CONSTITUTION AND REFORM
EDUCATION CONSORTIUM (CRECO)

THE SORRY
STATE OF THE NATION, 2018

Shadow Report on The Implementation of National Values and Principles of Governance
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THE SORRY STATE OF THE NATION, 2018:
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<tbody>
<tr>
<td>CAJ:</td>
<td>Commission for the Administration of Justice</td>
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<tr>
<td>CBC:</td>
<td>Competency Based Curriculum</td>
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<td>CBOs:</td>
<td>Community Based Organizations</td>
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<td>CIPEV:</td>
<td>Commission of Inquiry into Post-Election Violence</td>
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<td>CEDAW:</td>
<td>Committee on All forms of Discrimination against Women</td>
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<td>CIC:</td>
<td>Commission for the Implementation of the Constitution</td>
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<td>CJPC:</td>
<td>Catholic Justice and Peace Commission</td>
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<td>CRECO:</td>
<td>Constitution and Reform Education Consortium</td>
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<td>CSOs:</td>
<td>Civil Society Organizations</td>
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<td>CSO-RG:</td>
<td>Civil Society Organizations Reference Group</td>
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<td>CREA:</td>
<td>Centre for Rights Education and Awareness</td>
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<td>CRAWN Trust:</td>
<td>Community Advocacy and Awareness Trust</td>
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<tr>
<td>DCI:</td>
<td>Directorate of Criminal Investigations</td>
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<td>EACC:</td>
<td>Ethics and Anti-Corruption Commission</td>
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<td>FIDA:</td>
<td>Federation of Women Lawyers (Kenya)</td>
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<td>IBP:</td>
<td>International Budget Partnership</td>
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<td>ICJ-K:</td>
<td>International Commission of Jurists, Kenya</td>
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<td>IEBC:</td>
<td>Independent Electoral and Boundaries Commission</td>
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<td>IEA:</td>
<td>Institute of Economic Affairs</td>
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<td>IMLU:</td>
<td>Independent Medico-Legal Unit</td>
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<td>IPOA:</td>
<td>Independent Policing Oversight Authority</td>
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<td>IREC:</td>
<td>Independent Review Commission</td>
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<td>KAM:</td>
<td>Kenya Association of Manufacturers</td>
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<td>KEPSA:</td>
<td>Kenya Private Sector Alliance</td>
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<td>KHRC:</td>
<td>Kenya Human Rights Commission</td>
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<td>KNCHR:</td>
<td>Kenya National Commission on Human Rights</td>
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<td>KNUT:</td>
<td>Kenya National Union of Teachers</td>
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<td>Abbreviation</td>
<td>Full Form</td>
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<td>MDAs</td>
<td>Ministries Departments and Agencies</td>
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<td>MPC</td>
<td>Maternity Protection Convention</td>
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<td>NASA</td>
<td>National Super Alliance</td>
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<td>NCCK</td>
<td>National Council of Churches of Kenya</td>
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<td>NCIC</td>
<td>National Cohesion and Integration Commission</td>
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<td>NEMA</td>
<td>National Environment Management Authority</td>
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<td>NGEC</td>
<td>National Gender and Equality Commission</td>
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<td>NGOs</td>
<td>Non-Governmental Organizations</td>
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<td>NLC</td>
<td>National Land Commission</td>
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<td>NSA</td>
<td>Non-State Actors</td>
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<td>NVPG</td>
<td>National Values and Principles of Governance</td>
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<td>ODPP</td>
<td>Office of the Director of Public Prosecution</td>
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<td>OGP</td>
<td>Open Governance Partnership</td>
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<td>PBO</td>
<td>Public Benefits Organization</td>
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<td>PPRA</td>
<td>Public Procurement Regulation Authority</td>
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<td>PWDs</td>
<td>Persons with Disabilities</td>
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<td>TI Kenya</td>
<td>Transparency International, Kenya</td>
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<td>TJN</td>
<td>Tax Justice Network</td>
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<td>TSC</td>
<td>Teachers’ Service Commission</td>
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<td>TWG</td>
<td>Technical Working Group on Monitoring of NVPG Implementation</td>
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<td>UNCAC</td>
<td>UN Convention against Corruption</td>
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<tr>
<td>UNCTAD</td>
<td>United Nations Conference on Trade and Development</td>
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<td>UNEP</td>
<td>United Nations Environmental Programme</td>
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Foreword

This publication has been done with the objective of enabling stakeholders in the Civil Society and government institutions keep track of the democratic process Kenya is making.

In consultation with subject experts and members of The Technical Working Group on National Values and Principles of governance, a framework to monitor the implementation of the National Values and Principles of governance was developed, that which is based on the laws, regulatory and public policy documents in place giving life to Article 10 of the constitution.

This document is divided in three parts: Background information on CSOs NVPG monitoring, the post 2013 election environment an implementation of NVPG and assessment of the President’s State of the nation Address.

Further, this publication notes that the greatest obstacle to a better and more humane Kenya is the culture of our politics which by and large has promoted to lack accountability. Kenyans must therefore be willing to exercise vigilance in ensuring that the National Values and Principles of governance; is fully implemented protected and safeguarded and is also fully supported by all citizens to make Kenya a thriving democracy based on social justice and fundamental freedoms, among other key principles.

In this way, the publication will be instrumental in enhancing a culture of civic consciousness of national values established in the Constitution of Kenya and consequently define the practice of governance and democracy for Kenyans citizens, Civil society organisation and government entities who want to exercise their rights and duties, elect their leaders, participate in governance at the national and county levels, and also ensure that all state institutions as well as those in the private sector should respect, protect and promote human rights, national values and principles of governance set out in the constitution.

As a Chair of CRECO, it gives me great honour, pleasure and sense of patriotic duty to be part of this publication, which will ultimately contribute to greater sense of nationhood, or to the building of one through better leadership.

God bless Kenya

Cornelius Oduor

Chairperson

CRECO Management Committee
Acknowledgement

The Constitution and Reform Education Consortium (CRECO) would like to acknowledge Kenyans for bequeathing themselves and future generations a progressive constitution. CRECO further recognizes the efforts by Kenyans of goodwill to defend and uphold the constitution. The survival of the constitution depends on the goodwill of all, and it is the responsibility of all Kenyans to respect, uphold and defend it as we ensure the constitution is implemented.

In a special way, we would like to sincerely thank all Members of the Technical Working Group\(^1\) on National Values and Principles of Governance for their time and valuable input towards the developing the monitoring framework and other CSOs who gave their time and input in validating the report.

We acknowledge our consultants who, while factoring inputs from CSOs, ensured the successful completion of the process; we thank Jessica Musilla who helped develop the framework, Otieno Adipo who helped write the report, and Kawive Wambua who helped edit the report.

We appreciate the role played by various government and private sector organizations that agreed to be part of this report. Particularly, we thank IPOA, EACC, KAM and KEPSA for sparing time to engage us on issues around implementation of NVPG.

We would also like to sincerely thank all the staff members for their time and skills. Our sincere thanks go to the Management Committee for guiding the Secretariat towards excellence.

Our thanks go to National Endowment for Democracy for supporting CRECO’s monitoring of NVPG Implementation. We couldn’t have achieved this without your unrivaled support.

Regina Opondo

Executive Secretary

CRECO

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Executive Summary

National values are an integral part of every society. The drafters of the 2010 Constitution were conscious of this fact and indeed ensured that these values were not only included in the Constitution but also provided for legal mechanisms for the implementation of the same. This is because the mere existence of national values written in our laws – as much as this may be deemed an achievement, may not necessarily suffice. A purposed execution of these values, driven by a utilitarian logic and an undying political will actually demonstrates true appreciation of national values.

Civil Society Organizations, under the auspices of the Technical Working Group on the monitoring of National Values and Principles of Governance (NVPG) implementation saw the need to annually appraise the government’s performance insofar as the implementation of NVPG is concerned.

In Chapter I, we give an introduction to CRECO’s NVPG monitoring project that commenced in 2016 under the auspices of the Technical Working Group (TWG) with the support of URAIA. In order to conduct effective monitoring, the TWG developed a monitoring framework from existing regulatory, legal and public policy documents. The first shadow report of the State of the Nation address was published in 2017 attracting little attention due to the heightened election campaigns of the time. To help guide the appraisal of the state of NVPG implementation, CSOs developed in 2018 a new monitoring framework that spoke to the objective interests of CSOs. The framework derived its sources of benchmarking from regional and international conventions.

The chapter further highlights the purpose, objective, significance and scope of the NVPG monitoring project, and the methodology used in writing this report including KIIs, FGDs, desk review and analyses of the 2019 SOTN Address.

Chapter II sets the report within the general context of implementation of the NVPG which dates back to the post-election violence of 2007/8 which resulted in the death of over 1,000 Kenyans. Well captured is the relevance of Agenda 4 of the National Accord and reports by key Commissions in underscoring the need to address historical injustices.

More specific are the overriding issues in 2018 – period of reference of the report. Against the backdrop of 2013 and 2018 Jubilee campaigns, it is demonstrated herein that the government performed dismally on issues of transparency, corruption, rule of law and impunity among others. Interestingly, the President’s annual SOTN Address seems to paint a better picture of the country which is in stark contradiction with the actual state of the country. It also highlights the failure of Parliament in protecting and advancing NVPG.

In the chapter we draw the reader’s attention to key legislations touching on NVPG as well as the specific sources of benchmark upon which the framework was premised.
Chapter III focuses on the SOTN Address 2019 against the backdrop of identified positive and negative developments in 2018 as well as a number of primary issues that the TWG regarded as of great importance to the implementation of NVPG. The selection of the issues was not only based on what was happening in the country at the time but also on the President's previous SOTN Addresses and the promises he made during those addresses. Some of the key issues highlighted in the chapter are the Big 4 Agenda, two thirds gender rule, rising cases of SGBVs, restoration of human dignity, extrajudicial killings and the war against corruption. Further, it looks into notable 2018 legislations that have negatively impacted NVPG implementation.

Chapter IV shares key findings arising from FGDs, KIIIs and desk reviews of the 2019 SOTN Address. Generally, the government’s performance in the implementation of NVPG is rated as dismal. It’s observed that the government did not prioritize NVPG implementation and largely disregards actions that can lead to active implementation of NVPG. Some of the government MDAs that progressively work towards fulfilling NVPG do so through undertaking their functions as stipulated in the law.

Summary of Broad Recommendations

**Public Participation**

a) The government should engage citizens in structured public participation both as a legal and moral duty to ensure the public have adequate and accurate information about proposed laws before they can be tabled before Parliament for debate.

b) Whereas the government may have great initiatives for improving the welfare of Kenyans, e.g., the Big Four Agenda, it is incumbent upon the government to ensure there is demonstrated effort to engage citizens in the spirit of public participation as enshrined in the law. Public participation should not be limited to urban and peri-urban areas but also include rural areas.

c) A public participation law and framework needs to be enacted to provide for a more deliberate participation of the people with clear participatory structures that would empower the people to engage representatives and veto unpopular and selfish laws passed in Parliament and County Assemblies.

**Runaway Corruption**

a) Corruption has become a crisis in the country. Leadership today seems to be a perfect opportunity for leaders to loot and enrich themselves. The politicization and weaponization of the war against corruption and whipping up of ethnic emotions by the corrupt are a hindrance to the fight against corruption. The war on corruption should be grounded on both the law and the idea of integrity and
b) Parliament, in light of the limitations of existing anti-corruption laws, should work with the relevant government organs to amend the existing anti-corruption laws to empower the organs in investigating, prosecuting and preventing corruption. In particular, the legislations should mirror the integrity test of Chapter Six and provide for immediate suspension of individuals implicated in scandals.

c) In light of the Public Procurement and Disposal Act and the subsidiary Public Procurement and Disposal Regulations, procurement files and records should be properly managed to avoid incidents of lost or missing files.

d) The failure to have a lifestyle audit for all State officers and the adamant refusal by high ranking government officials to declare their wealth should be treated as sufficient ground for judicial prosecution of these State officers. Where the relevant laws have loopholes, the government should amend the laws to ensure that no State officer shall stay in office if they do not abide by the requirement to declare their wealth.

e) Corruption cases before courts generally drag for several years and a verdict is yet to be issued regarding some of the major corruption cases. The Judicial Service Commission should introduce a judicial policy to outline pre-trial and trial proceedings, asset freezing and recovery to ensure that the Judiciary enables rather than impedes the quest for justice.

f) The Asset Recovery Agency should be empowered to carry out its mandate without political interference or pressure from any quarters.

g) The Elections Campaign Financing Act had previously banned politicians and political parties from receiving anonymous contributions (Section 13, 14) and demanded they disclose funding sources (Section 16). Politicians and State officers should be banned from participating in fundraisers to curb money laundering and use of public resources to appeal for political support.

Two Third Gender Rule Implementation

a) Parliament should enact the two thirds gender rule without further delay to reflect the aspirations of the 2010 Constitution.

b) There is lack of political will from the Executive arm of the government to implement the two thirds gender rule for appointive positions. The President should implement two thirds gender rule for all appointive positions in all government agencies, parastatals and departments.

c) The National Gender and Equality Commission (NGEC) and the Kenya National Commission on Human Rights (KNCHR) should be allocated higher budgets to enable them to effectively address arising gaps and challenges in the gender and
human rights campaign.

d) Civil society organizations should collaboratively work together and design a global approach to dealing with gender issues.

Restoring Human Dignity

a) To ensure human dignity is restored, the government should ensure these programmes actually benefit the people for whom they are intended by holding its officers accountable and culpable in case of embezzlement. In his SOTN Address, the president should provide hard facts and solutions to the failure of his government to address the recurrent issue of death from hunger and famine.

b) The government should identify sustainable ways to address the problem of famine and hunger. The government could invest in innovative water harvesting mechanisms to shield drought-stricken regions from hunger and death.

c) The civil society should collaboratively work together to conduct social audit of these programmes to establish the efficacy of the models employed by government while at the same time assessing the level of embezzlement of funds meant for alleviating poverty, famine and destitution.

Restoring Justice

a) The “primary reference” when it comes to restoring justice in Kenya is the Truth, Justice and Reconciliation Commission report. The report identifies the problem of historical injustices as the greatest obstacle to the present justice and reconciliation effort. The most effective way to restore way is to fully and unconditionally implement the TJRC Report.

b) The President has set aside more than once money towards setting up the Restorative Justice Fund but the fund has never been putting in place. The buck stops with the President – the failure by Treasury to allocate funds to the Fund is an indication it was a mere PR stunt. The President should therefore set a timeline by which money shall be transferred to the Fund and its subsequent implementation.

Sexual Gender-Based Violence

a) The government should work with CSOs and other NSAs to identify current gaps in SGBV legislation and policy implementation challenges that have affected the war against SGBV. The government should ultimately establish a legal framework that will protect its citizens from being sexually violated - whether male or female.

b) The Kenya Police Service should work in partnership with gender CSOs to train selected police officers and DCI officers on SGBV. The Directorate of Public Prosecution (DPP) should also work with these CSOs to train their prosecutors on
how to handle SGBV cases.

c) This sometimes creates a window for perpetrators to attempt to defeat justice. The Judiciary should create specialized SGBV courts across the country to aptly deal with rising cases of SGBV.
Chapter I:

INTRODUCTION

1.1 About CRECO

Constitution and Reform Education Consortium (CRECO) is a network of civil society organizations that belong to the broad human rights governance and democracy category of NGOs. As a consortium, CRECO is committed to promoting constitutionalism, democratic governance and institutional excellence through coordination and capacity building of CSOs. CRECO was founded in 1998, even though its history dates as far back as 1992 when NGOs involved in human rights, democracy and governance began to proliferate. CRECO’s membership comprises of 23 CSOs implementing diverse human rights, democracy and governance activities in various parts of Kenya, all united in the vision of a just society. CRECO’s membership is drawn from both urban and rural-based NGOs working in 47 counties of Kenya.

1.2 Background to CSO NVPG Implementation Monitoring

In late 2016, CRECO with financial support from URAIA Trust developed a framework to enable the various stakeholders keep track on the democratic progress Kenya was making. The framework was developed in consultation with subject experts and CRECO’s members and partners who formed the Technical Working Group (TWG) on national values. The framework was based on the laws, regulatory and public policy documents in place giving life to Article 10. Reports from the Independent Commissions and offices were also cited. The framework also looked at the matrix that the department of the National Cohesion and National Values in the Presidency uses in compiling the President’s address. The expected users of the framework developed were the National and County governments and CSOs.

Consequently, the first ‘Shadow Report’ of the ‘State of the Nation’ report was produced in 2017 based on the developed framework but it had limited impact as the country was distracted from matters implementation and primed for elections. However, the requisite government agencies that contributed to the development of the State of the Nation (SOTN) address were proactively engaged on how they could improve their reporting.

A fresh election cycle started with 2017 general elections and CRECO with National Endowment for Democracy’s support sought to continue the work of monitoring the National Values and Principles of Governance (NVPG) under the project ‘Entrenching Democratic Governance and Constitutionalism in Kenya through an Informed Citizenry’ aimed at enabling the CSO sector to enhance its efforts of providing oversight to the process of constitution implementation with particular emphasize on Article 10 (2) (c). The project

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had two key milestones: i) a review of the monitoring framework, and ii) the production of a shadow report on the progress of realization of National Values and Principles of Governance in Kenya. Through the project, CRECO sought to create awareness to the public on the status of implementation of NVPG and enable them to understand their roles in implementation of the same which will empower them to hold their leaders to account.

1.3 Methodology towards the Report

To afford an objective assessment of the implementation of the NVPG with particular reference to the 2019 State of the Nation Address, CRECO adopted a CSO approach to monitoring of the implementation of NVPG. The guiding principle to this approach was the need for an independent objective assessment of government’s compliance with Article 10 of the Constitution of Kenya, and it was imperative that civil society organisations in the governance sector to provide this much need unprejudiced appraisal of the implementation of NVPG.

1.3.1 NVPG Monitoring Framework

The formation of a Technical Working Group (TWG) on the monitoring of the implementation of NVPG was informed by the need to create a sense of CSO ownership of the monitoring process. The TWG comprised key civil society organizations in the governance sector. The TWG was critical in the creation of a Framework for monitoring the implementation of NVPG which was done with the help of an independent consultant. The TWG mainly interrogated existing laws, regulations and policies that relate to the implementation and protection of NVPG.

The Framework laid out the key issues by narrowing down to fifteen (15) national values deemed relevant to values espoused in Article 10 (2) (c). The Framework further identified benchmarking tools to help guide the appraisal of the state of NVPG implementation. CRECO, through a consultant, conducted a training on the Monitoring Framework to provide a rationale for adopting the Framework in the monitoring of the NVPG implementation and to enable CSOs to adopt it as a matrix for assessing various issues around NVPG.

1.3.2 Desktop Review

To ensure that framework’s methodology covered what couldn’t be covered by KIlS, FGDs and the CSOs physical platforms, CRECO conducted a desktop research on an array of issues around the 2019 SOTN Address. The research was purely qualitative and was instrumental in providing a more lucid picture of the actual State of the Nation as viewed by various stakeholders in response to the President’s SOTN Address. The research combined, in a systematic way, responses of CSOs and other stakeholders to the 2019 SOTN Address. Further, it analyzed select television talk shows on the President’s SOTN Address as well as some previous SOTN Addresses to establish consistency.
1.3.3 Focused Group Discussions

Under the auspices of the TWG on monitoring of NVPG implementation, CRECO also conducted Focused Group Discussions (FGDs) with stakeholders in the civic space to evaluate significant issues around NVPG implementation in 2018. To ensure the FGDs were effective, participants were trained on the framework for monitoring NVPG implementation. The FGDs, besides scoring the government, explored the role of both civil society and the private sector in advancing NVPG agenda. The FGDs comprised CRECO membership, members of the TWG Monitoring NVPG and members drawn from the civil society.

The FGD session was divided in two groups with each group guided by a facilitator. The groups attempted to address the provided questions and recorded their deliberations with the help of a rapporteur. Each group, with the help of their leader, made presentations of their discussions which were later collated into one document. The questions for discussion were in line with the framework and the fifteen NVPGs highlighted in the framework.

1.3.4 Key Informant Interviews

CRECO conducted key informant interviews with selected duty-bearers and private sector stakeholders. The duty-bearers were regarded as critical players in the implementation of specific recommendations of this report while at the same time affording the report a balanced view of issues. The private sector was also regarded as a critical player given the role it plays in building the economy of the country. In their unique ways, they are critical to the success of the implementation of the NVPG.

The KIIs were crucial in providing a non-CSO perspective to the NVPG implementation. The questions, numbering twelve (12), were designed by a consultant and shared with the respondents ahead of meetings, which happened at the offices of the respondents.

The KIIs were conducted with an interview guide and the interviews were conducted at locations convenient to the interviewees and for the most part that was the offices of the interviewees. The interviews sought to collect qualitative insights on the interviewee’s compliance with Article 10 of the Constitution as well assess the interviewee’s views on the general implementation of NVPG. The KIIs also sought to collect recommendations from the interviewees on the implementation of NVPG.

The duty-bearers that we contacted and managed to interview were the Independent Policing Oversight Authority (IPOA) and the Ethics and Anti-Corruption Commission (EACC); our efforts to interview the Commission for Administration of Justice (CAJ), Directorate of National Values, National Cohesion and Integration Commission (NCIC) and the Public Procurement Regulation Authority (PPRA) bore no fruit. In the private sector, Kenya Private Sector Alliance (KEPSA) and the Kenya Association of Manufacturers (KAM) were successfully interviewed.

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3 The KIIs comprised a set of twelve (12) questions.
1.4 Purpose of the NVPG Implementation Monitoring

The purpose of the NVPG implementation is the realization of the NVPG in line with the Constitution of Kenya. It obligates the President of the Republic of Kenya to present annually a SOTN Address to a joint sitting of Parliament on how his government has contributed to the entrenchment of the National Values and Principles of Governance as is enumerated in Article 104 and as well provide an update on the implementation of values and principles of public service listed in Article 232.5

In the spirit of holding the government accountable to the people, CRECO, as a consortium that brings together various CSOs in the governance and democracy sector, sought to monitor the implementation of the NVPG under the auspices of the aforementioned TWG as from 2016. To this extent, the monitoring of the NVPG implementation is premised upon a constitutional obligation owed citizens by the government in providing accurate and truthful reporting on the implementation and protection of the NVPG.

The monitoring of NVPG implementation provides a parallel (CSO) report to the President’s SOTN address and identifies key issues around NVPG, existing gaps (legislative or otherwise), failures and successes in the implementation of NVPG. In the process, CRECO will publish its findings and recommendations from various stakeholders and duty bearers to enable the country bring to its full life Article 10 of the Constitution. The monitoring of NVPG implementation will be instrumental in enhancing a culture of civic consciousness of national values established in the Constitution of Kenya and consequently define the practice of governance and democracy. CRECO is convinced that this will ultimately contribute to greater sense of nationhood, or the building of one through better leadership.

1.5 Objectives of the Monitoring of NVPG Implementation

Under the theme “Entrenching Democratic Governance and Constitutionalism through an Informed Citizenry” the monitoring of the government’s implementation of national values has the following objectives:

- To take stock of the efforts by stakeholders and identify the gaps and opportunities for complementary interventions towards the realization of NVPG.
- To create public awareness on the status of the implementation of NVPG and enable the public to understand their role and empower them to hold the leadership to account.

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4 (1) The national values and principles of governance in this Article bind all State organs, State officers, public officers and all persons whenever any of them— (a) applies or interprets this Constitution; (b) enacts, applies or interprets any law; or (c) makes or implements public policy decisions. (2) The national values and principles of governance include— (a) patriotism, national unity, sharing and devolution of power, the rule of law, democracy and participation of the people; (b) human dignity, equity, social justice, inclusiveness, equality, human rights, non-discrimination and protection of the marginalised; (c) good governance, integrity, transparency and accountability; and (d) sustainable development.

5 (1) The values and principles of public service include— (a) high standards of professional ethics; (b) efficient, effective and economic use of resources; (c) responsive, prompt, effective, impartial and equitable provision of services; (d) involvement of the people in the process of policy making; (e) accountability for administrative acts; (f) transparency and provision to the public of timely, accurate information; (g) subject to paragraphs (h) and (i), fair competition and merit as the basis of appointments and promotions; (h) representation of Kenya’s diverse communities; and (i) affording adequate and equal opportunities for appointment, training and advancement, at all levels of the public service, of— (i) men and women; (ii) the members of all ethnic groups; and (iii) persons with disabilities. (2) The values and principles of public service apply to public service in— (a) all State organs in both levels of government; and (b) all State corporations.
To increase CSOs engagement and voice on issues of NVPG with specific focus on Article 10 (2) (c) and Article 232 of the Constitution

1.6 Significance of the Monitoring of NVPG Implementation

The success of every human society today is determined, not by the kind of laws and institutions they have, but rather the kind of values they share as a people. This is because values precede and indeed determine the kind of laws and institution they establish. The Constitution of Kenya envisaged this truth and identified twenty-five (25) national values that the government must work to advance and protect as an integral part of the operationalization of the constitutional dispensation. A successful implementation of NVPG enriches the democratic ideals, builds civic confidence in governance processes, enables a culture of shared identity and guides the crafting of the state as an embodiment of axiological imperatives that drive the cause of nationhood.

The civic monitoring of the implementation of the NVPG is significant to the realization of national values as it provides an accurate and objective shadow reporting on the government’s 2018 NVPG implementation progress. Particularly, the report highlights findings and recommendations for various duty bearers (Ministries, Departments and Agencies), private sector, the legislative arm of government, political parties, the civil society and the civic public. The findings and recommendations will be useful in policy and law making as well as in civic engagement and education around the NVPG agenda. As a process initiated by civil societies, the report proves relevant for civic engagement of government to ensure the values highlighted in Article 10 of the Constitution are secured. The issues highlighted in the findings and recommendations are central to the success of the constitutional order and demand immediate address by respective stakeholders and duty bearers – with the Executive arm of government bearing the greatest responsibility.

1.7 Scope of the Monitoring Process

The monitoring of NVPG implementation was limited to President Uhuru Kenyatta’s 2019 SOTN Address in which he gave an update on government’s NVPG initiatives for the calendar year ending December, 2018. The engagements with stakeholders from both the civil society and private sector, and select duty bearers were conducted in Nairobi with CRECO membership across the country represented in the FGDs and TWG workshops.
Chapter II:

POST-2013 ENVIRONMENT AND IMPLEMENTATION OF THE NVPG

2.1 Context Setting

2.1.1 Introduction

This is the first shadow report that CRECO, under the auspices of the TWG on monitoring of NVPG implementation, has published since the disputed 2017 Presidential elections. The inclusion of NVPG in the Constitution of Kenya was chiefly influenced by the collective need for a fair and equal society under institutions that inspire confidence among Kenyans rather than provoke suspicion and promote hatred as a result of historical biases and injustices, real or perceived.

The 2007-08 post-election violence demonstrated the extent to which injustices can hurt a people’s quest for nationhood. Agenda 4 of the National Accord outlined issues that the country felt were at the heart of its malfunction and which needed to be addressed. Both the Independent Review Commission Report (popularly known as the Kriegler Report) and the Commission of Inquiry into the Post-Election Violence-CIPEV (popularly known as Waki Report) on the post-election violence demonstrated there was a severe need to address injustices that hung over the nation. The promulgation of the Constitution of Kenya in 2010 birthed a new dispensation that would enthuse the making of a nation for all Kenyans, irrespective of age, gender, religion, ethnicity or any other factor. Kenya’s Constitution gives the country an opportunity to appreciate its collective identity, re-tell the national story, acknowledge the fact that each one of us is a guardian of the NVPG in our homes, places of work, schools, places of worship and in all public entities. Some of these values and principles of governance are articulated in supporting statutes and laws such as the Leadership and Integrity Act 2012; Sessional Paper No. 8 of 2013 on National Values and Principles of Governance and the Mwongozo - Code of Conduct for State Corporations.

The campaign platform on which the Jubilee administration was elected was centred on affording a better life for all Kenyans through creating opportunities, implementation of the constitution, improving the economy, enhancing transparency and diversity, and inculcating a true sense of nationhood. However, Kenya under President Uhuru Kenyatta’s government, has since turned out to be a breeding ground for corruption, impunity and retrogressive politics. While the president has presented six ‘State of the Nation’ addresses

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4 Agenda 4 of the 2008 National Accord sought long term solutions for the direct and indirect causes of Post-Election Violence. Some of the proposed solutions included constitutional, institutional and legal reforms, land reforms, inequity, poverty, national cohesion, accountability, transparency, and youth unemployment.

5 An interim Commission of Inquiry established in 2008 by the Government of Kenya to holistically inquire into the 2007 General Elections with bias for the presidential elections.

6 An international Commission established by the Government of Kenya to inquire into the 2007-08 post-election violence. The Commission submitted its findings to President Mwai Kibaki and Prime Minister Raila Odinga. An envelope bearing the names of PEV perpetrators was handed over to Mr. Kofi Annan which was then handed over to ICC Prosecutor Luis Moreno Ocampo.

7 https://www.brookings.edu/blog/up-front/2013/05/09/top-six-priorities-for-the-uhuru-administration-in-2013/ Accessed on 2 June, 2019
to Parliament since 2013, the exercise has been more of a tick-the-box exercise for majority of the public entities reporting. There have not been any significant changes reported on human rights, transparency, accountability, rule of law, civic space and service delivery.

2.1.2 Lack of Parliamentary Oversight

Parliamentarians, as the representatives of the people, have not shown rigor in their oversight of the Executive with regard to the operationalization of the national values and principles of governance – partly because they are affected parties. The EACC National Survey carried out in 2017 also revealed Parliamentarians, in addition to the police, governors and Members of County Assemblies (MCAs), were perceived to be non-committal in the war on corruption. The so-called tyranny of numbers in Parliament during the 2013-2017 election cycle compromised oversight even more since the Jubilee Party had the majority number of parliamentarians in both houses of Parliament. In 2018, both houses of Parliament continued to act as a rubberstamp of the Executive and largely failed to represent their constituents. Parliamentarians chose to play politics as opposed to representing and protecting the interests of their constituents.

Politics entrenches ignorance about public finance the wider public is praising the public debt caused by the government’s excessive borrowing. This notion is shared under the misnomer that there can be no development without debt. Yet public debt is reported to have hit the 6 trillion Kenya shillings mark. The public is unaware that there’s good debt and bad debt. Apathy among the public is high that the people don’t feel sufficiently empowered to claim their human dignity. Parliamentarians continue to award themselves more perks and the public barely makes a whimper. In such an environment, CSO oversight work around the NVPG becomes even more necessary and public support and awareness critical. There is need to delink politics from the major livelihood aspects of the people. People seem to only know about elections and embrace corruption despite seeing its impact. They don’t know or don’t bother to pursue their rights and responsibilities. Even though chapter 6 on leadership and integrity is frequently cited, national re-armament is necessary.

2.1.3 Micromanagement of the Civic Space

In the 2013 – 2017 period, civic space was heavily contested with government trying to micro manage Civil Society Organisations (CSOs). During the 2017 elections and in early 2018, some Kenyan CSOs seen to be spearheading civic work like the Kenya Human Rights Commission (KHRC) and the Africa Centre for Open Governance (AFRICOG) were threatened with de-registration. Even the International Federation for Electoral Systems (IFES) found it impossible to carry out its grant-making work in Kenya during the election period. The government was hostile towards the civic space thereby suffocating efforts by CSOs to effectively do their work at the grassroots. In the same period, and since its enactment in 2012, the Public Benefits Act has not been operationalised. This is in spite of several court rulings in favour of its operationalisation.
2.1.4 Cyclic Corruption

Since 2013, corruption has gone rife in both the National and County governments. A national survey on ethics and corruption conducted by the Ethics and Anti-Corruption Commission (EACC) reported high levels of corruption in the counties with Murang’a, Kisumu, Busia and Nyamira counties highlighted as areas where bribery was most prevalent. A significant increase in the size of bribes demanded in election years was also observed. County governments’ departments most prone to corruption were reported to be Finance and Planning, Health Services and Transport while National Government’s Interior Ministry ranked as most prone to corruption, followed by Health and Lands ministries. A general increase in crime especially murders has been reported in Gilgil, Marsabit and Eldoret.  

On the other hand, corruption at the national level has almost become cyclic. For example, the country has had maize scandals reported in the last three electoral cycles. There have been scandals linked to mega projects undertaken by the government like the Standard Gauge Railway (SGR), the National Youth Service (NYS) I and II, Healthcare, School Laptops and Galana Kulalu among others. These projects include the e-service platforms that Jubilee government embarked on from its 1st term in office. The Integrated Financial Management System (IFMIS) turned out to be a channel for enabling rather than inhibiting theft of public funds. The same can be said of e-Citizen platform that has proved ineffective. National Examinations Management Identification System – NEMIS was meant to make capitation for schools fast, effective and efficient. However, based on concerns of both teacher unions and the Kenya Secondary School Heads Association, it is sabotaging education. Clearly, the Ministry of Education and TSC did not involve teachers or teacher unions in the establishment of NEMIS.

The manner in which the government is rolling out the National Integrated Identification Management System – NIIMS [popularly known as Huduma Namba] is also suspect. These digitized/digitalized platforms for government services don’t seem to be in the interest of citizens. They are marred by inflated costs and suspect procurements.

Kenyans have every reason to worry. Nearly all, if not all, Jubilee government mega projects have metamorphosed into big scandals. Despite the many corruption scandals, hardly anyone gets prosecuted or their assets recovered. It is reported that out of KES 5.6 trillion lost to corruption from 2013, only a paltry KES 5 billion has been recovered.

2.1.5 Big 4 Agenda

In his second term, President Kenyatta outlined key pillars of his administration which he termed “The Big Four Agenda”, i.e., universal healthcare, manufacturing, food security
and affordable housing. The President’s Big Four Agenda are well placed to drive Kenya’s Vision 2030’s Third Medium Term Plan which focuses on issues that create the greatest impact on the well-being of Kenyans. However, given the meteoric rise of corruption in the country, Kenyans are more sceptical than optimistic of the President’s implementation of the Big Four Agenda. The government’s implementation of some of the projects, i.e. housing and healthcare, has attracted public opprobrium due to the government’s failure to have structured public participation.

The government’s roll out of Universal Healthcare, for instance, seems to be conditioned on citizens’ subscription to the National Housing Insurance Fund (NHIF). This appears to be a gimmick to get more people registered on the NHIF. As a matter of fact, the government has always pushed Kenyans to register on NHIF. In 2018, the government went as far as issuing a directive that students should register with NHIF. Yet healthcare is a basic need that the government should be able to meet through taxes. If the government could recover even a quarter of looted funds, it would fund the healthcare agenda with ease. It’s a question of political will. Secondly, the government’s plan to implement the affordable housing agenda is in defiance of the spirit of public participation and the rule of law. The housing fund levy is unconstitutional and undermines the individual’s right to choose the kind of property he or she wishes to own, and where. By enacting a law to guide this process, the government is weaponizing legislation to become a tool of spurious conformity. The housing agenda is itself an unattainable grand ambition which raises even more suspicion given Jubilee’s bad reputation.

2.1.6 Politics of the Handshake

On 9th March, 2018, the President and the NASA leader Rt. Hon. Raila Odinga set their differences aside and made peace in what has since been famously referred to as the “Handshake”. There was a sigh of relief by Kenyans as they had been uneasy peace following a tumultuous electoral period the previous year. The civil society sector, that had been at the forefront of calling for dialogue, was optimistic that the Handshake would create an atmosphere for reconciliation but most importantly, the realisation of objective people-driven electoral reforms.

The Handshake, it turned out, was a purely political gimmick. It significantly (mostly in ways undesired) changed the political climate. The Opposition has since become weak (both at national and county level), at times looking like an appendage of the government. There is also a growing political crescendo towards 2022 characterized by the birth of two factions: the anti-Handshake (Tanga Tanga) and the pro-Handshake (Kieleweke). Again, the call for a constitutional referendum has divided politicians along these factional lines while at the same time undermining the initiatives by the civil society to push for reforms. The politicization of the referendum and the reforms enables the politician to manipulate public opinion by designing ad populum tribal rhetoric, enabled by fake news, to deny Kenyans objective people-centered reforms.

http://www.president.go.ke/ Accessed on May 23, 2019
Further, the handshake’s false narratives are being entrenched. The two-thirds Gender bill was opposed, on a number of occasion, by MPs from both political divide. The situation was made worse by the fact that County MPs elected on the basis of affirmative action did not embrace the parliamentary position as a means to push for more space for women in the political sphere. It was expected that with the Handshake, the President and Rt. Hon. Raila Odinga (both of whom have categorically supported the two thirds gender implementation) would rally their MPs to pass the bill in line with provisions of the Constitution of Kenya. By failing to pass the bill, the political class collectively proved their lack of respect to the rule of law and ideals of equality which are core to our Constitution.

It is observable that the political class hardly upheld the rule of law and the spirit of constitutionalism, both at the National and County levels. In the public eye, a number of politicians have failed to meet the threshold set by Chapter 6 of the Constitution which calls for integrity of public servants. A case in point is that of Migori Governor Okoth Obado who remains in office while he is charged with the murder of Ms. Sharon Otieno. Illicit conduct by politicians, state and public officers has emboldened them instead of ensuring they do not stay in office. Independent institutions like the Judiciary, the Independent Elections and Boundaries Commission (IEBC) and the Ethics and Anti-Corruption Commission (EACC) have consistently been attacked by politicians. This compromises their ability to execute their mandate in line with the Constitution. Most of the independent commissions that were up for getting new commissioners in 2018 were populated with gatekeepers who are mostly former politicians allied to the ruling party and the Opposition leader. Chapter 6 is about setting a good example of leadership, one that young people can aspire to have. Sadly, Chapter 6 remains a mere wish.

An immediate outcome of the Handshake is an initiative called Building Bridges Initiative (BBI) spearheaded by the President and Rt. Hon. Raila Odinga. The initiative’s role was to assess issues around ethnic antagonism and competition, lack of national ethos, inclusivity, devolution, divisive elections, safety and security, corruption, shared prosperity and responsibilities and rights. The task force began visiting different parts of the country in 2018 to collect opinions of citizens on the highlighted issues. The irony, however, is that there already exist reports such as Agenda 4 of the National Accord, Ndung’u Land Report, Kriegler Commission report, the TJRC report among others that extensively interrogated these issues and published findings and recommendations that have largely been ignored by the government. Nevertheless, the Handshake and the BBI taskforce has opened an environment for dialogue on many fronts including CSO space.

2.2 Parameters of NVPG Implementation

The following parameters were used to assess the implementation of NVPG.

2.2.1 Article 10 as the Foundation of NVPG

Article 10 of the 2010 Constitution not only defines the different kinds of values every
government must aspire to inculcate in its governance architecture but also acts as a foundation for the implementation of the same. To this extent, Article 10 can be rightly referred to as the engine of the Constitution, a “software” of sorts for the proper functioning of the State. It is instrumental in inculcating in all citizens a shared culture that acts as a glue of nationhood. Article 10 is thus important for State officers, public officers and other relevant offices, and acts as a guide before individual or collective action and a judge thereafter. We must question ourselves if by our action we exalted or undermined the protection of NVPG.

But again, the Article is a legal obligation towards a collective consciousness of “the other” for the sole purpose of raising a Kenyan ethos which many seem to agree has failed to exist since independence. It provides Kenyans with the opportunity to transform Kenya from being a “shared space” of forty four (44) ethnic nations to Kenya as one nation bolstered by the diversity of her people. The values espoused in Article 10 are binding to all State organs, State officers\textsuperscript{15}, public officers and any other persons whenever involved in the interpretation of the Constitution/laws or enactment of any law.

The CSO monitoring of the NVPG implementation focused on values espoused in Article 10 (2) (c)\textsuperscript{16} together with values regarded as closely related to those in Article 10 (2) (c). The values are fifteen (15) in total, and as listed herein below:

- Good governance
- Integrity
- Transparency
- Accountability
- Rule of Law
- Sustainable Development
- Human Rights
- Non-discrimination
- Devolution
- National Unity and Cohesion
- Equality
- Equity
- Inclusiveness
- Participation of the People
- Human Dignity

\textsuperscript{15} Article 260 of the Constitution defines State Office as: State office” means any of the following offices— (a) President; (b) Deputy President; (c) Cabinet Secretary; (d) Member of Parliament; (e) Judges and Magistrates; (f) member of a commission to which Chapter Fifteen applies; (g) holder of an independent office to which Chapter Fifteen applies; (h) member of a county assembly, governor or deputy governor of a county, or other member of the executive committee of a county government; (i) Attorney-General; (j) Director of Public Prosecutions; (k) Secretary to the Cabinet; (l) Principal Secretary; (m) Chief of the Kenya Defence Forces; (n) commander of a service of the Kenya Defence Forces; (o) Director-General of the National Intelligence Service; (p) Inspector-General, and the Deputy Inspectors-General, of the National Police Service; or (q) an office established and designated as a State office by national legislation; Consequently, “State officer” means a person holding a State office

\textsuperscript{16} Values in Article 10 (2) (c) are Good Governance, Integrity, Transparency and Accountability
2.2.2 Key Relevant Legislations

Besides the Constitution, the following legislations and regulations, among other laws not highlighted herein below, form the legal basis for the implementation of NVPG:

**The Public Officer Ethics Act (2003)**

This is an Act of Parliament that advances the ethics of public officers by putting in place a Code of Conduct and Ethics for public officers and wealth declaration for public officers. To aid in the administration of Part IV of the Act is the Guidelines of Declaration of Income, Assets and Liabilities which was published by the government in May, 2009. The guidelines amplify the Public Officer Ethics (Public Service Commission) Administrative Procedures 2009. A public officer is required by law to declare his or her income, assets and liabilities within thirty (30) days upon joining the public service. This law complements the values of public service articulated in Article 232 of the Constitution. The political class have largely been averse to the philosophy of wealth disclosure and as a result failed to implement it.

**Leadership and Integrity Act No 19 of 2012**

The Act operationalizes Chapter Six (6) of the Constitution by establishing procedures and mechanisms for effective implementation and administration of the requirements of Chapter Six through promotion of ethics, integrity and servant leadership. The law places the highest responsibility upon State officers as they owe it to citizens to diligently manage the affairs of the State.

**Anti-Corruption and Economic Crimes Act of 2003**

The Act was established to provide legal framework to steer the fight against corruption in the country. The Act, also critical to the implementation of Chapter Six of the Constitution, stipulates various ways of preventing and fighting corruption such as investigation, prosecution, prevention, civic education and asset recovery. As it is today, there seems to exist a dysfunction in the execution of this law especially in relation to other existing government bodies like the Directorate of Criminal Investigation (DCI) and the Directorate of Public Prosecution (DPP). This partly explains why very little has been achieved since the enactment of this law, besides the fact that anti-corruption war is dependent on political goodwill of the incumbent government. The greatest weakness of the Act is the mild penalties that sets a maximum penalty of ten years for economic crimes. The Anti-Corruption and Economic Crimes (Amendment) Bill 2019 is currently in Parliament and seeks to set stiffer penalties for persons found guilty of graft. The Bill, if passed into law, shall empower the courts to impose heavy fines on graft suspects.

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**Ethics and Anti-Corruption Act of 2011**

In line with the 2010 Constitution, the Ethics and Anti-Corruption Act was enacted in 2011 to establish the Ethics and Anti-Corruption Commission. The Constitution empowers the Commission to administer the compliance with provisions of Chapter Six through, among other things, protection of integrity and development of a code of conduct for both State and public officers.\(^{20}\)

**Public Procurement and Asset Disposal Act 2015**

This Act sets standards and procedures of procurement of goods and services by government entities to ensure the processes are fair, transparent, equitable, cost-effective and competitive, in line with Article 227 (1) of the Constitution of Kenya.

**Public Appointments (Parliamentary Approvals) Act of 2011**

This Act sets in place procedures for vetting and approval of constitutional and statutory appointments. The Act, in line with Chapter Six of the Constitution, thus sought to ensure that the suitability of candidates (including whether they meet statutory requirements) is assessed.

**2.2.3 Mwongozo Code of Governance**

Mwongozo is the Code of Governance for State Corporations established in 2015 and based on the 2010 Constitution and provides a framework that embodies codes of conduct, board charters, professional ethics and performance management of various government entities.\(^{21}\) Specifically, Mwongozo sought to effect the values and principles of public service stated in Article 232 of the Constitution.

**2.2.4 Sources of Benchmark**

The following protocols and conventions to which Kenya is a signatory have defined the basis of scoring the government on the implementation of NVPG.

1. **African Union Convention on Preventing and Combating Corruption (AU-CPCC)**
   - To gauge whether the government meets the set threshold for preventing and combating corruption

2. **African Union Convention on Cyber Security and Personal Data Protection**
   - To gauge the government’s application of the Principles of African Information Society Initiative (AISI) and Regional Action Plan on Knowledge Economy (ARAPKE)

\(^{20}\) Ibid. p 7.

3. Maternity Protection Convention (MPC)
   - In line with the MPC guidelines, we should be able to assess if there is impact
4. Paris Agreement (United Nations Framework Convention on Climate Change (UNFCCC))
   - To gauge whether the government’s policies on environment are contributing to the global response to the threat of climate change
5. Universal Declaration of Rights of Mother Earth
   - To assess whether Kenya’s laws on environment and conservation reflect the UNDR Mother Earth Paris Protocol
   - To address the challenge of climate change by strengthening capacity of countries to deal with climate change
   - To monitor progress against the new technology-cum-capacity building framework of the Protocol
   - To assess whether both men and women enjoy of all social, economic and cultural rights recognized under the covenant.
7. Convention Against Torture
   - To interrogate whether the government has observed the requirements of this convention
8. International Convention on Civil and Political Rights
   - To interrogate whether the government is in violation of this convention.
   - To assess progress in light of Art 26 (Implementation and monitoring) and the existing legislative and political progress made towards implementation of gender issues at national level
    - To gauge whether Kenya is working within the guidelines/general recommendations of CEDAW to address gender issues since its ratification of the same in 1984.
CHAPTER III:

ASSESSMENT OF 2019 SOTN ADDRESS

3.1 Introduction

In every SOTN address, the President is expected to report on the progress in the implementation of NVPG. In a publication by the Africa National Congress, a political party in South Africa, titled ‘The State of the Nation Address: An important tool for accountability and democracy’, the party underscored the obligatory nature of the address.22

The SOTN Address by the President is a duty that is within the mandate of his office. Generally, the President may, and often does address, the nation in times of disaster, national emergencies or national victories.23 However, the obligatory nature of the SOTN address creates a clear, inescapable implication for its contents. It makes it a tool of accountability. The rationale for the address is to facilitate the reporting of the executive body of the government, headed by the president of the political and socio-economic state of the nation, to the legislative body.24 Due to the doctrine of separation of powers, the judicial, executive and legislative bodies of government are required to work independently.25 However, there is a need for a checks and balances framework in the three arms of government to promote a unified voice within the government, and to avoid the inevitable corrupting nature of absolute power. As the British historian Lord Acton stated: though power tends to corrupt, absolute power corrupts absolutely.26

As a tool of accountability, the SOTN Address ought to focus in a specific way the issues that affect the welfare and existence of a people in line with a nation’s relevant legal obligations. In Kenya’s case, the Constitution of Kenya and related Acts of Parliament are the reference point.

3.1.1 Positive Developments in 2018

2018 recorded some progressive steps in promotion of the values Kenya as a people espoused in the Constitution. If protected and harnessed, these developments have far-reaching impact on the collective process of implementation of the Constitution. Some of the key developments include;

- 2018 saw an increase in public discomfort and outrage towards corruption, forced evictions, health rights denial, violence and discrimination.
- There was also a growing use of human rights language to describe what was happening both by duty-bearers and the public – a sign of enhanced civic education.

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There was also announcement of radical police reforms in September that placed command and control in a vertical line of management ending with the Officer in Charge of the Police Station.\(^{27}\)

The public demonstrated zero tolerance to police brutality by petitioning the Cabinet Secretary in charge of interior, the Director for Public Prosecutions and the Director for Criminal Investigations. This contributed to securing of convictions in the courts.\(^{28}\)

There was a reasonable development on the way forward with the PBO Act as members of the civil society including the CSO Reference Group, Amnesty International - Kenya, CRECO reached an agreement with the Interior Ministry, Office of the President and NGO Coordination Board to commence the PBO Act as is, with minor amendments to follow.

Illegal ban of safe post-abortion emergency services had threatened the health rights of women. However, with following sustained advocacy and legal action by Centre for Reproductive Rights, KELIN, Amnesty and other CSOs, the ban was revoked.\(^{29}\)

The quick, effective and professional response with which the anti-terror squad responded to Al-Shabaab linked terror attack on Dusit D2 Hotel in February, 2019 saved over 700 lives. This was a great development against the backdrop of previous attacks that left several Kenyans dead.

The increase of CSO supported community legal empowerment and the proliferation of community based social justice centers is critical to addressing issues affecting these communities such as sex trafficking, violence against women, unlawful police killings, among others.\(^{30}\)

There was a progressive ruling by the Court of Appeal against anal testing as a means of determining acts of homosexuality. The Court ruled that the act of forceful testing of gay persons was not only an affront on their right to privacy but also – and most importantly, their right to dignity.\(^{31}\)

### 3.1.2 Negative Developments in 2018

Heightened incidences of forced evictions to pave way for infrastructure and conservation in Embobut and Mau forests, Nairobi and Mombasa among others urban areas. Besides, there was no movement on a legal framework for forced evictions that upholds international standards.

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\(^{27}\) [https://www.standardmedia.co.ke/article/2001295542/why-we-need-support-for-police-reforms](https://www.standardmedia.co.ke/article/2001295542/why-we-need-support-for-police-reforms) Accessed on 28 May, 2019


\(^{29}\) [https://www.irunguhoughton.org/opinions/a-country-or-chaos-choose](https://www.irunguhoughton.org/opinions/a-country-or-chaos-choose) Accessed on 28 May, 2019.


There was an increase in the number of unlawful police killings with little action by the Police Inspector General to rein in his officers.

Failure to put in place an effective comprehensive and consistent sex education programme has led to rising numbers of teenage pregnancies, unsafe abortions and child defilement by adults.

Increasing cases of health-care denial, including maternal and emergency treatment, despite declaration of universal health-care.

The amendment of Registration of Persons Act that would enable the government to intrusively collect personal data without putting in place the Data Privacy Act and Policy.

3.2 Desktop Review

On 4th April 2019, His Excellency President Uhuru Kenyatta delivered his sixth SOTN Address to a joint sitting of Kenya’s legislative body: The Senate and the National Assembly. With its normalization over the years, its inherent importance, legal implications and constitutional background are often gainsaid or even forgotten. In fact, the NVPG may well be unbeknown to the general public.

The general lack of accountability by the government in nearly all the SOTN Addresses since 2013 has eroded the very essence of the SOTN Address, i.e., to give a substantive update of the government’s initiatives and achievements in the protection and promotion of NVPG. The reaction from political entities, members of the civil society, and citizens generally, demonstrates the failure of the Jubilee government to address effectively and implement NVPG which in itself is a failure on the part of the government in protecting the Constitution of Kenya.

At any given point, there are issues that plague a nation. In 2008, for instance, following the post-election violence, social fragmentation and internal displacement of citizens was an urgent and pertinent issue worth addressing. A SOTN Address then would have focused on the efforts the government was making to address the plight of IDPs and the need for social and ethnic cohesion. Such an address, had it been provided for in the law, would have been an effective tool of accountability. With Kenya ranking number 144 out of 175 countries in the latest corruption index report, with the 175th being the most corrupt, a SOTN Address would be incomplete without a comprehensive statement on the reasons for the high-level corruption and structured approach to addressing the vice. Besides speaking to specific issues of the time, there usually are matters which, by their nature, are always relevant. The state of the economy of a country, for instance, speaks to a government’s policies and ideologies around growth and development, investment and aid, employment and informal sector, among others. An effective SOTN Address must therefore be anchored

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upon the pillars of government such as the economy, foreign policy, health, cohesion, and other pillars that relate to a country’s national values.

President Kenyatta’s 2019 SOTN Address may have passed, at the face of it, as cross-cutting, persuasive and filled with optimism. The President commented on nearly every critical issue affecting the country, ranging from corruption, devolution, democracy, the economy and his second term’s four pillars of development, popularly known as the Big Four Agenda. However, in real sense, the speech – just like previous SOTN Addresses, was devoid of substantive reporting on what the government had actually achieved in the implementation of NVPG. Whereas he spoke to a wide range of issues, there was little clarity, accuracy and consistency that one would expect of a SOTN Address. It was characterized by blanket statements, hefty generalizations and broad affirmations without tangible reference to the logic of proof. The speech thus, from a CSO perspective, was mostly a colorful session of rhetoric which evidently denied mwananchi the opportunity to, not only know the foundation of such an important speech, but also have a grasp of where the country was at with regard to the implementation of NVPG.

Ahead of the 2019 SOTN Address, CRECO, under the auspices of the TWG on Monitoring of NVPG, outlined a number of primary issues that the TWG regarded as of great importance to the implementation of NVPG. The selection of the issues was not only based on what was happening in the country at the time but also on the President’s previous SOTN Addresses and the promises made during those addresses. Yet the President’s 2019 SOTN Address failed on many fronts to fundamentally address these issues. The following are some of the key issues the TWG on Monitoring of NVPG, as well as other CSOs, demonstrated were not tackled in the President’s speech:

3.2.1 The Two Thirds Gender Rule

The Constitution of Kenya in Article 27(8) states that no more than 2 thirds of members in an elective or appointive body shall be of the same gender. The provision is not only a constitutional tool to ensure non-discrimination but also a direct indicator of the existent inequality in sharing of public and State positions between genders. This inequality, sadly, persists nine years into the promulgation of the new constitutional dispensation.

In the 2019 SOTN, the president did not address the obvious disregard of the rule of law within the country with the repeated failure of the two thirds gender Bill in the National Assembly.34 In 2012, the Supreme Court had given Parliament until 27th August, 2015 to enact the law. Following the failure of Parliament to enact the law, the High Court in 2016 issued a 40-day notice to Parliament to enact the law and consequently gave the Attorney General and the Commission for the Implementation of the Constitution forty days to table two thirds gender rule implementation Bill before Parliament. The High Court issued a new 60-day deadline failure to which Parliament would be dissolved. The deadline elapsed on June 30, 2017 and since then, Parliament has persistently failed to enact the law in

2018 – a bold demonstration of impunity and disregard to the rule of law. The Majority Leader of National Assembly, Hon. Aden Duale, was quoted by the Media to have said that Parliament cannot be dissolved for failing to enact the two thirds gender rule.\footnote{https://www.the-star.co.ke/counties/north-eastern/2019-04-08-parliament-will-never-be-dissolved-says-duale/ Accessed on 28 May, 2019.}

Despite the enormity of the issue, the President in his 2019 SOTN Address did not engage on it. It can be rightly observed that the President’s failure to engage in the matter in the first place presents itself as a real problem we face as a country. It is a subtle demonstration of the lack of political will. Unlike socio-economic rights, which require progressive realization and may be harder to actualize, equality and non-discrimination is a civil and political right making its realization more practical.\footnote{Office of the United Nations High Commissioner for Human Rights, Progressive Realization and Non Regression https://www.ohchr.org/Documents/Publications/FactSheet33en.pdf.} Having witnessed various demonstrations in the last two years alone, staged by civil society movements dealing with women’s issues and with the support of the public, ignorance of the gravity of the issue cannot be cited as a reason for its omission from the state of the nation address.

3.2.2. Sexual Gender-Based Violence

Related to affirmative action is the sexual gender-based violence which is occasioned by unequal and unfair treatment of women in the political, social, economic and cultural spheres. There have been reports that there has been a rise in sexual gender based violence in the country. Despite the enactment of three major laws related to violence against women (The Sexual Offences Act 2007, Female Genital Mutilation Act 2011 and the National Policy towards the Prevention and Response to SGBV 2014) violence against women has significantly increased. Between January and June 2018 alone, 2,182 cases of domestic violence were reported according to Federation of Women Lawyers (FIDA Kenya) Legal Aid Clinic.\footnote{https://www.nation.co.ke/news/Increased-domestic-violence-worries-Fida/1056-4867202-w4wvofz/index.html Accessed on 29 May, 2019.} Former Cabinet Secretary for Public Service, Youth and Gender Affairs observed that “Five in every ten women in Kenya in the bracket of 15 to 49 (about 47%) have suffered at least one form of violence or another.”\footnote{https://www.uaf-africa.org/fr/the-rising-trend-of-gender-based-violence-in-kenya-a-call-for-urgent-action/ Accessed on 29 May, 2019.} In his SOTN report, the President, having launched a joint Gender Based Violence joint GoK/UN programme in 2017\footnote{http://www.president.go.ke/2017/03/08/speech-by-his-excellency-hon-uhuru-kenyatta-c-g-h-president-of-the-republic-of-kenya-and-commander-in-chief-of-the-defence-forces-during-the-official-launch-of-the-gender-based-violence-gbv-join/ Accessed on 29 May, 2019.}, should have demonstrated to the nation what the initiative has so far done to provide long term solutions to the rising gender-based violence that has resulted in loss of over 250 women since January, 2019.

3.2.3. Affordable Healthcare

The President reported on healthcare as one of the Big Four Agenda. However, the President’s remarks focused solely on the increase in access to essential health services but did not speak to the quality of health services. Under Article 43 (1), the Constitution of Kenya states that all citizens have the right to the highest attainable standards of healthcare. The
President failed to address critical issues that stand on the way of quality healthcare in the country. The Kenya Institute for Public Policy Research and Analysis (KIPPRA) in its 2018 “Assessment of Healthcare Delivery in Kenya under the Devolved System” reported a rise in health facilities across counties. However, it was observed that thirty three (33) counties do not meet the World Health Organization (WHO) recommendations for health centres. The KIPPRA report states that only seven counties met the requirements set by WHO. Further, it is also observed that there is no data that has been published to adduce the President’s claim that there has been a 39% increase in access to healthcare following the launch of Universal Health Coverage in the four counties of Isiolo, Kisumu, Nyeri and Machakos.

Secondly, even though the realization of universal healthcare is a matter of progression, its success must not only be tied to increased access but must also include better quality. The importance of quality healthcare should be acknowledged as access is only the first step in the attainment of the highest standard of healthcare. There have been cases of industrial strikes by health workers protesting the state of infrastructure in hospitals, lack of sanitation, and even cases of under-budgeting or no budgeting for curative health. Most importantly, the continued failure to have structured engagements with healthcare workers on matters that affect their welfare affects universal healthcare. For instance, the controversial hiring of Cuban doctors and the subsequent sending of some Kenyan doctors to work in Cuba, the latter of which led to the death of Dr. Khamisi Ali Juma, a Kenyan doctor in Cuba who is reported to have committed suicide. Kenya Medical Practitioners and Dentists Union (KMPDU) raised concerns of lack of cooperation from the Embassy and Ministry of Health, low stipend to doctors in Cuba, unfair and coercive treatment of the doctors. Despite all this, the President failed to tackle these issues that are pertinent to the protection of medical practice and rights of workers.

3.2.4 The War against Corruption

The President’s SOTN Address failed to substantively address runaway corruption in Jubilee government. Kenyans had hoped the President would share actionable points to decisively deal with corrupt officials in his government but the SOTN Address, coming in the wake of the KES 21 billion Aror-Kimwarer Dam scandal, turned out an anti-climax on the war against corruption for most Kenyans. In a press release dated 11th April 2019, Transparency International (TI-Kenya) stated its dissatisfaction with President’s address on matters of corruption. According to TI-Kenya the remarks by the President failed to account for the government’s inability to fulfil its past commitments, consequently, this culture jeopardizes the strength of the SOTN Address as a tool of accountability. TI-Kenya observed that the President lowered the bar on the fight against corruption by retreating to the criminal

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44 TI-Kenya Statement on President Kenyatta’s State of the Nation Address, 11 April 2019.
standard and vacating the ethical standard espoused in Chapter Six of the Constitution.\textsuperscript{45} Article 10 NVPG are a set of ethical statements that define our beliefs and ideals, and must be regarded as such.

The President, in all the six SOTN Addresses, promised to fight corruption. Six years later, theft of public funds has become an integral part of Jubilee administration. The looting may appear uncontrollable while in the real sense it is run by the top echelons of power who are determined to serve their selfish interests. As earlier noted in Chapter Two, the introduction of digitalization in government procurement systems and service delivery (IFMIS, e-Citizen, etc.) doesn’t seem to have solved the problem of corruption at that level and instead has only influenced its spread. In fact, projects like IFMIS only reek of corruption, same as NEMIS\textsuperscript{46}, NIIMS\textsuperscript{47} and e-Passport. It seems such projects are rolled out to benefit a few individuals with lucrative deals and without adhering to relevant rules. The President’s speech did not engage, for instance, the issue of NIIMS which had been flagged by many Kenyans as problematic in form and application.

\textbf{3.2.5 Restoration of Human Dignity}

In the 2018 State of the Nation Address, the President updated Kenyans of his government’s Hunger Safety Net Programme (HSNP)\textsuperscript{48} that would cushion Kenyans against hunger. HSNP was a social protection programme first initiated by the Grand Coalition government of His Excellency President Mwai Kibaki and Rt. Hon. Prime Minister Raila Odinga. Under the new Constitution, it was domiciled under the National Drought Management Authority (NDMA) in the Ministry of Devolution and Planning Services and sought to address the chronic food shortage to reach approximately 1.5 million Kenyans within the first ten years. The 1st phase ran from 2009 to 2012 while the 2nd phase began in 2013 and ended in 2018. The idea was to replace food assistance and intervention with cash transfer that was regarded to be less costly while at the same time enabling the targeted individuals to choose food of their preference.\textsuperscript{49}

In 2019, there was massive famine that ravaged all the ASAL counties resulting in despair, pain, sickness and loss of lives yet in his 2018 SOTN Address, the President had stated that through the HSNP, the government would restore dignity of Kenyans who had previously lined up for food as well as save Kenyans from hunger. In his 2019 SOTN Address, the President did not report on the progress with the HSNP and did not provide long term solutions to the persistent drought and famine in these parts of the country. Kenyans are thus left to wonder what became of the Programme the President profoundly spoke of in 2018. The country cannot focus on attaining the SDGs and Vision 2030 without the President first providing sustainable measures his government has put in place to arrest famine in the country.

\textsuperscript{45} Ibid.
\textsuperscript{46} National Education Management Information System (NEMIS); schools have expressed their dissatisfaction and frustration at how the NEMIS number is negatively affecting distribution of funds to their schools since it is not effective and efficient and is error-prone.
\textsuperscript{47} National Identity Integration Management System, popularly known as Huduma Namba.
\textsuperscript{48} HSNP, supported by UK’s Department for International Development – DFID, is one of the four pillars of the National Safety Net Programme; the other three are the Cash Transfer for Orphans and Vulnerable Children (CTO-VC), Older Persons Cash Transfer (OPCT) and Persons with Severe Disability Cash Transfer (PSDCT).
3.2.6 The State of Reparation

In his 2015 State of the Nation Address, the President spoke about the government’s reparations for victims of past injustices. Whereas the President in his 2019 SOTN Address re-stated his commitment to historical grievances by allocating KES 10 billion to the Building Bridges Initiatives for healing the nation and addressing historical grievances, it is not lost on Kenyans that the government has not provided the public with a progress report of the reparation agenda in Kenya as espoused in the TJRC Report. The KES 10 billion fund for reparations could just be another declaration made by the President that would not see the light of day just like the order he made in his 2015 SOTN Address by which he instructed the Treasury to establish a KES 10 billion fund for restorative justice. The institutionalization of the fund goes beyond declarations and pronouncements to real action backed by political will and policy framework. Integral to the success of reparation are the recommendations in Agenda 4 of the National Accord of 2008 as well as Judge Johan Kriegler IREC recommendations, the TJRC Report and the Ndung’u Report. The collective spirit of these reports define the direction the country should take.

3.2.7 Extra-Judicial Killings

The President’s SOTN Address did not speak to the rise of extrajudicial killings in 2018, an omission that defies the spirit of reparation stated above. In 2018, there were 267 cases of extrajudicial killings up from 152 reported in 2017 by the Independent Medico Legal Unit (IMLU). Even with the disbandment of the Flying Squad earlier in 2018, the cases soared. It therefore can only mean that whereas the Flying Squad might have been disbanded, it didn’t mean change of attitude towards citizens but rather a strategy to operate in a clandestine manner.

The Independent Policing Oversight Authority (IPOA) has from time to time promised citizens unbiased investigations and legal action to ensure justice is served. However, very few of these cases have been concluded in Court, the most prominent being the sentencing to death of former Ruaraka OCS Nahashon Mutua for the murder of a Mr. Martin Koome, a miraa trader in 2013. Extrajudicial killings largely appears to be an aggression against the status of the youth in urban poor settlements, an unfortunate criminalization of their economic status. The mere fact of living in urban informal settlements is itself a crime. The unfortunate and unresolved murder of a Carilton David Maina in Laini Saba by members of the Kenya Police Service in December 2018 aptly demonstrates how the police profile the youth who live in informal urban settlements. The same can be said of the clandestine “Hessy” killer police squad that operates in various of these urban settlements. In every such urban settlement there exists a “Hessy”, i.e., Hessy wa Dandora, Hessy wa Kayole, Hessy wa Majengo, etc., and all of them engage in killing of youth.

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Whereas there are criminals in these places, the police cannot solve crime by killing suspects of crimes. There exists a criminal justice system for trying suspects. These are the issues that affect the common mwananchi and the President’s speech would have meant a lot to the youth living in these places had he engaged with these issues. The failure of the President to speak about these issues infers from a general disregard to rule of law as a national value. The Jubilee government has on a number of occasions failed to obey court orders including failure to abide by the High Court ruling over the deportation of lawyer Miguna Miguna.54

3.2.8 Affordable Housing

The Jubilee government, the President stated, would build five hundred thousand (500,000) houses within the forty (40) months left in the President’s second term. The aim, he said, was to provide affordable housing to Kenyans. To realize this, the government passed a law requiring Kenyans to contribute 1.5% of their salary towards the Housing Levy Fund and the employers to contribute similar percentage. Experts have demonstrated the impracticality of building half a million units in 40 months and have put government to task to explain how it plans to solve the housing problem for millions of Kenyans when it failed to build units for police officers (a tiny fraction of the population) in line with Mr. Kenyatta’s 2013 manifesto. The government has also failed to coherently demonstrate how half a million houses in Nairobi will actually solve the problem of housing that millions of Kenyans face in urban centers.

Further, the government fails to understand that Kenyans have the right to choose where they want to live and are free to decline to be part of a suspicious “lottery” housing project.55 The determination by government to proceed with the levy despite suspension by the High Court itself is suspect. The gazettement of a subsidiary legislation setting penalties and fines against misuse of the Housing Fund to two years imprisonment and/or a fine not exceeding KES 10,000 is considered the height of impunity. It appears the subsidiary legislation sets the stage for the looting of the Housing Fund. The President failed to exploit the SOTN speech to address concerns and issues that Kenyans have raised regarding the fund.

3.2.9 Notable Legislations

In the recent past, Parliament passed or failed to pass notable Bills that have a direct impact on the implementation NVPG. Some of the relevant Bills tabled before Parliament include the following:

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55 Housing PS Charles Hinga is quoted to have said that government shall use lottery to allocate housing units. See https://www.standardmedia.co.ke/ureport/article/2001322444/lottery-will-be-used-to-determine-who-gets-a-house-ps-charles-hinga Accessed on 29 May, 2019
3.2.9.1 Registration of Persons Act (2018 Amendment)

Perhaps the most controversial move by Parliament in 2018 was to amend the Registration of Persons Act to require every citizen to acquire a unique identifier number commonly known as a ‘Huduma Namba’ for access to government services. The law empowered the State to collect private data, including DNA, fingerprints and identification card or passport details.56 KHRC moved to court seeking the suspension of the data collection through NIIMS (Huduma Namba) on grounds that it was an intrusive law that jeopardized the fundamental rights and freedoms of Kenyans; primarily because whereas the law grants the State the power to collect private data, it is not accompanied by necessary amendments that guarantee safety and protection of the collected data. The courts prohibited the State from collecting DNA information of citizens and ruled that the exercise must not be mandatory and should not be tied to a timeline.57

This amendment, regardless of the petition, caused great uproar among Kenyans, specifically the youth. Through widespread social media engagements, thousands of Kenyans complained of a lack of public involvement and participation in line with the Constitution. Many stated their skepticism, alleging this to be a scheme to ensure the Government’s control over the next election’s outcome. Further, many stated that they feared for their right to privacy as there are no comprehensive data protection laws in Kenya.

3.2.9.2 Computer Misuse and Cybercrimes Act 2018

President Kenyatta signed into law the Computer and Cybercrimes Legislation Bill that pronounces criminal the publication of false information. The violation of the law comes with hefty fines and stern prison terms for those found guilty.58 Freedom House, a watchdog for democracy has termed the legislation as ‘another step backward for media freedom and online expression in Kenya.’59 The penalties spelt out in the legislation are unfair, disproportionate to the alleged crime and therefore unconstitutional. The law-making process, it was observed, did not involve public participation and therefore defied the constitutional requirements. This law, which largely affects media houses and content creators on the digital space was said to be a tool for the suppression of free speech and freedom of expression.60

3.2.9.3 Finance Bill

Toward the end of 2018, the President assented to a Finance Bill that levied tax on all petroleum products as well as on cash transfer services. The aim of the provisions was to

59 Kenya’s New Cybercrime Law Opens the door to Privacy Violations, Censorship, Mercy Muendo, Information Technology and the Law  
60 Kenya’s new cybercrime law opens the door to privacy violations, censorship, Mercy Muendo, Information Technology and the Law  
raise funds, through introduction of slight tax increments on certain services. As happened with the Registration of Persons (Amendment) Act, many citizens complained that the Bill was passed without involvement of the public through civic education and participation. This effectively makes it unconstitutional and its application illegal.

3.2.9.4 Gender Equity Bill

One of the most widely praised provisions in the Constitution of Kenya is Article 27(4) that provides that no elective or appointive body shall have more than two-thirds of its members being of the same gender.\textsuperscript{61} As highlighted earlier, there have been several attempts to enact the two thirds gender rule in vain.\textsuperscript{62} The reason for its failure is a deliberate lack of quorum among members of Parliament which disabled the vote, a clear proof of lack of political will.

\textsuperscript{61} Article 27(4), Constitution of Kenya 2010.
CHAPTER IV:

KEY FINDINGS, RECOMMENDATIONS AND CONCLUSION

4.1 Introduction

In general, while President Kenyatta expressed confidence in the state of the nation, the SOTN Address did not meet the expectations of Kenyans who had anticipated a bold statement on varied issues affecting the nation. The speech in part did not offer consistency and continuity from previous SOTN Addresses. In his previous SOTN Addresses, the President made similar remarks to the ones he made in the 6th SOTN Address, almost as if there exists a template in use. Whereas this may not necessarily be a negative thing, in this case it actually is. As earlier stated, a SOTN Address must comprehensively address the socio-economic and political nuances of its time, failure to which it becomes a public relations exercise and not a SOTN Address.

The annual SOTN Address creates reasonable expectation of an accurate update on the implementation progress of matters addressed in the preceding SOTN Address. Sadly, the President and his Office have repeatedly overlooked this imperative and as a result failed to meet the threshold set in the Constitution. It is not to say the president does not comment on the issues – he actually does. However, instead of addressing the commitments he previously made in preceding SOTN Addresses, he makes general comments on the issues without affording his statements a factual backing.

Assessed against the existing protocols and Conventions to which Kenya is a signatory, the government’s performance is largely below the threshold set by the Protocols and Conventions themselves. The government has failed significantly to abide by the provisions and conditions set out by the AU-CPCC and AU Convention on Cyber Security and Personal Data Protection. Despite the billions spent by government on healthcare and specifically maternal healthcare, there is little effort towards protecting pregnant women across social cadres and promoting equality of all women in the workforce. Pregnant women working as casual laborers in Industrial Area in Nairobi work under poor conditions, are paid low wages, are sexually abused, bullied by their bosses and have no job security. On a positive note, the government investment in Universal Healthcare will increase funding in line with the pronouncement of the Abuja Declaration. The increased funding however must be put to proper use, with prudent prioritization, if it is to enhance quality and accessible healthcare.

Generally, the government has not fully prioritized the fulfilment of the Protocols and Conventions which has significantly affected the quality of life for Kenyans, besides undermining the values espoused in the Conventions and Protocols and the Constitution of Kenya.

63 All past SOTN are speeches available at http://www.president.go.ke/.
64 As earlier observed, the amended Registration of Persons Act fails to provide for protection of private data.
4.2 FGD Findings and Recommendations

The following findings were identified as key to addressing issues arising around the NVPG implementation. The Technical Working Group on Monitoring of NVPG implementation scored government, from a CSO perspective, on the implementation of specific national values. The score was on a scale of one (1) to ten (10) where one (1) represented the least score and ten (10) the highest. Indicators of achievements were identified and reasons given for the score. The context in which the scoring of government on NVPG implementation was the 2019 SOTN Address in light of government’s achievements in 2018 and its progressive achievements since the enactment of the Constitution of Kenya in 2010.

The NVPG implementation has been marked by government’s failure to instill integrity as a mark of good leadership, its failure to deal with famine in hunger-stricken counties, politicization of the war against corruption, lack of rule of law and general disregard of the constitutional obligation to engage the public.
### 4.2.1 Summary of Scores

Graph 1: Government Performance score on the Implementation of National Values and Principles of Governance

Table I (below) gives a summary of the scores, the indicators of achievement and the reasons for the score:

<table>
<thead>
<tr>
<th>NVPG</th>
<th>Score: 1 - 10</th>
<th>Indicator of Achievements</th>
<th>Reasons for the Score</th>
</tr>
</thead>
<tbody>
<tr>
<td>Good Governance</td>
<td>2</td>
<td>▪ Judiciary, Parliament, Executive</td>
<td>▪ State Capture is prevalent</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>▪ What the president covered during the State of the nation address doesn’t give the status of the Judiciary</td>
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<tr>
<td></td>
<td></td>
<td></td>
<td>▪ The state of the nation doesn’t cover all the three arms of the government hence we are not able to get a whole picture of the state of the Nation.</td>
</tr>
<tr>
<td>Rule of Law</td>
<td>2</td>
<td>▪ Judiciary/state</td>
<td>▪ The interferences with court rulings</td>
</tr>
<tr>
<td></td>
<td></td>
<td>▪ Adherence to laws, and Judicial pronouncements</td>
<td>▪ Government not adhering to or not complying with court decisions</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>▪ Laws have been passed by Parliament but low levels of implementation (Prevention of torture, PBO Act, SRC decision on the MPs salary, Implementation of the TJRC report.</td>
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<tr>
<td></td>
<td></td>
<td></td>
<td>▪ DPP, auditor general and DCI</td>
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<td></td>
<td></td>
<td></td>
<td>▪ John Githongo ruling1 Adamson, John Githongo rulings</td>
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<tr>
<td></td>
<td></td>
<td></td>
<td>▪ Miguna Miguna Saga2 Reforms in the police sector (OB)</td>
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<tr>
<td></td>
<td></td>
<td></td>
<td>▪ DPP and DCI bring cases that had been thrown out back to trial.</td>
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<tr>
<td></td>
<td></td>
<td></td>
<td>▪ Successful prosecutions e.g., Nullification of elections, ruling on the Gakuo case</td>
</tr>
</tbody>
</table>
| Transparency | 3 | - Proactive disclosure of information  
  - Access to information | - Access to information has improved.  
  - There is some improvement in information (access to documents with devolution being a big factor) legislature –Mzalendo  
  - Televising the parliamentary proceedings in both houses (Senate and NA)  
  - Auditor general’s report (timeliness has improved) Counties/ National governments and agencies have financial documents online  
  - Kenya being part of OGP since 2011 helped push the openness |
| Accountability | 3 | - Accuracy and effectiveness (SOTN Address inaccurate and ineffective) | - Level of corruption across the national and county government is very high  
  - Dubious public appointments still happening  
  - Corruption suspects are acquitted for lack of evidence. The arrests are a play to the gallery.  
  - They are more people being prosecuted for crimes, others have been sacked and have left office.  
  - There is progress but there is a counter force to the progress that is being made, by EACC, DCI,  
  - Citizens still voting in leaders with accountability issues. |
| Integrity | 1 | - Impunity  
  - Adherence to Chapter 6 | - Corruption is rampant  
  - No significant change in the kind of leaders that are elected. Nomination of persons to Parliament and County Assemblies is still dubious  
  - The appointments of public officers at the national and counties do not adhere to the integrity requirement. |
| Sustainable Development | 2 | - Long term impact of development projects,  
  - Public involvement, quality of development, policy framework | - Loans (SGR),  
  - The Big 4 Agenda: health care, food security, Housing and industrialization is a joke. (affordable health care is still a dream, people are dying of hunger in some parts of the country, no projects on housing started, industries still in limbo. |
| Human Rights | Social Economic rights | IDPs, Solai dam, hunger in Baringo and Turkana, right to Education (firing of teachers rife and change of the curriculum done haphazardly), |
| Social Economic rights | Group rights | Judiciary progressive in human rights issues, |
| Social Economic rights | Civil and political rights | Continued violations of Human rights defenders, extra judicial killings, SGBV, EPV, press freedom, Shrinking Civic space. |
| Social Economic rights | Sustainable development | Appointments of Security sector heads are from intelligence services. |
| Social Economic rights | | Funding the independent commissions (KNCHR) |
| Social Economic rights | | Right to a fair trial not fully realised |
| Social Economic rights | | Observance of the 2/3rd gender rule not done |
| Non-discrimination | Fair distribution of resources, | 2/3rd gender rule not adhered to |
| Non-discrimination | Balanced appointments | There is some improvement, but still tribe is a major factor |
| Non-discrimination | Fair distributive laws | Gender issues – at county level not well addressed |
| Non-discrimination | Affirmative action | Majority of persons nominated in the county assembly are women |
| Devolution | Intergovernmental relations | Delay in disbursements by the national government |
| Devolution | Transfer of functions | Allocations for health have increased (hence better service delivery) |
| Devolution | Adequacy of resource allocation | Agriculture - County government policies on urban agriculture to address food insecurity, and the decentralization of officers to sub county and ward offices being done. |
| Devolution | Employment opportunity distribution | Corruption issues present a challenge. Power has shifted – from national to county governments |
| Devolution | Development and sustainability | Functions devolved |
| Devolution | | Corruption is rampant in the Counties |
| National Unity and Cohesion | 2 | Historical injustices have not been addressed  
| | |  
| | | BBI is dependent on individuals (President and former Prime Minister)  
| | | Clannism  
| | | Elections of another ethnicity  
| | | The high school allocation of places was an attempt to do national unity  
| Equality | 3 | Fairness in the sense of opportunities to different groups  
| | | Gender considerations, inclusion of youth, minorities, and PWDs still wanting  
| | | AGPO and YAGPO policies in place but their implementation is questionable.  
| | | Two thirds gender rule not adhered to  
| | | Court rulings progressive in entrenching equality  
| Equity | 5 | Positive discrimination  
| | | Structured affirmative action  
| | | Equalization fund is a plus, distribution based on formulas and not based on the discretion of the president.  
| | | SRC distribution of salaries.  
| | | Amending the formula in the counties.  
| Inclusiveness | 3 | Proactive engagement  
| | | Diversity  
| | | Involvement  
| | | Tolerance  
| | | The counties are not promoting this.  
| | | SIGs inclusion at positions.  
| | | Vetting of public officers before appointments  
| | | Ambassador appointments still done by discretion of one person  
| Participation of the People | 3 | Civic education  
| | | Access to information  
| | | Poor feedback mechanisms  
| | | There has been an improvement at the county and national level. There are efforts to include the CSOs  
| | | Huduma Number- No participation (some do it for PR, no ample time hence less participation)  
| | | Court rulings on issues to do with lack of public participation.  
| | | Quality of participation is still very low although there is an effort.  
| | | Tokenism is still rife  
| | | Lack of feedback mechanism stifles participation and skews decision making
4.2.2 Recommendations to the Government

The following were identified as mitigative measures that the government and its MDAs could employ to effectively implement NVPGs.

The government should:

a) Integrate values through introducing them in early childhood education.

b) Conduct civic education to bring change in mindset in the population.

c) Inculcate transparency in our education system.

d) Promote learning the true history of the country and input the same in our curriculum.

e) Promote proactive delocalization policy across the civil service.

f) Rationalize salaries of civil servants and prevent MPs from increasing their salaries as they so wish.

g) Urge County Governments to implement Section 100 of the County Government Act.

h) Enact a law to protect whistleblowers.

i) Effectively implement access to information laws and conduct civic education on OGP.

j) Bring to life Chapter 6 of the Constitution.

k) Move from rhetoric to action (SOTN Address should be action-driven).

l) Promote constitutionalism to curb over-legislation.

m) Structure civic and political education and engagement.

n) Promote strong and independent institutions.

o) Implementation of the constitution should begin form the Government Ministries, Departments and agencies as the State of the Nation Address report is collated from the entities.
4.2.3 Recommendations to Civil Society

The FGD proposed roles of the civil society in regard to the implementation of NVPG and further proposed the best model through which the same can be achieved. The following roles were proposed:

a) CSOs / Religious institutions should encourage cohesion/exchange programs of Counties to deal with tribalism issues.

b) Initiate research and advocacy on main types of staple food.

c) Promote consumer education.

d) Actively engage on whistle blowing for accountability purposes.

e) Progressively advocate for passing of policies on whistle blowing.

The model through which civil society can realize the implementation of NVPG is three prong; civic engagement and education (to create awareness of the NVPG), advocacy and dialogue.

4.2.4 Recommendations to Private Sector in the Implementation of NVPGs

The FGD proposed roles of the private sector in regard to the implementation of NVPG and further proposed the best model through which the same can be achieved. The following roles were proposed;

• Desist from shoddy governmental benefit such as tenderpreneuring and corrupt deals to promote NVPG

• Inspiring civic goodwill and need of accountability for private businesses

The model through which the private sector can contribute to the realization of NVPG is a Private Public Partnership which shall play a fundamental role of policing private entities which unethically engage in business with government.

4.3 Key Informant Interviews: Findings and Recommendations

Our study established that there exists reasonable knowledge of the NVPG among government agencies as well as private sector. Among government agencies, it appeared the government agencies interviewed had made great effort to internally comply with the provisions of Article 10, and this was done mainly through workplace inclusiveness and diversity. The following is a summary of findings from interviews with key informants in government agencies and private sector.

4.3.1 Key Findings from Interviews with Government Agencies

While observing the effort the government agencies have made to internally realize the
NVPG, there still exists room for improvement. The institutions interviewed largely complied with the NVPG through undertaking of their functions as stipulated in the law. The institutions have in place a culture of integrity that is reflected in transparent recruitment to have the face of Kenya. Whereas one of the two interviewees confirmed having in place a Service Charter which promotes diversity, transparency and other values drawn from the Constitution, the other is in the process of putting in place a Service Charter. The absence of a Service Charter has however not undermined their promotion of NVPG. Both interviewees have developed frameworks for realizing NVPGs which comprise adherence to staff code of conduct, creating policies that guard NVPGs and active promotion of inclusion.

The government agencies, in line with the requirement for public participation, engages in capacity building and training of the public to enable the public have a better understanding of the mandate of the agencies. The government agencies interviewed stated they promote non-discrimination and protection of the marginalized through diversity and gender balance. The agencies stated they have published, in the past six years, status reports on the execution of their functions in accordance with the Constitution.

4.3.1.1 Recommendations from Government Agencies

The agencies observed that whereas the 2010 Constitution is progressive, there are areas for consideration of improvement. One such is the implementation of Chapter Six (6) whose implementation is still weak and lacks the requisite political will. To this extent there is need for improvement and Article 232 will be critical for this transformation. The other issue is that of governance, i.e., there are many constitutional commissions and they haven’t achieved much. At the same time, there is a lot of money that has been pumped into representation and devolution which has not materially transformed the lives of Kenyans. The level of corruption in the country is alarming and there is a general lack of prioritization by government. For effective implementation of NVPG, the following recommendations were made:

a) The government should engage citizens so that they know what is expected of politicians and public officers. This will empower the public to know what to demand from them.

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65 CRECO consultant interviewed IPOA CEO on 14th May, 2019 at their offices in Nairobi; EACC was interviewed on
66 IPOA observed that the number of employees from one tribe comprised 17% of the total IPOA staff; at EACC, thirty (30) out of forty four (44) tribes are represented in the staff and includes marginalized/minority groups, case in point is the immediate former CEO. EACC, however, acknowledged that SIGs are under-represented at the Commission and is working towards increasing PWDs up to 5% in accordance with the recommendations of the PSC Report 2008.
67 IPOA
68 EACC
69 IPOA has in the past four years developed 42 policies ranging from finance, sexual harassment, to training and financial management; IPOA has a Board Charter to enhance good governance.
70 EACC works with the public in investigating issues of corruption and engages the masses through community outreach activities, for instance, the Commission has been engaging the public in Siaya county; IPOA has in place civic education and awareness programs, media engagement, public engagement which involves police working with citizens in 30 counties, and has community and outreach programs (this program is run by a committee which has been running the Outstanding Police Service Awards).
71 EACC stated the Commission is guided by the HR Manuals, career progression to equal chances, guidelines on the same, code of conduct and ethics; IPOA stated diversity issues is entrenched in their values and that gender balance at the institution is currently at 36% [females], 64% [males].
72 Both agencies publish Annual Reports which highlights specific achievements, failures and recommendations; further, IPOA publishes Performance Report every six months with recommendations to the Kenya Police Service.
b) There is need to re-organize the existing independent commissions and reduce the numbers. This will further reduce the burden the many commissions have on the exchequer.

c) Laws that relate to NVPG should be amended to enhance the requirements of Chapter Six of the Constitution. In particular, Leadership and Integrity Act is critical in ensuring that only those who meet the requirements of Chapter Six are appointed or elected into public/State office. Chapter Six is about ethical and legitimate leadership and the mere presumption that an individual doesn’t meet Chapter Six requirement should itself be the basis upon which the burden of proof shifts to the individual so that he or she proves that he or she does not have integrity issues.

d) State officers, when charged in a court of law, should be suspended from office on half pay as it happens with public officers. This will enable the investigative organs to conduct their investigations without the accused abusing their office to influence findings of investigations or the court case itself.

e) The government should put in place feedback structures on the reporting of NVPG implementation and initiatives.

4.3.2 Key Findings from Interviews with Private Sector

The private sector is a critical player in the implementation of the 2010 Constitution. Its understanding and appreciation of the NVPG is therefore as fundamental as it is relevant for the NVPG agenda. The SOTN Address touches on issues that directly affect the private sector such as the economy, investment and the Big Four Agenda. The suspicious involvement of private sector in previous elections as well as in corruption scandals has raised concerns on the retrogressive role the private sector can sometimes play in the implementation of NVPG.

The private sector organizations interviewied confirmed their understanding of the NVPG in light of the Constitution. Both stated that they have made efforts to comply with the NVPG requirements. One organization stated their compliance is in form of merit-based recruitments in their institution and member institutions. This organization applies a ‘transcendent approach’ which enables it to apply integrity and truth in its daily operations, and the same is applied by its membership. The other stated their compliance is in form of sound organizational policies that reflect the NVPG spirit; this organization informed the interviewer that it deploys its HR Policy to promote non-discrimination and protection of the marginalized.

KEPSA stated they currently do not have a Service Charter, however, the organization has its values embedded in its philosophy, vision and mission which it collectively strives to bring to life. The specific values of the organization, shared by its membership, are

73 Kenya Private Sector Alliance, KEPSA and Kenya Association of Manufacturers, KAM
74 KEPSA
75 KAM
professionalism and teamwork. KAM stated they promote NVPG through their mission, vision and core values. Both private sector organizations highlighted their involvement in public engagement through meeting with stakeholders, engaging in electronic media outreach, publishing articles on leadership and encouraging private sector actors to engage the public.

4.3.2.1 Recommendations from Private Sector

Private sector actors are concerned that politicians do not walk the talk; that it’s all rhetoric and no action from the political class. In their view, the political class only focusses on themselves. They are not servants of the people; they don’t serve the common good. In light of this, the private sector organizations made the following recommendations:

a) The government should be transparent in procurement of goods and services in line with the set standards and procedures in the Public Procurement and Assets Disposal Act. Legal action should be taken against public and State officers who violate this law.

b) Implementation of the Constitution is extremely poor, and the leadership has failed. The spirit of the Constitution is lacking and the government isn’t doing much to protect the Constitution. Corruption scandals are undermining the values we espoused in the Constitution. There is therefore need to protect the rule of law and constitutionalism. The government – and all its arms, should work collectively to protect the rule of law and safeguard the Constitution.  

4.4 Broad Recommendations

4.4.1 Public Participation

d) A common issue regarding unpopular laws enacted by government in 2018 (such as Registration of Persons Act) was lack of public participation. As a result, there was heightened public resistance of these laws and amendments. Consequently, facts and truths are lost in the noise and there is attempt by opposing factions to present incorrect information as true in form of fake news. The government however is obligated by the law to engage, educate and involve the public in the process of law-making, in line with the Constitution of Kenya. The government therefore should engage citizens in structured public participation both as a legal and moral duty to ensure the public have adequate and accurate information about proposed laws before they can be tabled before Parliament for debate.

e) Whereas the government may have great initiatives for improving the welfare of Kenyans, e.g., the Big Four Agenda, it is incumbent upon the government to ensure there is demonstrated effort to engage citizens in the spirit of public participation.

The KEPSA representative, Mr. Caesar Mwangi stated that these were his own views.
as enshrined in the law. Public participation is critical in ensuring Kenyans not only properly understand the underlying philosophy that drives the Big Four Agenda but also the facts around contested issues. The participation of the public is critical in ensuring there is deliberate effort to provide information and create opportunities for the masses to express their views. Public participation should not be limited to urban and peri-urban areas but also include rural areas.

f) A public participation law and framework needs to be enacted to provide for a more deliberate participation of the people with clear participatory structures that would empower the people to engage representatives and veto unpopular and selfish laws passed in Parliament and County Assemblies.

g) All government Ministries, Departments and Agencies (MDAs) should endeavour to engage the public in policy making to ensure there is a sense of public ownership of the policies and regulations they gazette. Failure to do so is an affront to the Constitution. The best example is the manner in which the government is implementing the Competency Based Curriculum. Every indication points to a government that does not value consultative engagements with stakeholders and disregards their voices. The government should suspend the implementation of CBC until all issues raised by KNUT and other stakeholders are addressed. Most importantly, the government should identify an effective and efficient training module that will enable teachers implement the CBC in the best way possible.

4.4.2 Runaway Corruption

h) Corruption has become a crisis in the country. Leadership today seems to be a perfect opportunity for leaders to loot and enrich themselves. The politicization and weaponisation of the war against corruption and whipping up of ethnic emotions by the corrupt are a hindrance to the fight against corruption. The war on corruption should be grounded on both the law and the idea of integrity and ethics, and consequently, the President should suspend State officers suspected to have enabled corruption, through omission or commission, to allow for objective investigation by organs constitutionally mandated to investigate and prosecute corrupt individuals.

i) Parliament, in light of the limitations of existing anti-corruption laws, should work with the relevant government organs to amend the existing anti-corruption laws to empower the organs in investigating, prosecuting and preventing corruption. In particular, the legislations should mirror the integrity test of Chapter Six and provide for immediate suspension of individuals implicated in scandals. Further, fines and sentencing should be heavily punitive to ensure the severity of the judgment is equivalent to the severity of the crime committed.

j) In light of the Public Procurement and Disposal Act and the subsidiary Public Procurement and Disposal Regulations, procurement files and records should
be properly managed to avoid incidents of lost or missing files. The government should criminalize mismanagement of procurement files that results in loss or disappearance of files, and consequently firm administrative and legal action should be taken against officers who intentionally hide, misplace public records, or cause them to be lost or destroyed. In the spirit of this law, the government should interrogate new models of managing procurement files, such as cloud computing.

k) The failure to have a lifestyle audit for all State officers and the adamant refusal by high ranking government officials to declare their wealth should be treated as sufficient ground for judicial prosecution of these State officers. Where the relevant laws have loopholes, the government should amend the laws to ensure that no State officer shall stay in office if they do not abide by the requirement to declare their wealth.

l) Corruption cases before courts generally drag for several years and a verdict is yet to be issued regarding some of the major corruption cases. The Judicial Service Commission should introduce a judicial policy to outline pre-trial and trial proceedings, asset freezing and recovery to ensure that the Judiciary enables rather than impedes the quest for justice.

m) The Asset Recovery Agency should be empowered to carry out its mandate without political interference or pressure from any quarters.

n) The Elections Campaign Financing Act had previously banned politicians and political parties from receiving anonymous contributions (Section 13, 14) and demanded they disclose funding sources (Section 16). However, the Courts suspended its operationalization ahead of 2017 elections following a case filed by Orange Democratic Movement (ODM) challenging the IEBC directive. It is worth observing the significance of this law in curbing the influence of corruption during electioneering period. The Act should therefore be implemented as a strategy to deal with questionable sources of political campaign money. Politicians and State officers should be banned from participating in fundraisers to curb money laundering and use of public resources to appeal for political support.

4.4.3 Two Third Gender Rule Implementation

e) Parliament should enact the two thirds gender rule without further delay to reflect the aspirations of the 2010 Constitution.

f) There is lack of political will from the Executive arm of the government to implement the two thirds gender rule for appointive positions. Appointments are therefore largely skewed towards the male gender and as a result two thirds gender rule for appointive positions has not been realised or where it is, the female gender form the 1/3. The President therefore should implement two thirds gender rule for all appointive positions in all government agencies, parastatals and departments.
g) The National Gender and Equality Commission (NGEC) and the Kenya National Commission on Human Rights (KNCHR) should be allocated higher budgets to enable them effectively address arising gaps and challenges in the gender and human rights campaign.

h) Civil society organizations should collaboratively work together and design a global approach to dealing with gender issues. This collaborative approach should be geared towards advocacy for enactment of two thirds gender rule and influencing national conversations around gender issues.

4.4.4 Restoring Human Dignity

d) When human dignity ceases to exist as a result of a government’s failure to promote the welfare of the people, then such a government loses legitimacy. The Grand Coalition initiated great projects, under the Safety Net Programme, that were intended to benefit the vulnerable and marginalized in the society. However, it seems there has been systemic and systematic misappropriation of funds catalyzed by the morally corrupt governance systems and structures. The government, through the President, then cannot account for programmes they inherited from the previous regime or for the programmes they initiated. To ensure human dignity is restored, the government should ensure these programmes actually benefit the people for whom they are intended by holding its officers accountable and culpable in case of embezzlement. In his SOTN Address, the president should provide hard facts and solutions to the failure of his government to address the recurrent issue of death from hunger and famine.

e) The government should identify sustainable ways to address the problem of famine and hunger. The government could invest in innovative water harvesting mechanisms to shield drought-stricken regions from hunger and death.

f) The civil society should collaboratively work together to conduct social audit of these programmes to establish the efficacy of the models employed by government while at the same time assessing the level of embezzlement of funds meant for alleviating poverty, famine and destitution.

4.4.5 Restoring Justice

c) The “primary reference” when it comes to restoring justice in Kenya is the Truth, Justice and Reconciliation Commission report. The report identifies the problem of historical injustices as the greatest obstacle to the present justice and reconciliation effort. Until Kenyans speak with each other openly about the past, the present will always be scarred with the wounds of yesterday. Neither the politicized Handshake nor the elitist BBI shall afford justice for Kenyans who feel aggrieved. The President, in 2018, asked for forgiveness from Kenyans. What about those families that are aggrieved following police killing their loved ones? The only way is to fully and
unconditionally implement the TJRC Report.

d) The President has set aside more than once money towards setting up the Restorative Justice Fund but the fund has never been putting in place. The buck stops with the President – the failure by Treasury to allocate funds to the Fund is an indication it was a mere PR stunt. The President should therefore set a timeline by which money shall be transferred to the Fund and its subsequent implementation.

e) Both the Department of National Values and the National Cohesion and Integration Commission (NCIC) have largely been passive observers in the governance of the country with the latter coming to life a year to elections. Whether the problem is budgetary constraints or lack of sound policies for actively engaging the public on issues of cohesion, these institutions should be restructured and afforded capacity to deal with cohesion and integration beyond hate speech and diversity statistics. The institutions should attend to primary issues (causes) around cohesion and integration rather than the symptoms of social disintegration.

4.4.6 Sexual Gender-Based Violence

d) The government should work with CSOs and other NSAs to identify current gaps in SGBV legislation and policy implementation challenges (such as socio-cultural biases, judicial decisions and misconception of the term “gender”)


that have affected the war against SGBV. The government should ultimately establish a legal framework that will protect its citizens from being sexually violated - whether male or female. SGBV violates human rights as espoused in the Constitution of Kenya and other legal instruments such as CEDAW, BPFA, and UDHR.

e) The Kenya Police Service should work in partnership with gender CSOs to train selected police officers and DCI officers on SGBV. The Directorate of Public Prosecution (DPP) should also work with these CSOs to train their prosecutors on how to handle SGBV cases.

f) The Judiciary plays the most important role in the dispensation of justice. Due to the number of cases in the courts however, SGBV cases – just like other cases, tend to take long before final verdict is read. This sometimes creates a window for perpetrators to attempt to defeat justice. The Judiciary should create specialized SGBV courts across the country to aptly deal with rising cases of SGBV.
4.5 Conclusion

The greatest obstacle to a better and more humane Kenya is the culture of our politics which by and large has promoted a kind of lack of accountability that beggars’ description. We ethnicize our politics and politicize our ethnicities. We ethnicize our politics in the sense that our politics is interpreted through the ethnic lenses “tyranny of numbers”, “41 against 1”, “big tribes vs. small ‘numberless’ tribes”, etc. We politicize our ethnicities in the sense that our ethnic groups are political characters entangled in individualistic power games with constant realignments to outwit or defeat perceived enemies. Yet when we look at it critically, it is an expression of the capitalist-driven oligarchical politics characterized by puppetry of the masses. It’s a business enterprise to the detriment of the mwananchi.

Through this model (what Judge Kriegler called “ethnic democracy”) we cannot have mature politics and therefore transformational leadership. This type of democracy is impervious to the values we have espoused in our Constitution, and this is evident right from party primaries, to main elections, to post-election dinner table – where inclusiveness becomes a fallacy and public participation is – like the SOTN Addresses, a tick-the-box exercise. The leadership put no effort in building the nation: the real nation building is in harnessing NVPG as the pillars of the socio-economic, political and cultural edifice. Kenya, as a result, largely remains a “shared space” rather than a nation, until such a time we selflessly promote and protect the values that are dear to our country, or as the ancient Greek philosopher Plato says – “until philosophers become kings or kings, philosophers”. This is a call for true servant leadership, and it starts with our values, both collective and personal.
### Paramount Issues in 2018
- Corruption – IFMIS, High debt and taxation; tax avoidance; youth and Uwezo funds, Eurobond, National Youth Service (NYS), KPLC service scandal, Russia World Cup benchmarking trip by Parliamentarians, Stadiums construction, Procurement scandals involving Ministry for ICT to Laptops for schools project; IEBC General Election kits; CCTV procurement; Public Private Partnerships; County Scandals

### Affected National Values & Principles of Governance (NVPG)
- 1. Good Governance;
- 2. Rule of Law;
- 3. Transparency;
- 4. Accountability;
- 5. Integrity;
- 6. Sustainable Development
- 7. Public participation

### Public Institutions with related responsibility
- Ministry of Treasury and Planning; Office of the President – Service Delivery Unit; Parliament; Office of the Auditor General; IEBC; IPOA

### CSO with related Expertise
- Tax Justice Network (TJN); Institute of Economic Affairs; Transparency Int. Kenya (TI-Kenya); Kenya Human Rights Commission (KHRC); Article 19; Mzalendo, International Budget Partnership (IBP)

### International and Regional Protocols as source of Benchmarks

### Indicator of Achievement
1. Judiciary, Parliament & Executive
2. Adherence to laws, and Judicial pronouncements
3. Proactive disclosure of information/Access to information
4. Accuracy and effectiveness (SOTNA inaccurate)
5. Impunity and Adherence to Chapter 6
6. Long term impact of development projects/Public involvement, quality of development/Policy framework
7. Civic education/Access to information/Poor feedback mechanisms
8. Impact of the national park

### Status
- While we recognise efforts are in place by some government agencies and entities like the EACC, DCI and DPP where there has shown some glimmer of hope to the citizens in fighting corruption, the only time corruption seems to be fought, it’s when its being politicised. And our institutions are booby-trapped with no notable goodwill

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81 The strength of these protocols as sources of benchmark lies in the fact that the Kenyan government has signed the protocols and therefore is both legally and morally obligated to meet the set threshold.

82 Indicator numbered against affected NVPG
| -- | -- | -- | -- | -- | The driving motive behind the mega projects initiated is to benefit from the projects as they do not meet the thresholds. That is with regards to value addition and sustainability. |

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<td>Ministry of Interior; Judiciary; Police; Kenya Defence Forces (KDF); Kenya National Commission on Human Rights (KNCHR); National Gender and Equality Commission (NGEC); Commission for Administration of Justice (CAJ); IPOA, State Department of Gender; Police – Internal Affairs unit</td>
</tr>
<tr>
<td>IMLU; KHRC; Usalama Working Group; International Justice Mission (IJM); Justice Centres; Civil Society Organisations (CSO) Reference Group, Federation of Women Lawyers (FIDA) – Kenya; CREA; Crown Trust, Physicians for Human Rights; Amka Space for Women</td>
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<tr>
<td>CEDAW; Maputo Protocol; Universal Declaration of Human Rights (UDHR); Convention against Torture; International Convention for the Protection of all persons from Enforced Disappearances; International Convention on Civil and Political Rights</td>
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<tr>
<td>It has been noted that the Parliament oversight is weak especially in vetting of leaders. The parliament need to adhere the chapter 6 while conducting the same</td>
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<tr>
<td>Mega projects; Environmental degradation/mitigation strategies; Housing (tenure issues in urban areas); Tatu city; Food security; public private partnerships, public participation, evictions;</td>
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<th>Ministry of Lands and Physical Planning, Ministry of Environment; Ministry of Mining; Ministry of Trade; Ministry of Petroleum; National Land Commission; KNCHR; National Environmental Management Authority (NEMA); Council of Governors</th>
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<tbody>
<tr>
<td>Pamoja Trust; Haki Jamii; KHRC; ICJ – Kenya; Kenya Land Alliance; Natural Justice; Mzalendo; Kenya National Resource Alliance; National Council of Churches of Kenya (NCCK), Catholic Justice and Peace Commission (CJPC)</td>
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<td>Sanitation/Access to healthcare</td>
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<tr>
<td>6. Intergovernmental relations/Transfer functions/ Adequacy of resource allocation/Employment opportunity distribution/ Development and sustainability</td>
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<tr>
<td>7. Fairness in the sense of opportunities to different groups</td>
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<td>8. Positive discrimination/ Structured affirmative action</td>
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<th>There is a bill in the senate to amend the bill on PPP bill</th>
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<td>As much as the issues scored a re, we observe that there was some progress in particular</td>
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</table>
**Health – Maternal health; Sexual Gender-based Violence (SGBV); Universal Health Care (UHC)**

1. Social Economic rights/Government rights/Civil and political
2. Food security/Affordable housing/Water
3. For distribution of resources/Balanced appointive laws/Affirmative action
4. Proactive engagement/Diversity/Involvement

**Tolerance**

<table>
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<tr>
<th>Implementation of the Public Benefits Organizations (PBO) Act; PBO Act Amendments; Civic education; Public awareness on the current Constitution; Civic space &amp; enabling environment</th>
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There has been some improvement in the health sector, especially on the Universal Health Care and the NHIF, though there is still a lot of work to be done with regards to proactive engagement of resources across the different interest groups.

**Health – Maternal health; Sexual Gender-based Violence (SGBV); Universal Health Care (UHC)**


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There is a level of significant changes in service delivery in the government with the government in service delivery especially with Huduma services. The government still needs to do a lot more on procurement processes and data privacy.

Despite this, operationalisation of the PBO Act has not yet been done.

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There is a level of significant changes in service delivery in the government with the government in service delivery especially with Huduma services. The government still needs to do a lot more on procurement processes and data privacy.

Despite this, operationalisation of the PBO Act has not yet been done.

<table>
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</tr>
</thead>
<tbody>
<tr>
<td>Health – Maternal health; Sexual Gender-based Violence (SGBV); Universal Health Care (UHC)</td>
<td>1. Social Economic rights/Government rights/Civil and political</td>
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<table>
<thead>
<tr>
<th>Technology – Government Advertising Agency (GAA), IFMIS; National Integrated Identity Management System (NIIMS)</th>
<th>Open Institute; KICTANET, Ti-Kenya, Institute of Economic Affairs, Centre for Governance and Development (CGD); PPOA</th>
<th>UNCAC; African Union Convention on Preventing and Combating Corruption, African Union Convention on Cyber Security and Personal Data Protection; UN Declaration on Democracy Good Governance</th>
</tr>
</thead>
</table>

**Products related scandals e.g. sugar, maize; fish, rice, milk, sanitary products like tampons and pads; Food security issues – quality fertilizer and seeds; introduction of GMO.**

<table>
<thead>
<tr>
<th>Devolution; Rule of Law, Transparency; Accountability; Integrity; Human rights; Human dignity</th>
<th>Ministry of Agriculture; Ministry of Land and Physical Planning; Ministry of Trade; Ministry of Water; Council of Governors; Judiciary; Ethics and Anti-Corruption Commission (EACC), ODPP (Office of the Director of Public Prosecution), KEBS, KEPHIS, National Cereals and Produce Board (NCPB)</th>
<th>UNCA; AU-CPCC FAO</th>
</tr>
</thead>
</table>

**There has been some progress seen with regards to technology through procurement, service delivery and rights.**

**The government has slacked in delivering basic needs to its citizens. The standards of the good are not as per standards and the scarcity of the same is felt across board with lack of basic commodities and increase in prices of the same. There is need for the government to critically look at sustainable solutions with regards to food security and basic needs.**
Annex 2:

**Focused Group Discussion Questions**

The session is divided in two groups guided by a facilitator for each group. The groups attempt to address the questions provided and record their deliberations with the help of a rapporteur. Thereafter, each group identifies one among them to make a presentation of their findings.

**Question 1: NVPG Scoring (Group A & Group B)**

Following the first elections (2013) after the promulgation of the 2010 Constitution, Article 132 of the Constitution mandates the President to give a State of the Nation address in which the President is required to outline measures and progress undertaken to implement and promote the NVPG espoused in Article 10 of the Constitution. From a CSO perspective, rate/score the achievements in the implementation of NVPG on a scale of 1 to 10 where 1 is the “Poor” and 10 is “Excellent”. Please also share for the respective NVPG, the indicators of achievement.

<table>
<thead>
<tr>
<th>NVPG</th>
<th>Score: 1 - 10</th>
<th>Indicator of Achievements</th>
<th>Reasons for the Score</th>
</tr>
</thead>
<tbody>
<tr>
<td>Good Governance</td>
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<tr>
<td>Rule of Law</td>
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<td>Transparency</td>
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<td>Accountability</td>
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<td>Integrity</td>
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<td></td>
<td></td>
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<tr>
<td>Sustainable Development</td>
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<td></td>
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<td>Human Rights</td>
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<td>Devolution</td>
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<td></td>
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<tr>
<td>National Unity and Cohesion</td>
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<td>Equality</td>
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<tr>
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<tr>
<td>Inclusiveness</td>
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<tr>
<td>Participation of the People</td>
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<tr>
<td>Human Dignity</td>
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</tbody>
</table>
Question 2: Case Scenarios (Group A & Group B)

In the past seven (7) years, the country has witnessed cases of grand corruption. It has been said in some quarters that corruption is synonymous with the Jubilee government. These corruption scandals, counting to over 40, have cost taxpayers billions of shillings. The Auditor General has placed the loss at KES 5 trillion (since 2013) out of which a paltry KES 3 billion has been recovered.

Further, service delivery programs such as healthcare delivery (introduction of NHIF for school students and as part of UHC) and safeguarding of human dignity do not seem to genuinely address the interests of the citizens while at the same time are devoid of the public participation (this also includes NIIMS – Huduma Namba, Housing Fund Levy, among others). As a result, Kenyans are largely skeptical of the Big 4 Agenda.

From a CSO perspective, what would be the mitigative measures proposed to the government to enable an effective implementation of NVPG?

______________________________________________________________________________________
______________________________________________________________________________________
______________________________________________________________________________________
______________________________________________________________________________________

Question 3: Civil Society (Group A)

In light of your responses in Questions 1 and 2, what would you consider as the key role of civil society in the implementation of NVPG and what’s the best model for achieving this?

______________________________________________________________________________________
______________________________________________________________________________________
______________________________________________________________________________________
______________________________________________________________________________________

Question 4: Private Sector (Group B)

In light of your responses in Questions 1 and 2, what would you consider as the key role of private sector in the implementation of NVPG and what’s the best model for achieving this?

______________________________________________________________________________________
______________________________________________________________________________________
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During his 2018 SOTN Address, the President told Kenyans his government had put in place a Hunger Safety Net Programme that would cushion Kenyans against hunger. In 2019, hunger ravaged parts of Kenya leading to many deaths yet the President did not update Kenyans on what happened to the Hunger Safety Net Programme he had spoken profoundly about in the 2018 SOTN Address.
Annex 3:

Key Informant Interviews (Questionnaire)82

IMPLEMENTATION OF NATIONAL VALUES & PRINCIPLES OF GOVERNANCE: KEY INFORMANTS INTERVIEWS

1. Are you conversant with the National Values and Principles of governance?
   - Yes ☐
   - No ☐

2. To what extent (on a scale of 1 to 5 where 1-poor, 2-average, 4-good and 5-Excellent) has your institution/office complied with the provisions of National Values and principles of governance? How? (tick appropriately; record explanation in the box on others)
   - 1.
   - 2.
   - 4.
   - 5.
   - Other (please specify)

3. In what form is the compliance exhibited?
   - 1.
   - 2.

82 Same questionnaire was used for both government agencies and private sector interviews.
3.

Other (please specify)

______________________________________________________________________________________
______________________________________________________________________________________
______________________________________________________________________________________
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______________________________________________________________________________________
______________________________________________________________________________________

4. How does your service Charter promote National values and principles of governance?

1.

2.

3.

4.

5.

5. Within your institution what frameworks have you developed to ensure that National Values and Principles of good governance are realized?

1.

2.
6. How do you engage with the public in your work?

1. 

2. 

3. 

4. 

7. What measures has your institution put in place to promote non-discrimination and protection of the marginalized?

1. 

2. 

3. 

4. 

5.
8. In your opinion what should be done for effective implementation of National values and principles of governance as captured in Article 10 of the CoK 2010?

☐ 1.

☐ 2.

☐ 3.

☐ 4.

☐ 5.

9. Has the institution/Office Published any status report on execution of your functions in accordance with the constitution?

☐ Yes

☐ No

10. When was this done?

☐ 2011

☐ 2012

☐ 2013

☐ 2014
11. What was (were) the title(s)?

- 1.
- 2.
- 3.
- 4.

12. What would be your general comment on the implementation of the Constitution of Kenya 2010 thus far?

Comment

Other (please specify)

______________________________________________________________________________________
______________________________________________________________________________________
______________________________________________________________________________________
______________________________________________________________________________________