

REPUBLIC OF KENYA

PARLIAMENT
OF KENYA
LIBRARY



KENYA NATIONAL ASSEMBLY

TENTH PARLIAMENT-FOURTH SESSION

.....

REPORT OF

KENYA PARLIAMENT DELEGATION TO THE 12TH ANNUAL CONFERENCE OF THE
ASSOCIATION OF PUBLIC ACCOUNTS COMMITTEES (APAC) OF SOUTH AFRICA

HELD FROM

11TH TO 14TH OCTOBER, 2010

AT

THE INKOSI ALBERT LUTHULI INTERNATIONAL CONVENTION CENTRE (ICC) IN
DURBAN, KWAZULU-NATAL PROVINCE, SOUTH AFRICA

Clerk's chambers,
National Assembly,
NAIROBI

October, 2010

1

2

3

TABLE OF CONTENTS

No.	Page
1. Preface.....	1-2
2. Strengthening Strategic Partnerships in Oversight – A case of Public Accounts Committee.....	3-7
3. Ensuring economical, effective and efficient public financial and performance management.....	7-10
4. Uprooting fraud and corruption.....	10-16
5. Conference declaration.....	16-18

LIST OF ABBREVIATIONS AND ACRONYMS

ACTT	Anti-Corruption Task Team
AG	Auditor General
AGSA	Auditor General of South Africa
CPA	Commonwealth Parliamentary Association
CSO	Civil Society Organization
DPCI	Directorate for Priority Crime Investigations
DPSA	Department of Public Service and Administration
ECZ	Economics Association of Zambia
IMC	Inter-Ministerial Committee
IPU	Inter-Parliamentary Union
JCPS	Justice, Crime Prevention and Security
MAWG	Multi Agency Working Group
MPAC	Municipal Public Accounts Committees
NPA	National Prosecuting Authority
PAC	Public Accounts Committee
PSC	Public Service Commission
SADC	South African Development Community
SADCOPAC	South African Development Community Organization of Public Accounts Committees
SAI	Supreme Audit Institution
SCOPA	Standing Committee on Public Accounts
SIU	Special Investigation Unit

1. PREFACE

Mr. Speaker Sir,

The Association of Public Accounts Committees (APAC) is a South African association comprising Members of the national and provincial legislatures of the Republic of South Africa. The Association was created to provide a forum at which Members could dialogue, share best practices, undergo specialised skills training programmes and pursue issues of common interest. Since its establishment in 1997, APAC has contributed significantly to capacity building within the Public Accounts Committees fraternity in South Africa and Africa as a whole. Through its training interventions, research activities and best practices development, APAC has managed to provide its Members with an enhanced capacity to discharge their oversight duties. This translated into a perceptible improvement in financial oversight over the use of public funds in South Africa.

The 12th Annual Conference of the Association of Public Accounts Committees (APAC) was held at the Chief Albert Luthuli International Convention Centre (ICC) in Durban, Kwazulu Natal Province, South Africa from 11th – 14th October, 2010. The conference brought together Members of Public Accounts Committees from the national parliament and nine provincial legislatures of South Africa, representatives from the Auditor-General of South Africa, peers in related sectors in South Africa and Members of Public Accounts Committees from Kenya, Namibia, Uganda, Mauritius, Malawi, Nigeria, Zambia and Zimbabwe.

The National Assembly of Kenya was represented at the conference by the following Members of Parliament:-

- (i) Hon. Dr. Boni Khalwale, M.P. - Leader of delegation
- (ii) Hon. Mithika Linturi, M.P.
- (iii) Hon. Daniel Muoki, M.P.
- (iv) Hon. Alex Mwiru, M.P.
- (v) Hon. Charles M. Nyamai, M.P.

The Members were drawn from the Public Accounts Committee (PAC), Public Investments Committee (PIC) and Local Authorities and Funds Accounts Committee (LAFAC), the three watchdog Committees of the Parliament of Kenya which have jurisdiction over financial accountability matters.

Mr. George Gazemba, Clerk Assistant was secretary to the delegation.

The delegation wishes to express its sincerest gratitude to the Office of the Speaker of National Assembly for entrusting it with the responsibility of representing the House at the conference. The delegation also wishes to record its appreciation to the Office of the Clerk of National Assembly for the technical and logistical support accorded which made their participation to the conference a success.

Mr. Speaker Sir,

On behalf of the delegation and pursuant to provisions of Standing Order 181(3), it is my pleasant privilege and pleasure to present to the House a report of the delegation on the attendance to the conference.

Signed _____

Hon. Dr. Boni Khalwale, M.P.
Leader of delegation

Date _____

26/Nov/10

REPORT OF THE KENYA PARLIAMENT DELEGATION TO THE 12TH ANNUAL CONFERENCE OF THE ASSOCIATION OF PUBLIC ACCOUNTS COMMITTEES (APAC) OF SOUTH AFRICA HELD FROM 11TH TO 14TH OCTOBER, 2010 AT THE ALBERT LUTHULI INTERNATIONAL CONVENTION CENTRE (ICC) IN DURBAN, KWAZULU-NATAL PROVINCE, SOUTH AFRICA

The central conference theme was "*strengthening accountability through sharpening the tools of proactive oversight*". The sub-themes were:-

- (i) Strengthening strategic partnerships in oversight;
- (ii) Uprooting fraud and corruption in the public sector;
- (iii) Ensuring economical, effective and efficient public financial and performance management.

2.0. STRENGTHENING STRATEGIC PARTNERSHIPS IN OVERSIGHT – A CASE OF PUBLIC ACCOUNTS COMMITTEE

2.1. Strategic partnership definition

Many scholars, writers, leaders and managers define strategic partnerships differently depending on their respective professions or the core function of their organisation. An internet resource defines strategic partnership as a formal alliance between two entities (commercial or non commercial), usually formalised by one or more contracts but falls short of forming a legal partnership, agency or corporate affiliate relationship. This definition assumes that every partnership is formal and that some partnerships operate under less formal arrangements.

Strategic partnering is not merging. Each party continues to exist as an independent entity and carrying out its functions as before except that it modifies its corporate strategy of achieving organisational objectives by working with another entity sharing the same vision and values.

2.2. Types of partnerships

Partnerships can be broadly categorised in two, formal and informal. Under formal partnerships, resources made available can be quite substantial requiring high levels of accountability. This arrangement inevitably demands a written agreement. The converse will be an informal partnership.

A strategic partnership is one of the many types of partnerships. Its distinguishing feature lies mainly in the objectives.

2.3. Why strategic partnerships for Public Accounts Committees

Strategy deals with how an organisation achieves its objectives. When two or more entities resolve to work together to achieve either in full or in part their organisational objectives,

this will be a strategic partnership. Strategic partnering can among other things create cost-effective programmes, build capacity and coordinate activities.

The main objective of PACs is to provide effective oversight on the utilisation of public financial resources. PACs in most jurisdictions particularly in the SADC Region face a number of challenges which hamper them from achieving this objective. Some of the challenges faced include:-

- (i) Lack of adequate financial resources to enable PACs undertake their oversight function effectively;
- (ii) Lack of adequate support staff dedicated to the PACs on full time basis;
- (iii) Weak legal frameworks supporting the work of PACs;
- (iv) Lack of capacity of members. Not all members may have adequate knowledge in financial management
- (v) Non implementation of PAC recommendations
- (vi) Inappropriate internal procedures such as:
 - short tenure of office of members e.g. one session of parliament
 - inability to hold regular meetings to consider audit reports
 - holding of meetings in camera

One option available to a PAC to achieve its objectives despite these challenges is strategic partnerships. Benefits arising out of such relationships include:-

- (i) Generation of a broader array of funding sources which is quite cardinal for PACs;
- (ii) Pooled human resources to support the work of the PAC;
- (iii) Acquire greater public visibility and awareness. The more people are aware of PAC activities, the more the pressure on the Executive to take timely corrective action on identified irregularities and weaknesses in the system;
- (iv) Creation of a greater political voice and influence. Partnerships may enable the PAC transcend traditional boundaries of influence;
- (v) Creation of a broader continuum of programmes. Additional resources that a partnership brings to the table can enable PACs become more proactive. PACs should not be confined to scrutinising audit reports only.

2.4. Who can PACs strategically partner with?

Potential partners are unlimited. Parliaments need to have in place criteria for identifying suitable strategic partners especially with respect to what conditions should necessitate going into a partnership and length of the partnership.

(i) Civil Society Organisations

Civil Society Organizations (CSOs) can serve as channels of communication. CSOs have access to funds which can be utilised by the PACs. CSOs can provide training to Members of

Parliament and support staff. CSOs have the ability to apply pressure on the Executive. They can:-

- (i) Compel the Executive to take timely action on PAC recommendations;
- (ii) Influence the strengthening or introduction of legislation supporting public financial management;
- (iii) Influence the introduction or speedy implementation of reforms in public financial management.

(ii) Professional Bodies

These can provide the much needed expertise to the PACs in scrutinising audit reports. The National Assembly of Zambia signed a Memorandum of Understanding with the Economics Association of Zambia (EAZ) in 2008. The EAZ has been providing training to Members of Parliament and support staff on how to analyse the national budget and review economic programmes and development initiatives.

(iii) Other Parliaments

Opportunities for partnerships also exist between parliaments. Members of PACs and support staff can benefit from regular exchange visits with other parliaments particularly those with a track record of success.

(iv) Regional and International Parliamentary Bodies

Partnering with parliamentary bodies such as SADCOPAC, CPA and IPU can be useful in experience sharing and learning new techniques. Parliaments need to go beyond mere membership of these bodies and start carrying out joint programmes aimed at enhancing the oversight function.

The Parliamentary Centre in Africa (PCA) has partnered with a number of national legislatures to enhance the oversight function of parliaments through capacity-building.

(v) Supreme Audit Institutions (SAIs)

There are opportunities of establishing additional areas of cooperation between PACs and SAIs beyond the traditional legal relationship. The two institutions can pool resources and carry out a number of programmes such as training of PAC members and support staff and follow-up on recommendations.

(vi) Donor Organisations

Donors desire that there exists a strong PAC in any country where they are providing development assistance. Donors can provide PACs with financial resources, expertise, training and facilities. They can influence the strengthening or introduction of legislation that supports the work of PACs. The Friedrich Ebert Stiftung (FES) has partnered with a number of legislatures to enhance their oversight role.

2.5. Strengthening Strategic Partnerships

There are a number of factors that can make a strategic partnership successful. These include:-

- (i) The strategic decision to partner should be made at the highest institutional level. Parliaments are political institutions and how the decision to partner is made has a bearing on the strength and sustainability of the strategic partnership;
- (ii) The criteria for identifying potential partners should be comprehensive. The potential partner has to be the right match. Vital issues to consider include shared vision and values. The more unbalanced the relationship is, the higher the likelihood that the partnership will fail to achieve its objectives;
- (iii) Clear understanding of roles expected to be played by each partner. If possible, there should be a written agreement which among other things will ensure that there is less misunderstanding on any of the following:-
 - a. The time and resources each partner should put in;
 - b. Who will be responsible to drive the partnership;
 - c. Administrative and financial procedures;
 - d. Process of how to adapt to significant changes in the operating environment;
 - e. Exit procedure;
 - f. Channels of communication particularly in case of a grievance; and
 - g. Method of evaluating the partnership.
- (iv) It should always be borne in mind that a partnership is not a merger. There is a chance for a conflict of interest in other areas. If Parliament on behalf of the PAC enters into a strategic partnership with one CSO, it does not mean that Parliament will always be in agreement with whatever the CSO does, neither will the CSO support Parliament on every issue. Being alert to such matters makes the partnership much stronger.
- (v) Each partner should bear a fair and appropriate share of the risks involved in the partnership.
- (vi) The Government in power, on the other hand can also attempt to frustrate such partnerships particularly with "not politically right" CSOs, donors and professional bodies. This can turn out to be a political power play and not so much as enhancing the oversight role of the PAC.

2.6. Resolutions

Under the sub theme of strengthening strategic partnerships in oversight, the conference resolved that:-

- (i) APAC must further research and formulate the detailed role each of the identified strategic partners must play;
- (ii) APAC must champion the formulation of legislative amendments to:-
 - a) Clarify the role and powers of MPAC's and resolve the separation of powers issue, as well as the rules and orders of municipalities with respect to the role of MPAC's;
 - b) Provide clear guidelines on the relationship between MPAC's and the Accounting Officers of municipalities;
 - c) Formalise the relationship between APAC, PAC's and MPAC's.
- (iii) APAC must actively engage with strategic partners so that the role of PAC's and MPAC's is clearly understood and formulate the nature of the Memorandum of Understanding to be entered into with each of our strategic partners.

3.0. ENSURING ECONOMICAL, EFFECTIVE AND EFFICIENT PUBLIC FINANCIAL AND PERFORMANCE MANAGEMENT

3.1. Introduction

The public sector has a pervasive impact on the country. Its actions or inactions influence social well-being, economic growth and political stability. Countries with poorly performing public sectors tend not to flourish and such countries are not internationally competitive.

3.2. Performance management

Performance management covers a variety of terms namely performance measurement, performance budgeting, performance auditing and performance contracting.

Performance management is best defined by its purpose. It is not just a system but an active process of getting public sector organisations to do more or better. Performance management is not something that happens at the press of a button. You need to keep working at it.

3.4. Presidency: Outcomes approach to performance management (South African context)

Ministry for Performance, Monitoring and Evaluation was established in 2009 to drive improvement in government performance through focus on outcomes.

Priority outcomes have been identified from the Medium Term Strategic Framework. Focus is on the sector, not individual departments. Each outcome has approach aims to emphasise accountability on ministerial performance agreements and delivery agreements.

3.5. How performance management can be made efficient and effective

The following factors greatly determine the efficiency and effectiveness of performance management:-

(i) Systems

Systems should be kept as simple as possible. Useful guidance and tools should also be available same as valid, reliable and timely performance information.

Performance audits and independent evaluations are vital to augment annual performance reporting. It is also important that organisational and individual performance management systems be aligned.

(ii) People

The roles, responsibilities and accountabilities of officers concerned in performance management must be clearly defined. The officers must be skilled in managing performance information and reporting, performance audits and evaluations.

(iii) Action

Performances have to be properly recorded and tracked. In the event anomalies are detected, timely corrective action should be taken. Officers responsible for anomalies and or irregularities must be held accountable while the good performers should be rewarded.

(iv) Oversight bodies

Oversight bodies are aware of available performance information and have capacity and capability to use performance information. Oversight bodies must therefore be well facilitated to perform their functions.

3.6. Impediments to ensuring economical and efficient public financial and performance management

(i) Performance information

Quality of performance information in many departments is not at an acceptable standard of validity and reliability. It is at times difficult to develop valid and robust performance indicators.

Delay in releasing performance information reduces its usefulness for decision-making. There are cases of too few performance audits and independent evaluation of policies and programmes to complement performance information.

(ii) Capacity

Departmental capacity to define, collect, verify and analyse performance information does not match the scale required. Data collection systems are weak in some departments and there is a misplaced emphasis on computer systems.

Internal audit capacity in departments is constrained and this impacts negatively on performance auditing in addition to monitoring and evaluation capacity gaps in departments.

(iii) Complexity in the system

Performance management is increasingly becoming complex in the Public Service as evidenced by multiple performance management frameworks and complex frameworks. Unrealistic targets are also de-motivating and counter-productive.

(iv) Culture

Public sector has some way to go to develop a performance culture. This is characterized by:-

- a) Lack of discipline in managing performance;
- b) Reluctance to report negative performance information;
- c) Fear of punishment;
- d) Fear that information is distorted or used for political point-scoring;

3.6. What central departments can do to improve performance management

Central departments can improve performance management by:-

- (i) Engaging in more practical guidance and sharpening tools for performance management;
- (ii) Reducing complexity and bureaucracies in the system;
- (iii) Adopting an incremental approach to new performance management initiatives;
- (iv) Encouraging use of peer review or independent review for quality assurance of performance information and evaluations;
- (v) Giving meaningful and timely feedbacks to departments on reports and information provided.

3.7. What other bodies can do to improve performance management

The Auditor-General can improve performance management by carrying out performance audits and producing results in time or as when required. Audit

Committees on the other hand can improve performance management by giving more attention to performance information to ensure compliance with acceptable standards.

3.8. What Public Accounts Committees can do to improve performance management

Public Accounts Committees can improve performance management by:-

- (i) Creating a demand for performance information by using it;
- (ii) Proposing standards and formats of performance information to be provided on departmental websites;
- (iii) Commissioning independent analysis of performance information and expanding sources of information at its disposal.
- (iv) Closely monitoring implementation of recommendations arising from performance audits, and other reports;
- (v) Conducting joint hearings between PAC and other parliamentary committees where appropriate;
- (vi) Continue to build and sustain PAC capacity to carry out its mandate.

3.9. Resolutions

The conference having deliberated on the topic made the following resolutions:-

- (i) Public Accounts Committees should align their strategic plans, budgets and performance agreements and should strengthen internal controls for continuous monitoring and evaluation;
- (ii) Public Accounts Committees should ensure the building and maintenance of competency and capacity amongst politicians and officials to enhance financial management and improve oversight;
- (iii) The government on the other hand should make the public service attractive to qualified and competent people.

4.0. UPROOTING FRAUD AND CORRUPTION IN THE PUBLIC SECTOR

4.1. The Special Investigation Unit (SIU) (South African Context)

The Special Investigation Unit (SIU) was set up by Act of Parliament, the SIU Act 74/1996. The current SIU was established by a Presidential Proclamation R118 of 2001.

The SIU is mandated to investigate corruption and maladministration and institute civil legal action to correct any wrongdoing. The primary purpose of the unit is to enable the state to recover money lost as a result of corruption, maladministration and fraud. The unit applies civil law to prevent losses and also facilitate systemic improvements.

The unit has special powers of subpoena, search, seizure and interrogating witnesses under oath but not powers of arrest and prosecution. The unit works with relevant government law enforcement agencies when it comes to arrest and prosecution.

There has been massive expansion of the SIU in the last five (5) years involving development of multi-disciplinary forensic capability comprising of:-

- (i) forensic investigators, lawyers and accountants;
- (ii) cyber forensic and data analysis experts; and
- (iii) project management capacity.

In discharging its mandate, SIU is guided by a vision, mission, strategic objectives and organisational values and has developed close working relationships with:-

- (i) Law enforcement agencies;
- (ii) The Accountant General and Auditor General;
- (iii) Oversight bodies like Public Protector; and
- (iv) Individual departments, provinces and other institutions.

4.2. Fighting corruption a government priority

In April, 2009, the Government of South Africa identified dealing with crime and corruption as one of its top five (5) priorities. Procurement fraud group was set up by the Minister for Finance in August, 2009 and is now known as MAWG (Multi Agency Working Group).

The President set up an Inter-Ministerial Committee (IMC) on corruption in Dec 2009. In April, 2010, specific and ambitious corruption targets were set for Justice, Crime, Prevention and Security (JCPS).

The Anti Corruption Task Team (ACTT) was established in July, 2010 while Department of Public Service and Administration (DPSA) anti-corruption capacity was announced in Sep 2010 to focus on disciplinary proceedings in important cases.

4.3. Overcoming fragmentation

Until recently, one of the challenges facing South Africa was the fact that various agencies, departments and entities within the public sector had anti-corruption mandates. The following bodies all have anti-corruption mandates in their work:-

- (i) The Auditor-General of South Africa (AGSA);
- (ii) The Public Protector;
- (iii) Public Service Commission (PSC);
- (iv) National Prosecuting Authority (NPA);
- (v) Directorate of Priority Crime Investigations (Hawks);
- (vi) Asset Forfeiture Unit (AFU);

- (vii) Special Investigating Unit (SIU);
- (viii) Department of Public Service and Administration (DPSA);
- (ix) South African Revenue Services (SARS);
- (x) Financial Intelligence Centre (FIC); and
- (xi) National Anti-Corruption Forum (NACF).

4.5. Moving towards integration

There are various government initiatives seeking alignment across these various entities to move from fragmentation towards integration and co-ordination. The initiatives are spearheaded by an Inter-Ministerial Committee (IMC) on Anti Corruption

The mandate of IMC and its supporting Inter-Department Task Team is to:-

- (i) Ensure overall co-ordinated anti-corruption efforts;
- (ii) Promote policy coherence and alignment on cross-cutting anti corruption programmes of government;
- (iii) Develop and enhance technical measures to curb corruption both in the private and public sector;
- (iv) Procurement practices review;
- (v) Address weaknesses in the criminal justice system;
- (vi) Ensure efficient prosecutions take place; and
- (vii) Ensure political co-ordination of anti-corruption efforts on the international stage.

4.6. New Initiatives: Multi-Agency Working Group (MAWG)

Multi-Agency Working Group (MAWG) was established by the Ministry of Finance in late 2009 with the expressed purpose to detect and investigate potentially high-risk irregularities in government procurement across all three tiers of government.

MAWG's mandate is to:-

- (i) Review and make recommendations on the functioning, policies and procedures of government systems;
- (ii) Enhance a culture of accountability and adherence to government systems and processes;
- (iii) Develop an approach and methodology to combat fraud and corruption in government processes;
- (iv) Facilitate the evaluation and implementation of government processes; and
- (v) Identify sanctions for non-compliance including:-
 - a) Disciplinary proceedings;
 - b) Blacklisting;
 - c) Civil recoveries;
 - d) Tax enforcement compliance; and
 - e) Referral for criminal prosecution.

MAWG comprises:-

- (i) Office of the Accountant-General (convenor);
- (ii) National Treasury;
- (iii) South African Revenue Services (SARS);
- (iv) Financial Intelligence Centre (FIC);
- (v) Auditor-General of South Africa (AGSA);
- (vi) Special Investigation Unit (SIU);
- (vii) Department of Public Service and Administration (DPSA);
- (viii) Directorate of Priority Crime Investigations (Hawks); and
- (ix) National Prosecuting Authority (NPA).

MAWG has a Compliance and Enforcement Sub-working group whose mandate is to:-

- (i) Determine whether to take on cases using objective criteria;
- (ii) Conduct preliminary investigations using inherent law enforcement powers of the police and SIU proclamations;
- (iii) Identify, and where necessary refer cases indicated to the appropriate agency; and
- (iv) To investigate procurement related corruption on priority cases.

To date, the committee has developed a process flow indicating sources of cases, processes for data analysis, preliminary investigations, enforcement and the referral of criminal cases. A number of cases are already under investigation

MAWG was created out of increasing concern about procurement irregularities. The aim of MAWG investigations is to determine whether:-

- (i) Government procedures and policies were adhered to;
- (ii) Conflict of interest was properly managed;
- (iii) The government received value for money; and
- (iv) There was full tax compliance;

Activities of the MAWG are co-ordinated through two sub-working groups namely; Supply chain management systems group and compliance and enforcement group

4.7. New Initiatives:- The Anti-Corruption Task Team (ACTT)

The Anti-Corruption Task Team (ACTT) is a sub-committee of the Justice, Crime Prevention and Security (JCPS) cluster. The Task team was established by the President in July, 2010 to coordinate the work of law enforcement agencies and watchdog bodies.

ACTT is intended to perform high priority criminal investigations especially where there is more than R.5 million of assets to be seized. JCPS targets for 2010 to Apr 2014 are 100 convictions of corruption in cases where more than R.5 million can be frozen.

Membership in the ACTT include Directorate for Priority Crime Investigations (DPCI), NPA and SIU.

4.8. New initiatives – Department of Public Service and Administration (DPSA)

A new unit was created in DPSA by the Minister for Public Service and Administration in 2010. The unit will have an enforcement mandate and powers. Features of the new unit as announced include:-

- (i) Centralised prosecutorial facility to coordinate disciplining officials in departments at local, provincial and national level and all parastatals;
- (ii) Continued co-ordination of legislative and policy initiatives such as, no pay for suspended officials, outright ban on public servants holding business interests and preventing those facing disciplinary proceedings from resigning or receiving golden handshakes.

4.9. Challenges and difficulties faced in uprooting corruption

The challenges and difficulties the Government of South Africa has been facing in uprooting corruption are:-

- (i) Coordinating activities of various agencies with different mandates into a seamless anti-corruption approach;
- (ii) Ensuring sufficient resourcing for new initiatives to make an impact;
- (iii) Ensuring that centralised approach results in uniformity in terms of enforcement in provinces and local government;
- (iv) The persistent challenge of fighting corruption at local government;
- (v) Avoiding duplication and ensuring correct information flows:-
 - a. from agencies with detection and prevention capacity – such as the AGSA, PSC and DPSA
 - b. to those with enforcement capacity – Hawks, SIU and NPA;
- (vi) Recognising that anti corruption efforts must provide attention to the entire value chain namely: education, prevention, detection, investigation and enforcement;
- (vii) Currently, initiatives have a strong investigation and enforcement slant – the challenge remains building efficiencies up-stream within the public sector to ensure education and prevention are addressed;
- (viii) Integrating the important role that watchdog bodies, such as the SCOPAs, must play in surfacing information they receive and channelling such information to the proper forum; and
- (ix) Further attention must be given to education and the role that civil society can play in mobilising support for government's anti-corruption initiatives and feeding information from the ground to the proper forum.

4.10. Investigation constraints

Investigations in the war against corruption have been impeded by the following:-

- (i) Non-availability of documentation;
- (ii) Not sufficient information when received;
- (iii) Destruction of evidentiary material;
- (iv) Inadequate investigation;
- (v) Lack of cooperation by former and current state employees or potential witnesses;
- (vi) Prescription period affecting possibility of civil recoveries;
- (vii) Investigation recommendation not always followed up by departments, i.e. capacity and or political will to conduct disciplinary or civil action;
- (viii) Little monitoring or oversight once investigations are concluded; and

4.11. Way forward

SIU welcomes the invitation to work with APAC and the SCOPAs, nationally and in the provinces, to co-ordinate and prioritise matters for investigation and also to advise the government on broader anti-corruption initiatives.

Liaison Committees should be meeting regularly in each province to share information from the work of SCOPAs to feed into law enforcement and where appropriate to provide feedback from law enforcement on investigations except on matters which could compromise on-going investigations.

APAC should aim to keep an updated list of matters, share information and prioritise matters arising for investigation or referral to the appropriate forum for action. Priority matters identified for investigation can be referred to the AG, MAWG or ACTT for necessary action

4.12. Resolutions

The conference having deliberated on the topic resolved as follows:-

- (i) APAC should lobby for a ban on Public Servants and Public Representatives in business with Government. All Public Servants should declare their business interests and Public Representatives should be barred from influencing procurement processes.
- (ii) APAC should lobby for the streamlining of law enforcement agencies and laws that govern fraud and corruption.
- (iii) APAC should lobby for the establishment of a central database of all suppliers which should be made public. Furthermore, companies that engage in fraudulent and corrupt activities should be blacklisted. APAC also recommends

a review of procurement processes, for example a national standard on pricing and a review of the constitution of tender committees.

5.00. DECLARATION OF 12TH APAC CONFERENCE, 2010

We the delegates of 12th APAC Annual Conference assembled at the Inkosi Albert Luthuli International Convention Centre (ICC) in Durban, Kwazulu-Natal Province, South Africa:-

**NATIONAL ASSEMBLY
FREE STATE
KWAZULU-NATAL
MPUMALANGA
NORTHERN CAPE**

**EASTERN CAPE
GAUTENG
LIMPOPO
NORTH WEST
WESTERN CAPE**

and the following Municipal Public Accounts Committees

**CITY OF JOHANNESBURG
CITY OF CAPE TOWN
EKURHULENI MUNICIPALITY
ETHEKWINI MUNICIPALITY
EMFULENI MUNICIPALITY
MELAFONG DISTRICT MUNICIPALITY
MOGALE CITY MUNICIPALITY
JOHN TAOLO MUNICIPALITY
SEDBENG DISTRICT MUNICIPALITY
LISEDI MUNICIPALITY
TSHWARE METRO
WESTONARIA LOCAL MUNICIPALITY**

**CAPRICORN DISTRICT MUNICIPALITY
NELSON MANDELA BAY METRO
DR RUTH MOMPATI DISTRICT MUNICIPALITY
EHLANZENI DISTRICT MUNICIPALITY
O.R. TAMBO DISTRICT MUNICIPALITY
MIDVAAL LOCAL MUNICIPALITY
METSWEDING DISTRICT MUNICIPALITY
RANDFONTEIN LOCAL MUNICIPALITY
SISONKE DISTRICT MUNICIPALITY
MAKHUDUTHAMAGA LOCAL MUNICIPALITY
SEKHUKHUNE DISTRICT MUNICIPALITY**

as well as delegates from the following foreign jurisdictions:-

**KENYA
MALAWI
NAMIBIA
ZAMBIA**

**MAURITIUS
NIGERIA
UGANDA
ZIMBABWE**

RECOGNISE:

- That all ten legislatures through their Public Accounts Committees are key institutions for conducting oversight on public finance to enhance service delivery;
- That the local government sphere is in the process of establishing Municipal Public Accounts Committees to strengthen oversight and financial management at local Government level;

- That the executive authorities and not Accounting Officers bear the ultimate leadership responsibility for proper and effective functioning of the executive and as such should appear before PACs to account on matters of financial management and performance among others;
- That the AGSA will be hosting the 20thINCOSAI conference to be held from the 22nd to 27th November, 2010 in Sandton, and fully supports the Auditor-General in his new responsibilities as the incumbent chairperson of INTROSAI.
- That the prevalence of fraud and corruption in the public sector continues to undermine the best efforts of oversight at all spheres of government;
- The importance of collaboration between APAC, Chapter 9 Institutions and Law Enforcement Agencies to root out corruption and fraud in the public sector;
- The need for the Auditor General to issue audit opinions not only on financial statements but also on performance information throughout a given financial year;
- The need to enhance the capacity and resources of Public Accounts Committees to ensure effective scrutiny to enhance their oversight mandate.

WHEREAS WE REALISE:

- That only 48 out of 283 Municipalities have established MPACs across the country and therefore there is a need for provinces to expedite the establishment of MPACS to enhance oversight at local government level;
- That there is lack of clarity on the part of the Executive with regard to who should account to legislatures (principle) and to PACs in particular with respect to financial management matters;
- That the executive needs to ensure that individual executive authorities must adhere to this principle of accountability;
- We realize the need to review the legislative framework that will legitimize the separation of powers at local government level to enhance accountability and good governance;

WE THEREFORE DECLARE:

1. APAC to lead the process to finalization of the establishment of an Anti Fraud and Corruption Forum in order to ensure prioritization of cases (prosecution and expedient judgment against the culprits).
2. APAC to ensure that those involved in fraudulent and corrupt activities as well as those found guilty of squandering public funds are blacklisted from future employment and doing business with all state institutions.

3. APAC to facilitate and enhance, through training and capacity building for members and support staff, on modalities to improve oversight on performance in line with budget appropriations.
4. APAC to develop tools of oversight mechanisms that will help SCOPAs to ensure the realization of the triple Es (economical, efficient and effective)
5. APAC to develop an MOU with relevant stakeholders detailing the modalities of the collaboration and action plan with timeframes regarding implementation.
6. That APAC must, through its jurisdictions, facilitate a process to establish provincial MPAC structures to be recognised as legitimate APAC members soon after the upcoming local government elections.
7. APAC and relevant stakeholders must coordinate and facilitate an annual capacity building programme for MPACS and its support staff to enhance oversight at local government level.
8. In order to avoid the challenges of unfunded mandate, APAC to ensure that CoGTA and National Treasury fund municipalities towards the realisation of fulltime, dedicated MPAC chairpersons as well as support staff

Finally this 12th APAC conference held at Inkosi Albert Luthuli ICC calls upon all Speakers, delegates, the public and other relevant stakeholders to voluntarily facilitate the successful implementation of adopted resolutions without undue impediment.

XX

MINUTES OF THE FIRST SITTING OF THE KENYAN PARLIAMENTARY DELEGATION TO THE 12TH ANNUAL CONFERENCE OF THE ASSOCIATION OF PUBLIC ACCOUNTS COMMITTEE (APAC) OF SOUTH AFRICA HELD FROM 11TH TO 14TH OCTOBER, 2010 IN DURBAN, SOUTH AFRICA

PRESENT:-

Hon. (Dr.) Boni Khalwale, MP - Leader of delegation
Hon. Daniel Muoki, MP
Hon. Alex M. Mwiru, MP

ABSENT WITH APOLOGY:-

Hon. Mithika Linturi, M.P.
Hon. Charles Nyamai, M.P.

IN ATTENDANCE:-

Mr. George Gazemba - Clerk Assistant II

MIN No. 1/2010:- CONSIDERATION AND ADOPTION OF REPORT

The meeting considered and adopted its report on attendance to the 12th Annual Conference of the Association of Public Accounts Committees (APAC) of South Africa held from 11th to 14th October, 2010 in Durban, South Africa.

It was agreed that the report be tabled in the House for noting only.

MIN No. 2/2010:- ADJOURNMENT

The sitting was adjourned at eleven in the morning.

Signed Hon. Dr. Boni Khalwale, M.P.
(Leader of delegation)

Date 27th November, 2010

