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*Hon. Shafiq Shabazz, MP*

THE NATIONAL ASSEMBLY  
TWELFTH PARLIAMENT – SECOND SESSION  
DIRECTORATE OF COMMITTEE SERVICES

REPORT ON THE GLOBAL ORGANIZATION OF PARLIAMENTARIANS  
AGAINST CORRUPTION (GOPAC) HELD ALONG SIDE WITH THE 7<sup>TH</sup>  
CONFERENCE OF THE STATES PARTIES TO THE UNITED NATIONS  
CONVENTION AGAINST CORRUPTION (UNCAC) IN VIENNA, AUSTRIA  
FROM 6<sup>TH</sup> TO 10<sup>TH</sup> NOVEMBER, 2017.

CLERK'S CHAMBER,  
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NOVEMBER, 2018

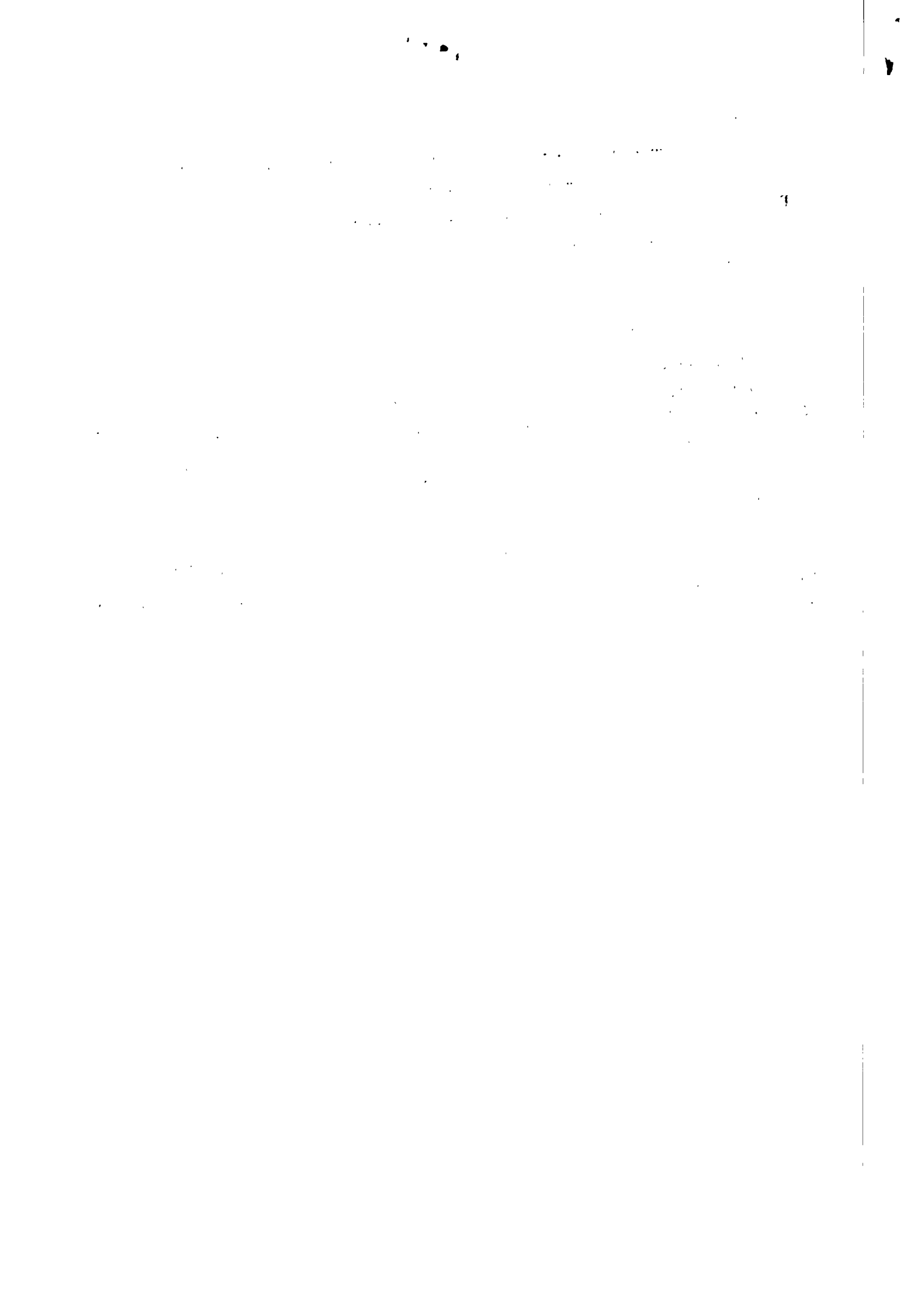


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## **1. FOREWARD**

A delegation comprising of four Members of the National Assembly attended a conference under the 7<sup>th</sup> Conference of the States Parties to the United Nations Convention Against Corruption in Vienna, Austria between 6<sup>th</sup> to 10<sup>th</sup> November, 2017 held at Vienna International Centre.

The Delegation had a two tier obligation in terms of participation and they managed to participate both in the main event which was a Conference of the States Parties to the United Nations Convention Against Corruption and in which the Hon. Speaker of the Senate Hon. Kenneth Lusaka read the Kenya Statement where he reiterated the country's commitment to support international and regional efforts towards fighting corruption, and more particularly to the full implementation of UNCAC requirements.

The Delegation also actively participated in the Global Organization of Parliamentarians Against Corruption (GOPAC) sessions which was a component of the main Conference and in which both the Hon. Shakeel Shabbir who was the Leader of the delegation and the Hon. Prof Jacqueline Oduol made detailed and informed presentations.

The Hon. Shakeel Shabbir presented to the conference on the Role of Parliamentary Committees in Anti-corruption while Hon. Prof Jacqueline Oduol took the Conference through a presentation on the Gender focus in anti-corruption oversight.

It is now my pleasant duty, to present the Report of the Delegation of the 7<sup>th</sup> Session of the Conference of States Parties to the United Nations Convention Against Corruption (UNCAC).



## 2. EXECUTIVE SUMMARY

The Delegation participated in the Global Organization of Parliamentarians Against Corruption (GOPAC) under the 7<sup>th</sup> Conference of the States Parties to the United Nations Convention Against Corruption and the main objective was to provide Members with an opportunity to learn best practices on financial control and operational integrity. The specific objectives were as follows:-

1. Legislation and other parliamentary rules establishing government financial control practices and other rules which guide and enable parliament to oversee the implementation of the UN Convention Against Corruption (UNCAC);
2. Procedures to account for and report revenues and expenditures; and,
3. Procedures and authorities for parliamentary oversight of financial administration

### Composition of the Delegation

The delegation was composed of the following;

1. Hon. Shakeel Shabbir, MP - **Leader of Delegation**
2. Hon. Benjamin Washiali, MP
3. Hon Charles Njagagua, MP
4. Hon. Prof. Jacqueline Odhiambo, MP
5. Ms. Halima Maalim Hussein - **Delegation Secretary**

The Delegation participated in the following sessions of the Conference

1. The 7<sup>th</sup> Conference of the States Parties to the United Nations Convention Against Corruption
2. The Global Organization of Parliamentarians Against Corruption (GOPAC)

The delegation has made recommendations based on the lessons learnt through the meetings and interactions during the conference. The recommendations are as follows;

1. Parliament should establish cohesion between Parliament as an institution and the Ethics & Anti-Corruption Commission and other institutions in the fight against corruption.

2. Parliament to improve its relationship with other International organisations that deal with matters related to fighting corruption.
3. Parliament should review, harmonize and consolidate the various sectoral legislations to adopt an implementable legislation that establishes and empowers the institutions mandated to enable tackle the vice against the backdrop of a solid piece of legislation.

## **4. BACKGROUND**

### **4.1 The United Nations Convention against Corruption (UNCAC)**

The United Nations Convention Against Corruption is the only legally binding universal anti-corruption instrument. The UNCAC Convention introduces a comprehensive set of standards, measures and rules that all countries can apply to strengthen their legal and regulatory regimes to fight corruption.

Kenya was the first country in the world to sign and ratify UNCAC on 9<sup>th</sup> December, 2003 and since then carried out various anti-corruption measures. The Convention complements the United Nations Convention against Transnational Organised Crime for building competent human resource capacity for effective onslaught against corruption which Kenya is one of the founder members.

At the regional level, Kenya has also joined others countries in pushing good governance in Africa in the spirit of inter-state cooperation in the fight against corruption that UNCAC promotes.

The Convention covers five main areas as noted hereunder;

#### **4.1.1 Prevention**

Corruption can be prosecuted after the fact, but first it requires prevention. An entire chapter of the Convention is dedicated to prevention, with measures directed at both the public and private sectors. In Kenya the Ethics and Anti-Corruption Commission (EACC) is mandated to provide technical and advisory services to both public and private sector organizations on preventing corruption and to educate the public on the damages of corruption and economic crime.

#### **4.1.2 Criminalization**

The Convention requires countries to establish criminal and other offences to cover a wide range of acts of corruption. States are legally obliged to establish offences. Offences committed in support of corruption, including money-laundering and obstructing justice, are also dealt with. Convention offences also deal with the problematic areas of private-sector corruption.

#### **4.1.3 International Cooperation**

Countries agreed to cooperate with one another in every aspect of the fight against corruption, including prevention, investigation, and the prosecution of offenders. Countries are bound by the Convention to render specific forms of mutual legal assistance in gathering and transferring evidence for use in court, to extradite offenders. Countries are also required to undertake measures which will support the tracing, freezing, seizure and confiscation of the proceeds of corruption.

#### **4.1.4 Asset Recovery**

In a major breakthrough, countries agreed on asset-recovery, which is stated explicitly as a fundamental principle of the Convention. This is a particularly important issue for many developing countries where high-level corruption has plundered the national wealth, and where resources are badly needed for reconstruction and the rehabilitation of societies under new governments.

Effective asset-recovery provisions will support the efforts of countries to redress the worst effects of corruption while sending at the same time, a message to corrupt officials that there will be no place to hide their illicit assets.

### **5. THE 7<sup>TH</sup> CONFERENCE OF THE STATES PARTIES TO THE UNITED NATIONS CONVENTION AGAINST CORRUPTION**

The Conference held its 7<sup>th</sup> session in Vienna from 6<sup>th</sup> to 10<sup>th</sup> November 2017. The outgoing President of the Conference commended the important work undertaken since the 6<sup>th</sup> Session of the Conference. He made reference to the impact of the Implementation Review Mechanism which had led many countries to improve their domestic legislation by providing better protection for whistle-blowers and creating a more reliable legal basis for international cooperation in criminal matters.

The President highlighted the importance of transparency and integrity of public administration and political commitment to strengthen cooperation in preventive measures.

Many countries reaffirmed their support and commitment in combating corruption. The Group of African States were represented by Angola which is the Current Chair of the Group of African



States in its presentation reaffirmed the Group's commitment course. The Group noted that detrimental effect that lack of financial resources had on developing countries and the importance of developing policies and practices to prevent corruption and issue of asset recovery. The group further stressed on the need for strengthened international cooperation in realizing the objectives of the Convention.

The Kenya's statement highlighted hereunder was read to the conference by the Hon. Speaker of the Senate Ken Lusaka and sought to demonstrate how Kenya is strengthening its system to combat corruption;

1. Kenya has successfully underwent its implementation review in the 1<sup>st</sup> Cycle of the Implementation Review Mechanism, and has put in place an elaborate implementation matrix to guide in the implementation of the recommendations of the Review Report. In addition, Kenya is currently undergoing the review of implementation in the 2<sup>nd</sup> Cycle which focuses on Prevention and Asset Recovery.
2. Subsequent to completion of the 1<sup>st</sup> Cycle review and the recommendations therein, Kenya has amended several anti-corruption laws with a view to strengthening the fight against corruption. The Bribery Act was enacted and came into force in January 2017. Other laws pending in Parliament include the Anti-Corruption Laws (Amendment) Bill as well as the Whistle-blower Protection Bill. Apart from legislation, parliament has demonstrated strong support towards anti-corruption through budgetary allocation and vetting of Presidential appointees, among other measures.
3. As part of the agenda to strengthen the war against corruption, Kenya has recently set up and fully operationalized the Assets Recovery Agency and the Financial Reporting Centre (which is charged with reporting on suspicious financial transactions) as fully autonomous agencies. The two institutions are provided for under the Proceeds of Crime and Anti-Money laundering Act enacted in 2009; and their roles are crucial especially on prevention and asset recovery and will complement the existing efforts, including those of the Ethics and Anti-Corruption Commission.
4. In terms of the legal framework, Kenya Constitution is a key pillar on ethical leadership and integrity, and this theme runs throughout all the chapters. Besides the Constitution, some of the other key anti-corruption laws that Kenya has enacted include the following:

the Anti-Corruption and Economic Crimes Act; the Public Officer Ethics Act; the Ethics and Anti-Corruption Commission Act; the Leadership and Integrity Act; the Public Procurement and Disposal Act; the Proceeds of Crime and Anti-Money Laundering Act; the Mutual Legal Assistance Act; the Witness Protection Act, the Public Finance Management Act and the Bribery Act.

5. Kenya equally established the Multi-Agency Team (MAT) which comprises of the Ethics and Anti-Corruption Commission, the Director of Public Prosecutions, Directorate of Criminal Investigations, the Kenya Revenue Authority, Assets Recovery Agency, Financial Reporting Centre, and National Intelligence Service, and is chaired by the Attorney General. MAT, and serves as a cooperation, coordination and collaboration center for all agencies that play a part in the investigation and prosecution of corruption, economic crime and other organized crimes including terrorism, drug trafficking, poaching, smuggling and trafficking of persons and firearms.
6. In line with its preventive approach to fighting corruption, Kenya has introduced far-reaching measures which have served to significantly reduce opportunities for corruption. Notable among these are: compulsory requirement that all payments from the Government be made on ICT-based platforms through which citizens can apply and pay for passports, driving licenses, business registration, marriage certificates, land search certificates and other necessary documents so as to reduce human contact. The establishment of “Huduma Centres” to provide a one-stop-shop for provision of essential Government services. The Huduma Centre concept won Kenya the 2015 UN Public Service Award in Improving Delivery of Public Services.
7. Additionally, Kenya has adopted an Integrated Financial Management System (IFMIS) geared towards enhanced transparency and accountability in the management of public funds.
8. At the national level, Kenya has strengthened the capacity of the Ethics and Anti-Corruption Commission, and the Assets Recovery Agency. Through the efforts of the two agencies, Kenya has managed to recover assets valued at millions of shillings derived from corrupt practices, both locally and abroad



9. On asset recovery, Kenya strongly supports mechanisms that provide for the confiscation of corruptly-acquired assets. In this respect, Kenya acknowledges and supports the work of the Working Group on Asset Recovery.
10. At the national level, Kenya has strengthened the capacity of the Ethics and Anti-Corruption Commission, and the Assets Recovery Agency. Through the efforts of the two agencies, Kenya has managed to recover assets valued at millions of shillings derived from corrupt practices, both locally and abroad.
11. Kenya continues to cooperate and work with other State Members on international cooperation. To this end, Kenya acknowledges the support and cooperation, with the governments of the United Kingdom, United States of America, Switzerland, and France. Through their cooperation, Kenya has recently repatriated millions of shillings back to the country from foreign jurisdictions, consisting of proceeds of corruption stashed abroad and/or fines imposed on companies for corrupt practices. This notwithstanding, Kenya remains concerned about legal and administrative challenges which frustrate the return of stolen assets especially from some developed countries.

Kenya did collectively and sponsored the following resolutions with Angola, the Chair of the Group of African States THAT;

1. States Parties to promote universal adherence to the United Nations Convention against Corruption and urges all States that have not yet so to consider acceding to the Convention.
2. State Parties to continue reinforce the effective implementation of the preventive measures outlined in Chapter II of the Convention.
3. The ongoing efforts of the Open-ended Intergovernmental Working Group on the Prevention of Corruption to facilitate the sharing of the information between states parties on their initiatives are welcomed
4. The commitment and efforts undertaken by States Parties to provide information on good practices in preventing corruption are appreciated
5. States Parties to develop revise and update their legal system, national anti-corruption strategies or action plans addressing corruption and in collaboration with relevant

regional and international organizations to strengthen the fight against corruption through legislation

6. States parties to take measures to enhance integrity, transparency, accountability and the rule of law in public administration in accordance with the fundamental principles of their legal systems.
7. States Parties to promote the integrity and accountability of their criminal justice systems in accordance with the Conventions
8. States Parties to strengthen measures to prevent corruption in the public procurement process and the management of the public finance.
9. The United Nation Office on Drugs and Crime to continue to provide and develop capacity building initiatives on measures to prevent corruption.
10. Secretariat to continue to provide technical assistance to States parties particularly developing countries and the United Nation Office on Drugs and Crime be provided with funds to be able to respond to the increasing demand for its services and argued Member States and donors to make adequate voluntary contributions to support the fight against corruption.

## **6. THE GLOBAL ORGANIZATION OF PARLIAMENTARIANS AGAINST CORRUPTION (GOPAC)**

The Global Organization of Parliamentarians against Corruption (GOPAC) was founded in October 2002 as a result of a Global Conference in Ottawa, Canada, which brought together over 170 Parliamentarians and 400 observers dedicated to fighting corruption and improving good governance. GOPAC is unique in that it is the only international network of Parliamentarians focused solely on combating corruption. Its members represent more than 50 countries in all regions of the world. They are current or former legislators. GOPAC's vision is to "achieve accountability and transparency through effective anti-corruption mechanisms and inclusive participation and cooperation between Parliamentarians, government and civil society.

Parliamentary oversight has been a key component of good practice United Nations Convention Against Corruption implementation. With the advent of measureable Sustainable Development Goals, parliamentarians have to ensure that oversight of the SDGs learns from UNCAC and



follows good governance practices. The Forum aimed to enhance the capacity of parliamentarians to localise the United Nations Convention Against Corruption by adapting international standards to national needs and to play an important oversight role in the monitoring and review of the national effort to implement the UNCAC. The Forum also encouraged parliamentarians and States Parties to the UNCAC to incorporate good practices from SDGs to bolster accountability and transparency. Partnerships with parliamentarians have been a key component in the successful engagement of States parties with UNCAC.

The African Parliamentarians Network Against Corruption (APNAC) –Kenya as part of the larger GOPAC network has over the last five years participated and made its presence appreciated in the struggle to combat corruption in Africa. The African Parliamentarians Network Against Corruption (APNAC) –Kenya is a recognized partner of the United Nations Convention Against Corruption and has been contributing during its conferences. The African Parliamentarians Network Against Corruption (APNAC) –Kenya's role is to strengthen parliament's contribution to the fight against corruption.

Hon. Shakeel Shabbir, MP who is the chair of APNAC Kenya and Hon. Prof. Jacqueline Oduol, MP made presentations on the Role of Parliamentary Committees in Anti-corruption and Gender focus in anti-corruption oversight respectively as noted hereunder;

#### **6.1 The Role of Parliamentary Committees in Anti-corruption (Kenyan Scenario) by Hon Shakeel Shabbir, MP.**

Hon Shakeel Shabbir, MP made the following presentations;

1. Kenya was the first country to sign and ratify the United Nations Convention Against Corruption (UNCAC) when it was opened for signature on the 9<sup>th</sup> December, 2003 and the 2010 Constitution of Kenya gave more strength to the implementation of UNCAC in Kenya and affirmed the position by entrenching Article 2(5) and (6) of the Constitution
2. Article 2 of the Constitution of Kenya provides that the general rules of international law and any treaty or convention (including UNCAC) ratified by Kenya shall form part of the law of Kenya under the Constitution

3. Each House of the Kenyan Parliament has established Committees dealing with several issues including anti-corruption, and may where necessary establish joint Committees consisting of Members of both Houses to handle Anti- corruption issues.
4. When a House of Parliament considers any appointment of State Officers for which its approval is required under the Constitution or an Act of Parliament the Committees of Parliament are guided, among others by the principle of leadership and integrity.
5. The Committees of the Houses have powers to summon any person to appear before it for the purpose of giving evidence or providing information on issues related to corruption.
6. The National Assembly of Kenya has Parliamentary Investigatory Committees that are responsible for the examination of accounts showing the appropriations of the sum voted by the House to meet the public expenditure and the examination of the working of the public investments on the basis of their audited reports and accounts.

## **6.2 Gender focus in anti-corruption oversight by Hon. Prof Jacquiline Adhiambo Oduol, MP.**

Hon Prof. Jacquiline Oduol, MP made the following presentations;

1. The Global Organization of Parliamentarians against Corruption (GOPAC) officially declared support for The United Nations Convention Against Corruption (UNCAC) in Merida, Mexico in 2003 and in 2006 respectively. The GOPAC global conference in Arusha issued a resolution to enhance capacity of parliamentarians to localize the convention by adapting international standards to local needs & to play an important oversight role in monitoring national effort to implement UNCAC
2. During the 2<sup>nd</sup> Nusa Indonesia Forum and the 3<sup>rd</sup> Doha Forum in 2008 and 2009 respectively ways in which parliamentarians could support the implementation of governance improvements needed to prevent corruption and different ways to engage citizens, experts, civil society and international agencies to fight corruption together were identified.
3. Corruption has a direct co-relation to gender mainstreaming, gender equality and good governance and women are often overlooked in anti-corruption oversight programs.
4. Parliamentary oversight is the review, monitoring and supervision of government and public agencies including the implementation of policy and legislations

5. Women viewed as consumers of policy making, governance and politics and included in a token capacity as perpetrators and solution providers in grand and petty corruption
6. Anti-corruption strategies review existing rules against corruption and measure perceptions of corruption on a state level



## **7. OBSERVATIONS**

The Members observed the following;

1. The Kenya Government, through the relevant institutions charged with combating and preventing corruption, remains steadfastly committed and focused on the war on corruption. Kenya firmly believes that eradication of corruption is the key to spurring economic growth and development and also provides an enabling environment for the enjoyment of the human rights and fundamental freedoms for our people.
2. The Parliamentary Committees have endeavoured to localise The United Nations Convention Against Corruption (UNCAC) through its legislative agenda by enacting various laws and therefore the role of Committees of Parliament in Anti-Corruption is pivotal in light of implementation of the UNCAC and cannot be overlooked.
3. Developing modern reporting channels and working with women's caucuses and women parliamentarians on strategy/leadership, better research and information, capacity support outlining the effects of corruption on men and women, gender mainstreaming, equality and resource allocation are the among the many ways corruption can be reduced in the world
4. The need for States Parties to promote capacity building on the prevention of corruption and continue in cooperation with relevant partners to develop comprehensive academic and other educational materials in the field of anti-corruption for higher learning institutions to support States parties.

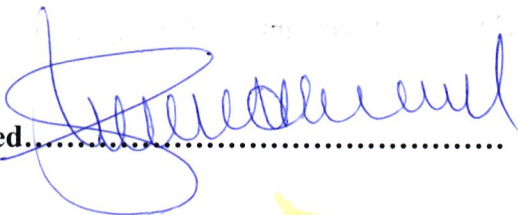


## 8. RECOMMENDATIONS

The delegation makes the following recommendations:-

4. Parliament should establish cohesion between Parliament as an institution and the Ethics & Anti-Corruption Commission and other institutions in the fight against corruption.
5. Parliament to improve its relationship with other International organisations that deal with matters related to fighting corruption.
6. Parliament should review, harmonize and consolidate the various sectoral legislations to adopt an implementable legislation that establishes and empowers the institutions mandated to enable tackle the vice against the backdrop of a solid piece of legislation.

Signed.....



Date.....

29th November 2018

Hon. Shakeel Shabbir, MP

Leader of Delegation

