reduction in particular. Democratic Parliaments all over the world utilise a significant amount of their time legislating, debating and discussing budgetary matters. As such, it is important that the legislators are well equipped with the necessary knowledge and tools with which to perform their role in the budget process. The tools would enhance their understanding of the salient elements that are of direct relevance to core areas such as poverty alleviation for their areas of representation in particular and the country at large.

#### **1.2.1 Legislative and Procedural Changes to the Budget Process**

The Kenyan budget process has undergone reforms, more so from 2008 when parliament enacted Fiscal Management Act (FMA) and changed the Standing Orders. The sum total of all these has been to open up the budget processes to Parliamentarians. The new law introduced Budget Policy Statement (BPS) and required that the same be tabled in

Parliament by March 21<sup>st</sup> of each year. Through the BPS, Parliamentarians got the opportunity to scrutinize and make recommendations on policy and budgetary intentions of the Government in the coming budget. The same law also provided for the Minister of Finance to publish on a monthly basis in the Kenya Gazette, actual revenues collected as well as actual exchequer releases to MDAs. The Budget Committee created by the same law, with technical back-up from Budget Office, has been very instrumental in leading parliament to review revenue and expenditure estimate of government. This has led to changes in the budget estimates during approval process in Parliament. Indeed for the first time Parliament amended the Appropriations Bill 2012 on June 28<sup>th</sup> 2012.

### **1.2.2 Constitutional Changes to the budget process**

The promulgation of the Kenya Constitution 2010 brought with it key changes with regard to management of public finances in Kenya. Chapter Twelve of the Constitution comprehensively sets out Public Finance Management platform. Specifically, the chapter has altered the public finance landscape by providing more powers to parliament and other independent state organs including Commission on Revenue Allocation and Controller of Budget in the budget making process. Indeed, the new constitution makes a major departure in ensuring that the process of approval of the budget provides necessary checks and balances which are geared towards ensuring openness and accountability including public participation in financial matters. This is the key principle provided in article 201 in Chapter 12 of the constitution. Overall, the legislature has an enhanced role which includes the ability to decide on resource mobilization, allocation, monitoring and control.

In the old constitutional order, it was expected that the Minister for finance shall cause to be prepared and laid before the National Assembly in each financial year estimates of the revenues and expenditure of the Government of Kenya for the next following financial year. That constitution did not give a deadline by which the estimates were to be submitted or laid before Parliament. However the Standing Orders gave the date by which the estimates were to be laid in the House. Standing Order No.144 spells out that the Annual Estimates shall be laid on the Table of the House not later than 20<sup>th</sup> June.

The new Constitution 2010 fundamentally deviates from the aforementioned practice. Under Article 221, the Cabinet Secretary responsible for finance (in this case the Minister for Finance) shall submit to the National Assembly estimates of revenue and expenditure of the national government. The estimates shall be considered together with those from the Judicial Service Commission as well as those presented by the Parliamentary Service Commission. The provision further provides that the estimates shall stand committed to a relevant Committee. In finalizing the report, the Committee shall seek representation from the public and include issues arising thereon in their report to the House.

Article 221 of the constitution spells out that the Estimates of Revenue and Expenditure should be submitted at least two months before the end of the financial year. The purpose of this window is two-prong; firstly, this is meant to ensure that there is adequate time for the legislature to seek the views of the public on whether the budget is in line with their requirements and the vision of where this economy is going. Secondly, the two months are in line with reforms going on all over the world where the estimates of expenditure are submitted at least two to six months before the end of the year so as to ensure they are reviewed by Parliament and approved before the commencement of the new year and hence there would be no need of vote on account<sup>2</sup>.

The spirit and provisions of the constitution including the ongoing reforms in budget making and approval process is where there is no need for a budget speech and where the budget day is not the one where there is pomp and ceremony. Instead, the Minister submits his tax proposals to the house and publishes a finance bill for introduction in the house. In short, in the new dispensation, the budget day is no more. The budget speech as it were outlines the state of the economy and the environment Kenya is operating in and indicates the total expenditures and key areas where the government has allocated the funds they are to raise. This particular section is more or less the basis of the address on the state of the nation that the president does sometime in February and in the Budget Policy Statement also to be submitted to the house in February. The second part of the speech normally concentrates on the measures that the minister intends to employ to

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<sup>2</sup> Vote on Account is a practice where parliament allows the executive to access some portion of the budget estimates pending approval of the budget. In Kenya the law allows for not more than half the estimates.

address taxation that are having negative impacts on the economy in particular as concerns engaging in some form of investment or business in the country and also those measures he has to employ to raise the required finances which includes how to finance the deficit. In addition, under the EAC framework the tax proposals must be discussed, agreed and announced on the same day with other East African Community countries.

Article 221 (1) spells out that: “At least two months before the end of each financial year, the Cabinet Secretary responsible for finance shall submit to the National Assembly estimates of the revenue and expenditure of the national government for the next financial year to be tabled in the National Assembly”. Based on Article 221(5) which requires that a committee of the National Assembly consults the public before making its recommendations to the Assembly, the Budget Committee was mandated to undertake this task. Parliament therefore generates a report coalescing views from the public alongside the recommendations of the Departmental Committees. The 2010 Constitution gives Parliament the power to amend the executive budget proposal by reallocating resources to other programs viewed as necessary by the public. This is the single most significant achievement of Parliament in this Constitutional dispensation and strongly indicates the important role that Parliament has henceforth assumed in the budget process.

Secondly, the spirit, letter and intent of the new Constitution as set out by Chapter 12 on Public Finance completes the transition of our Parliament from a budget approving legislature to a budget making one. It also brings openness and accountability to the budget process, strengthens the separation of powers and ensures fiscal parity between the three arms of Government.

A detailed account of the key process in budget approval is provided in the table in appendix 1.

In conclusion, the Constitution 2010 has attempted to eliminate the firm monopoly by the Executive over the budget making process. It has not only opened up the budget to intensive scrutiny by Parliament whose proposals can no longer be ignored but has also

opened it up to public participation and whose input form part of the report tabled before the House. With this transformation the public should keep watch of parliament to deliver this promise and expect a well coordinated participatory budget process and whose output is more responsive to their needs.

### ***1.3 Objectives, Aims of the APSP programme and Rationale for API.***

The African Parliamentary Index (API) is a set of indicators that show the level of engagement of selected seven African Parliaments in the budget process in their respective countries. The Index also measures the performance of Parliaments in selected African Countries on budget oversight. The Africa Parliamentary Strengthening Program (APSP) for Budget Oversight aims to enhance partner Parliaments' ability to carry out their legislative, financial, oversight and representative functions in ways that engender good governance and the values of accountability, transparency and participation, especially in the budget process. The budget process is a key area of focus for Parliaments and relates closely to poverty reduction because government budgets are about the allocation of scarce resources that affect the lives of citizens who parliamentarians in democratic states represent. It is, therefore, imperative that parliamentarians are equipped with the necessary tools with which to perform their role in the budget process and increase their understanding of the salient elements that are of direct relevance to poverty reduction in their respective countries.

In addition to the APSP aim of assisting partner Parliaments to develop and implement plans to strengthen their role in providing effective oversight of the national budgeting process, it also recognizes that the organization, powers and effectiveness of Parliaments vary widely from country to country. This recognition has reinforced the need for a set of indicators against which the performance of partner Parliaments can be measured. These set of indicators would be aggregated into an index to describe different Parliaments in terms of the key indicators of APSP.

The choice of indices and selection of indicators is grounded in a framework of existing literature on governance performance as well as the work by likeminded institutions such as the National Democratic Institute (NDI), World Bank Institute (WBI), the Commonwealth Parliamentary Association (CPA) and the experience of the Parliamentary Centre. The development and adoption of indicators has been participatory and included consultations with a wide range of stakeholders.

The APSP seeks to strengthen partner parliaments' financial accountability through training with the aim of enhancing their role and authority in the budget process, and to provide space for citizen engagement. In addition, the APSP also supports partner parliaments' anti-corruption work through the African Parliamentarians Network Against Corruption (APNAC).

The African Parliamentary Index (API) is a core component of the APSP. It seeks to measure the performance of the above seven Parliaments of selected African countries on their budget oversight responsibility. The index is a set of indicators that shows the level of engagement of these selected Parliaments in the budget process in their respective countries. These indicators were derived from a series of variables and combined into an index to measure cross-country variation in legislative budgeting.

#### ***1.4 Key developments especially as a direct result of the findings of the API round 1.***

The results of the API study round 1 of 2011 showed certain areas of weaknesses. Consequently, certain recommendations were made as a way to fill the identified gaps to ensure parliament plays its rightful functions as envisaged in a democratic society. Major recommendations made in 2011 were about deepening parliament's capacity to exercise its representation function, strengthening legislative budget capacity in the budget process, increasing parliamentary capacity for independent research and resourcing of budget committee and budget office; and institutional capacity of parliament.

There have been recent developments with regard to some of the issues arising from 2011. Concerning strengthening legislative budget capacity in the budget process, Kenya parliament just enacted a comprehensive Public Finance Act, 2012 in June 2012 to fully operationalize the provisions of Public Finance chapter in the Constitution. The Act provides for extended budget approval process and gives the Legislature more powers in the budget process including changing the executive's estimates. Concerning increasing parliamentary capacity for independent research and resourcing of budget committee and budget office, Parliamentary Service Commission recruited additional eight analysts in October 2011 to beef up the capacity of the Budget Office to help the Budget Committee and parliament at large with analysis of the budget as well as providing general economic and budgetary advice to parliament. All the 12 analysts have been undergoing various capacities strengthening including attachment and trainings both locally and abroad. In addition to locally organized trainings, analysts and budget committee legislators have been exposed to operations of similar committees in Germany, Philippines, Canada, and USA. Some development partners, for instance the PC, has kindly sponsored some of the analysts to specialized short term trainings in Zambia –*Taxation of Natural Resources (July 2012)* and South Africa – *Tax Analysis and Revenue Forecasting (July 2012)*. Concerning the institutional capacity of parliament, the Parliamentary Service Commission, has come up with a new administrative structure as a response to the forthcoming bicameral parliament after the general elections in March 2013. The structure has created new senior positions and the Commission is in the process of filling some of the said positions. In line with some recommendations of this API report the Commission has enlisted the services of one of the top human resource firms in Kenya, Price Waterhouse Coopers Limited, to conduct the recruitment exercise.

## **CHAPTER 2: OVERVIEW OF THE AFRICAN PARLAIMENTARY INDEX (API)**

### ***2.1 Purpose and Objectives of the African Parliamentary Index (API)***

The purpose of the African Parliamentary Index is to present a standard and simplified system for assessing the performance of Parliaments in Africa, especially Parliaments in the seven core countries of the APSP project. The API provides a simplified way of assessing different Parliaments engaged in the APSP on the key objectives of the program. Specific objects of the API are outlined as follows:

- To assess partner Parliaments against international best practice for budget oversight
- Present a standard and simplified system for assessing the performance of selected Parliaments on budget oversight
- To demonstrate strengths and gaps of the parliaments to inform future PC program design
- To provide the status of capacity needs for parliament, and
- To stimulate Parliamentary progress towards achieving the goals of the program

### ***2.2 Approach and Methodology***

The 2012, round 2 API workshops for the Parliament of Kenya was held in Nairobi on 17<sup>th</sup> May 2012. It was facilitated by the Independent Country Assessors (ICA) for Kenya assisted by the Director, Parliamentary Budget Office. The workshop was attended by Members of Parliament representing different committees and parliamentary staff mostly from the Parliamentary Budget Office. The ICA made a presentation on the concept and scope of the API and assisted the participants to find a common understanding of the

purpose of the exercise and the roles each group member was expected to play. He also introduced and explained the primary tool kit (with questionnaire providing capacity level options) and its components. The Parliamentarians and staff produced a good participant's mix with experience and knowledge in the operations of Parliamentary business (see Participants list in Appendix 2). The assessment team formed and worked in smaller groups of five (5) where each group was given a task to deal with a cluster or clusters of indicators to carefully analyse and then assign a score. Each of the groups had a chairperson and a secretary who recorded the final verdict of the group. They discussed the issues extensively under review and scored each indicator on the provided score scale while generating evidence to support the ratings. During the exercise, each of the assessment groups was armed with the Kenyan Constitution, Fiscal Management Act and the National Assembly Standing Orders as key reference tools for the assessment.

The group assessment/exercise was then followed by a plenary session where each group representative presented group reports. Participants at the plenary discussed each of the group reports and reached a common understanding on the results of the various assessments.

**Validation with Key Stakeholders:** A validation workshop for parliament and civil society to allow different stakeholder groups to independently critique, confirm or otherwise and provide additional information to enrich the report was carried out. If a score was challenged and the reason proffered is accepted by the large majority, then the score is changed. Here it is the CSOs that validate the scores parliament has assigned for each indicator.

The self-assessment tool covered five core areas of representation, legislation, financial, oversight, institutional capacity and institutional integrity as they relate to Parliamentary budget oversight and other core functional areas that directly affect Parliaments' financial and oversight roles. The questions were both qualitative and quantitative, with the latter giving greater clarity of response. Instruments were designed to allow each area of Parliament's responsibility to be assessed separately or in turn. Questions required respondents to make judgment on a six-point scale as shown below:

0 = Not Applicable

2 = Disagree

3 = Somewhat Disagree

1 = Completely Disagree

4 = Somewhat Agree

5 = Agree

6 = Completely Agree

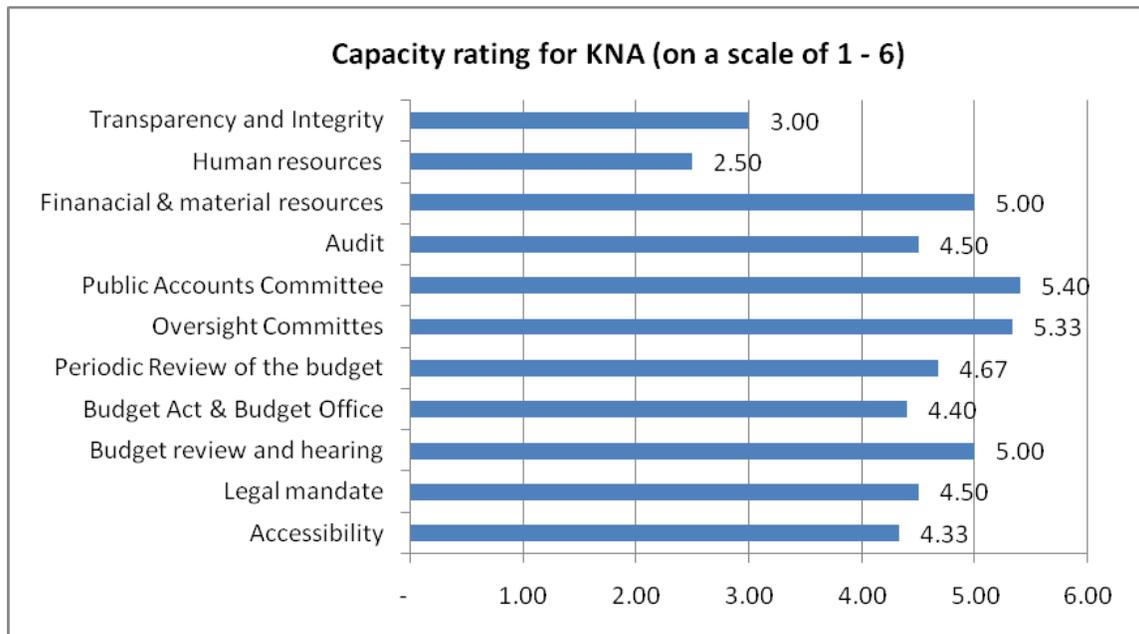
Both quantitative and qualitative data analysis techniques were used to analyze data collected. SPSS and Excel were employed in the quantitative data analysis which data are presented in tables and graphs with descriptive notes.

## CHAPTER 3: ANALYSIS AND PRESENTATION OF RESULTS

Parliaments in most jurisdictions have largely embraced progressive change towards effective engagement in their mandates of representation, legislation and oversight. Effective engagement with the public is being embraced as a way to make parliaments become more genuinely representative of their electorates, more accessible and accountable to them, more open and transparent in their procedures and more effective in their legislation and oversight of the executive branch of government.

Parliament's own assessment on a scale of 1-6 on different indicators is summarized in graph 1 below.

**Figure 1: Capacity Rating for Kenya National Assembly**



As can be seen from graph 1, the highest rating was recorded in the Oversight Function Mandate of Parliament with Public Accounts Committee scoring the highest marks of 5.40 closely followed by Oversight Committees at 5.33. The lowest rating score was on Human Resource area at 2.5.

Following is a detailed analysis and discussions on Parliament's own assessment of the individual thematic areas of its mandates.

### ***3.1 Representation***

Parliamentarians represent people of diverse socio-economic and political bearing. Therefore a democratically elected parliament must fulfill the characteristics of a best practice Legislature by ensuring equal opportunity and protection for all its members despite their social, economic and political diversity and affiliations. This fundamental mandate makes Parliament an embodiment of the will of the citizens and therefore provides the space for the expression of that will. Parliament provides a forum where issues of local and national importance are raised and debated and these debates often translate into policies.

Effective representation requires MPs to continually interact with their constituents in order to understand their views and perspectives and to use various legislative or parliamentary processes such as questions, motions, resolutions and other oversight mechanisms to bring these to the attention of implementing institutions for redress. Indeed, the quality of the interaction between the legislators and their constituents is a great determinant of the effectiveness of the representational role of the MPs. In many developing countries, MPs are expected to lobby for projects and financial support on behalf of their constituencies and to demonstrate their accomplishments to warrant a re-election. Overall, the effectiveness of the representational role of the MP and for that matter the Legislature depends to a large extent on the quality of the interaction between the constituents and MPs.

In assessing the extent to which Parliament represents the views of citizens in the budget process, the API looked at how accessible the legislature is to the public including associations and movements of civil society organizations (CSOs) in their work; and the efforts of the Legislature to get the public to understand its role.

#### **3.1.1 Accessibility**

The table below shows the assessed indicators and the average capacity rating of 4.33 on a scale of 0 to 6. The individual indicators of accessibility were however rated differently as explained here below.

**Table 1: Assessment of Accessibility**

<b>Accessibility</b>	<b>Own rating by parliament</b>
The legislature is open to citizens and the media.	6
The Legislature has a non-partisan media relations facility.	6
The Legislature has mechanisms to promote public understanding of the work of the Legislature.	2
The Legislature provides timely information to the public on the budget	4
The Legislature promotes citizens' knowledge and understanding of the role of MPs in the budget Process.	4
The Legislature fosters sound relationship between Parliament, CSOs and other related Institutions	4
<b><i>Average capacity rating</i></b>	<b>4.33</b>

- i. **Kenya Legislature is open to the public and the media.** This is grounded in the National Assembly Standing Orders and Speakers Rules which provide for public and Media access including Committees during sittings. In addition, Parliamentary proceedings are broadcast live on national television. Parliament also has a website – [www.parliament.go.ke](http://www.parliament.go.ke) – through which its verbatim records (Hansard) can be accessed for free. Schedules of parliamentary business (Order Papers) are also available for the public through the website.
- ii. **Legislature has a non-partisan media relations facility.** In May 2009 Kenya parliament launched a vibrant and fully equipped media centre with internet facility that enables journalists to file their stories to their respective newsrooms. The media centre facilitates parliamentarians irrespective of their political affiliations to have press conferences in a designated room.
- iii. Even though some **forms of mechanisms exist to promote public understanding of the legislature**, the parliamentarians' assessment is that they have not achieved the desired goals. The existing outreach programme, Kenya parliament magazine, access to the parliament public gallery, and the existing public relations office have failed to promote public understanding partly because they are not well structured. It was generally agreed that there is poor public awareness on the work of Legislature often

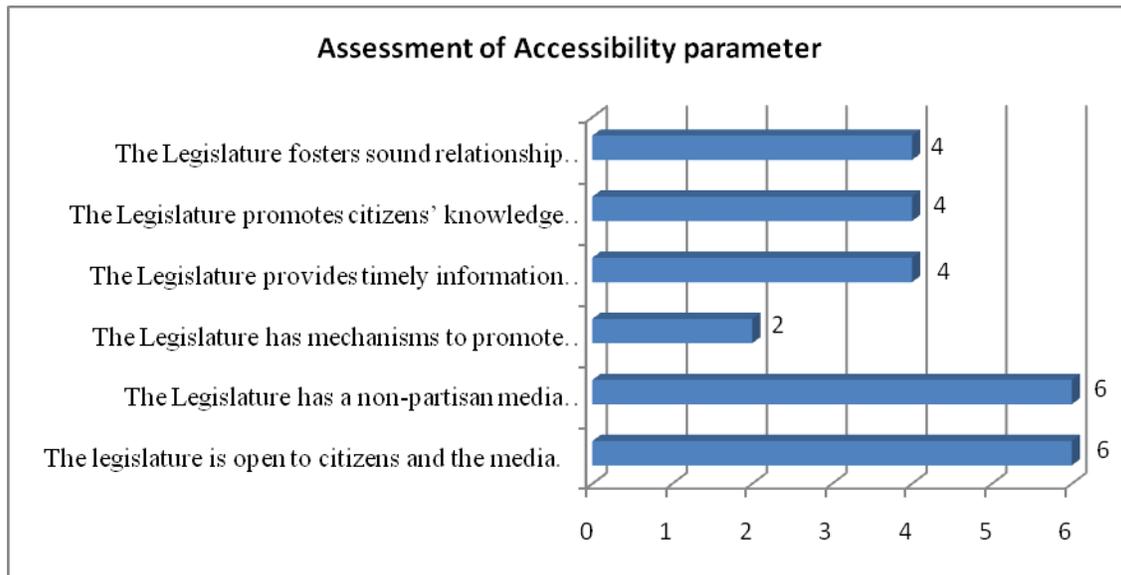
resulting in misguided accusations and blame. Further, this shortcoming was demonstrated during public hearings<sup>3</sup> (the new phenomena introduced by the Constitution to be undertaken by parliamentary Committees on critical issues including the national budget). To this extent Parliament is in clear need of increasing capacity in the areas of promoting citizens understanding of the role of the Legislature by putting in place sound mechanisms including publications in the media and radio communications in addition to the website information. There is a great need to institute and continuously update workable mechanisms strengthening public relations office or creating a robust communications unit within the parliament's structure. There is also need to strengthen and operationalize the existing communication strategy

- iv. The three aspects of whether the **Legislature provides timely information to the public on the budget; whether the Legislature promotes citizens' knowledge and understanding of the role of MPs in the budget Process; and whether Legislature fosters sound relationship between Parliament, CSOs and other related Institutions**; all recorded a rating of 4. This is an indication that steps taken to reach out by Parliament are insufficient. The insufficiency in filling the gaps were found to be as a result of unstructured way of relating to the CSOs and other Institutions and missing public education function. To this extent Parliament is in clear need of increasing capacity in the areas of promoting citizens knowledge and understanding the role of Members of Parliament in the budget process. Parliament should facilitate the Budget Office to coordinate public education on the role of MPs in the budget process. Equally, a structured way for example a memorandum of understanding should be put in place to guide and foster sound relationship between the Legislature and CSOs.

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<sup>3</sup> Parliamentary Committee Meetings conducted outside parliament where MPs engage the public on certain issue of public interest. The feedbacks from such public meetings are consequently relayed to parliament through Committee reports.

**Figure 2: Assessment of Accessibility**



### ***3.2 Legislative Function:***

The Constitution of Kenya vests the supreme duty of law making on Parliament. The law making responsibility is performed by the Legislature by making new laws, repealing existing laws and amending certain existing laws. Legislation can either be initiated by the Executive through a Public Bill or by a legislator in his/her private capacity through a Private Members Bill. Whether initiated by the Executive or a Private Member, it is the responsibility of the Legislature to pass such a Bill into law irrespective of the source of the legislative power (whether vested by the constitution or by an Act). The Legislature's control of the purse (resources) is expressed in its power to pass the Appropriations Act which allocates resources to the Executive and other institutions of the State.

For this noble duty to be effectively carried out, and recognizing the complexities of modern society and the technicality of the legislative process, Parliaments obviously require knowledge and expertise in vast array of technical areas to enable them fulfill their mandate. The index assessed all the factors that affect the effectiveness of the Legislature in executing its legislative function. The assessment also covered Parliaments' legal mandate with emphasis on the source of the authority of the legislative

power, whether the public has access to input into the legislative process and whether the Legislature has a mechanism to monitor the impact of laws passed.

### 3.2.1 Legal Mandate

The Kenya Parliament derives its legal mandate from the Constitution, various Acts of Parliament, various subsidiary legislations and the Standing Orders. The assessed indicators are shown in the table below with the average capacity rating of 4.5.

**Table 2: Assessment of Legal Mandate**

<b>Legal Mandate</b>	<b>Own rating by parliament</b>
The Mandate of Legislature regarding Budget making and oversight including the Appropriations Act is properly grounded in Law	5
The Legislature has power to amend the Appropriations Bill	6
Adequate opportunities exist for public input into the Legislative Process.	5
Adequate mechanisms exist to track legislations that have been enacted	2
<b><i>Average capacity rating</i></b>	<b>4.5</b>

- i. **The Mandate of Legislature regarding Budget making and oversight including the Appropriations Act is properly grounded in Law.** The Kenyan Constitution 2010 grants parliament immense powers regarding the budget process and approval. This is further expounded on the Public Finance Management Act 2012<sup>4</sup> and the Standing Orders 2008.
- ii. **The Kenya Legislature has power to amend the Appropriations Bill.** For a long time in the history of Kenya, the Independent (Old) Constitution<sup>5</sup> limited Parliament’s budget amendment powers. In section 48, for instance, there are provisions that the Legislature cannot propose new changes of the Consolidated Fund. Further, members could not propose changes to tax laws. The new Constitution, on

<sup>4</sup> The Public Finance Management Bill 2012 was in the legislation process by the time of this assessment. Parliamentarians wanted its implementation to be fast tracked to align existing laws to the Constitution. It was finally passed and assented to in July 2012.

<sup>5</sup> Independent Constitution refers to the Constitution Kenya had at independence in 1963 and which was amended severally with the effect that weakened parliament and centralized power under the executive. It was replaced with a new constitution in October 2010.

the other hand, provides for a significant shift from budget approving parliament to budget making. But even before coming into effect of the Constitution, Fiscal Management Act was enacted and became operational in 2009. It grounded parliament in the budget process by providing enhanced budget scrutiny and oversight powers. The new Standing Orders of 2008 further granted parliament more powers on the budget process. From then on parliament has been able to exert itself in the budget process including amending the Appropriation Bill<sup>6</sup>. The amendment of the Appropriations Bill 2012 has therefore demonstrated that Parliament now has unlimited powers to do so by reductions and additions (readjustments of the votes allocations) without necessarily seeking consent from the Executive.

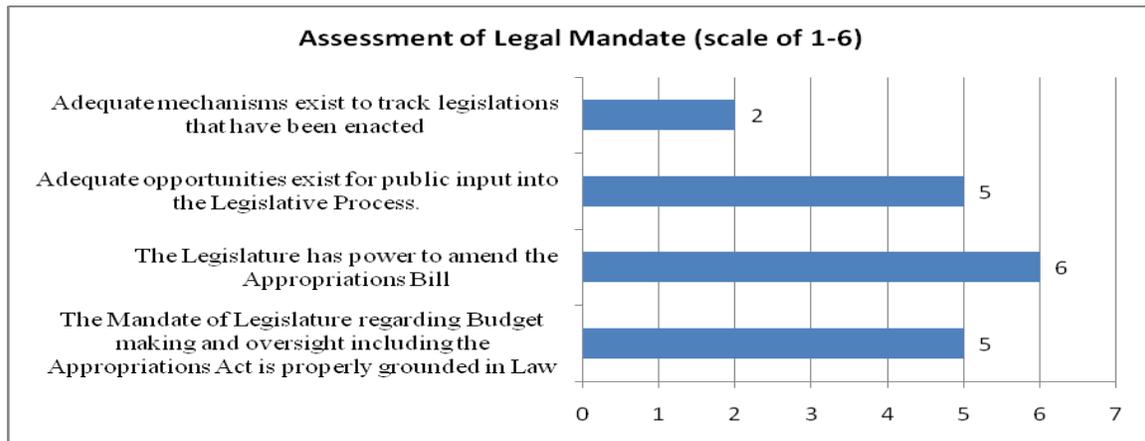
- iii. **Adequate opportunities exist for public input into the Legislative Process.** Self assessment by parliamentarians indicates that adequate and publicized opportunities exist for citizens input into any legislative process. The Constitution 2010 has express provisions requiring public consultations by parliamentary committee during the budget making and other issues of public interest. It further provides that issues from the public representations be considered when the committee makes its report for consideration by Parliament. The Kenya Parliament has consequently utilized this opportunity and conducted public hearings in 2011 and 2012. The reports of the same have been laid in the National Assembly and some of the amendments affected in the Appropriations Bill 2012 were in furtherance of the requests by the public during such hearings. However, some challenges such as time limitations in publicity of budget information, coverage of public consultations, inadequacy of parliamentary staff, insufficiency of Parliamentary facilities, limited knowledge of the public to make inputs to the budget and civic education still exist in the line of public input into the legislation process.
- iv. It was found that **some mechanism exists for the Legislature to track legislations that have been enacted**, but this is not adequate and needs to be relooked. The Parliamentary Committee on Implementation whose mandate is largely to track

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<sup>6</sup> Appropriation Bill 2012 was actually amended by Parliament on Jun 28<sup>th</sup> on the recommendations of Budget Committee.

legislations that have been passed for implementation is largely dormant making the mechanism inactive. The Committee should therefore be reactivated by clear focus to undertake this important function.

**Figure 3: Assessment of Legal Mandate**



From the above graph, it is evident that the Kenya Parliament ranks strongly on three of the four indicators relating to the legal mandate. This is a good indication given that the parliamentary legal mandate is anchored in the Constitution. This mandate enables the legislature to fulfill its democratic function of rule-making in addition to representation.

The only lowly ranked indicator, lack of mechanism to track legislation, implies failure by parliament to implement rules management process which is a necessity in smooth rule function and strengthening.

**3.3 Financial Function:**

Parliament’s financial function is one of the major responsibilities of the Legislature. Parliament is the custodian of public money and as such approves appropriations and taxation measures to become effective as required by a majority of democratic constitution. The power of the purse, as it is referred to in parliamentary parlance, implies that it is the Legislature that controls the resources/finances of the State and therefore its responsibility to disburse such resources. As representatives of the people, it is the

Legislature that must approve of taxes and also determine how those taxes are expended. Thus the financial function transcends the mere allocation of funds to encompass a general understanding of economic indicators and how decisions of the Legislature such as increases in taxes and the imposition of levies impact on economic activity generally. The effective and efficient execution of this responsibility will therefore determine the direction of the economy and the country's ability to reduce poverty and to achieve targets such as the MDGs.

The API assessed the strengths of Kenya Legislature on the execution of this financial function. This assessment particularly examined the extent of involvement of the Legislature in the budget process and whether the Legislature can introduce changes to the proposals submitted by the Executive and the legal foundation of the Legislature's involvement in the budget process if they exist. It further assessed availability of technical expertise to the Legislature. Of particular interest are Budget Review and Hearing, Existence of a Budget Act and a Budget Office; and Periodic review of the budget once approved by Parliament.

### **3.3.1 Budget Review and Hearings**

Under this category the interest was to assess the Legislative scrutiny of the Government's budget proposals in committees and through debates on the floor of the House to the passage of the Appropriations Act. The table below shows details of the self assessed parliament's average capacity rating of 5.0. Individual indicators are also shown.

**Table 3: Assessment of the budget review and hearing indicators**

<b>The Budget Review and Hearing</b>	<b>rating</b>
The Legislature has enough time to review of the Budget	4
The Legislature has a Budget/Estimates /Finance Committee exists with the sole mandate of reviewing the budget.	6
The Budget/Estimate/Finance Committee and/or sector Committees hold public hearings on the budget where evidence from the executive and the public is taken.	5
The Legislature has an effective and well documented process for citizen participation in the Budget process which is known to the public.	4
The Legislature has authority to amend the budget presented by the Executive including spending and revenue proposals	5
The Legislature has the power to send back proposed Budget to the Executive for review.	6
The Legislature is able to make binding amendments on spending and revenue proposals.	5
The Appropriations Act approved by the Legislature has details on all allocations to MDAs.	5
<b><i>Average capacity rating</i></b>	<b>5</b>

- i. **The Legislature has enough time to review of the Budget.** The assessment was that a gap exists and the Legislature does not have enough time to review the budget. Parliamentarians indicated that the two months period provided is insufficient and there is need to review relevant laws to give Parliament at least four months to review the budget.
- ii. **The Legislature has a Budget/Estimates /Finance Committee with the sole mandate of reviewing the budget.** Kenya Parliament has a Budget Committee created by an Act of Parliament and Standing Orders. The Committee core mandate is to review the budget in addition to other oversight functions. The assessment resulted in award of full score of 6.
- iii. **The Budget/Estimate/Finance Committee and/or sector Committees hold public hearings on the budget where evidence from the executive and the public is taken.** The Budget Committee with membership from all departmental committees hold annual budget hearings where evidence is taken and a report filed to the House. The assessment rated it 5 and noted the challenge of time constrains during such

hearings and recommended that in future time for the consultations need to be extended and more centres should also be added to extend the outreach.

- iv. **The Legislature has an effective and well documented process for citizen participation in the Budget process which is known to the public.** The assessment rating was 4. Parliamentarians noted that even though the process exists it is inadequate due to insufficient publicity. They proposed that clear guidelines need to be provided for public participation in addition to conducting civic education to sensitize the public.
- v. **The Legislature has authority to amend the budget presented by the Executive including spending and revenue proposals.** The assessment rated this 5 by agreeing that legislature has authority. It is worth noting that this authority has always been exercised with regard to revenue proposals which are annually amended through the Finance Bill. Amendments to the expenditure side remained weak for a long time due to limitations by the Old Constitution. However, in recent times the situation has changed with the new Constitution and the Legislature actually amends Executive expenditure proposal.
- vi. **The Legislature has the power to send back proposed Budget to the Executive for review.** This assessment was given the highest rating of 6. Parliament through the budget scrutiny effected by Budget Committee has effectively resulted in the sending back proposed budget by the Executive. This has been a strong indication that parliament no longer plays rubber stamping role to the Executive on matters of national budget.
- vii. **The Legislature is able to make binding amendments on spending and revenue proposals.** The assessment rating is 5 meaning the Legislature is able to make binding amendments on expenditure and revenue proposals.
- viii. **The Appropriations Act approved by the Legislature has details on all allocations to MDAs.** The assessed rating is 5. The parliamentarians noted that even though the entire MDAs budget is included in the Appropriations law, parastatals

(agencies) and NSIS budgets are approved as one-line items within their principal ministries. This denies Legislators the opportunity to scrutinize the details of such agencies budgets.

### 3.3.2 Budget Act and Budget Office

Under this category the interest was to assess the existence of a Law or set of Laws that define the roles of all actors in the budget process, defines precisely the budget calendar and in addition prescribes an office in parliament charged with the responsibility of providing parliament with informed analysis of budget proposals. The average parliament's own assessed score for this thematic area was 4.40. The individual aspects of budget act and budget office however faired differently as tabulated below.

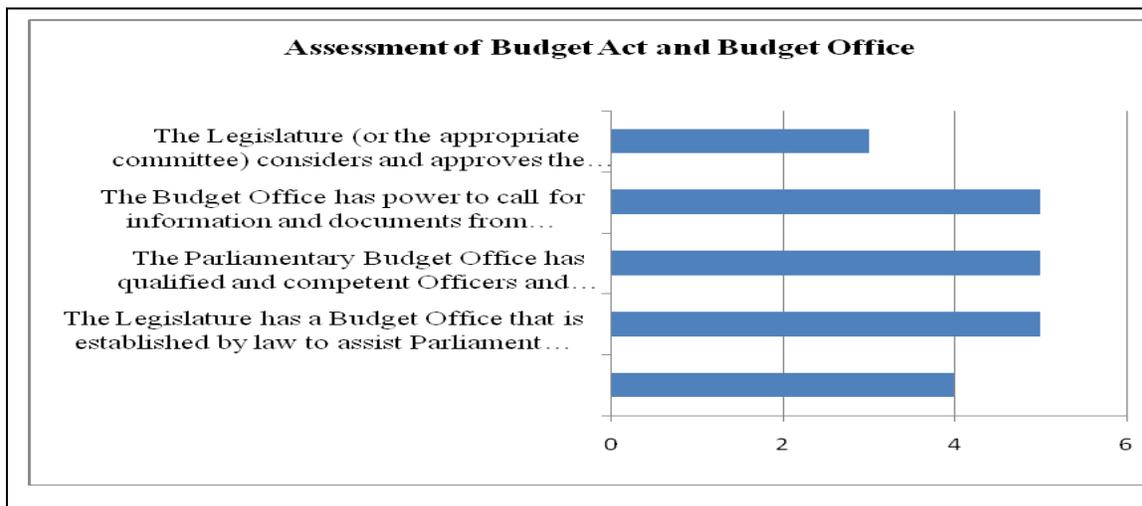
**Table 4: Assessment of Budget Act and Budget Office**

<b>Budget At and Budget Office</b>	<b>rating</b>
There is a Budget Act that clearly defines a role for the Legislature in the budget process.	4
The Legislature has a Budget Office that is established by law to assist Parliament undertake a thorough review of the draft budget.	5
The Parliamentary Budget Office has qualified and competent Officers and the Office is equipped to efficiently and effectively assist Parliament with informed analysis.	5
The Budget Office has power to call for information and documents from Government Departments and the private sector and in good time (Power of Subpoena).	5
The Legislature (or the appropriate committee) considers and approves the budget estimates for Defence and Intelligence Services and is given full disclosure on the budget estimates/figures.	3
<b><i>Average capacity rating</i></b>	<b><i>4.40</i></b>

- i. **There is a Budget Act that clearly defines a role for the Legislature in the budget process.** The Fiscal Management Act, 2009 clearly spells out the role of Legislature in the budget process. Standing Orders also spells out the role of parliament in the budget process. The assessment was however rated at 4 as parliamentarians noted that the Public Finance Management Bill 2012 was still in the enactment process. They required that the enactment of the bill be fast-tracked to spell out the comprehensive PFM law that should include the devolved structure as spelt out in the Constitution.

- ii. **The Legislature has a Budget Office that is established by law to assist Parliament undertake a thorough review of the draft budget.** Kenya has a Parliamentary Budget Office established through the Fiscal Management Act. The Office has been in existence from May 2007 and provides parliamentarians with timely and non-partisan information concerning the budget and economy. This indicator was rated 5 while parliamentarians noted that there is need for more staff in the Office. Continuous capacity building was also recommended.
- iii. **The Parliamentary Budget Office has qualified and competent Officers and the Office is equipped to efficiently and effectively assist Parliament with informed analysis.** Parliamentarians rated this indicator 5 and noted that more equipment/facilities and resources are still required to make the Office do even better.
- iv. **The Budget Office has power to call for information and documents from Government Departments and the private sector and in good time (Power of Subpoena).** This indicator was rated 5 with a rider that even though this authority is granted by the Constitution, it should expressly be provided in the PFM law that was in the process of enactment as at May 2012.
- v. **The Legislature (or the appropriate committee) considers and approves the budget estimates for Defence and Intelligence Services and is given full disclosure on the budget estimates/figures.** Parliament approves the budget estimates for defense and NSIS. It was noted that some information on defense budget is available but NSIS do not disclose their budget information details. Parliamentarians however noted that NSIS information should be treated with understanding given the nature of their work. This indicator was rated 3, the lowest under this sub function.

**Figure 4: Assessment of Budget Act and Budget Office**



### 3.3.3 Periodic Review of Budgets

Under this category the interest was to assess the existence of analytic reviews undertaken by government during the course of the financial year which are reported to parliament. The assessed own parliament rating average capacity was 4.67 with the individual indicators fairing differently as tabulated below.

**Table 5: Assessment of Periodic Review of the Budget**

<b>Periodic Review of the Budget</b>	<b>rating</b>
The budget is reviewed by the Executive periodically during implementation (Number of reviews in a year and types).	5
All reviews of the budget are presented to the Legislature and approved by the Legislature.	5
Adequate time is allocated for the consideration of the reviewed budget both at plenary and at committees	4
<i>Average capacity rating</i>	<b>4.67</b>

- i. **The budget is reviewed by the Executive periodically during implementation (Number of reviews in a year and types).** Parliamentarians rated this 5 and noted that the Executive reviews the budget every quarter on annual basis. The Quarterly Economic and Budgetary Reviews are published by Treasury and submitted to

parliament in addition to being availed at the Treasury website – [www.treasury.go.ke](http://www.treasury.go.ke). Members of Parliament however noted that the reports are, in most cases, not published on time.

- ii. **All reviews of the budget are presented to the Legislature and approved by the Legislature.** Parliamentarians rated this 5 by agreeing that all reviews of the budget are presented to the Legislature. They however noted that some gap exists since there are no legal requirements that these reviews be approved by the Legislature; thus, they are mostly for information. Parliamentary Committees such as Budget Committee usually uses the analysis done by Budget Office on the reviews and use the information to interrogate the Executive (Ministry of Finance) on budget implementation.
- iii. **Adequate time is allocated for the consideration of the reviewed budget both at plenary and at committees.** This was rated 4 by parliamentarians; being the lowest in this category. They noted that there have been delays by the executive in presentation of the Supplementary Budget. They recommended that clear timelines should be provided.

### ***3.4 Oversight Function***

Under this function, attention was required on the parliamentary review, monitoring and supervision of government and public agencies including the implementation of policy and legislation to ensure public policy reflects and meets citizens' needs and also that agreed policies are properly implemented and delivered to target citizens. Parliamentary oversight broadly involves monitoring of the Executive's actions by the representatives of the citizens. It is the cornerstone of parliamentary democracy and an indicator of good governance; its purpose is to hold the government accountable for the policies that it implements. Effective parliamentary oversight is one of the tools used by the Legislature to maintain a balance of power among the three arms of Government and to assert the interests of ordinary citizens particularly against the decisions of the Executive.

The committee system is a key tool for oversight. It breaks down the work of Parliaments into small chunks based on themes and subject matter, allowing parliamentarians to develop expertise and conduct thorough examinations of proposed legislations, Executive actions and policies and Executive expenditure. Committees are often referred to as “the workhorses” of Parliament, as the management of committee meetings, information gathering, organization of hearings, and preparations that they must undertake are often time-intensive tasks. As key organs of Parliaments, committees require highly qualified staff that is familiar with parliamentary procedures and practices and the subject to which the committee has oversight. The composition of committees is another essential element of the effective functioning of the committees and therefore effort is often made to ensure that their membership reflects or represents the different shades of opinion within the Legislature.

The API assessed the existence and effectiveness of relevant oversight parliamentary committees, their powers and the resources available to them. It also examined the existence and effectiveness of the Public Accounts Committee and the Auditor-General, the powers and responsibilities of the two bodies and whether they have requisite resources to enable them deliver. This also includes the quality of interaction between the two bodies on one hand, and between the two bodies and the public on the other hand.

### **3.4.1 Oversight Committees**

Under this category, interest was placed on parliamentary committees tasked to scrutinize implementation of the budget across government departments. Often these are permanent committees like the budget or finance committee which corresponds to the Ministry of Finance/Treasury, which both authorize the budget bill and scrutinizes reports on its implementation on the one hand and public accounts committee that scrutinizes the budget ex-post. The table below shows the assessed indicators with parliament’s own assessed capacity rating averaging 5.33. The individual indicators were however rated differently as explained here below.

**Table 6: Assessment of Oversight Committees**

<b>Oversight Committees</b>	<b>rating</b>
The budget oversight function of the Legislature is performed by all sector related committees and other special committees	5
Legislative Oversight Committees have strong investigative powers over budgetary issues.	5
Legislative Oversight Committees exercises sufficient oversight of the expenditures of State Owned Enterprises	6
Sufficient mechanisms exist for Oversight Committees to obtain information from the Executive during investigations.	6
Oversight Committees have adequate powers in law to request and receive updates on actions taken by the Executive on the Committees'/ Parliament's recommendations.	6
Oversight Committees are adequately resourced to undertake their activities.	4
Minority/ Oppositions parties play an effective role in Oversight Committees.	0
<b><i>Average capacity rating</i></b>	<b>5.33</b>

- i. **The budget oversight function of the Legislature is performed by all sector related committees and other special committees.** Parliamentarians assessed this indicator at 5 and noted that special committees such as Budget Committee perform the function throughout the budget process while sectoral committees are involved during approval stage. They recommended that the sector related committees should be involved through the whole process of budget.
- ii. **Legislative Oversight Committees have strong investigative powers over budgetary issues.** Parliamentarians rated this 5 agreeing with the statement. They however noted that the powers are there in the statutes but not currently exhaustively utilized. They recommended that the committees need to make use of the powers.
- iii. **Legislative Oversight Committees exercise sufficient oversight of the expenditures of State Owned Enterprises.** The Public Investment Committee (PIC) exercises this function adequately; thus this indicator was rated 6. The group recommended that PIC should deal with current issues and not backlog.

- iv. **Sufficient mechanisms exist for Oversight Committees to obtain information from the Executive during investigations.** This was rated 6. The assessment noted that power exist in the statute-Powers and Privileges Act and Auditor-General's Office. The group recommended that the Auditor –General should begin carrying out value for money audit. It was further recommended that the relevant statutes Powers and Privileges Act should be amended to make default attract stiffer penalties as this would help enforce compliance.
- v. **Oversight Committees have adequate powers in law to request and receive updates on actions taken by the Executive on the Committees'/ Parliament's recommendations.** This was rated 6 on the knowledge that Implementation Committee is in place. The group however noted that the current Implementation Committee has been largely dormant since its formation in 2009. They recommended that the Committee should become active and focused.
- vi. **Oversight Committees are adequately resourced to undertake their activities.** Parliamentarians assessed this indicator at 4 noting that the oversight committees are not adequately resourced to undertake their activities. They recommended that more budgetary allocations should be availed.
- vii. **Minority/ Oppositions parties play an effective role in Oversight Committees.** This was rated 0, that is not applicable. The current Kenya parliament (2012) has no official opposition party. This scenario arose as a result of the National Accord and Reconciliation Act, 2008 and the Constitutional amendment in early 2008 which created a coalition government between the major political parties. This arrangement was a settlement agreement overseen by the International Community after the chaos that erupted in Kenya immediately after the disputed general elections held in December 2007.

### 3.4.2 The Public Accounts Committee

Public Accounts Committee is one of the traditional oversight committees of Parliament that scrutinizes the budget ex post. Audited government accounts and financial statements constitute the main raw materials for the work of the Public Accounts Committee. The table below shows the assessed indicators and the average capacity rating of 5.33. The individual indicators were however rated differently as explained here below.

**Table 7: Assessment of Public Accounts Committees**

<b>Public Accounts Committee (PAC)</b>	<b>Rating</b>
The Legislature has a Public Accounts Committee that examines the expenditures of Government.	6
The Public Accounts Committee is chaired by a member who does not belong to the party in Government.	
The PAC has power to subpoena witnesses and documents and this is backed by law.	6
All who use public funds including Ministers are obliged to appear before the PAC when summoned.	6
The PAC is required by law to hold its proceedings in public.	6
The PAC reviews all reports of the Auditor General and in a timely manner.	6
The PAC can initiate independent investigation into any matter of public interest.	6
The Executive is bound by law to implement the recommendations of the PAC and this is strictly enforced.	5
Adequate mechanisms exist for the PAC to track the implementation of its recommendations and this can be accessed and verified by the public.	5
The PAC is adequately resourced to undertake its activities.	4
The PAC collaborates freely with other anti-corruption institutions without let or hindrance.	4
<b><i>Average Capacity Rating</i></b>	<b>5.40</b>

- i. **The Legislature has a Public Accounts Committee that examines the expenditures of Government.** Public Accounts Committee is established by the Standing Orders and examines the expenditures of Government. It is one of the longest existing committees of the House. Parliamentarians rated this indicator 6. There were however some suggestions that Kenya can go a level higher, as is the case

in some jurisdictions, to establish PAC through an act of parliament –not just the Standing Orders as is the current situation.

- ii. The Public Accounts Committee is chaired by a member who does not belong to the party in Government. The situation in Kenya is such that the chairperson of the PAC has traditionally been reserved for the leader of official opposition party in the House; and where there is no official opposition, a member elected by the committee from a party outside government. However, in the 10<sup>th</sup> parliament (current), there is no official opposition party (due to existence of a coalition government), thus the traditional PAC chairperson rule was compromised. This indicator was therefore rated '0', or not applicable.
- iii. **The PAC has power to subpoena witnesses and documents and this is backed by law.** Kenya parliament has Powers and Privileges Act which empowers PAC and all other committees to summon witnesses as they require. Thus the indicator was rated 6. The group however recommended that the relevant statutes including the Powers and Privileges Act should be amended to make default attract stiffer penalties as this would help enforce compliance.
- iv. **All who use public funds including Ministers are obliged to appear before the PAC when summoned.** The PAC summons any public officers to appear before it including Permanent Secretaries and Ministers. This was rated 6. These are supported by the Powers and Privileges Act and the Standing Order.
- v. **The PAC is required by law to hold its proceedings in public.** PAC may hold its proceedings in public if the chairperson and members so decide. The public however cannot make inputs during such proceedings. The Powers and Privileges Act and the Standing Order provide for this. Parliamentarians rated this indicator 6.
- vi. **The PAC reviews all reports of the Auditor General and in a timely manner.** Parliament's own assessment was a score of 6. PAC is responsible for examining all the reports prepared by the Auditor General after the audit of government ministries, departments and state corporations. The Committee then prepares a report with

comments and recommendations or formulates a draft resolution by parliament. This is done to help shorten and focus the subsequent debate in the plenary. There was a time challenge in that consideration of the A-G report had not been done in a timely manner. The current PAC has however cleared the backlog and is up to date in its reviews of Audit Reports.

- vii. **The PAC can initiate independent investigation into any matter of public interest.** The Standing Orders empowers PAC to initiate independent investigation into any matter of public interest but this is subject to the approval of the House. In carrying out its work, the committee can call upon the A-G to audit any particular accounts. The cases in question that PAC initiated include the *Maize sale scandal in 2009, the Sale of Grand Regency scam in 2008, the Anglo leasing scam*, among others. This was rated 6.
- viii. **The Executive is bound by law to implement the recommendations of the PAC and this is strictly enforced.** According to parliamentarians the Executive is bound by law to implement the recommendations of the PAC but this is rarely enforced. They rated this indicator 5 and recommended that parliament should put stiffer penalties on non enforcement of the recommendations by the executive. It is important to note that the work of the Oversight Committees and the Auditor General will only have practical value if the executive implements the recommendations of the Committees
- ix. **Adequate mechanisms exist for the PAC to track the implementation of its recommendations and this can be accessed and verified by the public.** Parliamentarians rated this indicator 5 and noted that the Implementation Committee and the reporting requirements under FMA, 2009 are good mediums for tracking the implementation of PAC recommendations. These mechanisms however cannot be accessed and verified by the public.
- x. **The PAC is adequately resourced to undertake its activities.** Parliamentarians rated this indicator 4 and noted that budgetary constraints are major hindrance to PAC

mandates. They recommended that more budgetary allocations should be extended to PAC.

- xi. **The PAC collaborates freely with other anti-corruption institutions without let or hindrance.** PAC has an informal collaboration with a limited number of anti-corruption institutions including APNAC and a parliamentary caucus that crusades against corruption. Parliamentarians rated this indicator 4 and recommended that PAC should enter into more structured collaborations without compromising independence.

In conclusion, Kenya has a strong PAC with powers to summon all public officers including Minister. This parameter has been assessed with the overall highest mean score rate of 5.40 even though the element of collaboration with anti-corruption institutions is still weak.

### **3.4.3 Audit Process**

This is a key component of the PFM since it is through the audit process that parliament determines whether spending by government ministries, departments and agencies was in line with the budget approved by the Legislature. Also important is whether the spending adhered to the expected standards and whether value for money is obtained. Thus, this parameter revolves around the institutional capacity, mandate, procedures and processes by which supreme audit institutions produce the audit reports for the scrutiny of parliament. The table below shows the assessed indicators and the average capacity rating averaging of 4.50. The individual indicators of Audit parameter were however rated differently as explained here below.

**Table 8: Assessment of Audit Process**

<b>Assessment of Audit</b>	<b>Rating</b>
The Auditor General is an officer of Parliament.	1
All reports of the Auditor General are submitted to the Legislature.	6
The Legislature receives regular and timely reports from the Auditor General.	4
The reports of the Auditor General are deemed public immediately they are issued by the Auditor General	6
The Legislature can request the Auditor General to conduct special audits on its behalf.	6
The Auditor General has adequate resources and legal authority to conduct audits without any hindrance.	4
<b><i>Average capacity rating</i></b>	<b><i>4.50</i></b>

**The Auditor General is an officer of Parliament.** Under the new Kenya Constitution, the Auditor General is an independent Office not directly under any arm of government. Thus, the Auditor General is not directly under parliament. Parliamentarians however noted that they are comfortable with this constitutional arrangement. They rated this indicator 1.

**All reports of the Auditor General are submitted to the Legislature.** This was rated 6 with a note that it is a constitutional requirement that all the reports of the Auditor General are submitted to the Legislature. This requirement is provided for both in the Constitution and the Audit Act, 2003.

**The Legislature receives regular and timely reports from the Auditor General.** This indicator was rated 4 with a note that timeliness of receiving audit reports should be improved. The Audit Act stipulates that the audit report should be ready six months after the end of a financial year. This implies that audit reports should be ready on 31<sup>st</sup> December given that the financial year ends on 30<sup>th</sup> June. The audit reports are normally received later than that expected time. The group recommended that resource capacity (funds and staff) of the Auditor General’s Office should be enhanced to ensure they produce work on timely basis.

**The reports of the Auditor General are deemed public immediately they are issued by the Auditor General.** Parliamentarians scored this indicator 6 completely agreeing

that the reports are deemed public immediately on release. The reports are published by the Government press and immediately become available to any body interested. Copies are submitted to parliament for Legislatures and soft copies are uploaded in the website of the Kenya National Audit Office – [www.kenao.go.ke](http://www.kenao.go.ke) .

**The Legislature can request the Auditor General to conduct special audits on its behalf.** Parliamentarians rated this indicator 6 completely agreeing that such requests can be made. In exercising its oversight, parliament can request the A-G to conduct special audits at any time on its behalf as provided for in the Public Audit Act 2003.

**The Auditor General has adequate resources and legal authority to conduct audits without any hindrance.** Kenya National Audit Office (KENAO) is will need some form of resources – human and funds – to be able to conduct its audit in a timely manner.

### ***3.5 Institutional Capacity of the Institution of Parliament***

Effectiveness of any Parliament, like all other institutions, depends largely on the resource<sup>7</sup> availability at its disposal. The human and material resources employed by parliament as a means of effective organization of its business in accordance with democratic values and the performance of parliament's legislative and oversight functions in a manner that serves the needs of the whole population. Existence of a strong, dynamic, and effective Parliament is directly related to existence of a parliamentary administration of equal quality. The organization of the parliamentary administration is a key component of a successful parliamentary institution. The internal organization and the provision of modern facilities and improved information technology (IT) system is essential for building a strong Parliamentary institution. With the development of the internet and broadband technologies, Parliaments can connect to a global network of information that assist legislative research, improving the quality of parliamentary debates and the quality of legislation and public policy generally.

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<sup>7</sup> Resource refers to material, financial and human capital available to the institution to carry out its mandates.

Parliamentary information management requires documenting the activities of Parliament and ensuring the availability of all relevant information in good time to people who seek such information. This is one of the key responsibilities of the parliamentary administration. Finally, informed legislation and decision-making relies on a Parliament having strong policy analysis and research capacities.

Parliament’s institutional and legal framework sets forth its powers in relation to those of the Executive and Judiciary. It also specifies the tools and methods that a Parliament may use to execute its mandate. With adequate institutional resources Parliaments are more likely to achieve the objective of their mandate for the betterment of citizens. Therefore, the API assessed the institutional capacity of Parliament, which includes access to resources (whether human, material, and financial) to support Kenya Legislators in the budget process.

### 3.5.1 Financial and Material Resources

These are key component of the Legislative effectiveness since they determine the tools and human capital that will be available to propel the Legislators work. The table below shows the assessed indicators with parliament’s own assessed capacity rating averaging 5.0. Coincidentally, all the individual indicators of financial and material resources parameter were rated 5 as explained here below.

**Table 9: Assessment of Financial and Material Resources**

<b>Financial and Material Resources</b>	<b>rating</b>
The Legislature is financially independent; it prepares its annual budget and the Executive cannot vary it.	5
The Legislature has adequate logistics including office space to enable it perform its functions.	5
MPs have a constituency development fund that is effectively managed.	5
The Legislature has a structured system for receiving technical and advisory assistance from external sources.	5
<i>Average Capacity Rating</i>	<b>5</b>

- i. **The Legislature is financially independent; it prepares its annual budget and the Executive cannot vary it.** The Kenya constitution empowers Parliamentary Service Commission<sup>8</sup> to make its own budget and submit to National Assembly for approval together with those on national government and judiciary. This indicator was rated 5 and parliamentarians noted that parliament should fully utilize its constitutional power to be the overall body on budget matters. This new constitution provision is a departure from the past where the budget of parliament was determined by the Ministry of Finance.
- ii. **The Legislature has adequate logistics including office space to enable it perform its functions.** Parliamentarians agreed that there was adequate logistics and facilities and rated this indicator 5. They recommended that it would be necessary to have a more centralized office space for staff since staffs were operating from five different buildings making it strenuous for Members to seek some assistance.
- iii. **MPs have a constituency development fund that is effectively managed.** Parliamentarians have a Constituencies Development Fund (CDF) that is used for development projects in their respective constituencies and is managed jointly by the legislature and the parliamentarians through CDF Board. According to the parliamentarians the CDF is very popular with the citizens. They however recommended that the CDF legislative structure should be amended in line with the new Constitution.
- iv. **The Legislature has a structured system for receiving technical and advisory assistance from external sources.** Kenya parliament Standing Orders provide for technical and advisory assistance from external sources. The office of the clerk presently facilitates this through the coordination of technical departments like Budget Office, Legal Office and Research Services. It was recommended that a more structured way should be established in line with the best practice.

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<sup>8</sup> Parliamentary Service Commission is the administrative arm of the Kenya Parliament

### 3.5.2 Human Resources

Adequate number of personnel with the right job skills sets is paramount to parliament to ensure that the discharge of its functions is professionally carried out in a timely and non-partisan manner. The table below shows the assessed indicators with parliament's own assessed capacity rating averaging 2.5 on a scale of 6. This was the worst rated thematic area as discussed below.

**Table 10: Assessment of Human Resources**

<b>Human Resource</b>	<b>rating</b>
The Legislature is an equal opportunity employer.	2
The Legislature has adequate and highly skilled research and staff support.	3
<i>Average capacity rating</i>	<b>2.5</b>

- i. **The Legislature is an equal opportunity employer.** Recruitment is conducted by the Parliamentary Service Commission which does not discriminate on the basis of race, ethnicity, religion, gender, disability or party affiliation. Parliamentarians however felt that the employment process was not transparent. They rated this indicator 2 and recommended that senior positions in parliament should be filled using professional human resource agencies of high integrity and repute. They further recommended that all positions/job openings should be advertised and competitively filled.
- ii. **The Legislature has adequate and highly skilled research and staff support.** Parliamentarians felt that there is inadequate staffing in parliament compounded with wanting skills in some areas. This indicator was rated 3 with the recommendation that more staff with right skills should be transparently recruited.

### ***3.6 Transparency and Integrity***

Parliamentarians, as representatives of the people, are expected to be honorable men and women of society who do things in a transparent way and do not condone wrong doing. Along this line, parliament should be open to the nation through different media and also maintain transparency in the conduct of its business. Institutional integrity is fundamental

in ensuring public belief and acceptance of the decisions and actions of that institution. As the representatives of the people, MPs and staff of the Legislature must be perceived and known to be above board in the performance of their responsibilities. Any negative perception on the integrity of the Legislature by the public will weaken and distort further the authority and power balance between the Executive and the Legislature. In line with the best practice and in fulfillment of the modern management practices, the Legislature should establish mechanisms for preventing abrasions to the standards, detecting them when they occur and exacting sanctions to avoid recurrence. The Legislature must also ensure that it conducts its activities in an open and transparent manner in order to court the confidence of the public.

The API therefore assessed whether the Legislature has a code of conduct and whether it is being enforced. It also examined whether the code is backed by legislation or is a convention and whether it is published. The table below shows the assessed indicators with parliament’s own assessed capacity rating averaging 3.0. The individual indicators of transparency and integrity parameter were however rated differently as explained here below.

**Table 11: Assessment of Transparency and Integrity**

<b>Transparency and Integrity</b>	<b>rating</b>
The Legislature has an enforceable code of conduct that guides the behavior and actions of MPs.	5
MPs maintain high standards of accountability, transparency and responsibility in the conduct of public and parliamentary work.	3
Anti-corruption networks exist in Parliament and MPs are free and motivated to participate in the activities of such networks.	3
Efficient and effective mechanisms exist to detect and prevent corrupt practices among MPs and legislative Staff and to bring to justice any person engaged in such activities.	1
MPs are required by law and the Rules of Procedure to declare their assets and business interests and this is strictly complied with.	3
<b>Average capacity rating</b>	<b>3</b>

- i. **The Legislature has an enforceable code of conduct that guides the behavior and actions of MPs.** Parliamentarians agreed that the Constitution, Standing Orders and

the Parliamentary Service Commission Code of Conduct spell out enforceable code for the Legislatures. They rated this indicator 5 and recommended that a revised and more robust code of conduct should be established for both Members and staff.

- ii. **MPs maintain high standards of accountability, transparency and responsibility in the conduct of public and parliamentary work.** Kenyan parliamentarians rated this indicator 3 and noted that Members are accountable, transparent and responsible in their work in terms of parliamentary duties. However the situation is different when Members are out of parliament. There is no standard procedure providing how Members should behave or address the public in public places thus Members behave differently in places outside parliament. They recommended that vetting of those who are aspiring to be Legislators should be instituted. Further, they recommended that requisite law should be enacted to operationalize Chapter six of the new Constitution on Integrity of public officers.
- iii. **Anti-corruption networks exist in Parliament and MPs are free and motivated to participate in the activities of such networks.** Parliamentarians noted that APNAC is in place but not very effective since motivation to participate in it is low. They rated it 3 and suggested that such a network should exist in the form of a caucus, which is important in parliament being an engine of society.
- iv. **Efficient and effective mechanisms exist to detect and prevent corrupt practices among MPs and legislative Staff and to bring to justice any person engaged in such activities.** Legal mechanisms do exist to deter and prevent corrupt practices. Kenya has Ethics and Anticorruption laws which guide the behaviors of all public officers as far as ethics and corruption matters are concerned. These mechanisms are known to all. However, Members rated this indicator 1 noting that there is no mechanism in place. It is important to indicate that the MPs carrying out the assessment responded so believing that the mechanisms they were being asked for were to be specifically targeted at parliament alone. They recommended that a mechanism should be established in line compliance with Chapter six of the Constitution.

- v. **MPs are required by law and the Rules of Procedure to declare their assets and business interests and this is strictly complied with.** In Kenya all public officers are required by law to declare their assets and liabilities and this is complied with by MPs and staff of Parliament. However, there is no mechanism for disclosure of business interest by Members. The parliamentarians therefore rated this indicator 3 and recommended that a mechanism should be put in place for disclosure of business interest.

## **CHAPTER 4: CONCLUSIONS AND RECOMMENDATIONS**

Kenya parliament, like a majority of other African Parliaments, maintained some conservative practices from the colonial times which, together with oppressive executive regimes, made it weaker for about four decades of independence. Through progressive transformation since early 1990s, parliament has now asserted itself to play its rightful roles, including budgetary ones, in a democratic society.

Resulting from the assessment and discussions with parliament, the following recommendations have been proposed for consideration by stakeholders in parliamentary development.

- 4.1 Parliament needs to come up with clear strategies to promote citizens understanding of the role of Legislature. Legislators, while contributing to the assessment that low mechanisms exist to promote public understanding of the work of the Legislature, recommended that this should be done by way of putting in place sound mechanisms including publications in the media and radio communications in addition to the website information. There is a great need to institute and continuously update workable mechanisms strengthening public relations office or creating a robust communications unit within the parliament's structure. There is also need to strengthen and operationalize the existing communication strategy.
- 4.2 Parliament should come up with a clear policy to guide the process and operations of public hearings as provided by the Constitution. While discussing the self assessment that no adequate opportunities exist for public input into the legislation process, it was noted that despite the provisions in the constitution inherent challenges such as time limitations in publicity of budget information, coverage of public consultations, inadequacy of parliamentary staff, insufficiency of Parliamentary facilities, limited knowledge of the public to make inputs to the budget and civic education still exist in the line of public input into the legislation process.

- 4.3 Implementation Committee of the House should be reactivated by clear focus to track legislations that have been passed for implementation. Legislators, while discussing the indicators of whether adequate mechanisms exist to track legislations that have been enacted, noted that despite the existence of a Parliamentary Committee on Implementation, it is largely dormant thus the existing mechanism is inactive.
- 4.4 The Parliamentary Service Commission should professionalize recruitment of its staff by utilizing a credible human resource firm to recruit skilled and experienced staff. Legislators recommended this on the assessment which indicated doubts about recruitment not being on equal opportunity. The recommendation was seen as a way to ensure existence of adequate and highly skilled research and staff support.
- 4.5 A legislation to operationalize Chapter six of the Constitution on Integrity should be fast tracked to institute bench marks expected on aspirants of public offices like Presidency and Legislators. Members also recommended that all those aspiring to be Legislators should be vetted. These recommendations arose out of the debate that currently there is no standard procedure spelling out how Members should behave or carry themselves in public places. The proposals will enable Members to maintain high standards of accountability, transparency and responsibility in the conduct of public and parliamentary work.
- 4.6 APNAC should be strengthened and possibly made into a caucus of the House to motivate Parliamentarians to participate in its activities. Members recommended this while noting that existence of APNAC has not been very effective due to low motivation for participation. They noted that Parliament, being an engine of society, should be motivated to participate in Anti-corruption networks including APNAC.
- 4.7 Parliament should put procedures in place to enable MPs disclose business interest in addition to declaring their assets and liabilities inline with the general requirement that all public servants including MPs declare their assets and liabilities. Members were concerned that there is no mechanism for disclosure of business interest by

Members. The parliamentarians therefore rated this indicator 3 as they made the recommendation.

4. 8 Parliament should facilitate public education on the role of MPs on the budget process by use of media, particularly radio especially during budget approval times when the public is expected to participate. This was suggested as it emerged that there is a clear need of increasing capacity in the areas of promoting citizens' knowledge and understanding the role of Members of Parliament in the budget process.
4. 9 Parliament should come up with a structured way of engaging with Civil Society Organizations in a form of memorandum of understanding to guide and foster sound relationship. Members recommended this out of realization that currently there is no coordinated way to engage such important stakeholders.
4. 10 Increased budgetary allocations should be availed to Oversight Committees to enable them carry out their mandates effectively. Members recommended this out of the assessment that Oversight Committees are not adequately resourced to undertake their activities.
4. 11 PAC should enter into structured collaborations with Anti-Corruption Institutions without compromising independence. Legislators recommended this on the assessment that PAC, as currently constituted, does not have a structured collaboration mechanism with other anti-corruption institutions without let or hindrance.

## **REFERENCES**

Kenya National Assembly, 2009, Standing Orders, Nairobi, Kenya

Republic of Kenya, The Kenya Constitution 2010, Government Press, Nairobi, Kenya

## APPENDIX 1 BUDGET PROCESS IN KENYA

### MTEF Budget Calendar

Activity	Sub-activity	Timelines	Actor(S)
Issuance of indicative guidelines	Updated sector composition, budget calendar and broad policies the Government seeks to achieve. Preliminary resource allocation	July	National Treasury/ County Treasury
Strategic Planning	Progress report on the implementation of the Vision 2030. Expenditure review : With specific reference to updating strategic plans. Preparation of annual plans.	August	-Ministry of Planning -Line Ministries
Formulation of macro-fiscal framework	Development of the Budget Review Outlook Paper (BROP) <sup>9</sup> this includes the following: Estimation of the resource envelop (indicative) Determination of policy priorities Resource allocation to national and county governments, judiciary and parliament	October	Macro-Working Group (MWG)
Development of budget proposals	Launch of sector working group Preparation of MTEF budget proposals Public participation Draft sector reports Submit to treasury Review proposals	December	-National and county treasury -line ministries -SWG
Development and approval of Budget Policy Statement and County Fiscal Strategy Papers	Recommendation on division and allocation of revenue based on audited revenue Updating of the macroeconomic framework Preparation of division of revenue and county division of revenue bills	January	-CRA -National Treasury -MWG -National and county treasury -Parliament / County Assembly
Preparation and submission of the budget	Issue guidelines on the preparation of programme based budgets. Consolidation of the budget for the national government and county governments. Submission of the estimates to the national and county governments. Submit views on the budget of the Parliament and judiciary.	April	-Line Ministries/ County departments -National and County Treasury -Cabinet/county cabinet secretary for Finance
Budget approval	The estimates of revenue and expenditure shall submit to the National Assembly, by the Executive, Judiciary and Parliament respectively shall stand committed to the Budget Committee. The budget committee reviews the Estimates by the Budget and Appropriations Committee in consultation with other Departmental Committees.	April – June	Parliament

<sup>9</sup> It is important to note that the BROP at the National level and County level must be approved by the cabinet of the respective levels of government.

Activity	Sub-activity	Timelines	Actor(S)
	<p>The Committee also holds public hearing with an aim of seeking views from the public as per the provisions of the Constitution.</p> <p>The Budget Committee presents the report on the estimates of revenue and expenditure to the House for approval.</p> <p>County Budgets shall be approved by the respective county assemblies.</p> <p>Committee of supply and introduction of the appropriation bill</p>		
Finance Bill	<p>Debate and approval of the Finance Bill</p> <p>It is expected that issues raised during expenditure discussions that have revenue implications shall be incorporated in the finance bill before submission.</p> <p>Given the sensitive nature of Tax issues, it is expected that there shall be extensive consultations between the Cabinet Secretary in charge of Finance and the Budget Committee.</p>	April – June	Parliament

Source: Parliamentary Budget Office, Treasury working Committee on Fiscal Decentralization

**APPENDIX 2: RAW DATA OF INDICATOR SCORES AS PER THE  
QUESTIONNAIRE IN THE APPENDIX**

Question		Rating	Average Rating	Weight	Capacity Rating (Weighted Average)
<b>1. REPRESENTATION</b>					
<b>1.1 Accessibility</b>					
1	The legislature is open to citizens and the media.	6	4.33	372.00	268.67
2	The Legislature has a non-partisan media relations facility.	6			
3	The Legislature has mechanisms to promote public understanding of the work of the Legislature.	2			
4	The Legislature provides timely information to the public on the budget	4			
5	The Legislature promotes citizens' knowledge and understanding of the role of MPs in the budget Process.	4			
6	The Legislature fosters sound relationship between Parliament, CSOs and other related Institutions	4			
<b>Total Rating REPRESENTATION</b>					268.67
<b>2. LEGISLATIVE FUNCTION</b>					
<b>2.1 Legal Mandate</b>					
7	The Mandate of Legislature regarding Budget making and oversight including the Appropriations Act is properly grounded in Law	5	4.50	208.00	156.00
8	The Legislature has power to amend the Appropriations Bill	6			
9	Adequate opportunities exist for public input into the Legislative Process.	5			
10	Adequate mechanisms exist to track legislations that have been enacted	2			
<b>Total Rating LEGISLATIVE FUNCTION</b>					156.00
<b>3. FINANCIAL FUNCTION</b>					
<b>3.1 The Budget Review and Hearing</b>					
11	The Legislature has enough time to review of the Budget	4	5.00	148.00	123.33

12	The Legislature has a Budget/Estimates /Finance Committee exists with the sole mandate of reviewing the budget.	6			
13	The Budget/Estimate/Finance Committee and/or sector Committees hold public hearings on the budget where evidence from the executive and the public is taken.	5			
14	The Legislature has an effective and well documented process for citizen participation in the Budget process which is known to the public.	4			
15	The Legislature has authority to amend the budget presented by the Executive including spending and revenue proposals	5			
16	The Legislature has the power to send back proposed Budget to the Executive for review.	6			
17	The Legislature is able to make bidding amendments on spending and revenue proposals.	5			
18	The Appropriations Act approved by the Legislature has details on all allocations to MDAs.	5			
<b>3.2 Budget Act and Budget Office</b>					
19	There is a Budget Act that clearly defines a role for the Legislature in the budget process.	4			
20	The Legislature has a Budget Office that is established by law to assist Parliament undertake a thorough review of the draft budget.	5			
21	The Parliamentary Budget Office has qualified and competent Officers and the Office is equipped to efficiently and effectively assist Parliament with informed analysis.	5			
22	The Budget Office has power to call for information and documents from Government Departments and the private sector and in good time (Power of Subpoena).	5	4.40	136.00	99.73
23	The Legislature (or the appropriate committee) considers and approves the budget estimates for Defence and Intelligence Services and is given full disclosure on the budget estimates/figures.	3			
<b>3.3 Periodic Review of the Budget</b>					

24	24. The budget is reviewed by the Executive periodically during implementation (Number of reviews in a year and types).	5	4.67	96.00	74.667
25	All reviews of the budget are presented to the Legislature and approved by the Legislature.	5			
26	Adequate time is allocated for the consideration of the reviewed budget both at plenary and at committees	4			
<b>Total Rating FINANCIAL FUNCTION</b>					297.73
<b>4. OVERSIGHT FUNCTION</b>					
<b>4.1 Oversight Committee(s)</b>					
27	The budget oversight function of the Legislature is performed by all sector related committees and other special committees	5	5.33	112.00	99.56
28	Legislative Oversight Committees have strong investigative powers over budgetary issues.	5			
29	Legislative Oversight Committees exercises sufficient oversight of the expenditures of State Owned Enterprises	6			
30	Sufficient mechanisms exist for Oversight Committees to obtain information from the Executive during investigations.	6			
31	Oversight Committees have adequate powers in law to request and receive updates on actions taken by the Executive on the Committees' / Parliament's recommendations.	6			
32	Oversight Committees are adequately resourced to undertake their activities.	4			
33	Minority/ Oppositions parties play an effective role in Oversight Committees.				
<b>4.2 Public Accounts Committee (PAC)</b>					
34	The Legislature has a Public Accounts Committee that examines the expenditures of Government.	6	5.40	104.00	93.60
35	The Public Accounts Committee is chaired by a member who does not belong to the party in Government.				
36	The PAC has power to subpoena witnesses and documents and this is backed by law.	6			
37	All who use public funds including Ministers are obliged to appear before the PAC when summoned.	6			

38	The PAC is required by law to hold its proceedings in public.	6			
39	The PAC reviews all reports of the Auditor General and in a timely manner.	6			
40	The PAC can initiate independent investigation into any matter of public interest.	6			
41	The Executive is bound by law to implement the recommendations of the PAC and this is strictly enforced.	5			
42	Adequate mechanisms exist for the PAC to track the implementation of its recommendations and this can be accessed and verified by the public.	5			
43	The PAC is adequately resourced to undertake its activities.	4			
44	The PAC collaborates freely with other anti-corruption institutions without let or hindrance.	4			
<b>4.3 Audit</b>					
45	45. The Auditor General is an officer of Parliament.	1			
46	All reports of the Auditor General are submitted to the Legislature.	6			
47	The Legislature receives regular and timely reports from the Auditor General.	4			
48	The reports of the Auditor General are deemed public immediately they are issued by the Auditor General	6	4.50	104.00	78.00
49	The Legislature can request the Auditor General to conduct special audits on its behalf.	6			
50	The Auditor General has adequate resources and legal authority to conduct audits without any hindrance.	4			
<b>Total Rating OVERSIGHT FUNCTION</b>					271.16
<b>5. INSTITUTIONAL CAPACITY OF THE INSTITUTION OF PARLIAMENT</b>					
<b>5.1 Financial and Material Resources</b>					
51	The Legislature is financially independent; it prepares its annual budget and the Executive cannot vary it.	5			
52	The Legislature has adequate logistics including office space to enable it perform its functions.	5	5.00	84.00	70.00
53	MPs have a constituency development fund that is effectively managed.	5			

54	The Legislature has a structured system for receiving technical and advisory assistance from external sources.	5			
<b>5.2 Human Resources</b>					
55	The Legislature is an equal opportunity employer.	2	2.50	152.00	63.33
56	The Legislature has adequate and highly skilled research and staff support.	3			
<b>Total Rating INSTITUTIONAL CAPACITY OF THE INSTITUTION OF PARLIAMENT</b>					133.33
<b>6. TRANSPARENCY AND INTEGRITY</b>					
<b>6.1 Transparency and Integrity</b>					
57	The Legislature has an enforceable code of conduct that guides the behavior and actions of MPs.	5	3.00	36.00	18.00
58	MPs maintain high standards of accountability, transparency and responsibility in the conduct of public and parliamentary work.	3			
59	Anti-corruption networks exist in Parliament and MPs are free and motivated to participate in the activities of such networks.	3			
60	Efficient and effective mechanisms exist to detect and prevent corrupt practices among MPs and legislative Staff and to bring to justice any person engaged in such activities.	1			
61	MPs are required by law and the Rules of Procedure to declare their assets and business interests and this is strictly complied with.	3			
<b>Total Rating TRANSPARENCY AND INTEGRITY</b>					18.00
<b>API Score</b>				1552.0	1144.9
<b>API Score (%)</b>					73.77%

### APPENDIX 3 ATTENDANCE LIST

**2012 ROUND 2 API MEETING BETWEEN CPC AND KENYA NATIONAL ASSEMBLY**

**14<sup>TH</sup> MAY 2012 AT LAICO REGENCY HOTEL, NAIROBI, KENYA**

NO.	NAMES	
<b>A) Members of Parliament</b>		
1	Hon. Alfred Sambu, MP	Vice- Chairperson – Budget Committee
2	Hon. John Mbadi, MP	Member, Budget Committee
3	Hon. Danson Mungatana, MP	Member, Budget Committee
4	Hon. Nelson Gaichuhie, MP	Member, Budget Committee
5	Hon. Robert Monda, MP	Chairperson, Health Committee
6	Hon. Yisuf Chanzu, MP	Member, Transport Committee
7	Hon. Emilio Kathuri, MP	Member, Budget Committee
8	Hon. Jackson Kiptanui, MP	Member, Budget Committee
9	Hon Dr. Nuh Nassir, MP	Vice-Chairperson, Health Committee
<b>B) Kenya Parliament staff</b>		
10	Mrs. Phyllis Makau	Director, Parliamentary Budget Office
11	Mr. Nicodemus Odongo	Senior Fiscal Analyst
12	Mr. Fredrick Muthengi	Fiscal Analyst I
13	Mr. Martin Masinde	Fiscal Analyst II
14	Mrs. Lucy Makara	Senior Fiscal Analyst
15	Mr. Robert Nyaga	Fiscal Analyst I
16	Mr. Gilbert Kipkirui	Fiscal Analyst II
17	Mr. Gichohi Mwaniki	Fiscal Analyst II
18	Mr. Joash Kosiba	Fiscal Analyst II
19	Ms. Millicent Ojiambo	Fiscal Analyst III
20	Mr Josephat Motonu	Fiscal Analyst III
21	Mr. Benjamin Ngimor	Fiscal Analyst III
22	Mr. Alice Thuo	Office Assistant
23	Mr Erick Kanyi	PBO Junior Fellow
24	Mr. Lewis Nguyai	PBO Junior Fellow