

Rising Legislative Assertiveness in Uganda and Kenya 1996 to 2002

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Paper prepared for delivery at the 19th International
Political Science Association World Congress
Durban, South Africa,
June 29 to July 4, 2003
Version 2

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Introduction

The purpose of this paper is to describe and analyze recent developments in parliamentary assertiveness occurring in Uganda and Kenya and to explore the significance of these events.

The picture that we will present of Uganda and Kenya is one in which their respective parliaments have been developing as assertive, lawmaking, representative institutions demonstrating a willingness to challenge executive authority. Our conclusions are based on observations, interviews, and participation in developments conducted over a number of years in both countries.

If our characterization of those developments is accurate, then there are important implications for students of legislative development and democratization. First, Uganda and Kenya would be by most understandings unlikely places for legislative assertiveness to develop. Both were ruled during most the period of our studies by chief executives, at the head of political organizations with strong parliamentary majorities, in former colonies that initially followed a Westminster model, and in nations in which poverty and tribalism constituted explosive issues if dissent got out of hand. So if Uganda and Kenya are indeed developing viable legislative institutions, then the range of potential places is greater than is currently assumed.

The second set of potential implications is more policy related. It has to do with the form that legislative assertiveness has taken in Uganda and Kenya and to the efficacy/appropriateness of external assistance efforts in these developments. Carothers and others have voiced a powerful and compelling critique of US assistance policy based on several components.¹ The East African cases shed some critical light on the applicability of some of these. The critics see US efforts as too rooted in conceptions of democracy and democratic institutions based on its own historical experience. This view is operationalized in a "democracy template" which includes American conceptions of how democratic institutions should be structured and operate. The implication is

* Robert Nakamura would like to acknowledge the assistance of the Ford Foundation for its support of African parliamentary studies at the United States International University under whose auspices the author was able to work in 2001. He also wishes to thank SUNY's Center for International Development for opportunities to observe, as it was occurring, parliamentary developments in Kenya and Uganda.

¹ Thomas Carothers, *Aiding Democracy Abroad* (Washington: Brookings Institution Press, 1999).

clear, trying to install an inappropriate, single model on diverse circumstances is a losing strategy.

While few dispute the face validity of an assertion that “one size” does not necessarily fit all, there is more room for flexibility than the critique assumes. For example, the “American” model of a legislature—with its tensions between executives and legislatures, lawmaking powers and separate claims to representativeness -- is not necessarily a uniquely American nor is its appeal as limited as many argue. While we are not necessarily arguing for the “one size fits all” approach of the template, our analysis of the two East African states indicates that whether or not the American conception has been “exported,” similar ideas have captured parliamentary activists in other places and they have achieved a measure of success in working to implement them. So we would caution that concern with localism should not be read as ruling out conceptions of institutional development with possibly foreign roots.

A second element of Carothers argument is a mistrust of “top down” approaches. In this approach, he is joined by civil society advocates and others who see democratization efforts as better rooted in assistance to non-governmental organizations. Here again our East African cases are intended to be cautionary rather than an attempt at refutation. The implication that “top down” approaches inevitably are misdirected because they merely strengthen the already strong hand of government at the expense of civil society rest in the notion that the top is insufficiently diverse. Our case, however, indicates that in democratic development, even parliaments—as institutions of the ruling elites—can become arenas for the expression of diverse sentiments and become avenues for expression by outside groups including those from civil society. Indeed the encouragement of competition among elites, as well as the creation of access to them, have long been considered hallmarks of pluralist democracies.²

Method: A word on method before we get into the discussion of our cases. My colleague John Gunnell stresses the difference between the language of discovery and the language of explanation. Discovery is often a serendipitous process. We picked Uganda and Kenya for analysis because, in an overlapping period, we became involved with their parliaments through USAID assistance projects and learned about how they were changing and why. We, however, hasten to explain our choice for such a comparative case study to scholars on another, more formal basis.³ The two nations are a good match for a comparative case study because of they offer enough similarities so that we can feel greater confidence about making generalization and they offer a limited

² See for example Robert Dahl, Preface to Democratic Theory.

³ See Beryl Radin and Robert Agranoff, “The Comparative Case Approach in Public Administration,” *Research in Public Administration* (JAI Press, 1991). For an application of the method to policy analysis, see Thomas W. Church and Robert Nakamura, *Cleaning Up the Mess* (Washington: Brookings Institution Press, 1993) and Robert Nakamura and Thomas W. Church, *Taming Regulation* (Washington: Brookings Institution, forthcoming).

number of differences with which to test the other hypotheses. The most important methodological problem posed by case studies is uncertainty about the extent to which generalizations based on them can be applied more broadly. One frequent form of this objection is the question of “compared to what?” One finding, in one place is interesting but usually not very convincing. Comparison helps to answer that question. Uganda and Kenya are, for our purposes, can be treated as “natural experiments”⁴ in varying enough features so that better generalizations about the effects of variables can be gleaned.

Organization: This paper divided into three subsequent sections. The next will describe our Ugandan case. After that developments in Kenya will be discussed. The concluding section will then draw our general lessons and conclusions.

⁴ See Donald Campbell, “Causal Inference in Non-Experimental Research,” and “Reforms as Experiments.”

The Case of Uganda

Introduction:

Our discussion of the Ugandan case is based on participant observation of developments occurring over a five year period beginning in 1997 and extending to 2002.⁵ In 1997, the authors conducted an assessment of the Ugandan Parliament for USAID.⁶ Later that year, USAID signed an agreement with Uganda for a parliamentary assistance project. John Johnson served as the US-based manager of that project, Marc Cassidy as its Chief of Party and Robert Nakamura as an occasional consultant.

The following is based on three sets of interviews with participants conducted over that period and documentary research.

Historical and Constitutional Background:

The present Parliament of Uganda was created by the 1995 Constitution. It replaces a transitional body of appointees created by the National Resistance Movement (the NRM) following its victory in the civil war. Uganda now has a mixed system with an strong president who is elected nationally and has the power to appoint ministers. Members of parliament are separately elected.⁷ Since Uganda officially has an official “no party” system in which party electioneering was formally banned, the NRM disavows the title of political party although its members dominate elective offices. Because parties do not officially exist, official figures on the party balance in parliamentary seats are not available, but the group sometimes called “multi-partyists” never numbered more than a handful.

We will briefly describe the main features of the political system in which parliament operates: the formal legal and constitutional environment; and the

⁵ For the story of this project see Marc Cassidy, “IMPROVED LEGISLATION AND MORE EFFECTIVE CONSTITUENT REPRESENTATION THROUGH THE DEVELOPMENT OF RESEARCH CAPACITY IN THE PARLIAMENT OF UGANDA” SECOND INTERNATIONAL CONFERENCE ON LEGISLATIVE STRENGTHENING June 5 – 8, 2000 Wintergreen Resort Virginia, USA

⁶ In 1997, the authors conducted an assessment of the Ugandan Parliament for USAID. Over a two week period, we interviewed over twenty informants including members of parliament (leadership and opposition), ministerial personnel, academics, NGO leaders, and others. We will briefly

⁷ Under the new design, Parliament is composed of one chamber and 276 members of whom 214 are directly elected and 62 are indirectly elected. Among the 62 seats that are indirectly elected, 39 are reserved for women, 10 for the military, 5 for disabled, 5 for youth, and 3 for trade unions. Ministers who are not elected members of the Parliament are considered *ex officio* members of Parliament.

political environment; and important events in Uganda's recent parliamentary development.

The Formal Legal and Constitutional Environment: The Constitutional position of Parliament is relatively weak with respect to the power of the purse, but quite strong in other areas.⁸ Parliament cannot unless the bill or motion is introduced on behalf of government-- proceed on a bill or amendment that taxes, spends public funds, or borrows in the name of Uganda.⁹ Its constitutional role is thus quite limited in taxing and spending measures.¹⁰ Indeed in the pre-1997, that role was largely limited to passing budgets presented on short notice and approving after they occurred expenditure over-runs presented to them by the government. It also has audit powers, but in the the pre-1997 period auditing of executive expenditures ran years behind.

The general lawmaking powers are similar to those found in many other nations. Bills can be introduced by the government, by committees and by private members. A committee system is specified to consider legislation. That system, according to the member who introduced the measure to create it, was based on observation of American legislatures including those in the states, and the authors hoped that it would develop into a similar system dividing legislative labor.¹¹ Bills passed by Parliament can become law with the President's approval, or over his opposition with a two-thirds vote.¹²

In the area of oversight, Parliament has substantial potential power over ministers. It has the commonly found legislative power to confirm ministerial appointments. And, less common, it can censure ministers by majority vote, and censure means removal from office.¹³

Parliament through its committees has another power that can be combined with the above to give it a potentially larger role in oversight.¹⁴ Committees have a large grant of authority to get information out of government: the power to call public officials (including ministers) before them, to compel them

⁸ Chapter 6, The Constitution of the Republic of Uganda, 1995 pp. 49-61.

⁹ *Ibid.*, p. 59-60.

¹⁰ See for example, Dr. Y Okulo Epak, MP, "Budget Process It A Black Box? Can Citizens Influence It? Speech at Equatoria Hotel, Kampala, Feb. 22, 1997. Dr. Epak characterizes the present process as one in which "legislators, who represent the interest of the citizens/people do not play (an) effective role in influencing the budget process and outcome. This is a matter which is not of concern and debate among Uganda legislators.

¹¹ Interview with the Hon. Karuhanga, 1997.

¹² *Ibid.* pp. 58-59.

¹³ *Ibid.*, pp. 76-77.

¹⁴ The Rules of Procedure of the Parliament of Uganda, July 30, 1996. One explicit function of the standing committees is oversight or to "assess and evaluate the activities of Government and other bodies" (p. 115)

to provide information, and to produce documents.¹⁵

In short, in the pre-1997 period the constitutional environment provided Parliament with potentially great powers in commanding a degree of accountability from government in the personal conduct of ministers or in the implementation of the laws. In that period, those powers—with few exceptions—mostly existed in their potential rather than in exercise.

The Outside Political Environment: The Parliament's political environment is defined by: the ruling National Resistance Movement (NRM) that shapes the demands made upon it; the press which reports its activities to the larger public; and by the other elements of civil society such as the non-governmental organizations, traditional interest groups and other movements through which popular aspirations might be channeled.

Often, in one party states, parliamentary bodies become rubber stamps for decisions made at the top. In Uganda, NRM supported candidates are an overwhelming majority of Parliament.¹⁶

In 1997 and for most of the subsequent period, NRM control over parliamentary members was exercised in a rather loose fashion. While President Museveni has engaged in effective personal lobbying of members on selected issues, the number of members, the President's limited time, and the increasingly large number of issues precludes expanding this approach. In addition, he has patronage powers including rewarding compliant parliamentarians with ministerial rank and other benefits that can be conferred as needed. And there was a semi-secret NRM caucus within Parliament that occasionally met with one another and with the president but did not enforce party discipline on its members.

Part of the hesitance to create a more explicit structure to control parliamentary deliberations from the outside stems from the fact that the NRM does not define itself as a party. The official view is that everyone is part of the "the movement" or NRM. Indeed, the preferred description is that it is a unique party-less system in which MPs are elected on the basis of their 'individual merit,' rather than through a party structure.¹⁷ With the exception of selected articles of faith (including a commitment to extensive decentralization), the NRM does not have a comprehensive party line of positions across a large number of issues.¹⁸ Thus even those who identify with the NRM do not necessarily act in accord

¹⁵ Ibid. p. 57.

¹⁶ For a critical view of the NRM see Joe Oloka-Onyango, Uganda's Benevolent Dictatorship, Current History, May 1997. Oloka-Onyango recognizes that President Museveni has made progress, but he stresses the need to institutionalize mechanisms for governance separate from the movement.

¹⁷ Cassidy, p. 1.

¹⁸ This point was made by several interviewees who were Members of Parliament.

politically when the context is an ambiguous one.

So despite the NRM's dominance in the governmental and political systems, that dominance has not smothered parliamentary opposition and indeed it may have perversely encouraged it by channeling criticism into one highly public arena.

Next there is the press. The importance of the press in Parliament's political environment that it is press attention that has made the institution a subject of national attention. An essential element of the exercise of legislative authority unlike executive or judicial authority is that it is done on the basis of public deliberations. And for citizens, in public means reported in the media. A perusal of Kampala papers shows that parliamentary activities are often front page news. The Ugandan press operates under few constraints on what they write, and the activities of Parliament and President are apparently favored because they occur in public where they can be easily seen by the press and the alternative newsmakers such ministries tend to be somewhat secretive about what they do. So whatever Parliament does, there is a strong likelihood that what they do will be reported and often harshly criticized.

The third sector of the political environment consists of the citizens groups and others through which political demands are aggregated and articulated. Transparency in the political process is a value because it contributes to the legitimacy of decisions and more practically provides citizens with the knowledge of what is going on and the chance to influence it. This latter function is only possible when groups exist to channel popular preferences. In Uganda, individual demands on politicians most often take the form of requests for personal help (handouts, loans, favors, etc.) from impoverished constituents. Indeed, people form lines outside parliament to catch the eye of their representatives for that purpose. While such activities are legitimate, they do little to advance the larger purpose of a representative institution: to shape policies in response to the needs of groups of citizens rather than individuals.

Uganda does have some relatively well developed interest groups thanks to entrepreneurial leaders, the efforts of people in common situations to organize, and the support of outside donors. Womens issues as well as those of other marginalized groups are articulated by FOWODE and other groups.¹⁹ The NRM government has encouraged groups of the handicapped. Foreign donors have supported NGOs concerned with human rights. The Uganda Law Society forms an effective voice for the legal profession. And the Uganda Local Authorities Association and others speak for sub-national governments. While the number of these groups is relatively small, and few penetrate deeply into the countryside at the village level, they do speak for significant groups and interests and have shown that they can make use of opportunities for public participation provided

¹⁹ Sylvia Tamale, *When the Hens Begin to Crow: Gender and Parliamentary Politics in Uganda* (Boulder, Westview Press, 1999).

by legislative forums.

Parliament Asserts Itself:

NRM dominance and President Museveni's popularity, and parliament's own weaknesses of inexperienced members and scant resources, seemed to promise a familiar outcome: a rubber stamp legislature. The frequency of such outcomes is cited in this World Bank report on parliamentary development in Africa:

Under single party regimes, the parliament was in effect an extension of the executive and the role of parliaments was in many cases reduced to "rubber stamping" policy developed by the government and party. Even when not taken to such extremes, parliaments enjoyed little independence and exercised no real authority.²⁰

What was unusual is that this result did not occur.

One well known commentator interviewed in 1997 saw little prospect for parliamentary assertiveness. Three years later he had changed his mind and thought that parliament was developing into an arena for public deliberations. We now turn to the events that indicate that Uganda is diverging from the more common course of marginalization.

Taking Control of Its Own Environment-- The Administration of Parliament Act of 1997: Nelson Polsby sees an important indicator of legislative institutionalization as the creation of boundaries that separate the representative assembly from rest of the political system.²¹ An important step in this process is an institution's capacity to wrest control over the resources it needs to function. In the past, Parliament was treated by the executive bureaucracy as just another department of government and its needs were accorded no special consideration by bureaucrats responsible for its staffing and support. That situation changed with the Administration of Parliament Act of 1997. The Act established the fiscal autonomy of the Ugandan Parliament, separated its staff from the Civil Service, and created a Parliamentary Commission with overall responsibility for its development as a legislative institution. The Parliamentary Commission has subsequently overseen the administration and the institutional development of Parliament. Pursuant to that act, Parliament successfully created a parliamentary service for its staff (expanding it from an estimated 9 staff members in 1997²² to 60 by 2000²³), and developed and is implementing a long-range development plan supported by Ugandan resources and foreign assistance contributions.

²⁰ Role and Functioning of Parliaments in Africa: Issues Paper, prepared for a meeting of parliamentarians supported by the World Bank, Harare, Zimbabwe, December 3 to 4, 1998.

²¹ Nelson W. Polsby et al., "The Institutionalization of the US House of Representatives," American Political Science Review.

²² Interview with Chris Kaija, Deputy Clerk of the Parliament, Summer, 1997.

²³ Cassidy, op. cit.

This act was introduced as a private member bill by the Hon. Wandera Ogalo. What was unusual was that it passed the Parliament. The then-Speaker, who later became the national chairman of the NRM, and other prominent members of the NRM supported the measure. It appears that the government ministries did not consider the measure a significant one. The Hon. Ogalo described the committee deliberations at the time in this way:

The bill has finished last week in the committee. A report ...is being prepared and once it is complete it will be presented to Parliament. The pattern has been that whatever comes out of committee has been normally approved by Parliament. Normally under our system, the whole house does not disagree much with committee. The Committee has already approved it. (QUESTION: Opposition from the Ministry of finance?) (RESPONSE: Laughter). We did invite the Minister, the Minister of Public Service, and Attorney General, and Public Service Commission. Only the Public Service Commission came. The Minister of public service , he refused to say anything until he received the advice of the Attorney General. We were not interested in his legal opinion. Minister of finance said he was too busy and he would come later on. Attorney general has been positive.²⁴

As he predicted, the bill did pass on the floor. While the ministries may not have taken the measure seriously, an opposition member whom we met leaving the chamber indicated that he and his colleagues thought that it was a very significant development.

The Hon. Ogalo made two things clear in his interview at the time. First, he wanted to make the Parliament an institution that had its own status, separate from the rest of the government bureaucracy:

With finances here, parliament is more or less an administrative department of the government. The speaker cannot buy so much as a typewriter without the approval of some minor clerk. You must depend on the minister of finance for everything. Now members must depend on payments made irregularly by the minister of finance.

Second, he thought that the Ugandan parliament was in danger of becoming a rubber stamp:

My view was to make parliament stronger and more capable of acting on its own. In our parliament, maybe 95% subscribe to the movement system. Very dangerous to have it become a rubber stamp. We need to have financial and administrative autonomy. (There is)...no way to have a strong check on the executive without it.

He saw such a check as especially necessary in Uganda's unique system:

(We have a) ...movement or no-party system.... Under a multi party system (there is)... normally ...an opposition (to)... act (as) a watchdog. My view was that if you have a constitution that says you have no formal opposition, (then the)...executive can become too powerful. So I thought

²⁴ Interview with the Hon. Ogalo, summer 1997.

that we must enhance the doctrine of separation of powers. Although not a complete separation. Separation should be more necessary in a movement system.

Another member mentioned that he hoped for Parliament to develop into a more autonomous institution along the American model, particularly in the exercise of greater fiscal powers.

More assertiveness in Lawmaking: Often, even in institutionalized democracies, legislative assemblies play a secondary role in making laws usually by approving measures introduced by the government. In parliamentary systems in particular, the use of parliamentary elections as electoral colleges to elect the executive, and doctrines of party democracy, act to encourage a view that parties serve as the vehicle for representation and legislatures and other bodies should support decisions made through elections of party majorities.²⁵

The experience of Uganda indicates, again, that political architecture is not necessarily political destiny. Despite its beginnings in the Westminster tradition, there have been signs of legislative assertiveness as well as the explicit development of a support apparatus intended to support a larger role in lawmaking.

We observed an early instance of this assertiveness in 1997 when Parliament passed, over ministerial objections, a bill increasing its own salaries and perquisites. The institution was severely criticized for this by the government and by the press. A similar event occurred later in Kenya.

Whatever the merits of the case, the measure did achieve several things. It showed that members were willing to act in defiance of explicitly stated government ministerial preferences and that a majority could be created for such measures from within as well as outside NRM ranks. This laid the groundwork for subsequent alliances on other measures on which the interests of members of parliament and those of the government were different. An example of this is in terms of articulation of regional preferences when those differed from ministerial decisions. In addition, by providing members with greater personal financial resources, the measure thereby helped to subsidize greater attention to parliamentary business -- most members routinely having to have other employment -- and the member's capacity should he/she so wish to interact with or provide for constituents through a variety of means.

While salary bills separate the private interests of members from the interests of the government, the Ugandan Parliament has been at work developing an institutional capacity to support lawmaking that is separate from that of the executive branch. In this sense, there has been a pursuit of

²⁵ For a summary of these arguments see Denis Sullivan and Robert Nakamura, "Party Democracy and Democratic Control," in Walter Dean Burnham and Martha W. Weinberg, eds., *American Politics and Public Policy* (Cambridge: MIT Press, 197_).

institutional development, a more collective concern, which serves to distinguish its capacities from those of the government at large. Thanks to the work of the Parliamentary Commission, the cooperation of the leadership, and the assistance of foreign donor. We will briefly describe the several forms that these developments have taken.

First, there are services that are collective in nature available to members as individuals. In the lawmaking area these include trained staff who now help in writing legislation through a bill drafting service and in tracking legislation. Assistance with the substance of policy comes from a developing legislative research and information service. Since being put into operation, these services have been heavily utilized by members to do research on a number of topics and to support legislative initiatives. The developments are described in a paper by Marc Cassidy.²⁶

Second, there have been important developments in the committee system, particularly in the area of budgeting. An effective system of dividing legislative labors to encourage specialization, to assist in majority building, and to address the more specialized needs of constituents is often thought to be an element essential to effective legislatures.²⁷ Uganda has been developing its support apparatus for committees.

The most important of the specialized developments at the committee level has been in the area of support for the money committees. Parliament, for example, has created, staffed and trained a Parliamentary Budget Office which has functioned to provide research reports and other support in this area. Despite Parliaments rather scant budgetary powers and history of deference, recent developments in this area indicate how far they have come:

Parliament has also used its sessional committees, whose mandate is to oversee budget and operations of executive agencies, to monitor spending and performance of government programs. During the final days of last year's session, the sessional committee, and ultimately the full House, spent weeks reviewing the Executive's proposed Electricity Bill, which authorized a controversial new contract with a private firm to provide badly needed utility services. The Executive pressed the Parliament to approve the bill quickly and without changes, but Members resisted pressure from the President and the press and conducted a thorough and open investigation of the proposal which ultimately passed with significant amendments.²⁸

²⁶ See Cassidy *op. cit.*

²⁷ See for example the American congressional committee literature. Richard Fenno, *Congressmen in Committees.*

²⁸ Cassidy, *op. cit.*

The Ugandan Parliament is clearly using its legislative powers in a way that would be considered unusual in one party states.

Oversight: A feature of many effective legislatures is their willingness and capacity to exercise oversight over the executive branch. In both parliamentary and presidential-congressional systems, effective institutions can contribute to good government by using oversight to perform a variety of functions including: exposing corruption, policing adherence to the legal and procedural requirements, holding agencies accountable for results, and serving as a means for raising equity considerations. Again, effective oversight is a rarity in one party systems, and this is said to contribute to the worsening of problems like corruption, ineffectiveness, and bureaucratic insulation.

The Ugandan Parliament's powers to hold cabinet ministers accountable to investigate government operations have now been given like by a greater willingness to exercise them. While prior to 1997, important high profile investigations were conducted, they have taken on greater vitality in recent years. Here is Cassidy's summary of recent events:

Through the use of select committees, Parliament has conducted nine high-profile investigations of government officials accused of corruption, two of which led to the censure of the Minister of State for Education and the forced resignation of the Minister of State for Privatization. Following a Parliamentary investigation of the Vice President in her second role as Minister of Agriculture, the President was forced to remove her from her ministerial position and reshuffle the Cabinet.²⁹

In addition, Parliamentary inquiries led to the departure of the President's own brother from an important post and other resignations in anticipation of censure or other actions. Indeed, President Museveni complained about the aggregate impact of parliamentary investigations of his cabinet as diminishing his capacity to govern.

Interestingly, our interviews and documentary research during some of these events indicated that members of the president's cabinet as well as members of the NRM were often willing to go along with parliamentary sentiment that in turn was shaped by the events themselves as well as by committee reports which documented the reasoning behind motions. Membership in the NRM, or even the cabinet, did not foreclose joining parliamentary majorities in moving against cabinet ministers and others in authority.

Another example of oversight, though one which did not produce the same definitive actions, has been the efforts of a parliamentary minority to question and to hold to account the President's actions in waging war in the Congo. A war powers act was introduced, and questions raised in parliamentary forums about

²⁹ Cassidy, *op. cit.*

the conduct of that war. While legislatively unsuccessful, these measures helped to feed a public dialog on that important question.

Representation: Changes here have been less dramatic. The Ugandan Parliament, like nearly all other legislative bodies with a basis in geographic representation, has been and continues to be a forum for articulating regional concerns. The most common pattern in the past has been to privately lobby cabinet departments, and that practice undoubtedly continues, but it has been supplemented by formal hearings and there is some anecdotal evidence that some of these have raised the awareness of government ministries about local differences and preferences.³⁰

In addition to the conventional idea of representing places, the Ugandan Parliament's constitutionally designed system of representation includes special allotments of representatives for a number of historically marginalized groups including women and the handicapped. For women's issues in particular, there has been a developing connection between NGOs with these concerns and at least some female members.³¹

One area where we anticipate changes to affect the quality of representation in the future is in the degree of competition for legislative seats. There is general view among scholars and practitioners that the more competitive elections become for seats, the more likely it is that candidates and legislators will pay attention to constituent needs. Due to changes in recent years, including the denigrated salary bill and the more widely applauded increased effective powers of the parliament and its greater levels of press attention, the value of seats has increased making them more attractive to potential candidates thereby increasing the level of competition and incentives to identify and serve constituent needs.

³⁰ For example, the story of constituents expressing a preference for greater reliance on boat transportation enhancements rather than the road development plan advanced by a ministry.

³¹ Tamale op.cit.

The Case of Kenya

Introduction:

Our Kenyan case will focus on developments occurring in the period beginning 1999 and the ending in 2002³² during which Kenya was ruled by President Daniel Arap Moi through his Kenyan African National Union (KANU) Party. 2002 marked the presidential election in which President Moi's KANU candidate was defeated by an opposition coalition. The data for our case study is drawn from participant observation, interviews, and documentary review. In 1999, John Johnson visited Kenya at the time of the passage of the act establishing the Parliamentary Commission. And from 2000 to 2002 Johnson managed a USAID funded parliamentary assistance project in Kenya. Robert Nakamura visited Kenya on that project in 2000 and 2001 as a consultant to that project and as a visitor to the United States International University of Nairobi (USIU) parliamentary program supported by the Ford Foundation.

The national legislative bodies of Kenya for most of this nation's history—under colonialism and after independence—have performed as “rubber stamps” for executives. A 1999 assessment of the Kenyan National Assembly began by noting the body was at that point “neither independent nor effective.”³³ By the end of 2000, the National Assembly demonstrated independence— one newspaper said it was no longer a “toothless bulldog” -- but had yet to develop the means to be effective.³⁴ By 2002, important strides had been made in making it a more effective institution. We now turn to where the National Assembly began and describe how far it came.

Historical and Constitutional Background:

For most of Kenya's first three decades as a nation, power moved continuously to the presidency and away from parliament.³⁵ Kenya's independence constitution divided powers among the three branches of government, allocating to the Parliament an important role in balancing Executive power. But beginning immediately after independence, first President Kenyatta,

³² Much of the material for this section comes from John Johnson, *The Growing Power of the Kenyan Parliament*, a paper prepared for delivery to Kenyan political scientists in 2003.

³³ Joel Barkan, *Strengthening the Kenya National Assembly*, May 15, 1999.

³⁴ House no longer a toothless bulldog, *Daily Nation*, December 12, 2000.

³⁵ Material for this section was drawn from two presentations to the Constitution of Kenya Review Commission (CKRC), September 15, 2001. The first was entitled Amendment Lessons from History, by CKRC Commissioner Githu Muigai, and the second by Professor Macharia Munene of the United States International University entitled, The Manipulation of the Constitution of Kenya, 1963 - 1996

and later President Moi³⁶, progressively concentrated what became almost dictatorial powers in the office and person of the President, making Kenya's Parliament little more than a rubber stamp.

Increasing concentration of power: Kenya's 1963 independence constitution created a Westminster form of government with a federal system. According to the constitution, a Governor-General appointed a Prime Minister from amongst the members of the House of Representatives with the largest majority, and the two shared powers. The Parliament had two chambers, with an upper house (senate) to safeguard federal concerns. The country was divided into seven regions, each with its own legislative and executive powers. Individual rights were guaranteed through a bill of rights modeled on the European Convention on Human Rights and Fundamental Freedoms. The constitution established an independent judiciary with independence of tenure for judges, and established a civil service system with both political and non-political civil servants. The ink was hardly wet on the constitution, however, when MPs began approving amendments that reduced their powers, and increased those of the President. Over Kenya's first 25 years, the constitution was amended 30 times, and nearly every amendment further concentrated power in the person of the President of the Republic of Kenya. A rundown of many of the key amendments follows.

The 1st Amendment eliminated the positions of Governor-General and prime minister, and concentrated power in one chief executive, who was head of state, head of government, and commander in chief of the armed forces.

The 4th Amendment eroded parliamentary independence and ended the independence of the civil service. All civil servants (including parliamentary staff) now served at the pleasure of the president, and the amendment provided that MPs missing eight consecutive session meetings without the permission of the Speaker lost their seat. Only the president had the power to waive the rule.

The 7th Amendment merged the Senate and House of Representatives, eliminating the upper (federal) house, thus weakening Kenya's federal system.

The 9th Amendment was the final nail in the coffin for Kenyan federalism; it abolished the Provincial Councils and deleted from the constitution all references to provincial and district boundaries, removing the last constitutional vestiges of a federal system.

³⁶ Jomo Kenyatta was Kenya's first president, taking office in 1963. Vice President Daniel Arap Moi succeeded President Kenyatta as President upon Kenyatta's death in 1978. President Mwai Kibaki, following his election December 27, 2002 succeeded President Moi.

The **10th Amendment** replaced the 12 specially elected members of Parliament with 12 nominated members appointed by the President (President Moi used this power to install his candidate for President, Uhuru Kenyatta in the Parliament in 2002).

Finally, **Act 5 of 1969**, which incorporated the above amendments in a revised constitution, also gave the president the power to appoint the members of the Electoral Commission.

1960s amendments had made Kenya a unitary state, concentrated power in the President and reduced the power of the Parliament. Kenya had become a de facto one party state, but the **19th Amendment** went a step further and made Kenya a de-jure one party state, further reducing parliament's role. Only KANU members could hold elected office, and any MP who resigned from KANU lost his seat. The **22nd Amendment** gave the President the power to remove the Attorney General and the Controller and Auditor General. Finally, the **24th Amendment** expanded presidential power even further, removing the right of security of tenure from judges of the high court and court of appeals, as well as the members of the public service commission.

For nearly three decades MPs watched and acquiesced as Parliament's role was systematically reduced to that of a rubber stamp.

The pendulum begins to shift: Opposition, both from within and from outside of Kenya – including a cut off of aid - to what was becoming a dictatorial presidency, began to push the political pendulum in opposite direction beginning in the late 1980s and early 1990s. One illustration of the change is the **25th Amendment** to the Constitution, which restored security of tenure to judges of the high court and court of appeal, the Attorney-General, the Controller and Auditor General and members of the public service commission. And another, very significant to the development of the Parliament, was the **27th Amendment**, which ended the ban on multiparty politics and made possible a multiparty Parliament.

Despite the **27th Amendment**, and the possibility of real electoral competition, those interested in unseating President Moi were severely disappointed during the 1992 – 2002 decade. The opposition failed to unite in 1992 and 1997, and KANU and Moi (with the help of Kenya's electoral system which gives a tremendous advantage to sparsely populated KANU supporting regions in the north, dirty electoral tricks, and persecution of the opposition) were twice returned to power. Those whose eyes were only on the major prize (the presidency), however, were missing an important transition under way.

The multi-party parliament was beginning to assert itself, tentatively at first, but with growing boldness. MPs the author interviewed stated that President Moi forbid KANU MPs from speaking or socializing with opposition MPs in the **7th Parliament** (1993 – 1997), and that they took this prohibition

seriously. The 8th Parliament, however (1998 – 2002), proved to be less docile and more independent than any of Kenya's previous Parliaments, and took several concrete measures to establish its authority.

The Situation Changes

The 8th Parliament emerged from the 1997 election with a clouded claim to legitimacy arising out questions about their representativeness based on problems with the (1) electoral system whose majoritarian vote system and malapportionment provided ruling party which won 38.64% of the vote in the 1997 election with 50.95% of the elected parliamentary seats.³⁷ And (2) the conduct of the elections was characterized by intimidation, the corrupt use of government monies and other irregularities.³⁸ The bare majority so-gained was augmented by an alliance with a major opposition party leader to produce a greater margin for control. President Moi and KANU, as the dominant partner in a two party coalition, enjoyed a comfortable parliamentary majority.

Presidential power to shape how parliament actually did its business on a daily basis rested on four principal pillars:

1. The Speaker who is elected by the majority and who is empowered by the Standing Orders to control access to the floor, the submission of questions and other devices to hinder or obstruct unwanted measures and debates.
2. Budgetary and administrative control exercised through the Speaker and his assistants.
3. The Leadership of KANU (head of government business, whip, etc.) which has a whip system and other apparatus for mobilizing its working majority.
4. The patronage powers of the Presidency, particularly his capacity to award compliant members by appointing them as ministers and deputies.

A fifth source of power acted as an insurance policy, the capacity to dissolve the Assembly and "call an election" in case it gets out of control.³⁹

This combination, so effective in the past, had by late 2000 increasingly begun to fail the executive. We now briefly explore the reasons suggested by interviewees as to why.

The major conditioning factor for the changes that occurred was KANU's internal problems. When the succession issue emerges in any system of "one man, one party" rule, it dominates political action in that society. One outside observer called it a "meltdown" of the ruling party. A KANU MP joked at the time

³⁷ see Institute for Education in Democracy pamphlet, Electoral Systems: Majoritarian and Proportional Systems and Their Impact on Kenya. (no date)

³⁸ see Joel D. Barkan & Njuguna Ng'ethe, Kenya Tries Again, African Ambiguities, Journal of Democracy 9.2, 1998

³⁹ For a brief description of these powers, see "The Constitution and the President, pamphlet issued by the Centre for Governance and Development Public Information Service Project, Civic Education Programme, in partnership with the Danish International Development Agency (Danida)

that it was a welcome end to the term of a president-for-life. Moi was getting older and he had not anointed any clear successor, though he continued to use the prospect to work alliances.

The changing situation in KANU and a strengthening opposition altered the political situation in the National Assembly. There were specific implications for the President's instruments of control:

1. The Speaker who is elected by the majority was increasingly seeing that the majority was not under the President's control (see below) on a number of issues and was thus faced with the unpalatable choice of pleasing two masters: his legislative majority and the president. This is a choice that has not faced previous speakers. (His capacity to deal with contending groups apparently held him in good stead, he survived the 2002 elections and is still Speaker in a Parliament without a KANU majority).
2. The Speaker's largely discretionary power over the administration and budgeting was soon to be shared with the Parliamentary Service Commission in a subsequently defined structure.
3. The Leadership of KANU already divided on attitudes towards reform was further divided as heads of factions vied for the inside track on succession. So they spent more of their time, energy and political capital competing against one another than they did in keeping their majority in line.
4. The value of government appointments for MPs was apparently declining as more positions had to be created to retain the same support. And, in an effort to spread around the patronage, rotation increased. These trends occurred against the backdrop of diminishing opportunities for patronage afforded by a reforming civil service and diminishing state.
5. And the presidential option of dissolving Parliament and calling an election was not very appealing in an increasingly unsupportive electoral environment.

As these pillars weakened, opposition MPs and KANU dissidents followed creative and/or opportunistic strategies that have produced their own majorities by combining the opposition and with the disaffected within KANU.

Building Working Opposition Majorities

The period from 1999 to 2000 saw an increasing pattern of parliamentary majorities willing and able to defy presidential preferences.

In 1999, Parliament succeeded in passing legislation establishing the basis for an administratively independent parliamentary service as a foundation

for a more effective parliament.⁴⁰ It was then a singular achievement, made possible by dedicated and talented reform MP leadership, outside drafting assistance, and by the nascent support of enough MPs for a more effective institution. President Moi opposed this legislation and KANU leadership attempted, unsuccessfully, to block it. At the 11th hour, when it became clear that he could not stop its enactment, the President made it a Government proposal.

The following year, more controversial changes followed. Opposition MPs combined with KANU backbenchers and even KANU leaders to create on an issue by issue basis, majorities capable of prevailing over presidential resistance in a series of unprecedented actions. To avoid public embarrassment, the president accepted some of these measures and considered vetoing others (an issue that never arises rubber stamp legislatures). If parliamentary power is the capacity to get the president to do what he otherwise would have preferred not to do, then this parliament had exercised power.

While the President's margin remained a comfortable one, members of increasingly showed themselves increasingly free to make their own choices on a number of measures.

We will now briefly describe two strategies used by opponents to pass members over the President's preferences in a Parliament that was nominally under his coalition's control.

The Self Interest Strategy-- The Salary Bill and KACA: One opposition strategy was to pick issues most likely to produce majorities by uniting MPs across parties. The appeal to individual self-interest can be used to trump party loyalty. The most obvious such measure was the compensation bill of the Fall of 2000 in which all MPs, KANU and non-KANU, were able to act in their self-interest driven agreement that they should be paid better. The same thing had happened in the Ugandan Parliament three years before when the tiny opposition had united with NRM members to overcome presidential opposition to their salary bill. Interestingly, these measures while popular with MPs, salary bills were unpopular in their respective societies. In both instances, a more disciplined, hierarchical majority party leadership might have exploited overwhelming societal unpopularity for higher salaries to put down rebellions but they did not.

The salary bill for all of its self-serving quality also had its more public regarding side as a contribution to legislative independence. . Prior to 2001, Assembly members earned around \$1,000 per month, but Parliament voted to increase salaries by a factor of five that year (again, over executive opposition). While this sounds self-serving (and is, in fact), the salary increase also provided

⁴⁰ One interviewee told us the story of Pres. Moi reading the newspaper at a breakfast meeting and choking on his food when he came across an account of the Assembly's recent enabling legislation on modernization. The non-KANU and KANU MPs present at this telling all laughed heartily.

MPs with new levels of independence from the executive. This is because Kenya's *harambee* system (Kiswahili, meaning "pull together"), places tremendous financial demands on MPs. Kenyan MPs are expected to pay for constituent expenses from their own resources. Over the years, constituents have come to expect MP help with relatives' funeral expenses, school fees, etc. Historically, MPs have relied on the President to provide them *harambee* funds, and such funds come with strings attached. New, higher salaries reduced MPs' dependence on presidential patronage, and gave them greater independence in voting.⁴¹

The self-interest of MPs—combined with a larger public purpose—may have been involved, too, in the delaying of ethics legislation. Passing the anticorruption constitutional amendment (KACA) in 2002 was a precondition laid by international donors for restoring aid and low interest loans to Kenya, and President Moi personally lobbied members of his own party to support the amendment (hardly an indication of dictatorial powers). Critics charged that the blanket amnesty provisions, which would excuse from prosecution any corrupt officials who committed their crimes prior to date of enactment, would allow all the corrupt officials of the Moi era to escape prosecution, and so voted against it. President Moi himself came to Parliament to vote in favor of the KACA amendment, but even his presence and vote were not sufficient for the amendment to carry.

A "Flash" Issue or Populist Strategy: Another tactic was to pick issues that are popular in the society. As the value of Assembly seats increases—with gains in compensation and visibility—concerns with doing the popular thing also increase for members. The controversial Donde bill legislatively capping the interest rates charged by banks and involving the Kenyan government's agreements with international financial institutions was a measure that succeeded in the Assembly because its societal popularity operated on non-KANU and KANU MPs who were otherwise free enough to respond.

The Donde Bill has made Parliament a center of societal attention and MPs liked it. It could serve as an exemplar for future action. By championing a popular measure and by making their deliberations over it a decisive arena, MPs

⁴¹ In the forward to Bunge, A House for All Kenyans (2001, State University of New York), Speaker Ole Kaparo states, "But I can say without fear of any contradiction, that as poverty continues to hit a majority of our people, Members of Parliament have correspondingly been called upon by the electorate to sponsor both social and personal projects which traditionally would have been undertaken by the Government. Originally, *harambee* projects were meant to take care of the little things in the village which could not attract Government funding. The situation has changed over the years such that even students who join the local state sponsored universities have to conduct *harambees* to raise some of their fees!

Indeed, some Members of Parliament have raised millions of shillings to assist their constituents and yet when the multi-party era set in, the voters went ahead to humiliate them at the polls. The *harambee* spirit in the form it is practised at the moment is simply unsustainable." Bunge, A House for All Kenyans (2001, State University of New York), p. (ii).

for the first time have seen that how they vote can be of enormous interest to power actors – economic and bureaucratic—who have ignored them in the past.

One member joked that he could have become rich by voting against the Donde Bill at the behest of the banks. He had never been lobbied so extensively on any piece of legislation prior to the Donde Bill. Such lobbying has, however, been increasing. One indicator of a stronger, more independent legislative power in Kenya was the subsequent establishment of a firm in Kenya to lobby Parliament. *Legisconsult* is a registered lobby firm in Kenya and its sole activity is to represent the interests of clients before the Parliament. One does not bother to lobby a powerless institution.

An outside assistance strategy: This was basically the model followed when the Parliamentary Service Commission was created. A core of progressive MPs was supported by civil society and outside donor groups which assisted them with the formulation of legislation and gathering of support.

This measure took the form of Constitutional amendments enacted by Parliament in 1999 and 2000. The amendments formally separated legislative and executive powers. They established the Parliamentary Service and the Parliamentary Service Commission, giving Parliament authority over its own budget and staffing, and over virtually all matters related to its management.⁴² Through this amendment all staff working in Parliament was separated from the civil service (which serves at the pleasure of the president) and made parliamentary service. Each staff member now serves at the pleasure of the PSC. Soon after its creation, the PSC increased parliamentary salaries to roughly double those of their counterparts in the civil service.

Institutional Developments—

While the events above were dramatic, a quieter set of changes was occurring over this period. As in Uganda, these included the evolution of a more effective committee system and a heavier investment in the institutional needs of the National Assembly itself.

The Committee System Develops: Prior to 1998, most of the work of the Kenyan Parliament, with the exception of the oversight work of the Public Accounts and Public Investments Committees, occurred in plenary. But changes to the Parliament's Standing Orders made in 1997 established departmental committees, and required that these committees review legislation.⁴³

⁴² The members of the Parliamentary Service Commission are the Speaker of the Parliament, the Vice President and Leader of Government Business in the House, and seven backbench members elected by the House, four from the Government, and three from the Opposition. Parliamentary Service Commission Strategic Plan of Parliament (2000 – 2012), Nairobi, Kenya, February 2001. p. (i).

⁴³ Changes to the Standing Orders made by one parliament become effective for the next parliament. Oversight committees on Public Accounts and Public Investments had existed, and were responsible for reviewing government spending. New committees were responsible for specific ministries, and had

This change gave the Parliament unprecedented potential to reshape – or even block – Executive legislation. Departmental committees were not terribly active early in the life of the 8th Parliament, but as chairmen and members learned their roles a number of the new committees became very active – in some cases taking the initiative on policy issues away from the Government. And ruling party committee members – even chairmen who had been appointed with the approval of the President – were willing to challenge the Government and act independently. Members from both the Government and the opposition informed the author that, “...when we meet in committee, we leave our party affiliation at the door”, and, “In committees, we just look for the best policy.”

By 2001, the initiative for policy changed had shifted to Parliament’s committees. There were more committee sittings in 2001 (over 250) than in any other year in Parliament’s history, and outside individuals and groups were invited to testify in scores of them. Some committees traveled outside of Nairobi to meet with stakeholders affected by legislation under their consideration. Hours for plenary sessions had to be increased at the end of the year to allow the House to consider committee reports. The amount of work and type of work carried out by the Agriculture Committee was especially impressive, but other committees – such as Health and Finance – also had a great impact on Kenyan national policies.

The Committee on Agriculture submitted comprehensive legislative proposals on coffee and sugar in 2001, which became the Coffee Act 2001, and Sugar Act 2001. Members proposed 33 amendments to the Sugar Bill, and 22 were passed by Parliament. The amendments, introduced by six different members, generally shifted authority for this sector to sugar farmers, increased the speed of payments, etc. The history of the Coffee Bill was similar. Members proposed a total of 13 amendments to the Coffee Bill, and five passed. As with the sugar bill, the coffee bill gave coffee growers greater authority over their sector.

The Health Committee held multiple sessions to discuss the Children’s Bill, and met with groups interested in its passing and in its specific provisions. Committee members proposed a total of 23 amendments, and 22 were taken over by the Minister. And the Finance Committee made a number of significant changes to the Government’s Finance Bill. The Committee used the full time it was allowed to discuss both the Financial Statement and Tax proposals. There were a total of 38 amendments to the Finance Bill, and Government accepted 65% of the changes recommended. Amendments reduced import duties on a

authority to provide input on, and amend legislative initiatives proposed by the Executive. New Departmental Committees are the committees on (1) Agriculture, Lands, and Natural Resources, (2) Energy, Communications & Public Works, (3) Education, Research and Technology, (4) Health, Housing, Labour and Social Welfare, (5) Administration, National Security and Local Authorities, (6) Finance, Planning and Trade, (7) Administration of Justice and Legal Affairs, (8) Defence and Foreign Relations.

number of items, rejected the Government's proposal to criminalize bouncing checks (MPs argued that this provision did not belong in the Finance Bill), and rejected the proposal to require VAT on commercial property. Perhaps most surprising of all is that the Chairman of the Finance Committee, who led the fight to expand the power of his committee and amend the Government's taxing policies, was also Chief Whip for the Government!⁴⁴

Creating a support structure: Not only has the Parliament established its formal independence, it is also making the institutional changes necessary for it to take advantage of its independence. In 2001 the PSC adopted, and is in the process of implementing a 12-year plan to strengthen Parliament. The plan presents what the PSC sees as the legitimate functions of the Parliament. These are:

- (i) Legislation
- (ii) Financial appropriation and control
- (iii) Oversight and supervision of governance
- (iv) Checks and balances on the other two arms of government
- (v) Representation of the people in the Government
- (vi) Leadership of the people and the nation
- (vii) The making and unmaking of the Government
- (viii) Watchdog of democracy⁴⁵

The PSC plan proposes a new institutional structure, and new professional services. These include a new directorate of information services, comprising the Library, a Department of Research, and a Department of Information. The plan also includes a Department of Legal Services, which, among its other responsibilities, will provide legislative drafting and bill analysis services to the Parliament. Referring back to Chart 1, one can argue that Parliament is moving in the direction of the transformative legislature, and is developing a more complex organizational structure, and more and better information resources to effectively fulfill its expanding role.⁴⁶ For a parliament that just a decade before was no more than a rubber stamp, a mouthpiece for the President, the PSC (which includes the leader of Government Business, the Speaker, and Finance Minister – all positions approved by the President) articulating this vision in an official document of the Parliament is a giant step forward.

Parliament is putting its (or Kenya's) money where its mouth is. In a period when Government was struggling to meet its obligations without the benefit of IMF and World Bank loans, Parliament increased its own budget dramatically. Parliament more than tripled its 2001 – 2002 budget for the Office

⁴⁴ Statistics on committee sittings, etc., taken from the Legislative Report of the Fifth Session of the Eighth Parliament of Kenya, Calendar Year 2001 (Report from SUNY/Kenya to USAID/Kenya)

⁴⁵ Parliamentary Service Commission: *Strategic Plan of the Parliament (2000 – 2012)*. The Parliament of Kenya, February 2001, p 2.

⁴⁶ Cite William Robinson piece and Nelson Polsby categories.

of the Clerk from the previous year (from Kshs 240 million to Kshs 750 million), and much of the increase was dedicated to new staff and equipment for a more effective Parliament. Speaker Ole Kaparo in his address to Parliament opening day (March 21, 2001) informed members that, "...democracy is expensive", and stated that the State would in the future pay the price "in spite of dwindling resources."⁴⁷ In addition to new staff and equipment, Parliament refurbished an office building next to the main Parliament complex, and members of the 9th Parliament have moved in. As it turns out, Parliament was not able to spend its entire 2001 – 2002 budget and so returned some of it to Treasury to help cover budget shortfalls in other areas.

Hon. Oloo Aringo and other MPs had proposed that each member be given a constituency fund to be used to support development projects in their districts – again, freeing themselves from the executive (somewhat similar to earmarks state and federal legislatures receive in the US). It appears that this fund will soon be a reality. NARC Coalition MPs at a weekend retreat (April 5 – 6, 2003), as part of a deal to keep the NARC coalition which defeated KANU in power, agreed that each MP would receive 20 million Kenya shillings (appx. \$260,000) each year "...for a development fund to replace the *harambees* [communal fund raisers] in an effort to end corruption."⁴⁸

⁴⁷ *All MPs to get offices in the House*, Daily Nation, March 21, 2001. p.2.

⁴⁸ *It's lunch with Kibaki as MPs pursue peace*, Daily Nation on the Web, April 7, 2003.

Conclusion

In the Ugandan and Kenyan parliaments the unexpected has been happening. In both instances, assessments made by knowledgeable observers at the beginning of the periods studied held that neither institution had to date been very independent of the executive nor much of an arena for policy deliberations.⁴⁹ Subsequently both institutions prevailed in tests of strength with their presidents over important matters. And more significantly for the long term, both institutions have been developing and using greater capacities to function as law making rather than merely law-approving institutions. In this section, we will draw some conclusions about the factors we found in common between the two countries that contributed to parliamentary assertiveness. And then we will speculate about the implications of our findings for the literature on parliamentary development.

Proximate causes and circumstance—

The picture that emerges from our case materials and observations is one in which individuals, the availability of productive strategies, and broader circumstances all played important roles in creating the circumstances for parliamentary assertiveness. In each case there was a single person who acted as a policy entrepreneur for parliamentary development.⁵⁰ These people conceived of plans for development, sold others on the idea, gathered support and after initial successes shepherded the implementation process. In each case, the impetus for action was a desire to curb executive power for a variety of reasons. And there were some strategic similarities in what dissidents did to build support for their causes to a point where they could marshal parliamentary majorities to back them. And finally, there were broader political circumstances that provided the leeway for such majorities to form though here the similarities end in the particulars of those circumstances. We will now describe each of these in greater detail.

A “policy entrepreneur” as champion for Parliament: In each legislature which has advanced as an institution, and in which the authors have worked, there has been at least one champion for the legislature who had a vision for the institution, and who led the effort for change. In Bolivia in the early 1990s, it was Dr. Luis Ossio, Vice President of the Republic and President of the National Congress (responsible for the development of the institution), who had a vision for a more effective Congress. Dr. Ossio sought help from USAID and from

⁴⁹ See Joe Oloka-Onyango, Uganda’s Benevolent Dictatorship, Current History, May 1997. He indicated his pessimism about Uganda’s parliament in an interview with the authors later that year. Joel Barkan, Strengthening the Kenya National Assembly, May 15, 1999.

⁵⁰ The implementation literature has stressed the role of such people in successful innovations and their absence as important causes of failure. See Eugene Bardach, The Implementation Game; Robert Behn, Leadership Counts; Martin Levin and Barbara Fermin, The Invisible Hand; and Robert Nakamura and Frank Smallwood, The Politics of Policy Implementation.

SUNY in implementing a professional, non-partisan congressional research center. He had a vision for the institution, and not just for his own party and political career, and without his support it would have very difficult to make any progress.⁵¹

In Uganda, MP Dan Ogalo was the key individual. Hon. Ogalo had requested from Treasury some researchers to assist the Parliament for the 1997 budget year, and was denied. In response, he proposed that the Parliament establish an independent Parliamentary Commission, responsible for the management and staffing of Parliament. The Parliamentary Commission was also responsible for developing a professional, non-partisan research staff. (Political parties are not allowed to field candidates for public office in Uganda, so establishing a non-partisan staff is not as difficult in Uganda as it is in some other nations). Parliament passed the legislation, and Hon. Ogalo became the backbench member who was key leader for institutional development.⁵²

In Kenya, Hon. Oloo Aringo was the key actor. A former head of KANU, former education minister for President Moi, and former Moi confidant, Aringo understood the President, the party, and Kenyan MPs, and knew how to get his legislation through. He has been the driving force behind virtually every institutional development effort within the Kenyan Parliament. He was responsible for the Parliamentary Service Commission legislation, and, as Vice Chairman of the PSC, has prodded the Speaker and other Commission members to make real changes. He pushed the pay raise for members, attempted to get repealed Sections 58 and 59 of the Constitution (which give the president authority to prorogue Parliament), and is behind the budget office initiative for Parliament. There is little doubt that without his leadership, the Kenyan Parliament would not be nearly as developed as it is today.⁵³

Political strategies for building majorities out of minorities: In each case, dissidents faced a similar problem, the president controlled or appeared to control majorities that could frustrate their attempts to assert parliamentary preferences over the executive. They were able to, early on, create opportunities for majorities to form over presidential resistance and to thereby demonstrate the power of parliament as an institution in accord with Robert Dahl's classic definition of power as the ability to enforce preferences over resistance.⁵⁴

⁵¹ From interviews, meetings with Vice President Ossio in 1992 and 1993 in La Paz, Bolivia.

⁵² From interviews, meetings with Hon. Dan Ogalo, other politicians and parliamentary staff in 1997-99 in Kampala, Uganda

⁵³ From interviews, meetings, with Hon. Oloo Aringo, other politicians and parliamentary staff in Nairobi, 2000 - 2002

⁵⁴ Robert Dahl, Modern Political Analysis..

In both parliaments, bills to increase parliamentary salaries were early vehicles. Appeals to self-interest proved to be more effective than appeals to party or movement loyalty.

In addition, there were other opportunities developed for “majority building.” Here dissidents were able to appeal to MPs through a variety of motivations that led them to diverge from presidential preferences. One of these was the desire of MPs for popular support. This motivation was tapped in the Donde Bill with its populist economic appeal. Faced with a choice between what people were applauding and what the President wanted, members chose popularity. The corruption issue in Uganda, and investigations of official misdeeds and incompetence, served a similar function. Once started, these investigations were widely supported and applauded. Again the presidential preference—for having his cabinet ministers left in place as long as he wanted—conflicted with popular cries for their removal.

A long term agenda for development: In both Uganda and Kenya short term successful challenges to presidential power were accompanied by programs of institutional capacity building. As the institutions were asserting themselves in specific instances using particular strategies, the capacity for more routine participation in law making was also being developed. Committee systems were strengthened, and policy analytic capabilities and other forms of support were developed.

Political Room for Institutional Development: In Uganda and Kenya, though for different reasons, the parliamentary majority parties operated in ways that left MPs room for effectively differing. It is important to note, however, that latitude was not in any sense purposely created by the presidents who led KANU and the NRM. The situations in Uganda and Kenya were different but there was a functional equivalency about the results.

In Uganda, unlike Kenya, the President was overwhelmingly popular in the society and capable (as he later demonstrated) of winning elections more or less fairly. In addition, he was not in any sense a “lame duck” in the fashion of the aging President Moi. In addition, the NRM was the only permitted political organization (though other parties existed they were prohibited from electioneering). The NRM was hampered, however, by its own official ideology which held that it was not a conventional political party and avoided building the parliamentary apparatus to mobilize its majorities. While they subsequently engaged in some such efforts these came later in the form of damage control. In addition, the NRM did not have a comprehensive official ideology and contained a diversity of members with differing preferences.

The KANU situation was different but the results provided similar room for effective disagreement. Moi’s departure—either by death or by actually following a constitutional term limitation—seemed imminent and the struggle for

succession was on. KANU, in addition, had always been a diverse party whose members were not united by a common ideology or program. So while KANU did have a parliamentary leadership structure which had been built to mobilize its members, that apparatus like the rest of the party was falling into disarray during the period under study.

In neither Uganda nor Kenya, then, was the majority “movement” or party capable of stop the success of the initial strategies for building dissident majorities, nor later institutional developments in law making capacities which would occur at the expense of executive influence.

Implications?

We began this paper with the observation about the “democracy template” that while “one size” does not always fit all, it is not clear that it sometimes fits somebody. At the risk of over interpreting data collected in a limited time frame, we will now draw some implications from our findings.

First, both Ugandan and Kenyan MPs have been developing a taste for and institutional capacity to support a greater role in law-making than is normally found in parliamentary systems and in one party presidential systems. Little in the political traditions of either country would indicate that this would have happened. Whether or not these MPs are following the “American model” or that the promise of a policy making role appeals to them for other reasons is beside the point. The visions of the the parliamentary champions in both instances has been that of a more assertive body with greater capacities to exercise executive oversight and to make laws.

Second, top down assistance does not have to strengthen the established order. Parliamentary assistance programs provided timely help to policy entrepreneurs. The infusion of outside resources strengthened their hands in their efforts to facilitate institutional change. Both Uganda and Kenya are developing institutional capacities to support greater public deliberation than they had available prior to these developments.

Third, no good deed goes unpunished. The Kenyan case, in particular, shows that a parliament more attune to populist sentiments may be less likely to comply with outside donor preferences in important economic matters.