
John Kendall Johnson Jr

University at Albany, State University of New York, johnkjohnson.jr@gmail.com

The University at Albany community has made this article openly available. Please share how this access benefits you.

Follow this and additional works at: https://scholarsarchive.library.albany.edu/legacy-etd

Part of the Political Science Commons

Recommended Citation

https://scholarsarchive.library.albany.edu/legacy-etd/59

This Dissertation is brought to you for free and open access by the The Graduate School at Scholars Archive. It has been accepted for inclusion in Legacy Theses & Dissertations (2009 - 2024) by an authorized administrator of Scholars Archive. Please see Terms of Use. For more information, please contact scholarsarchive@albany.edu.
PARLIAMENTARY INDEPENDENCE
IN UGANDA AND KENYA
1962 - 2008

by

John K. Johnson, Jr.

A Dissertation
Submitted to the University at Albany, State University of New York
in Partial Fulfillment of
the Requirements for the Degree of
Doctor of Philosophy

Rockefeller College of Public Affairs and Policy
Department of Political Science
2009
Several people contributed to the completion of this dissertation, and they deserve a note of thanks. First is my wife, Charity. Without her encouragement and support, patience and understanding, and hours of editing, map-making and layout assistance, I could not have finished. My sons, John and Brett, sacrificed a great deal of time with their father while I was taking classes, and I thank them. My in-laws, Dr. John and Ann Higgins, provided encouragement and support, and Jim and Robin Drago allowed me to escape to their home to write in 2008. Robert Nakamura, my friend and mentor, helped shape my understanding of legislatures and my approach to institutional development. We have worked with several legislatures and written a number of studies together, and his thinking and insights have contributed to this study. Special thanks go to Helen Desfosses. Late in 2007, she challenged me to complete this dissertation within a year, and her phone calls, insights, willingness to review drafts, and constant encouragement helped keep me going. Finally, thank you to Katy Key and to Tom Tarrants.
This comparative case study examines the independence of the Uganda and Kenya parliaments from the time of their independence from the U.K. in the early 1960s, until 2008, focusing especially on the past 12 years. Beginning in the mid-late 1990s, these East African legislatures became two of the most independent in Africa, censuring ministers, developing effective committees, amending legislation, and enacting private member bills that significantly enhanced their power relative to that of their executive branches. Following the enactment of these private member bills, the two parliaments gained control over their budgets and staffs, expanded their campuses, and began playing unprecedented policy-making and oversight roles. Uganda’s Parliament censured ministers, and its committees became very active. It reached its highest levels of independence and power in the Sixth Parliament (1996-2001) during Uganda’s no-party era, but has since become a less independent institution. The Kenya Parliament, in contrast, continues to expand its power relative to the presidency, and members are relatively unconstrained by political parties.

The dissertation describes how, after decades of presidential and party dominance over the Uganda and Kenya parliaments, the two legislatures were able to become independent institutions. Key factors in both cases were the efforts of parliamentary reformers, who recognized the need to strengthen their legislatures, and were able to win the support of other legislators. The study finds, somewhat paradoxically, that while the restoration of multi-party politics in Kenya in the early 1990s helped make possible the development of Kenya’s independent parliament, the re-establishment of multi-party politics in Uganda has been a key factor in reducing the independence of the its parliament.

The dissertation combines indicators of legislative institutionalization with indicators of formal legislative powers and their use to arrive at approximate measures of parliamentary independence. The study also introduces the Independence of Parliament Triangle, to illustrate the relative influence of presidents, political parties, and “the independent parliament” over decisions emanating from the legislatures.
# TABLE OF CONTENTS

**PREFACE** .................................................................................................................. VII

**CHAPTER 1 - INTRODUCTION** .................................................................................. 1  
**BACKGROUND** .......................................................................................................... 1  
**IMPORTANCE** ........................................................................................................... 5  
  - Dearth of knowledge of African legislatures ............................................................... 6  
  - Some African legislatures are exercising greater influence ........................................ 10  
  - Informing the field of legislative studies and legislative strengthening .................... 14  
  - Factors encouraging and discouraging parliamentary independence ...................... 15  

**METHODOLOGY** ....................................................................................................... 19  
  - Most similar system design case study methodology .................................................. 20  
**WHAT THIS DISSERTATION DOES NOT DO** ............................................................... 36  
**DISSERTATION OVERVIEW** ..................................................................................... 38

**CHAPTER 2 - PRE-REFORM PARLIAMENTS** .............................................................. 46  
**INTRODUCTION** .......................................................................................................... 46  
**UGANDA** ..................................................................................................................... 47  
  - Uganda under Obote - 1962-1971 .............................................................................. 47  
  - Uganda parliamentary independence during the pre-reform period ......................... 57  
  - Indicators of parliamentary independence .................................................................. 59  
**KENYA** .......................................................................................................................... 60  
  - Concentrating power under Presidents Kenyatta and Moi ......................................... 60  
  - Power begins to shift back .......................................................................................... 71  
  - Efforts of parliamentarians to strengthen parliament’s independence ......................... 74  
  - Indicators of parliamentary independence .................................................................. 81  
**INDEPENDENCE OF PARLIAMENT TRIANGLE** ....................................................... 85

**CHAPTER 3 - THE UGANDA PARLIAMENT SINCE THE REFORMS** .............................. 87  
**INTRODUCTION** .......................................................................................................... 87  
**UGANDA’S SIXTH PARLIAMENT, THE MOST INDEPENDENT IN UGANDA’S HISTORY** .............................. 88  
  - Parliamentary powers under the 1995 Constitution .................................................... 91  
  - The no-party system and parliament .......................................................................... 96  
  - Lawmaking in the Sixth Parliament ............................................................................ 100  
  - Oversight in the Sixth Parliament ............................................................................ 114  
  - Infrastructure improvements in the Sixth Parliament ............................................... 117  
  - Indicators of parliamentary independence .................................................................. 120  
  - Independence of Parliament Triangle ...................................................................... 124  
**SEVENTH AND EIGHTH PARLIAMENTS: MUSEVENI PUSHES BACK** ....................... 125  
  - Seventh Parliament .................................................................................................... 126  
  - Eighth Parliament ..................................................................................................... 138  
**PARLIAMENTARY INDEPENDENCE DURING THE REFORM AND POST-REFORM PERIOD** ..................... 147  
  - Indicators of parliamentary independence .................................................................. 150  
  - Independence of Parliament Triangle ...................................................................... 156

**CHAPTER 4 - THE KENYA PARLIAMENT SINCE THE REFORMS** .................................. 158  
**INTRODUCTION** .......................................................................................................... 158  
**CONSTITUTIONAL WEAKNESSES** ............................................................................. 165  
**CHANGES TO THE EIGHTH PARLIAMENT** ............................................................... 169  
  - Independence of parliament legislation, and parliamentary reformers ...................... 174  
  - Budget ....................................................................................................................... 185
SUMMARY OF FINDINGS........................................................................... 200
CONCLUSIONS AND SUGGESTIONS FOR SUBSEQUENT RESEARCH........ 278
TABLE OF FIGURES .................................................................................. 288
LIST OF ABBREVIATIONS ......................................................................... 290
BIBLIOGRAPHY ......................................................................................... 293

CHAPTER 5-COMPARING THE TWO CASES .............................................. 229

INTRODUCTION ...................................................................................... 229
HOW WERE THE UGANDA AND KENYA LEGISLATURES ABLE TO BECOME SUCH INDEPENDENT INSTITUTIONS? ......................................................................................................................... 229
Uganda ........................................................................................................ 229
Kenya ......................................................................................................... 239
WHY HAS THE UGANDA PARLIAMENT LOST MUCH OF ITS INDEPENDENCE WHILE THE KENYA PARLIAMENT HAS NOT? ................................................................................................. 244
Uganda ........................................................................................................ 244
Kenya ......................................................................................................... 246

CHAPTER 6-INFLUENCES ON INDEPENDENCE ....................................... 252

TYPE OF ELECTORAL SYSTEM.................................................................. 252
TYPE OF POLITICAL SYSTEM .................................................................... 256
PARTY STRENGTH.................................................................................... 258
OTHER FACTORS ..................................................................................... 260

CHAPTER 7-CONCLUSION ....................................................................... 264

SUMMARY OF FINDINGS........................................................................... 264
CONTRIBUTIONS OF THIS DISSERTATION............................................ 275
CONCLUSIONS AND SUGGESTIONS FOR SUBSEQUENT RESEARCH........ 278

TABLE OF FIGURES .................................................................................. 288
LIST OF ABBREVIATIONS ......................................................................... 290
BIBLIOGRAPHY ......................................................................................... 293
Figure 1. Map of East Africa
PREFACE

The seed for this dissertation was planted early in the spring of 1983. I was sitting in an office on the third floor of the New York State Capitol with the Senator for whom I worked, the Chairman of the Senate Transportation Committee, and with a high-level staff member of the Office of the Senate Majority Leader, Warren Anderson. My Senator was a powerful politician, overseeing the rebuilding of the New York Metropolitan Transportation Authority, responsible for the Senate’s highway safety and drunk-driving legislation, and passing the nation’s first mandatory seat belt law the following year. However, that day the Republican Majority Leader’s staff member was unceremoniously chastising the Senator for pushing too hard to enact his drunk-driving legislation. The staffer checked off a list he had prepared, informing the Senator precisely which of his drunk-driving measures would pass the Senate that year, and which would not. The Senator implored him to add some bills to the list, but the majority staff person refused, cut him short, and treated him with less respect than I had ever observed anyone treating the Senator. I was beginning to understand where the power lay in the New York State Legislature, that committees were not supreme, and that political parties and their leaders played a more dominant role than I had imagined.
Twenty-five years have elapsed since that spring meeting, and, under the auspices of various national and international organizations, I have since conducted “legislative strengthening” activities; trainings, long-term programs, short-term programs, study tours, etc., with legislatures in 40 nations. While the purposes of these activities have varied from country to country, and over time, most have sought to strengthen legislatures relative to other political actors. Working in this field for several years, it has become increasingly evident to me that the same kinds of factors that influenced the autonomy of the Senate Transportation Committee in 1983 also influence the levels of independence of committees and legislatures in democracies around the world.

My first experiences managing legislative strengthening projects were in Latin America in the early 1990s, when the United States Agency for International Development (USAID) was beginning to fund a number of such programs. In one of my earliest projects, I worked with the Vice President of Bolivia (who also served as president of the Congress) and representatives of all of Bolivia’s major parties to build a small, professional congressional research, budget-analysis and bill-drafting unit in the Bolivian Congress (the Center for Congressional Research; Centro de Investigaciones del Congreso Nacional – CICON, in Spanish). Vice President Luis Ossio and the leaders of Bolivia’s political parties had requested assistance from the United States because they
realized that the Bolivian Congress would continue to be a weak, ineffectual institution without major reforms.

_CICON_ survived three changes of elected government in Bolivia, but as Vice President Ossio and the congressional leaders driving the reform moved from power, political party interests overshadowed the congress’s _institutional_ interests, Bolivian congressional funding for the service dwindled and then ceased, and CICON disappeared. USAID funded the development of similar professional legislative capacities in the region during the 1990s, but most experiences were similar to Bolivia’s. Without a strong, internal demand for reform, when outside funding ceased, these new professional capabilities either disappeared or were captured by political interests and ceased serving the broader institutional needs of the legislature.

I spent much of the 1990s working with legislatures in Latin America, and it was becoming increasingly apparent that the paradigm within which we were working was only partly effective. Those of us involved in strengthening legislatures had assumed that if we built professional, non-partisan services in developing legislatures, then legislators and committees would use those services to improve government policies: they would enact legislation more responsive to citizen needs, and they would better oversee executive
implementation of those policies. Occasionally the model worked, but in most cases, it did not.

U.S. government funding for legislative programming in Latin America was tapering off in the late 1990s, but was growing in some countries in Africa. My focus also shifted to Africa, and I was delighted to observe that in Uganda the type of institutional-strengthening we had hoped to help effect in Latin America was actually occurring. Interestingly, Uganda parliamentarians, and not outside experts, were leading these changes. Robert Nakamura and I conducted a 1997 assessment mission to the Uganda Parliament for USAID and were impressed with how rapidly the parliament appeared to be developing as an independent institution. Out of the ashes of a nation wracked by decades of war, dictatorship and instability, the new Uganda Parliament (elected in 1996) quickly granted itself authority over its own staff and budget (which are typically controlled by the executive branch in Africa), established strong committees, began freely amending executive legislation, and even censuring some ministers which led to their resignations.

When I moved to Kenya in the summer of 2000 to initiate and manage a USAID-funded legislative strengthening program, I observed similar changes: the Kenya Parliament was becoming a more independent institution and the influence of the president and political parties over members was declining. The
Kenya Parliament granted itself authority over its own budget and staffing, amended legislation and budgets, and enacted private member bills (i.e. bills introduced by members of parliament, rather than by the executive) over the objections of the executive.

Why were these two East African legislatures able to become so independent? Some of the key factors, I was to recognize, were the efforts of a few reformers within each legislature to strengthen their institution, the declining influence of the nations’ presidents over MPs, and the declining influence of political parties over their members in parliament.

Levels of parliamentary independence in Kenya and Uganda, however, have not remained constant since the late 1990s and early 2000s, when I began working with these legislatures. Both the Kenya and Uganda parliaments became, and continue to be, “institutions of countervailing power” vis-à-vis their executives. Yet Uganda’s Parliament is a less independent institution today that it was in the late 1990s, while the independence of the Kenya Parliament has continued to grow. Decision-making authority in the Uganda Parliament is

1 Joel Barkan has coined this phrase to describe more assertive legislatures in Africa and used it in several publications. See, for example, Joel Barkan, “Emerging Legislature or Rubber Stamp? The South African National Assembly After Ten Years of Democracy” (paper presented at the annual meeting of the American Political Science Association, Washington, DC, September 2005), 1.
shifting from committees and backbench MPs within Parliament, to President Museveni and the nation’s dominant political party, the National Resistance Movement. In Kenya, meanwhile, presidential influence over decisions made in the parliament may be at an historic low. Similarly, party influence over parliamentary decisions is quite weak.

This study examines parliamentary autonomy in Uganda and Kenya from the beginning of their post-colonial periods to 2008. It demonstrates the relative influence of presidents, parties, and “the independent parliaments”, over the decisions emanating from the two parliaments. It also suggests ways that the experiences of the Uganda and Kenya Parliaments may be relevant to our understanding of parliamentary independence beyond these two East African nations.
CHAPTER 1-INTRODUCTION

Background

Beginning in the late 1990s, the Uganda and Kenya Parliaments transformed themselves into two of the most autonomous and assertive legislatures in Africa. They enacted legislation making them financially and administratively autonomous of the executive; increased parliamentary budgets several-fold (Kenya increased its parliamentary budget from US $10 million to US $45 million over just four years), expanded office space and increased the number and types of professional staff; and increased MP and staff salaries and allowances dramatically. Uganda’s Parliament gave itself new powers to shape the budget, changed the budget process and timetable, and established a new budget committee and a parliamentary budget office. Kenya was in the process of making some similar changes to its role in the budget process. Uganda parliamentary committee investigations in the late 1990s actually led to the

---

2 I base this statement on my observations and interactions with many African legislatures over the past several years. Since 1995, I have conducted legislative strengthening assessments or activities in Malawi, Kenya, Uganda, Ethiopia, Zimbabwe, Zambia, Namibia, Tanzania, Lesotho, Mozambique, Liberia, Rwanda, Mauritius, Botswana, Democratic Republic of the Congo, and Somalia. I have also discussed issues of parliamentary independence with legislators from other African countries, among them, Nigeria, Ghana, and South Africa.
censuring of ministers (and those ministers losing their positions), and to changes in government procurement practices.

Kenya’s Parliament now provides each MP with a fully funded, equipped, and staffed constituency office, and Kenyan MP salaries have grown several-fold. Each year, 2.5% of Kenya’s national budget is dedicated to a member-directed Constituency Development Fund (CDF); an amount, which in some cases, surpasses the government’s local development budget for the MP’s district. Over the past decade both Uganda’s and Kenya’s parliaments\(^3\) have exercised unprecedented influence over their respective national budgets and policies.

That these formerly impotent parliaments have developed this level of independence and power is, to say the least, surprising. Both come from a Westminster tradition of weak parliaments, and, for most of their histories, have routinely approved executive budgets, taxes, and bills with little real debate. MPs rarely dared to challenge government corruption, and, indeed, were often beneficiaries of it. In fact, challenging the president was counterproductive, for it would cut off the flow of patronage MPs needed to fund local projects. MPs also depended on cash from the executive as it enabled them to contribute to

\(^3\) In this study, I use the words parliament, legislature, and assembly interchangeably.
constituent needs, such as funerals, school fees, and rent. MPs not making such contributions could expect to be punished by the voters at election time.

These two unusually independent parliaments challenge Africa’s “Big Man” paradigm (which includes the idea that African democratic institutions are powerless before African presidents, who ride roughshod over legislatures, facing little, if any, opposition) that has dominated both popular and scholarly perceptions of African politics for decades.4

The questions this dissertation seeks to answer are: How and why did these two formerly rubber-stamp legislatures become more independent5, and

4 Daniel Posner and Daniel Young describe the “African Big Man” paradigm, and note that it is no longer as accurate a description of political power in Africa as it once was. Growing numbers of African leaders leave power through elections (rather than through violent overthrow), with many leaving when reaching their constitutionally prescribed term limits. And those who do attempt to continue beyond their term limits at least attempt to change their national legal frameworks so that they continue in power legally. ”From decolonization in the 1960s through the 1980s, most African rulers left office through a coup, assassination, or some other form of violent overthrow. Since 1990, however, the majority have left through institutional means – chiefly through voluntary resignation at the end of a constitutionally defined term or by losing an election.” Daniel Posner and Daniel Young, ”The Institutionalization of Political Power in Africa” Journal of Democracy 18, no.3 (2007): 127-131.

5 I define an independent legislature as one that makes its decisions free of the influence of chief executives and parties. Its committees have a good deal of autonomy to amend and introduce proposals free of party and executive control, and the legislature is able to respond to interests other than those of chief executives and parties (such as constituents and interest groups). Less independent legislatures provide legislators less latitude in decision-making, and their committees have little autonomy. I do not propose that a completely independent parliament, one in which parties and chief executives exercise no influence, is the ideal. But those legislatures which simply legitimate decisions made outside do not contribute to their nations in ways that more independent legislatures can.
second, why has the Uganda Parliament subsequently become a less independent institution, and the Kenya Parliament has not?

When I began work on this dissertation in November 2007, my plan was to conclude with the close of Kenya’s Ninth Parliament, which was dissolved in October 2007 in preparation for the December 27, 2007 elections. But the dramatic changes Kenya has undergone since that election, particularly the post-election violence and the power-sharing arrangement between President Kibaki and now Prime Minister Odinga, merit comment in this paper. The dissertation will discuss the effects of the 2008 Kenya electoral crisis as well as the agreed-upon power-sharing arrangement, and will make observations on how they appear to be affecting parliamentary independence. Extending the period under consideration into the final quarter of 2008 has also provided additional time to observe whether the return to party-politics in Uganda would further constrict parliamentary independence, as my model predicts.

---

6 Incumbent President Kibaki (PNU) declared himself victor in December 27, 2007 elections which were riddled with fraud, and in which the International Republican Institute said that exit polling gave rival Raila Odinga (ODM) by an 8% margin. Ethnic clashes following announcement of election results left some 1500 people dead and 600,000 homeless, according to the BBC. Violence subsided in late February after Kibaki and Odinga agreed to a power sharing deal brokered by former United Nations Secretary General Kofi Annan. The agreement made Raila Kenya’s Prime Minister (a position which did not formerly exist in Kenya) with undefined executive powers.
Importance

This study of parliamentary independence in East Africa is significant for several reasons. First, there is a dearth of knowledge about African legislatures in political science literature. Little has been written about them, and, as a result, political scientists understand poorly how African legislatures function, and why they function as they do. A second reason this study is important is that a number of African legislatures have begun to exercise greater influence over the political life of their nations. For most of their post-independence histories, other than distributing a portion of their nations’ wealth to individual constituencies, most African legislatures have simply legitimated decisions made by dominant chief executives. This is no longer the case for a number of African countries and, it is important to understand why.

A third reason this dissertation is significant is that it helps inform the growing field of legislative strengthening. Over the past two decades, legislative strengthening has become an important focus within the field of democracy assistance. Both legislative strengthening practitioners, and scholars interested in comparative legislatures, benefit from a fuller understanding of why legislators and legislatures behave as they do. This comparative study will elucidate reasons for the ebb and flow of parliamentary independence in Uganda and
Kenya, and its findings will be useful to both groups seeking to better understand how legislatures change.

Finally, this dissertation will suggest a number of factors that tend to encourage, and factors that tend to discourage, parliamentary independence. Scholars and practitioners might consider these factors while assessing a parliament’s potential – or lack of potential – to act independent of parties and executives.

Dearth of knowledge of African legislatures

Since the fall of the Berlin Wall, books and articles on democratization have proliferated, donors have spent billions of dollars on “democracy-building” and hundreds of millions on legislative strengthening, yet there has been little systematic study of how and why legislatures develop, or fail to develop, as institutions. Our knowledge of African legislatures is particularly sparse. Many


In Africa, donors such as the United States Agency for International Development (USAID), the United Kingdom’s Department for International Development (DFID), and the United Nations Development Programme (UNDP) have invested tens of millions of dollars to strengthen legislatures in such nations as Kenya, Uganda, Tanzania, Ethiopia, Somalia, Sudan, Malawi, Zambia, Zimbabwe, Namibia, Liberia, Sierra Leone, Nigeria, Ghana, and Mozambique.

of the studies which exist date from the early decades of African independence, describing legislatures less independent than the Kenya and Uganda parliaments analyzed here.\textsuperscript{10} Finally, even those studies that deal with democracy and democratic reform in Africa tend to focus on African governments and on civil society rather than on African parliaments.\textsuperscript{11}

Scholars are beginning to attend to this gap, but more remains to be done. One of the first new works on African legislatures was a 2002 study by Joel Barkan and several colleagues. The World Bank-sponsored comparative study examined developments in the legislatures of Benin, Ghana, Kenya, and Senegal. In 2003, Robert Nakamura and I co-authored a paper on the growing assertiveness of the Uganda and Kenya Parliaments, which he presented at the 19\textsuperscript{th} International Political Science Association World Congress in Durban, South Africa.\textsuperscript{12}

\begin{flushend}
The American Political Science Association’s Research Committee on Legislative Specialists’ annual meeting in 2007 (hosted by the Center for Legislative Development at the University at Albany) included three papers on African parliaments. Kimberly Smiddy’s paper analyzed Malawi’s more aggressive parliament, and while acknowledging that the parliament was doing more to oversee the executive than it had been in the past; it questioned the benefit of the kind of oversight it was conducting. Shaheen Mozaffar and Kimberly Smiddy presented a paper examining more broadly the growing oversight roles of several legislatures in Africa. Nelson Kasfir, a leading scholar on Uganda, presented a piece he and Hippo Twebaze had drafted which described the increased independence of the Uganda Parliament, and its subsequent decline. This study carries Kasfir’s analysis forward to the final quarter of 2008, following the continuing decline in parliamentary independence in Uganda.

The April 2008 edition of the Journal of Democracy included an article by Joel Barkan describing more assertive legislatures in Africa, and positing factors

---

behind their growing strength. Finally, there is an important research project under way at the University of Cape Town studying the performance of African legislatures and the public’s perception of those institutions. Known as the African Legislatures Project (ALP), the program has received funding from several donors to conduct a comparative study of legislatures and citizen attitudes in all 18 of the countries in sub-Saharan Africa covered by the Afrobarometer.

This dissertation adds to this small but expanding base of knowledge on African legislatures, and it complements other studies in this field. At one end of the spectrum of these new studies are in-depth works on single countries, such as Kimberly Smiddy’s work on Malawi and Nelson Kasfir’s on the Uganda Parliament, while at the other end is the African Legislatures Project, which compares legislatures more broadly across the continent. This dissertation will compare and contrast the changing levels of independence of two neighboring legislatures, allowing the developments in each to shed light on the developments in the other. It focuses on fewer countries than the Barkan piece, 

---

16 Joel D Barkan, "Legislatures on the Rise?" *Journal of Democracy* 19, no. 2 (2008): 131. One of the key factors Barkan identifies, which this dissertation describes in some detail, is the role of parliamentary reformers.

17 ALP is a collaborative project between the Center of Legislative Studies (CLS) at Bridgewater State College and the Democracy in Africa Research Unit (DARU) of the Center for Social Science Research (CSSR) at the University of Cape Town. The ALP is beginning with a study of the performance and image of eighteen African parliaments. The Afrobarometer is an independent, nonpartisan research project that measures the social, political, and economic atmosphere in Africa. [http://polisci.msu.edu/afronov25/](http://polisci.msu.edu/afronov25/)
which considers changes in several legislatures, and covers in greater depth the developments in two parliaments than can the broader African Legislatures Project.

The dissertation covers a longer period than most of the other studies described above. While its focus is primarily on parliamentary independence in Uganda and Kenya since the mid-late 1990s, it begins with the birth of the Uganda and Kenya parliaments at independence from the United Kingdom in the early 1960s. Understanding how chief executives and strong parties dominated these legislatures prior to the mid-late 1990s sets a context within which later developments can be better understood – and appear that much more remarkable. The African Legislatures Project, focusing as it does on parliaments throughout the continent at a point in time, does not take such a historical perspective.

Some African legislatures are exercising greater influence

A second reason this dissertation is significant is that a number of African legislatures are exercising greater influence than they have in the past. In describing the Third Wave of democratization, which he dates from the military coup in Portugal which ended the dictatorship of Marcelo Caetano in 1974, Samuel Huntington paints in broad brushstrokes the growth in numbers of
electoral democracies worldwide over the previous decades. The restoration of multi-party politics in Africa, which occurred in several countries in the early 1990s, was an important part of this democratic wave. In a number of African countries, more effective and independent legislatures are a part of the deepening of this wave.

Legislatures have the capacity to improve the quality of life of citizens in their nations as they carry out their three basic functions of representation, lawmaking, and oversight. While they share some of these functions with executive arms of government, specifically representation and lawmaking, they carry out those functions very differently. Both legislatures and executives represent citizens and interests, for example, but there are critical differences in the ways they represent them. For one, presidents and prime ministers are responsible for representing and acting on behalf of collective interests, of nations as a whole. Legislatures, in contrast, are designed to represent differences within nations. Legislators act on behalf of specific geographic, ethnic, religious, political, gender, or other groups, and seek to ensure that those groups’ interests are represented at the national level.

________________________

Another distinction between legislatures and national executives is that legislatures are, by design, a more open and transparent branch of government. Citizens tend not to be privy to the decision-making processes employed by executives. Democratic legislatures, by contrast, make – or at the very least approve – decisions publicly. Plenary sessions in most democracies are open to the press and public, and, in a growing number of nations, committee sessions are, as well. Moreover, as open institutions, permeable to multiple interests, they have a unique capacity to factor the interests and concerns of citizens and groups into the policy amending and policy-making process, to shape budgets to respond to citizen needs, and to check abuses of executive power through overseeing executive spending and programs than do less independent legislatures.

Beginning in the late 1990s, the national legislatures of Uganda and Kenya began to contribute in new ways to the governing of their nations. They amended budgets and executive legislative proposals, enacted private member bills expanding parliamentary power and independence, exposed hundreds of millions of dollars in resources wasted through corruption, conducted corruption investigations resulting in several ministers losing their jobs, and generally reduced presidents’ latitude to abuse their powers. Like

Uganda Parliamentary committees, for example, are open to the press, while Kenya’s still are not. Late 2008 proposed rules reforms in Kenya would open committees to the press.
most parliaments in Africa, the Kenya and Uganda parliaments have traditionally been dominated by strong executives who governed virtually unchecked by their legislatures. However, over the period covered by this dissertation these legislatures became more independent and assertive than ever before.

Political scientists are beginning to focus on the benefits more powerful and autonomous legislatures provide to their nations. In a 2006 article in the *Journal of Democracy*, Professor Steven Fish stated, “the strength of the national legislature may be a – or even *the* – institutional key to democratization.” He made this statement based on his study of the powers of legislatures in several post-communist nations in Eastern Europe and Central Asia, in which he found a positive correlation between the powers of legislatures in his *Parliamentary Powers Index* (PPI) and Freedom House measures of freedom for those same countries. Stronger legislatures, according to Fish, are better able to guard against the abuse of executive power and keep nations from reverting to old patterns of executive domination. If stronger legislatures can check authoritarian rule, then it is important to understand how the Uganda and Kenya legislatures were able to assert themselves against traditionally strong executives; how they were able

---

to play more significant representation, lawmaking, and oversight roles; and why Uganda’s Parliament has become less independent while the Kenya Parliament has not.

**Informing the field of legislative studies and legislative strengthening**

A third reason this dissertation is significant is that it helps inform the growing field of legislative strengthening. While the number of studies of developing legislatures has only recently begun to grow, the numbers of foreign assistance projects designed to strengthen developing legislatures increased rapidly over the past two decades. A primary objective of many of these projects has been to help legislatures become more independent of their executive branches, but our knowledge of factors involved in making legislatures more independent remains limited. Donor-sponsored studies seek to discover “what works” in legislative development programs, but our understanding of factors encouraging or discouraging stronger, more independent legislatures – especially

\[\text{\footnotesize 21 The Scope of Work (SOW) for the USAID Malawi legislative strengthening project, for example, begins, "Strengthening the ability of the Malawian National Assembly to assert its constitutionally mandated independence and oversight role is a key component of USAID/Malawi Special Objective 10. . . and specifically of Intermediate Result (IR) 10.2 Oversight Institutions Effective and Independent." USAID Malawi, Scope of Work, "Strengthening National Assembly Oversight to Curb Corruption and Enhance Fiscal Discipline in the Public Sector." Contract No.: DFD-I-00-04-00128-00; Task Order No. DFD-I-06-04-00128-00 (Lilongwe, Malawi: March 31, 2006), 1.}

\[\text{\footnotesize 22 See for example, Greg Power, "Donor support to parliaments and political parties: An analysis prepared for DANIDA," March 2008.} \]
in newer democracies – remains limited. Many of these donor-sponsored studies describe the importance of understanding the local context in which development agencies work, recommend that donors coordinate their efforts to avoid overlap of activities, and stress the importance of understanding and working in partnership with the legislature one is seeking to assist. But the studies tend not to address the reasons some legislatures become independent effective institutions, and why others do not. This comparative study addresses these issues.

**Factors encouraging and discouraging parliamentary independence**

Finally, this dissertation will suggest factors that encourage, and factors that discourage parliamentary independence. The Independence of Parliament Triangle, introduced below, is a tool to help illustrate the relative influence of some of the primary factors influencing parliamentary independence. The triangle helps one conceptualize the relative influence of presidents, political parties, and what I am calling “independent parliaments”, on the decisions emanating from a legislature.
The three corners of the Independence of Parliament Triangle represent three actors wishing to influence the decisions made by the parliament. At the top of the triangle are independent, autonomous parliaments, which I defined in footnote 5. We will see in the methodology discussion later in this chapter that independent parliaments tend to combine growing institutional strength and expanding formal powers (formal legislative powers are generally specified in constitutions, laws, or legislative rules and procedures). These legislatures tend to exercise significant decision-making power through strong committees. The parliaments, rather than the executive, determine the size of the parliament’s budget and how it will be spent. Independent parliaments, rather than the executive branches of nations, hire, fire, set the terms and conditions of employment, and manage their own staffs. They are well-resourced, allowances and facilities for members are generous, and they have adequate expert staff.
They have significant formal powers with which to constrain their executives, and they use those powers.

At the bottom right corner of the triangle are chief executives; in the cases of Uganda and Kenya, these are presidents rather than prime ministers. Since the early 1960s independence era in sub-Saharan Africa, at least during periods of non-military rule, strong chief executives have generally dominated their polities, and this has included controlling their legislatures. Finally, at the bottom left corner of the triangle are political parties. Strong political parties exercise effective party discipline and allow their members little autonomy in decision-making. We will see that throughout the post-independence histories of Uganda and Kenya, the combination of political parties holding a majority of members in parliament – and controlled by national presidents – have rendered parliaments practically impotent.

Outside interest groups (e.g., business and trade associations, NGOs, ethnic associations, religious organizations) exercise influence over the decisions made in legislatures, but I place them outside of the triangle. In general, they focus their efforts to influence the decisions emanating from parliaments on actors at each corner of the triangle - on presidents, political parties, or the legislature – especially through the committees.
In most democracies, the actor or actors represented by each corner of the triangle attempts to influence the decisions made by the parliament. Each corner wants to control the decision the legislature will make. The president wants the legislature to pass his or her budget without amending it, and desires that it approve every piece of legislation he or she submits – without amendment. Parties want to control their members, and determine how they vote on the budget and on legislation. The independent parliament (members and committees) also wants to exercise its own influence over the decisions the institution makes. Members want the national budget to reflect their concerns and priorities, and they want legislation enacted to promote the interests of their constituents or other groups on whose support they depend. An independent parliament has committees able to influence and shape the decisions the parliament makes, in ways that members desire. Members’ interests clash at many points, but independent parliaments are institutions that make decisions regarding those competing interests and priorities.

One can visualize the relative influence each corner exerts on a parliament’s decisions by imagining that a magnet rests in each corner of the triangle. The magnets vary in size and the larger the magnet, the greater its pull.
on the metal ball and thus its influence over the decision. The corner of the triangle exercising the greatest influence has the strongest magnet, and is able to pull the metal ball furthest in its direction. In a democracy, the metal decision ball will not rest in any corner, as the decisions emanating from the legislature must be negotiated among the three actors. The question then becomes, what determines the strength of each magnet, or what determines which actors will exercise the greatest influence over parliamentary decisions? This question is addressed specifically in Chapter Six.

**Methodology**

I utilized a “most similar system design (MSSD)” case study methodology in this dissertation. In conducting the research, I interviewed members and staff of the Uganda and Kenya parliaments, as well as knowledgeable parliament watchers in the two nations. I also worked on legislative strengthening projects in both nations over several years, interacting closely with those parliament members who led the reforms. Second, I studied how other scholars had attempted to determine levels of parliamentary institutionalization and independence and adapted their criteria to arrive at four statements describing an independent legislature. I then applied these descriptive statements to the Kenya and Uganda legislatures over three different
periods to determine whether they were becoming more or less independent. Third, I read from political histories of Kenya and Uganda, focusing especially on their parliaments. I also read several additional articles, books and newspaper stories that addressed these legislatures.

**Most similar system design case study methodology**

The comparability and potential broader application of findings are enhanced by using a “most similar system design (MSSD)” case study methodology. The MSSD design “…seeks to compare political systems that share a host of common features in an effort to neutralize some differences while highlighting others.” Neighboring Uganda and Kenya share a great deal, and their comparable Commonwealth historical roots, as well as the similar electoral and political architecture of the two legislatures, make them enough alike to provide some common bases for comparison. Both nations are former British colonies and won their independence within a year of each other (Uganda in 1962, Kenya in 1963). With some exceptions, (Uganda reserves special seats for women, the youth, disabled, and military), MPs in both countries are directly elected through majoritarian electoral systems.

---

23 The comparative case methodology “…achieves control through careful selection of countries that are analysed using a middle level of conceptual abstraction…Comparison of the similarities and differences is meant to uncover what is common in each country that accounts for the observed political outcome.” Todd Landman, Issues and Methods in Comparative Politics: An Introduction (London: Routledge, 2002), 27.
This similarity in electoral systems means that Ugandan and Kenyan MPs will relate to their constituencies and to their political parties in somewhat comparable ways. Both have similar separation of powers systems, with presidents elected from a nationwide constituency.


The two nations were once – and are again – members of the East African Community, which sought to establish free trade and to harmonize laws and standards among the East African nations of Kenya, Uganda, and Tanzania. Both are members of the Commonwealth Parliamentary Association, and continue to abide by Commonwealth parliamentary traditions of structure, language, behavior – and even garb – in use in the UK House of

24 The East African Community (EAC), comprising the nations of Kenya, Tanzania, and Uganda, was abolished in 1977 and re-established in 2000. Rwanda and Burundi have since been added.
Commons. At independence the British bequeathed to both nations constitutions which granted their parliaments significant powers, but for most of their histories (prior to the mid-late 1990s), the two parliaments exercised little real authority.

Figure 3, below, lists several of the similarities between the Kenya and Uganda parliaments.

25 Up to and including the Speakers of each parliament wearing the long, white wigs like those worn by the Speaker in the British House of Commons.
26 Kenya has an unbroken history of civilian (though sometimes only marginally democratic) governments, while Ugandans have spent much of their post-independence history under military governments.
**Figure 3.** Most Similar System Design: Uganda and Kenya Parliamentary Similarities

<table>
<thead>
<tr>
<th>Characteristic</th>
<th>Uganda</th>
<th>Kenya</th>
</tr>
</thead>
<tbody>
<tr>
<td>Colonial power</td>
<td>UK</td>
<td>UK</td>
</tr>
<tr>
<td>Political tradition</td>
<td>Commonwealth</td>
<td>Commonwealth</td>
</tr>
<tr>
<td>Year of independence</td>
<td>1962</td>
<td>1963</td>
</tr>
<tr>
<td>Independence constitution</td>
<td>Provided for a federal state, and a significant parliament</td>
<td>Provided for a federal state, and a significant parliament</td>
</tr>
<tr>
<td>Electoral system</td>
<td>Majoritarian, with additional seats set aside for women, youth, disabled, military</td>
<td>Majoritarian, plus 12 nominated members</td>
</tr>
<tr>
<td>Political system</td>
<td>Separation of powers (president and parliament elected separately, ministers selected from among MPs)</td>
<td>Separation of powers (president and parliament elected separately, ministers selected from among MPs)</td>
</tr>
<tr>
<td>Primary language used in parliament</td>
<td>English</td>
<td>English</td>
</tr>
<tr>
<td>Budget reform</td>
<td>2001 Budget Act (budget committee, budget office, new budget timetable)</td>
<td>Rules reforms establishing budget committee, budget office</td>
</tr>
<tr>
<td>Commonwealth Parliamentary Association</td>
<td>Member</td>
<td>Member</td>
</tr>
<tr>
<td>East African Community; seeks harmonization of laws</td>
<td>Member</td>
<td>Member</td>
</tr>
</tbody>
</table>
Interviewed and interacted with MPs and experts in East Africa

Over the past 34 years I have traveled to, lived, worked, and studied extensively in East Africa. As an undergraduate at St. Lawrence University, I first traveled to Kenya in 1975, lived with a Kenyan family in Nairobi, studying Kenya’s political system (one of my professors was Kenya’s Minister for Education), and working as a UN intern. I returned to Kenya in 1977, and spent the next two years teaching English and current events at an Ismaili high school in Nairobi, H.H. and learning more about Kenyan life and politics. I traveled to Kenya a few times in the early 1990s, attempting (unsuccessfully at that time) to generate USAID funding to support a parliamentary-strengthening project with the Kenya Parliament. I was a senior associate with the Center for International Development at the State University of New York at this time, designing and managing legislative strengthening programs in Latin America and attempting to expand into East Africa.

I began working with legislatures in Africa in 1995 and 1996 (in Ethiopia) and finally, in 1997, Robert Nakamura and I traveled to Kampala, Uganda to conduct a study on indicators of legislative change for USAID’s Democracy and Governance Bureau. USAID was attempting to develop measures to determine the impact of its democracy-strengthening programs, and our task was to help
them define these measures. In developing these measures for USAID, we interviewed dozens of Ugandan politicians, scholars and journalists about the development of the Uganda Parliament, and we were impressed with the parliament’s independence and rapid growth as an institution. We made two trips that year, having discovered that the Parliament was undergoing rapid change, and had already succeeded in enacting legislation wresting control over its budget and staffing from the executive branch. Recognizing the potential power Uganda’s 1995 Constitution vested in the Parliament, and the strides it was already making, we recommended to USAID/Uganda that they invest in activities to help strengthen that parliament.

I returned to Kampala twice the following year, conducting additional meetings, and then designing a parliamentary-strengthening project. The project to strengthen the Uganda Parliament was funded by USAID and managed by the State University of New York. I oversaw the project from Albany, making a number of trips to Uganda between 1998-2000, working on program matters, studying the development of the legislature, and speaking at program events. Robert Nakamura and I had met with several Uganda parliamentary leaders on our 1997 visit, and I continued to meet with them on these subsequent visits.
I made two trips to Kenya in the early 1990s to explore with USAID possible funding for legislative strengthening activities in that country. Kenya’s National Assembly was just beginning to emerge from decades of a *de facto*, and then *de jure*, one-party rule, and President Moi and the Kenya Government distrusted Western donors, especially the United States. The distrust was mutual, and at the time USAID democracy funding was being directed to NGOs, rather than the Kenya Government or to the Parliament. USAID judged that because President Moi and the still-dominant KANU party tightly controlled the parliament, a parliamentary-strengthening program would yield few results.

Nevertheless, during the 1990s, the demand for democratic reform in Kenya was growing. Kenyan civil society was becoming more vibrant and vocal in its insistence for change. In addition, toward the end of the decade, President Moi and the dominant KANU party were being challenged by an increasingly assertive parliament. In the late 1990s the UK Government, USAID, and other donors had begun funding workshops for MPs on issues of democratic reform and parliamentary institution building, and USAID was at last ready to finance a major parliamentary-strengthening program. SUNY won the competition for the USAID project and I moved to Nairobi in August 2000 to initiate and manage the project over the next two years.
As had been true in Uganda a few years earlier, the Kenya Parliament was taking measures to establish its independence from the executive. Most significantly, in 1999 and 2000, Parliament had passed constitutional reform measures giving the legislature, rather than the executive branch, authority over parliamentary budgets and staff. The legislation was similar (almost identical) to Uganda’s independence of parliament legislation. In both cases, the legislatures established a parliamentary commission and made it responsible for developing parliament’s budget, as well as for setting terms and conditions of employment and for managing parliamentary staff. Parliamentary reformers initiated these changes at significant political, and in some cases, personal, risk to themselves, and the presidents of both nations pushed back against these reforms.

Dr. Robert Nakamura joined me in Nairobi in December 2000 and, as we had done in Uganda, we met with several members, staff, and parliament watchers, learning a great deal about the institution and the dramatic changes it was undergoing. I worked in Nairobi for two years, meeting daily with staff and members, participating with them in several programs and events designed to assist them in making the parliament more independent and effective. Returning to Albany in 2002, I continued to travel to Kenya, helping to oversee the project, meeting with parliamentary staff and members, and closely following developments in the parliament of Kenya.
In 2003, I helped bring some of the leaders responsible for making and implementing the changes in the Uganda and Kenya Parliaments to member orientation programs in Zambia and Lesotho, which SUNY conducted in partnership with the Southern African Development Community Parliamentary Forum (SADC PF). I continued working with these leaders in programs in Sri Lanka, England, Somalia and Tanzania, staying abreast of changes in their legislatures, and keeping in touch with SUNY’s parliamentary-strengthening managers in Uganda and Kenya as well. Most recently, I traveled to East Africa in February-March 2008 to work in the region, and while there conducted a further round of meetings with Kenyan and Ugandan MPs.

**Indicators of parliamentary independence**

I was impressed with the independence and institutional growth of these two parliaments, especially when compared to several other legislatures with which I had worked, yet I realized that if I were to write about the independence of the Kenya and Uganda Parliaments I would need to consider indicators of parliamentary independence or institutionalization that others had used. I looked at several, and determined that it would be most useful to draw from some of Nelson Polsby’s work with the U.S. Congress from the 1960s and some recent comparative work by Professor Steven Fish of Berkeley.
Forty years ago, political scientist Nelson Polsby published his influential study on *The Institutionalization of the US House of Representatives*, in which he proposed three “operational indices . . . to measure empirically the extent to which the U.S. House of Representatives has become institutionalized.” His second indicator, “the growth of internal complexity” in the U.S. House of Representatives, corresponds with several of the changes which took place in the Uganda and Kenya Parliaments over the period I am considering. According to Polsby, “the growth of internal complexity can be shown in three ways: in the growth in the autonomy and importance of committees, in the growth of specialized agencies of party leadership, and in the general increase in the provision of emoluments and auxiliary aids to members in the form of office space, salaries, allowances, staff aid, and committee staffs.”

The growth in the autonomy and importance of committees (and more autonomous parliamentary administration in Uganda and Kenya), as well as the increase in the provision of emoluments and auxiliary aids to members in the form of office space, salaries, allowances, staff aid, and committee staffs, are especially relevant in Uganda and Kenya. Other scholars have used factors similar to Polsby’s in studying the institutional development of well-developed

legislatures.\textsuperscript{28} However, with few exceptions, such indicators have not been used explicitly to examine newer legislatures, or especially legislatures in less-developed countries.\textsuperscript{29}

One set of indicators of the independence of the Kenya and Uganda parliaments then is drawn from Polsby’s work in the U.S. House of Representatives. My other indicators of more independent parliaments deal with formal parliamentary powers: first, formal powers, as provided in constitutions and legislative rules of procedure; and second, the actual use of those powers. Steven Fish’s Parliamentary Power Index (PPI) considers the existence of formal legislative powers as measures of legislative strength.\textsuperscript{30} Formal powers are useful indicators of parliamentary power and independence, and the Uganda and Kenya parliaments (especially Uganda’s) expanded their formal powers beginning in the mid-late 1990s. Some of


\textsuperscript{29} For one such exception see Chan Wook Park, “Professionalization and Policy Activism of the National Assembly in Newly Democratized Korea: Two Things Moving in Tandem?” (Paper presented at the International Political Association World Congress; Research Committee on Legislative Specialists, Fukuoka, Japan, July 9-13, 2006).

\textsuperscript{30} See Steven Fish, “Stronger Legislatures, Stronger Democracies.” Among these powers listed in the PPI are legislative powers to impeach the president or replace the prime minister, oversee executive agencies, confirm executive appointments, approve treaties, etc.
these new parliamentary powers, as delineated in the constitutions or laws of Uganda and/or Kenya, are listed in Figure 4, below.

**Figure 4.** Formal Constitutional or Legal Powers: Uganda and Kenya Parliaments

<table>
<thead>
<tr>
<th>Formal constitutional or legal powers (1996 – 2008)</th>
<th>Uganda</th>
<th>Kenya</th>
</tr>
</thead>
<tbody>
<tr>
<td>Members vote to select committee chairs.</td>
<td>Yes, 1996-2006; No, 2006</td>
<td>No</td>
</tr>
<tr>
<td>Power to compel ministers to appear before committees.</td>
<td>Explicit</td>
<td>Not explicit</td>
</tr>
<tr>
<td>Powers of high court to enforce attendance of witnesses.</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>Power to approve cabinet ministers.</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>Expanded budget powers and structures.</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Power to censure ministers.</td>
<td>Explicit</td>
<td>Not explicit</td>
</tr>
<tr>
<td>Power to establish parliament’s budget.</td>
<td>Yes, 1997</td>
<td>Yes, 2000</td>
</tr>
<tr>
<td>Authority over parliamentary staff.</td>
<td>Yes, 1997</td>
<td>Yes, 2000</td>
</tr>
</tbody>
</table>
Using formal powers to measure the strength and independence of a parliament is one useful method, but it has an obvious weakness. Legislatures do not always use the powers they possess, and several factors (such as the influence of the chief executive and political parties, type of political and electoral system, technical capacity and staffing in the legislature, presence or absence of parliamentary reformers, demands and expectations from society, etc.) impact on how fully a legislature will use its legal powers. In addition, levels of parliamentary independence and the way a legislature uses its powers fluctuate over time, even without changes in formal powers. As a result, the PPI, while useful, is often a poor yardstick for measuring the actual performance of legislatures.

A 2008 *Washington Post* editorial by Fish and Kroenig made evident some of the shortcomings of using formal legislative powers as an exclusive measure of legislative strength or independence. In the January 2008 editorial, Fish and Kroenig stated that a weak Kenyan Parliament was to blame for the post-election violence in Kenya, and that the issue was not ethnicity. Fish contends that ethnic diversity did not cause the violence; he blamed it on a feeble parliament. I support Fish and Kroenig’s argument that, “Where the legislature is strong, opposition groups can hope to affect policy through their representatives in Parliament, without the need to resort to
violence.” Yet their scale of parliamentary power, because it considers formal powers, and not how effectively the legislature uses its powers, does not accurately reflect the reality in Kenya.

The Fish and Kroenig PPI ranks the Kenya Parliament 126th out of 158 parliaments in the world, far behind South Africa’s (48th) and Ghana’s (82nd).31 Yet the Kenya Parliament routinely amends executive budgets, kills or amends legislation introduced by the executive, has conducted several high-profile investigation of ministers on corruption charges (which has resulted in some resigning from office), and publishes Public Accounts Committee reports severely critical of government. Staff of the Kenya Parliament serves at the pleasure of Parliament, not the Government (unlike in Ghana), and each year Kenyan MPs receive two and one-half percent of the 2½% national budget to spend in their constituencies. South Africa’s and Ghana’s MPs can only dream of this level of independence and influence.32 Joel Barkan has also noted that the Fish scale does not account for the frequent divergence between a

32 A recent anecdote illustrates this point. In January 2008 I conducted a video-conference presentation on parliamentary budget offices to finance committee MPs and staff from four parliaments-Thailand, Indonesia, Nigeria and Ghana. I had described Uganda’s new parliamentary budget office, and during the Q & A session one of the Ghanaian MPs asked, “Why should we establish a budget office? We are only a rubber stamp for the executive and can’t change the budget.” None of the other Ghanaian members challenged him. That legislatures in much higher ranked South Africa and Ghana do not exercise the powers the Kenya parliament exercises shows the limits of an index which simply lists formal powers.
parliament’s formal powers, and the extent to which it uses the powers it possesses.\footnote{Barkan, Legislatures on the Rise?, 136.}

Given these caveats, however, formal legislative powers are important and should be considered in developing a full understanding of parliamentary independence. Formal powers and the actual influence a legislature exerts are related: it is easier for a parliament with significant formal powers to exercise its clearly delineated authority than it is for a legislature without such powers to do so. This dissertation considers the formal powers of these two legislatures, and whether and how effectively legislative powers are actually exercised. In addition to specifying formal powers, it describes specific changes the Uganda and Kenya Parliaments have made to government budgets, and to legislation (i.e., stopping government bills in committee, amending them, and introducing and/or enacting legislation the government opposes). It also illustrates how the legislatures have exercised their oversight powers, including conducting investigations, compelling executive officials to appear before parliamentary committees, and actually causing some ministers to lose their positions.
Indicators of Parliamentary independence: Drawing on the formal powers measures of Fish, and combining them with the more resource and committee-based indicators of growing institutionalization of legislatures described by Polsby and others, I describe more independent legislatures as those that:

1. Have independent committees, (and, in the cases of Kenya and Uganda, more independent parliamentary administrations, as well);
2. Provide growing resources, allowances and facilities for members; and have large (or larger) professional (or more professional) staffs;
3. Possess significant formal powers with which to constrain executive discretion, or are in the process of expanding those powers; and
4. Make use of, or are beginning to make greater use of, the powers they possess for Constraining the executive.

The dissertation examines the independence of the Uganda and Kenya legislatures over three different periods (pre-reform, reform, post-reform) using these four indicators, and includes a summary chart (titled, Indicators of Parliamentary Independence) modeled after Figure 5 below, at the end of Chapters Two, Three and Four.
Figure 5. Indicators of Parliamentary Independence

<table>
<thead>
<tr>
<th>Indicators of more independent legislatures</th>
<th>Status</th>
</tr>
</thead>
<tbody>
<tr>
<td>Independence of committees and parliamentary administration.</td>
<td>?</td>
</tr>
<tr>
<td>Resources, allowances, facilities for members, staff size and specialization.</td>
<td>?</td>
</tr>
<tr>
<td>Formal powers for restraining executive discretion.</td>
<td>?</td>
</tr>
<tr>
<td>Use of powers to constrain executive.</td>
<td>?</td>
</tr>
</tbody>
</table>

Additional reading on Uganda and Kenya, their parliaments, and other legislatures

Finally, to gain a fuller understanding of the political histories of Kenya and Uganda as well as the role and level of independence of the two parliaments since independence, I read several works on Kenyan and Ugandan politics, which I cite throughout the dissertation. In addition, in preparing to write this dissertation I added to this background by reading scholarly articles on developments in several other legislatures.

What this dissertation does not do

This study has distinct boundaries, and there are several areas it does not cover. First, while it addresses a good deal of the post-independence political history of Uganda and Kenya, it is not a political history of the two nations. Its
focus, instead, is on the independence of the Ugandan and Kenya parliaments from the mid-late 1990s up to the fall of 2008. It considers the independence of these parliaments prior to the mid-late 1990s, but in less detail.

Second, the dissertation is not a study of program implementation. This is a fertile area for study with these two legislatures, especially given the extensive donor-funded parliamentary-strengthening work conducted in both. This study, however, focuses instead on indigenous factors that encourage or discourage the independence of parliaments.

This brings us to a third item this study is not: it is not a study of political parties. It does not examine the inner workings of the National Resistance Movement (NRM) in Uganda, the Kenya Africa National Union (KANU) in Kenya, or other political parties in the two nations. Instead, it takes a step back, and examines how political parties and executives affected the independence of the members of these two legislatures.

34 USAID has been funding large parliamentary programs in both nations beginning in 1998 in Uganda, and 2000 in Kenya, and the Canadians, Danes, British, the Association of West European Parliamentarians for Africa (AWEPA), the World Bank Institute (WBI) and others have contributed as well.
Dissertation Overview

The dissertation traces the independence of the Ugandan and Kenya Parliaments from their nations’ independence in the early 1960s to the autumn of 2008 using the four indicators of parliamentary independence described previously. The two legislatures began to make profound changes beginning in the mid-late 1990s, so this study examines these periods in more detail. Chapter summaries are given below.


Chapter Two gives a brief history of the Uganda and Kenya Parliaments from independence to the mid-1990s. Throughout this period the two legislatures exhibited little autonomy or institutional strength; strong chief executives controlled them, and political parties that exercised strong party discipline generally dominated members. For several years prior to 1996, Uganda’s parliament was either non-existent or powerless. Uganda’s first president, Milton Obote, banned opposition parties in 1969. Idi Amin overthrew him in 1971, and Tanzanian forces and Ugandan exiles ousted Amin himself in 1979. Obote returned to power in 1980 but was later removed by a military council in 1985. This government, led by President Tito Okello, lasted just six months only to be overthrown Yoweri Museveni’s National Resistance Army.
Museveni established the National Resistance Council to govern the nation. Ten years later, in 1996, Uganda’s Sixth Parliament was elected and seated. During much of this era, Uganda was not a democracy, but during periods of civilian rule the classic African “strong-man” scenario prevailed, with a weak legislature and political power held by a dominant executive.

Kenya, in contrast, enjoyed an unbroken history of civilian government, despite an unsuccessful coup attempt in 1982. The British left Kenya with a constitution dividing power among the three branches of government, and sharing power between different levels of government through a federal system. Kenya’s first two chief executives (Jomo Kenyatta, 1963-1978, and Daniel Arap Moi, 1978-2002) had the Kenya Parliament amend this constitution dozens of times, with nearly every amendment progressively concentrating greater power in the president. Kenyatta made Kenya a de facto one-party state, and Moi made it a de jure one-party state, outlawing political parties other than KANU. Succumbing to national and international pressure, President Moi allowed an opening in the political system in 1991, lifting the ban on opposition political parties. With the opposition divided, however, Moi was still able to win both the 1992 and 1997 elections. By the end of the Seventh Parliament, opposition and even backbench members were beginning to assert some independence, laying the groundwork for the reforms of the Eighth and subsequent Parliaments, which have allowed them to become more independent.
In general, during the three and one-half decade pre-reform period, Kenya and Uganda parliaments exercised very little independence. During periods of non-military rule in Uganda, and throughout this period in Kenya, presidents controlled their parliaments, often working through the dominant (and sometimes sole legal) parties they controlled.

Chapter 3: The Uganda Parliament since the reforms: 1996 - 2008

Chapter Three covers the Uganda Parliament’s reform and post-reform periods. Reformers in Uganda’s newly-empowered legislature took advantage of the unprecedented powers granted the parliament in the 1995 constitution, and Uganda’s no-party system, to expand parliamentary independence in Uganda’s Sixth Parliament (1996-2001) to unprecedented levels. MPs censured ministers, passed private member legislation giving parliament authority over its own budget and staff, and passed legislation giving the legislature a more significant role in the budget process.

President Museveni pushed back against those MPs who had strengthened parliamentary autonomy and independence – unseating reformers, rewarding supporters – and curtailed the Seventh Parliament’s (2001–2006) independence. With the restoration of party politics prior to the 2006 election, President Museveni’s National Resistance Movement (NRM) party won two-thirds of the
seats in parliament, empowering the NRM and Museveni to curb the independence of MPs and to enforce party discipline in parliament. The independence of the Uganda Parliament continues to decline, while President Museveni and the NRM strengthen their control over the institution.

Chapter 4: The Kenya Parliament since the reforms: 1998 - 2008

As President Moi’s and KANU’s prestige and influence declined during the 1990s, reformers in the Kenya Parliament were able to enact legislation similar to Uganda’s, giving parliament, rather than the executive, control over the parliament’s budget and staff. Parliamentary committees began shaping legislation, the Kenyan Government amended proposed tax policies in response to requests by the legislature, and the Parliament kept the Kenya Government from enacting some of its priority legislation. As Moi and KANU were unable or unwilling to discipline members who challenged them, their legitimacy declined even further, and their control over the parliament waned even as they continued to hold a majority of seats.

KANU presidential candidate Uhuru Kenyatta was defeated in the 2002 election; Mwai Kibaki won the presidency by a landslide, and Kibaki’s coalition dominated parliament, at least numerically. But divisions in the coalition reduced President Kibaki’s influence in Parliament, which continued to expand its independence vis-à-vis, the executive. MPs established a very large constituency
development fund, provided for well-funded district offices for every member, and conducted investigations of the executive branch resulting in the resignation of some ministers. An increasingly independent parliament acted according to its institutional, rather than party or presidential, interests, expanding its budget, providing increasing resources for committees, and increasing member salaries.

**Chapter 5: Comparing the two cases**

Chapter Five attempts to answer the research questions raised: How and why did these two formerly rubber-stamp legislatures become more independent, and second, why has the Uganda Parliament become a less independent institution, and the Kenya Parliament has not? Primary reasons for the growth in independence in Uganda’s Parliament were new powers granted it in the 1995 Constitution, the no-party system, and the actions of parliamentary reformers. Secondary, or contributing factors, were highly educated MPs, support to parliament by Western donors, and political and social changes in Uganda which encouraged its increasing autonomy.

The restoration of multi-party politics in Kenya dealt a near-lethal blow to KANU, but the decline of the party occurred slowly. Beginning in the late 1990s, parliament started to become the avenue through which MPs could challenge the government and pursue their own political interests. And as in Uganda, parliamentary reformers were behind these changes. Secondary factors were
similar to Uganda’s: Kenya’s civil society (even more vibrant than Uganda’s) maintained a consistent drive to dismantle Moi’s and KANU’s dominance over Kenyan politics, highly-educated MPs pressed for political change, and donor attention supported the Kenyan drive for a more politically independent polity, which included support for a stronger, more independent, better-institutionalized parliament.

Why has Uganda’s Parliament become less independent? President Museveni rewarded compliant MPs, and punished Sixth Parliament reformers by setting up his own candidates to run against them, and threatening districts which did not support his chosen candidates. As it became evident early in the life of the Seventh Parliament that multi-party politics would be restored, the influence of NRM supporters and Museveni grew in parliament. With the constitutional amendment abolishing presidential term limits, the referendum ending Uganda’s no-party experiment, the overwhelming NRM majority in the Eighth Parliament, and the party machinery now in place in parliament to punish and reward MPs, President Museveni and the NRM increasingly dominated the institution.

Why has the Kenya Parliament become increasingly independent? Major reasons are that political power in Kenya has not coalesced around a president or a party. Parties are weak, poorly disciplined, and divided, and Kenyan
presidents are not able to count on their support. Parliament has become an institution in which individual MPs are able to pursue their own interests and those of their constituencies without having to depend on the support of the president, or even their own political parties. Fully staffed constituency offices, large constituency development funds, high salaries, and the expertise and resources of an increasingly professional and well-funded parliament are at the disposal of all MPs, regardless of their party affiliation or relations with the president.

**Chapter 6: Influences on Independence:**

Chapter Six summarizes several factors which either encourage or discourage parliamentary independence – factors which help move the decision ball toward the independent parliament corner of the Independence of Parliament Triangle, or factors which will tend to move it toward the bottom of the triangle, toward presidents or parties. Factors favoring more independent parliaments include the four indicators of independent parliaments already listed in this chapter (i.e., independent committees and administrations, growing resources and allowances, etc.) and include structural and other factors as well.

**Chapter 7: Conclusion**

The Conclusion addresses the dissertation objectives set forth in Chapter One, summarizes some of the dissertation findings, notes again the three tools
presented in the dissertation which can help one determine parliamentary independence (i.e., the indicators of parliamentary independence, the Independence of Parliament Triangle, and the list of factors encouraging or discouraging parliamentary independence), and suggests that the tools might be tested more broadly. The Conclusion also suggests areas for further research.
CHAPTER 2-PRE-REFORM PARLIAMENTS


Introduction

The Uganda and Kenya Parliaments were anything but independent, assertive institutions during the years I am calling the pre-reform periods. The Uganda Parliament functioned only intermittently (1962 – 1971, 1980 – 1985), and each time under President Milton Obote. In fact, Uganda has had only two presidents during its 47 years of independence; the other years were spent under military rule. Kenya, by contrast, has enjoyed uninterrupted civilian government during its 46 years of independence. Yet chief executives in both nations dominated their legislatures, and almost immediately after independence set about transforming their polities from multi-party to single-party states, concentrating all political authority in themselves and in the party they controlled. There were few parliamentary committees, and the administration of parliament was under executive, not parliamentary, authority. Allowances for members were meager, and parliamentary staff was minimal. MPs had little formal authority to constrain the executive, and even if they had possessed such power, political realities were such that they could not have used it effectively.
Uganda under Obote - 1962-1971

Independent Uganda entered statehood balanced precariously on a shaky administrative and political base. Like other new African rulers, Uganda’s first independence leaders needed to find a way of balancing the concerns and needs of its ethnic groups (in Uganda’s case, semi-independent ethnic kingdoms) with the need to create an integrated nation that could be governed from the capital. The 1962 independence constitution left by departing British administrators established a complex state which recognized four semi-independent kingdoms within the nation, and granted the dominant Buganda Kingdom (within which the national capital, Kampala, is located) a more independent status than the others. It reserved powers to each of these governments, among them, the powers to legislate concerning the offices of their rulers.

This structurally-mixed unitary-federal state was also riven by political and religious differences. The two parties forming the coalition government which ruled Uganda immediately following independence were united only by their common desire to keep the Uganda Democratic Party (DP) from taking power.35

———

They had little common philosophical ground; in fact, their visions of how Uganda should be ruled were diametrically opposed. One hand, Obote sought to make Uganda a unitary socialist state which he could govern from Kampala. The Kabaka (hereditary ruler of the Baganda people), on the other hand, was a monarchist who wished to rule his kingdom with minimal interference from the national government. The coalition comprising Milton Obote’s nationalist Uganda People’s Congress (UPC) and the conservative and monarchist Kabaka Yekka (KY) Party\textsuperscript{36} won the April 1962 elections; the UPC-KY coalition gaining control of parliament with 58 of the 91 seats.\textsuperscript{37} Then operating under a parliamentary system of government (since changed to presidential), the parliament named the leader of the dominant party in the coalition, Milton Obote, as prime minister. Obote appointed Sir Edward Mutesa (Kabaka Mutesa II) as non-executive president.

As if ethnic and political divisions were not enough, religious rifts also divided the nation. In the late 1880s, the court of Mutesa I, King of the Baganda, was a battleground in which the Church Missionary Society of England and the Roman Catholic White Fathers of France competed for influence. The struggle degenerated into a civil war which the Protestant faction won in the

\textsuperscript{36} The Kabaka was the king of the Buganda, and, not surprisingly desired to maximize the independence of his kingdom. Milton Obote sought to develop a strong, unitary state, with himself as chief executive.

decisive Battle of Mengo in 1892, thanks to colonial administrator Lord Lugard’s Maxim gun. Winning the war, the Protestant Baganda gained ascendancy, Ugandan Roman Catholics ranked second to Protestants in political influence, and Uganda’s Muslims were third.

The divisions within this unlikely UPC-KY political coalition soon became apparent. Over Uganda’s first four years of independence (1962-1966), Obote attempted to build a strong central government in place of the fragmented, quasi-federal government established at independence. And as Obote sought to consolidate his power and centralize the state under his authority, the Kabaka, his non-executive president, was attempting to exert the prerogatives of the Buganda.

The conflict between Obote and the central government on one side, and Mutesa and the Buganda Kingdom on the other, came to a head in the National Assembly in 1966. This was the National Assembly’s first direct challenge to Prime Minister Obote, and he crushed it with no regard for the constitutional powers of the Assembly. In February 1966, an overwhelming majority of the National Assembly – including MPs within Obote’s coalition, the UPC and the Buganda – passed a “motion of censure against Obote and his close

associates. Obote responded to this challenge by his opponents by arresting those parliamentary leaders who opposed him, suspending the constitution, abolishing the posts of president and vice president (thus removing any political opposition from within the government), and claiming for himself all the powers of government. Obote then introduced a new constitution, which he demanded the Parliament approve before even reading it. Opposition MPs, along with four UPC members, boycotted the session, and the Parliament adopted the new constitution by a vote of fifty-five to four.

Obote’s response to this challenge demonstrates the parliament’s weakness, but even before the crisis it was clear that the legislature could do little to challenge the prime minister. Using a combination of rewards (e.g., minister and assistant minister positions, benefits to member constituencies, etc.) and punishments, Obote had earlier convinced several DP and KY members to “cross the floor” and join the UPC. By 1966, only six of 24 the DP MPs winning office in 1962 remained loyal to the DP; the rest belonged to Obote’s UPC. Attempting to further weaken the opposition in the parliament, Obote

---

39 Mutiwba, p. 37.
formally abolished the position of leader of the opposition, and prohibited opposition parties from holding rallies. 41

Obote further reduced the strength of the opposition, and concentrated greater power in the executive by requiring the Parliament to adopt a new constitution in 1967. Among its other provisions, the 1967 constitution created the presidency (which Obote filled), gave the president power to nominate members to the parliament, and removed any federal constitutional provisions (thereby abolishing kingships), making Uganda a unitary state. 42 Under the new constitution, members of the National Assembly were rewarded with an extension of their mandate for another full term. MPs were deemed to have been elected for another five years, and this was considered Uganda’s Second Parliament. Following an attempt on his life in 1969, Obote further limited the possibility of political challenge by detaining opposition party leaders – even party leaders who were sitting members of parliament.

According to Justus Mugajiu, were it not for Idi Amin’s military coup, Obote would have outlawed opposition parties. Mugajiu states that the Obote government “. . . was in the process of imposing a de jure one-party political

42 Ocitti, 157.
system when it was overthrown by Amin in 1971.” Further, “. . . as the political arena continued to shrink, the UPC itself was reduced to a party of rubber stamping ‘speeches and resolutions’ . . . rather than a serious forum of debate and policymaking, and the spectre of militarism haunted the country long before Amin established his reign of terror.”

Looking back on the earliest years of the Uganda Parliament under Obote, it is clear that it was by no means an independent institution. When it attempted to exert its authority, Obote dealt with it ruthlessly, using the coercive power of the state to jail MPs who dared to use their constitutional powers to challenge the president. Further, Obote then rewrote the constitution to further concentrate power in himself, forcing parliament to adopt it.

Amin through the NRM

Life for those who dared to defy Uganda’s president was difficult during the Obote years, but it was about to deteriorate even more. Field Marshall Idi Amin ousted Obote through a military coup in January 1971 while the President

43 Ocitti, 21.
was out of the country. When Amin first took power, many Ugandans, especially the Baganda, saw him as a liberator from the increasingly authoritarian Obote. The euphoria was short-lived, however, as Uganda descended into political and economic chaos, and as life in Uganda was reduced to a Hobbesian state of nature, where individuals lived in continual fear, and danger of violent death; and the life of man, solitary, poor, nasty, brutish, and short. Parliament, which had been progressively disabled under Milton Obote, ceased to function altogether, being held in abeyance during Idi Amin’s 1971 – 1979 dictatorship.

In 1979, Ugandan exiles (including current Uganda President Yoweri Museveni), with assistance from the Tanzania military, succeeded in overthrowing Amin’s military regime, and Amin fled into exile in Saudi Arabia. The nation’s suffering was not over, however, as Uganda endured a long period of political instability, continued bloodshed, and short-lived governments.

After overthrowing Amin in 1979, military leaders established an unelected interim council called the National Consultative Council. Initially comprising 30 members, but later that same year expanded to 120 members, the council was established to advise the military rulers. This council survived through three short-lived caretaker governments until elections were held in 1980 and Milton
Obote and his UPC won more than a majority of seats (72 of 126) in the second elected parliament.\textsuperscript{45} Despite the UPC and Obote having presided over Uganda’s slide toward authoritarianism in the 1960s and early 1970’s, they were again returned to power.

Milton Obote and this second elected Uganda Parliament ruled during a period as bloody and divided as the years of Idi Amin’s dictatorship. Commenting on this legislature, Uganda scholar Nelson Kasfir says that “The National Assembly was an even more subordinate body during the Obote II period. An official serving then characterized it as simply ‘a department of government.’”\textsuperscript{46} Obote’s reign was as ruthless in the 1980s as it had been in the 1960s, and the factionalism, conflict, and bloodshed that had characterized the Amin dictatorship continued.\textsuperscript{47} Justus Mugaju calls the politics of this period “nothing more than a mockery of multi-party democracy,” and states, “Opposition politicians (and even those who belonged to the ruling party) were killed or forced to flee the country or go to the bush.”\textsuperscript{48}

\begin{flushright}
\footnotesize
\textsuperscript{45} African Elections Database, \url{http://africanelections.tripod.com/ug.html}.
\textsuperscript{46} Nelson Kasfir and Hippo Twebaze, “The Rise and Ebb of Uganda’s Parliament: Striving for Autonomy in a No-Party State.”
\textsuperscript{48} Mugaju, 23-24.
\end{flushright}
Obote’s Second UPC Government finally ended in July 1985 when a military coup led by generals Tito Okello and Bazilio Olara-Okello overthrew the Obote government, and the National Assembly was again disbanded. This did not end the violence in Uganda, however, as that same year Yoweri Museveni’s National Resistance Army (NRA) took up arms to remove President Tito Okello from power. Okello and Museveni signed a peace agreement in Nairobi in December 1985, but the agreement was never implemented (Jimmy Tindigarukayo called the agreement a “window dressing exercise”).\(^{49}\) Despite the agreement Museveni continued his drive to oust Okello, and by the end of January 1986 Kampala had fallen to the NRA and Museveni was sworn in as president.

Once in power, Museveni did establish a legislature (the National Resistance Council), vesting legislative powers in himself and the council. Council members were not directly elected,\(^{50}\) but constituency assembly delegates, charged with writing a new constitution for Uganda, were directly elected in 1994. We will see in Chapter Three that the constitution this assembly

\(^{49}\) Tindigarukayo, 620.
drafted was to be an important foundation for the surprisingly independent Sixth Parliament, elected in 1996.

The Parliament of Uganda website sums up the nation’s succession of parliaments from independence to the end of the NRM period as follows:

- **Second Parliament**: 1967-1971. Under the new constitution MPs in office stayed in office and were made members of the Second Parliament.
- **Fourth Parliament**: 1980-1985. This was the second elected parliament, again under Milton Obote. It too was removed by a military coup.
- **Fifth Parliament**: 1986-1994: This was the appointed National Resistance Council under Yoweri Museveni.
- **A Constituent Assembly to draft a new constitution was established in 1994 and worked on a new constitution, completing its work in October 1995.**

---

Uganda parliamentary independence during the pre-reform period

From this brief historical overview, it is evident that Uganda’s National Assembly had little opportunity to develop as an independent institution over the period we have considered, 1962-1995. There were several reasons for this. First, because of the essential unity of powers in true parliaments (where the chief executive is appointed by the party or coalition winning the election), it is generally difficult for them to exercise much independent power. Although there are exceptions (which I discuss in the final Chapter), true parliaments tend not to develop strong committees, nor are they likely to establish much independence from executives. This is especially true when the parliament is controlled by a dominant party, as it was during most of Obote’s years.

Second, Prime Minister (later, President) Obote, weakened Uganda’s parliament as by concentrating so much state power in the presidency. During the Uganda’s early independence years, Prime Minister Obote “de-federalized” Uganda, consolidating his power by making Uganda a unitary state (abolishing traditional kingdoms) under his tight control. When the National Assembly did attempt to assert its independence by censuring Obote, he responded by unleashing the coercive power of the state on MPs who challenged him, arresting the leaders who led the effort to have him removed, and suspending the constitution.
To coercive state power, Obote added patronage, and was able to get all but a minority of MPs to cross the floor to join his party. Having made Uganda a *de-facto* one-party state, Obote had the Parliament adopt an interim constitution in 1966 (without even reading it), and another new constitution in 1967 which abolished the federal provisions of the independence constitution. Even prior to Amin’s military coup in 1971, Obote had succeeded in reducing parliament to rubber-stamp status. With effectively a one-party state, and constitutional power now concentrated in the office of a powerful president who has been able to call in the military to do his bidding, Obote had practically eliminated parliamentary autonomy.

Parliament did not function for the duration of the Amin dictatorship, and the post-Amin military rulers established a short-term, non-elected consultative council (1979 – 1980). Uganda’s Fourth Parliament, once again under Milton Obote, had little opportunity to develop as an autonomous institution given Uganda’s ongoing violence in which politicians continued to be in danger. Kasfir called this Parliament even more subordinate to Obote than parliament in the 1960s, and looking back on this period, Justus Mugaju concludes that “... genuine competitive multi-party politics has never been practiced in Uganda.
before or after independence. Finally, the National Resistance Council over which President Museveni presided was not an elected body and it never represented any significant challenge to executive authority.

**Indicators of parliamentary independence**

If we examine Uganda parliaments over the first three decades of independence in light of our four criteria for independent parliaments, we find little indication of independence. Parliament was weak institutionally, its resources and formal powers were limited, and it had little ability to use the powers it possessed to constrain the executive. First, parliamentary administration and committees were subservient to the executive. Second, salaries, resources, allowances, facilities for members, and staff were all determined by the executive – not by parliament. Third, parliament had few powers for constraining executive abuses. And fourth, it was very difficult for the legislature to use its oversight powers. When the National Assembly attempted to use its powers to restrain the executive, Obote responded by arresting MPs and then forcing the Parliament to adopt constitutions further

52 Mugaju, 25.
liming their authority. Figure 6, below, provides a summary of the indicators of parliamentary independence in Uganda during the pre-reform period.

**Figure 6. Indicators of Parliamentary Independence: Uganda 1962-1995**

<table>
<thead>
<tr>
<th>Characteristics of more independent legislatures</th>
<th>Status (Uganda)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Independence of committees and parliamentary administration.</td>
<td>Weak committees, little administrative independence.</td>
</tr>
<tr>
<td>Resources, allowances, facilities for members, staff size and specialization.</td>
<td>Few resources, minimal facilities and staff.</td>
</tr>
<tr>
<td>Formal powers for restraining executive discretion.</td>
<td>Few.</td>
</tr>
<tr>
<td>Use of powers to constrain executive.</td>
<td>Unable to use the few powers it possessed.</td>
</tr>
</tbody>
</table>

As weak at Uganda Parliament had been in the 1960s, this was the high-water mark for parliamentary independence prior to 1996. Non-elected governments ruled from 1971-1980, and Obote dominated the 1980-1985 parliaments as thoroughly as he had their 1960s predecessors. Military governments and NRM then ruled until 1996.

**Kenya**

**Concentrating power under Presidents Kenyatta and Moi**

In stark contrast to Uganda’s bloody post-independence history, Kenya has enjoyed an unbroken record of civilian (though often not very democratic)
government. Similar to Uganda, however, an overarching theme through this pre-reform period is the growing concentration of power in the nation’s chief executive. As in Uganda, the departing British colonial administration left Kenya with a constitutional framework for a non-unitary state. The 1963 Westminster constitution divided power among the three branches of government, and shared power between different levels of government through a federal system. In addition, Kenya’s independence constitution established a two-house national assembly with an upper house (Senate) with 41 members elected to represent administrative districts, and a lower house (House of Representatives) comprising 177 constituency members and 12 specially elected members (elected by the House of Representatives constituency members). The country was divided into seven regions, with each region vested with its own legislative and executive powers.

Kenya’s first President, Jomo Kenyatta, had no interest in allowing the dispersion of power as envisioned in this constitution, and he never implemented the provisions which would have empowered regional bodies. Instead, Kenyatta, and later President Moi, amended Kenya’s constitution (more than 30 times during Kenya’s first 25 years), with most amendments further focusing political

power in the hands of the president. Kenyatta chose not to permit power-sharing through regional governments, but rather administered the regions through a civil service which he controlled centrally. As a consequence, civil servants in the regions were loyal to the center, rather than to the regions in which they served.

The Kenya Parliament, like other institutions of Kenya’s government over this period, exercised progressively less independence as Presidents Kenyatta and Moi increased their authority. Kenyatta required that Kenyan legislators approve several amendments limiting their authority and that of their parliament, simultaneously deepening and broadening the power of the president. In one such change, Kenyatta merged the Senate and the House of Representatives into one house, abolishing the Senate with its regional representation, and adding 41 new constituencies to what then became the National Assembly. Kenya’s independence constitution had provided for twelve specially elected members in addition to constituency members. The twelve were to be elected by the members of parliament. But parliamentarians relinquished this power, granting the president the authority to name them, and thus enabling the president to

57 Slade, 16-18.
58 Slade, 19.
expand his margin of control in the parliament. Another constitutional amendment enacted by parliament gave the president exclusive power to appoint the members of the Electoral Commission, further enhancing his power.

Borrowing a page from Prime Minister Obote, President Kenyatta was able to break the power of Kenyan opposition political parties in the years immediately following independence. At independence in 1963 Kenya had two major political parties; The Kenya African National Union (KANU) and the Kenya African Democratic Union (KADU). But in 1964 Kenyatta succeeded in making Kenya a *de-facto* one-party state, through a combination of inducements and penalties convincing KADU members that it was in their interest to dissolve their party. Kenyatta and KANU made it clear to KADU constituents that their districts would lose government funding as long as their representatives remained in opposition, and as a result KADU members began crossing the floor to join Kenyatta’s KANU party. KADU was rapidly drained by defections, and those MPs who first crossed the floor to join KANU were rewarded by securing the best terms for themselves (in terms of ministries and patronage), and for their

---

59 President Moi used this power to place the KANU candidate for President, Uhuru Kenyatta, in the 9th Parliament.
60 The fact that President Mwai Kibaki appointed all 22 of Kenya’s election commissioners helped fuel speculation that he stole the 2007 presidential election. Post-election violence led to over 1500 dead and 500,000 Kenyans being displaced. In December 2008, Kenya’s 10th Parliament was working on electoral reform that would take this power from the president.
constituencies. On the first anniversary of Kenyan independence in 1964, KADU formally dissolved itself and its members joined KANU, thus making Kenya a *de facto* single party state."\(^{61}\) As a one-party state, there was no problem getting the constitutional amendment through parliament declaring Kenya a Republic. Kenya became a unitary state, with the president both head of state and head of government.\(^{62}\)

President Kenyatta soon learned, however, that just getting KADU’s members under the KANU tent was not sufficient to silence them; a number of former KADU members opposed KANU’s land redistribution policies, and they made their opposition known. Particularly galling to Oginga Odinga (father of current Prime Minister Raila Odinga) was Kenyatta’s policy of requiring Africans to purchase (rather than to be given) settler land. This policy, and significant philosophical differences, made for an uneasy alliance between conservative and more radical Kenyan MPs. Odinga attacked KANU’s pro-Western policies, and KANU party leaders responded in 1966 by expelling Odinga as well as other more radical members from the party. Odinga was joined by several other members who defected from KANU and quickly registered a new political party, the Kenya’s People Union (KPU).


\(^{62}\) Ahluwalia, 34-35.
Kenyatta’s response was immediate and ruthless, and if anyone were in doubt, made apparent how little regard President Kenyatta had for parliament’s independence. Kenyatta had his Attorney General prepare a constitutional amendment to deal with Odinga’s insurrection, and it was rushed through parliament in a single day. The legislation (which was to become the Fifth Amendment) required that any MPs who left KANU to join another party must resign from Parliament and face a bi-election.

The Speaker immediately declared the seats of the 29 members who had left KANU vacant, and this action was sufficient to intimidate any other members who had considered joining KPU into taking the safer course and holding on to their seats. In what became known as Kenya’s 1966 “Little General Election”, the Government made it very difficult – almost impossible – for KPU candidates to register and to campaign. Ultimately, only nine of the 29 KPU members who had been forced out of parliament returned. Years later, after Kenya again made opposition parties legal 1992, President Moi was able to use this amendment to stem the tide of potential defectors to the opposition. During the years KPU and its supporters dared to challenge KANU, they suffered at the hands of Kenya’s provincial administrators (which broke up rallies, detained KPU officials, and
severely restricted registrations for public meetings) until the government banned the party and detained its leaders in 1969.\textsuperscript{63}

Additional amendments solidified presidential control over the civil service, and over parliament. Kenyatta had been able to extend his power over the country through his command of the civil service, and presidential control over the civil service was formalized through Constitutional Amendment 16 which made both the civil service and local governments directly accountable to the president.\textsuperscript{64} Another amendment – this one aimed directly at compromising parliamentary power – specified that MPs absent for eight consecutive parliamentary sessions without permission of the Speaker would lose their seats, allowing only the president to waive the rule. Other amendments abolished provincial councils and deleted from the constitution any references to provincial and district boundaries.

Hon. Oloo Aringo, whose actions to strengthen Kenya’s Parliament I will discuss at length in Chapter Three, described Kenyatta’s relationship with the parliament – and with the state – as follows.

\begin{flushright}
\textsuperscript{63} Throup and Hornsby, 13-14.
\end{flushright}
“Kenyatta emasculated it [Parliament] . . . then subordinated it to the civil service and therefore relegated it to irrelevance. . . His trick was to get the machinery of the civil service in his hands, at all levels. That is how the provincial administration became a very powerful institution. It was the field staff through which he controlled the parliamentarians, controlled the party. . . . Because he appointed the judges, the head of the civil service, the public service commission, which was directly responsible for recruiting into the civil service who would continue to toe the line of the president . . .

Aringo comments that Kenyatta applied the same methods for controlling Kenya that colonial administrators had used.

“So his power was extended to the province (provincial commissioner was head) to the district (where district commissioner was head) to the chief – who became very powerful. The chief was exercising the power of the president, and therefore was not accountable to any elected institution. . . Historically, the governor succeeded because he was able to decentralize his power (extend it) all the way to the chief. So Kenyatta made a carbon copy of a colonial structure into an independence structure.

According to Aringo, President Kenyatta was able to bring government institutions at both the national and local level under his own authority, making parliamentarians both irrelevant, and dependent on him for their success and survival.

“Who suffers? First, parliamentarians, because they become irrelevant. Backbenchers had no influence. Kenyatta did not need them – he could call the civil servants, order them to implement his policies without regard to what the parliamentarians were saying. He emasculated local authorities. Power pushed to the ministry of local government. By controlling the ministry of local government, he was actually controlling all of the local authorities in Kenya. He was very systematic, and step by
step consolidated the powers of the imperial presidency. Ministers had little say – they depended on him for budgeting.

As former Chairman of KANU, Hon. Aringo spent several years close to the president understood his patronage power, and how patronage corroded parliamentary independence.

"Now it became the people around Kenyatta. Now the patronage comes in. You are struggling to become an insider, and in doing so you are abandoning your role as a representative of the people. That gives you enormous political clout. It was not election which gives you clout; it was being in the family and being close to power. Gradually Parliament's powers were eroded." 65

Kenyan scholar Susanne Mueller agrees with Hon. Aringo's assertion that Kenyatta established his power base – and kept the parliament weak – by replicating the pattern set by colonial administrators.

"In Kenya, and elsewhere in Africa, one of the most important legacies of the colonial period was the creation of 'institutions of governance with a near monopoly of authority' and 'absence of countervailing institutions'. The origin and total impact of 'common authority', as well as the nature of its transfer, all suggest that it is the 'inherited colonial rather than tradition institutions' which are critical in understanding post-independent political patterns between government and opposition in Kenya. The persistence of institutional legacies from the colonial period is acknowledged in most discussions of post-independence politics in Kenya. Few authors have failed to mention the inherited centralised administration which continues to act as the arm of the executive, the weak district-oriented faction-ridden political parties which were kept from organising at the national

65 Author's interview with Hon. Oloo Aringo, February 17, 2008.
level during the colonial period, and the verbally vigorous, but political impotent legislature.\textsuperscript{66}

President Kenyatta died in office in 1978, and was succeeded by Vice President Daniel Arap Moi. President Moi initially attempted to conduct his presidency a bit more openly than President Kenyatta had, but following an attempted Air Force coup in 1982, Moi became a more insular president. He picked up where Kenyatta had left off, requiring parliament (which had little choice in the matter) to enact constitutional amendments consolidating power in the presidency, and, in the words of Oloo Aringo, further emasculating the parliament. One of the most significant was the 19\textsuperscript{th} Amendment, which made Kenya not only a \textit{de-facto}, but now a \textit{de-jure} one-party state. Only KANU members could hold elected office, and any MP resigning from – or being ejected from – KANU was effectively resigning from or being removed from his or her parliamentary seat.

The consolidation of presidential authority continued with further amendments, including the 22\textsuperscript{nd}, granting the president power to remove the Controller and Auditor General, as well as the Attorney General, from office. Judicial independence was compromised with enactment of the 24\textsuperscript{th} Amendment, 

\begin{footnotesize}
\end{footnotesize}
which removed the security of tenure from judges of the High Court and the Court of Appeals, as well as members of the Public Service Commission – all of whom could now be removed from office at the word of the president.

KANU, now the only legal political party in Kenya, grew in influence. Comparing the role of KANU under the two presidents, Throup and Hornsby note the growing power of KANU under President Moi. “The President’s dominance was reflected in the revived importance of the ruling party – possibly the most significant development of the 1980s – which now provided the main means by which the government controlled political debate.”67 Jennifer Widner, another student of Kenyan politics, comments on the increased importance of KANU. According to Widner, during the Moi era Kenya fit within the model of single-party dominant systems common in Africa at the time in which KANU was used, “. . . not just as a means of mobilizing regime support, but as an adjunct to the security forces in monitoring and controlling opposition.”68

67 Throup and Hornsby, 37.
Power begins to shift back

We shall see in Chapter Three that Uganda’s 1996 Parliament, endowed with considerable powers and free of partisan control, quickly exerted its new lawmakering and oversight authority and within a year of taking office was acting independently and curtailing the powers of a popular president. But in Kenya, which had not experienced Uganda’s tumultuous political changes or reforms, change came only gradually. Well before what I have labeled Kenya’s parliamentary reform period, which began with Kenya’s Seventh Parliament in 1998, the concentration of power in the office of the Kenya presidency slowed, and then began to reverse. Beginning in the late 1980s and early 1990s, a combination of Kenyan and expatriate pressures finally began to convince President Moi to loosen his monopoly grip on power. The watershed event, perhaps, was the decision by Kenya’s bilateral aid donors in November 1991 to suspend balance of payment supports and other rapid disbursement aid for six months as a means of forcing Moi to open up the Kenyan political system. The United States and other Western donors, no longer competing with the Soviet Union for influence along the Horn of Africa, demanded that Kenya make economic and political changes before they would restore the flow of aid.

President Moi responded by permitting some openings in Kenya’s political system. He had the Parliament enact two important amendments, one of which opened the way for establishing a more powerful and independent parliament,
which would begin challenging President Moi and KANU before the decade was over. The 25th Amendment restored security of tenure to judges of the High Court and the Court of Appeals, the Attorney-General, the Controller and Auditor General, and members of the Public Service Commission. The amendment began to wrest some control of the courts and public service from the president’s hands. But it was the 27th Amendment which ended Kenya’s *de-jure* one-party state, re-opened the possibility of political competition in the nation, and made it possible for parliament to begin to play a role in checking the power of the executive.

Those hoping that the restoration of multi-party politics would quickly lead to political change at the top in Kenya were severely disappointed during the 1992-2002 period, however, as Moi and KANU were victorious in both the 1992 and 1997 elections. Moi barely won the presidency in 1992 with just 37% of the popular vote, and KANU won just 100 of 212 elected parliamentary seats in the Seventh Parliament. KANU maintained its majority in the Parliament, but only because President Moi appointed all 12 of the nominated members, all from KANU.\(^69\) The opposition had failed to unite in time for the 1992 presidential and parliamentary elections, and KANU and Moi (with the help of Kenya’s electoral system which gave a tremendous advantage to conservative, sparsely populated, 

---

\(^69\) Inter-Parliamentary Union, [http://www.ipu.org/parline-e/reports/arc/2167_92.htm](http://www.ipu.org/parline-e/reports/arc/2167_92.htm)
KANU-supporting regions in the north of Kenya) returned to power. He did better in 1997 when he won with 40% of the popular vote and KANU won 107 seats in the Parliament (and President Moi was able to nominate an additional six). Once again, Moi had been able to defeat a divided opposition. Yet the re-opening of political competition and the power of new forces for reform in Kenya (such as the Inter-Parties Parliamentary Group, and the Ufungamano Initiative) were beginning to change the behavior of MPs, even loosening KANU’s grip on its MPs.

Kenya’s multi-party parliament began to assert itself, tentatively at first, but with growing boldness. President Moi forbade KANU MPs in the Seventh Parliament (1993-1997) from socializing or even speaking with opposition MPs and members took this prohibition seriously. The Eighth Parliament (1998-

---

73 From author’s meetings with MPs 2000 - 2002.
2002) however, proved to be less docile and more independent than any of Kenya’s earlier parliaments. KANU members paid less heed to Moi’s demands, and both KANU and opposition members began taking concrete steps to establish parliament’s independence and power. Chapter Four will describe in detail several of the changes that took place.

**Efforts of parliamentarians to strengthen parliament’s independence**

Our discussion of political power in Kenya during parliament’s pre-reform period has so far centered on how Kenyatta and Moi dominated all aspects of Kenyan politics, including parliament. In this section I want to focus specifically on the Kenya Parliament, its attempts to assert its independence and power over this period, and how, at least until the late 1990s, government generally crushed the efforts of would-be reformers. I will also discuss the four indicators of legislative independence, and how poorly they apply to the Kenya Parliament during the pre-reform period. The discussion is longer than that on Uganda, above, but this is largely because the Kenya Parliament, unlike Uganda’s, met throughout this period. Uganda had an elected parliament for only about fifteen

---

of the approximately 34 years of what I am calling its pre-reform period (1967-71; 1980-85), and for most of those years MPs daring to challenge Milton Obote did so at their peril. Kenya’s parliament, by contrast, met during each of its 35 pre-reform years (1963-1997), and some of its members did attempt to make parliament more independent of Kenya’s presidents, and from KANU.

Very early in the life of the Kenya Parliament KANU backbenchers occasionally refused to vote along party lines. In the early 1960s, the chairman of the Backbencher Group, Honorable Henry Clement Wariithi, lamented that backbenchers were “getting fed up with seeing Bills published . . . which we are then expected to support . . . and yet the Ministers do not consult with us while preparing them.” This same backbench group actually exercised some authority in August 1964 when, believing that the Kenya government was dragging its feet in establishing the East Africa Federation, they tabled the ratification agreements for the East African Federation and then voted for their ratification. While, not surprisingly, backbench victories such as these were rare, backbenchers could be a thorn in the government’s side. We will see later in this paper that backbench independence became the norm beginning in the late 1990s, but in the pre-reform parliaments, backbench freedom reached its peak between 1969 and 1975.

During the 1969-1974 parliaments, backbenchers were able to force government to withdraw a number of proposed bills. When one of their leaders, Joseph Seroney, was elected Deputy Speaker in 1974, backbenchers were able to “control debates and manipulate the parliamentary timetable whenever he was in charge of the House.” Commenting on the power of backbenchers at this time, Nancy Gitau observes, “The backbenchers did not succeed in derailing government by handing it defeat on legislation but they forced the government to concede to or rescind some decisions. However, the government used its excessive powers, including its tight control of the Provincial Administration, to control restless MPs through reward with ministerial appointments or appointments to boards in government bodies, or punishment through detention and assassination.”

Departmental committees in the Kenya Parliament (committees corresponding to and overseeing government ministries) did not become active until the Eighth Parliament. Reforms to the Standing Orders in 1979 had provided for the establishment of departmental committees, but for a variety of reasons (among them capacity restraints, and a scarcity of funding, committee

76 Throup and Hornsby, 17.
rooms and trained staff) they did not really begin to function until 1998.\textsuperscript{78} Kenya’s Public Accounts Committee (PAC) was an exception, however, during several years carrying out its responsibility of examining ministry appropriations and comparing them with actual ministry expenditures. Auditor General reports on appropriations and spending were several years late, however. This allowed the PAC, even when it did have significant findings, little opportunity to impact ministry actions or deal with the actors responsible for the expenditures.\textsuperscript{79}

Regarding the parliament’s independent lawmaking role over this period, Gitau concludes that in Kenya, out of 500 bills introduced in parliament over a period of 18 years, only two were introduced by private members. One of these was called the Hire Purchase Bill of 1968, and was introduced by Hon. J.M. Kariuki.\textsuperscript{80} The second was Hon. Jean Seroney’s Bill on Presidential and Parliamentary Elections. While the former was enacted into law, the latter was taken over by the government and subsequently moved as a government bill, before being enacted into law.\textsuperscript{81}

\footnotesize{\textsuperscript{78}} Gitau, 57.  
\footnotesize{\textsuperscript{79}} This is one of the most common ways executives are able to comply with the letter but not the spirit of the law with regard to parliamentary oversight of its spending. Governments often under-fund and under-staff supreme audit agencies, which leads to audit reports often being years late. For a discussion of this, and other common weaknesses in parliamentary oversight, see Johnson and Nakamura, Orientation Handbook for Members of Parliament (Washington, D.C.: World Bank Institute, 2006), Oversight, 23-28.  
\footnotesize{\textsuperscript{80}} A popular politician and sometimes vocal critic of the Kenyatta regime, Kariuki was assassinated in March 1975.  
\footnotesize{\textsuperscript{81}} Gitau, 54.}
Clearly, independent MP action within the parliament was the exception rather than the rule, and President Moi was even less willing to allow opposition from within KANU than President Kenyatta had been. One way African presidents weaken parliamentary independence is by making MPs ministers and assistant ministers. Government MPs know better than to bite the hand that feeds them, and even the hope of becoming a minister or assistant minister is often enough to make MPs compliant. President Moi made liberal use of this means of securing support in parliament such that by 1989 half of Kenya’s elected members occupied ministerial positions.82

Hon. Oloo Aringo, former Vice Chairman of the Kenya’s Parliamentary Service Commission, suggests that parliament’s weaknesses were rooted in the colonial Legislative Council, or LEGCO. These colonial councils were largely symbolic bodies, not exercising real authority in colonial Kenya. According to Aringo, the practices and procedures of the LEGCO were carried over into Kenya’s First Parliament (1963-69). LEGCO Standing Orders continued to be used in Kenya’s First Parliament, and the LEGCO’s Speaker continued to serve as Speaker in the first post-independence parliament. There was only one functional committee that was a standing committee. The Office of the Colonial

82 Widner, 32-33.
Governor had provided for the staff, services, facilities, and allowances in the LEGCO prior to independence, and at independence they became the responsibility of the Office of the President (rather than the parliament). In Kenya’s Second and Third Parliaments the President’s Office continued to determine parliamentary staffing, facilities, and funding. It was the president, not the parliament, which appointed a committee in 1979 to decide on levels of remuneration for members.

Aringo notes several unsuccessful efforts the parliament made to assert its independence during the 1970’s. Parliament adopted a resolution in 1972 calling for the establishment of a parliamentary service commission, which would have given the parliament control over its budget and staffing. Parliament also amended the Standing Orders in 1974 and again in 1979 in order to create several more committees; Public Investments (to oversee parastatals), Implementation, Sessional, and eight General Purpose Committees. But over the next decade (1980-1990), with the executive so dominant in parliament, the issue of the parliamentary service commission was not raised again, and most of the new committees established in the Standing Orders did not become operational. Executive management of parliament continued as before, with the executive ignoring parliamentary procedures when it suited its purposes. Even the re-establishment of a multi-party parliament in 1992 did not result in an immediate turn-around in parliamentary independence and parliamentary
management. A resolution to establish a parliamentary service commission and an independent parliamentary service was again introduced – and adopted – in July 1993, but was not implemented. 83

The hopes for change that multi-party proponents had placed in the return to a multi-party democracy in Kenya took several years to be realized. President Moi won the presidency in 1992 and again in 1997, KANU continued to control parliament, and political repression continued, with reported cases of police brutality, politically motivated ethnic clashes, and corruption increasing. Kenya’s civil society led the efforts to roll back the executive monopoly on power over this period, campaigning for constitutional and legal reforms that would make the 1997 elections free and fair.

Only gradually did Moi’s and KANU’s grip on parliament diminish. Opposition members and even KANU members began to meet to discuss Kenya’s political crisis and to find ways to advance the institutional interests of the parliament. Significant for this study on parliamentary autonomy, late in the life of the Sixth Parliament, 70 KANU MPs joined together with 36 opposition MPs to form the Inter-Parties Parliamentary Group (IPPG) and agreed to support several

reforms which would make Kenya more democratic and loosen the Moi-KANU stranglehold on political power. That KANU members were willing to do this indicates how far this monopoly had already deteriorated by the late-1990s. The IPPG pushed to allow political parties to nominate commissioners to the Electoral Commission of Kenya (ECK)\textsuperscript{84} and to finally implement the committee reforms which parliament had attempted in the 1970s.

**Indicators of parliamentary independence**

I conclude this chapter section on Kenya by applying the four criteria for an independent parliament to the Kenya Parliament during the 1963 – 1997 pre-reform period. First, parliamentary efforts to establish independent committees and parliamentary administrations failed. Parliament passed resolutions in the 1970s and early 1990s to establish an independent parliamentary service commission, but those efforts did not succeed. The Kenya government continued to treat parliament as a government ministry, determining parliament’s budget and staffing, and controlling its staff. Parliament also attempted to expand the number of committees, but here as well, was thwarted. Despite parliament amending its Standing Orders in the 1970’s to create several new

\textsuperscript{84} This reform has yet to take place. In fact, President Kibaki named several new members to the ECK just months before the December 2007 elections, and the fact that every appointment to the ECK is a Kibaki appointment severely weakened its credibility when it declared Kibaki the winner.
committees, the new committees did not become operational. Parliament was unable to develop an autonomous administration, and established very few committees.

Parliament’s experience in relation to the second criterion was similar. Despite the best efforts of some MPs, parliament was not able to gain control over its budget and staffing, and so remained dependent on the president’s approval for increased resources, allowances, facilities for members, or for larger, more professional staffs. The President’s Office chose to keep these salaries and allowances low, chose not to upgrade facilities, and chose not to increase the numbers and quality of parliamentary staff.

The issue of member staff and allowances will arise throughout this dissertation, and it is worth noting early on how African presidents are able to use low salaries to keep MPs compliant. Joel Barkan has written that these low salaries result in “... a continuing dependence by members of the legislature on the executive and therefore a near perpetual vulnerability to the blandishments of patronage by the head of government.”\(^85\) Both Kenyan and Ugandan MPs face a continued demand to provide funds for the specific needs of constituents, such as school fees, funeral expenses, rent, etc. MPs fear that failing to provide

such funds will almost certainly lead to their losing their re-election bids, a problem common through much of Africa. A Zambian MP stated in a 2003 seminar that, “Some constituents view us as ‘walking bags of money’ or ‘walking ATM machines.’” President Moi was hardly subtle in distributing such patronage. One MP related to the author in 2002 that President Moi handed out bags of money to MPs. To avoid confusion, different quantities of cash were placed in different colored bags. The cash was provided, obviously, at the price of MP independence.

The third criterion dealt with formal powers for constraining the executive, and whether those powers were expanding or contracting. Chapter Four will discuss in detail specific limits on the powers of the Kenya Parliament (dealing with budgets, etc.), but it is clear from this political overview that through most of this pre-reform period, Kenya’s presidents were expanding their own formal powers at the expense of virtually every other political institution in the nation – including parliament. Kenyan presidents made Kenya a unitary (rather than federal) state, made the president head of state and head of government, closely controlled the civil service and local authorities, made Kenya a de-facto and then a de-jure one-party state, eliminated opposition parties, and controlled the

---

87 Author’s conversation with a Kenyan MP (name withheld), February 2002.
administration of parliament. Parliament’s powers were under assault from independence, and were systematically reduced during most of this period.

And finally, our fourth criterion for an independent parliament deals with the ways parliaments actually use the powers they possess. A dominant executive with several carrots (such as ministries, and patronage) and sticks (ability to expel members from the nation’s single party, assassination, withholding of funds to members and their constituencies), at his disposal, made it extremely difficult for parliamentarians to make use of their formal powers. Kenyan MPs enjoyed some small successes early in the life of parliament (i.e., the backbench initiative to speed the implementation of the East African Federation agreement, and certain resolutions in the 1970’s to make the parliament more independent of the executive). Yet the constraints on the Kenya Parliament using its powers to challenge the executive were just too great, and the institution submitted to the demands of the president and of KANU. Figure 7, below, summarizes the four criterion, showing that the Kenya Parliament exhibited weaknesses similar to Uganda’s during the pre-reform period.
Indicators of Parliamentary Independence: Kenya 1963-1997

<table>
<thead>
<tr>
<th>Characteristics of more independent legislatures</th>
<th>Status (Kenya)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Independence of committees and administration.</td>
<td>Weak committees, little administrative independence.</td>
</tr>
<tr>
<td>Resources, allowances, facilities for members, staff size and specialization.</td>
<td>Few resources, minimal facilities and staff.</td>
</tr>
<tr>
<td>Formal powers for restraining executive discretion.</td>
<td>Few.</td>
</tr>
<tr>
<td>Use of powers to constrain executive.</td>
<td>Unable to use the few powers it had.</td>
</tr>
</tbody>
</table>

Independence of Parliament Triangle

We conclude this chapter by turning to the Independence of Parliament Triangle introduced in Chapter One to illustrate the influence of presidents, parties and independent parliaments over parliamentary decisions during the pre-reform period. One triangle can be used to represent the level of independence of both the Uganda and Kenya Parliaments during this period, which lasted from independence to the mid-late 1990s (see figure 8).

Uganda and Kenya presidents exercised the greatest degree of power over decisions emanating from their parliaments, and parliament members and committees had little say over the decisions their institution made. Parties,
however, were not insignificant. Over this period Presidents Obote, Kenyatta and Moi expended a great deal of effort to weaken or eliminate opposition parties, control their own parties, and then use their parties as a means of controlling their legislatures. We will see in the following chapters that when presidents did not control a dominant party in the parliament, their influence over parliamentary decisions waned.

The metal ball representing decisions emanating from the legislature sits very close to the president’s corner, most distant from the independent parliament, and second most distant from parties. The different font sizes at the three corners also help illustrate the relative strengths of the actors at each corner of the triangle.

**Figure 8.** Independence of Parliament Triangle: Pre-reform periods Uganda 1962-1995, Kenya 1963-1997
CHAPTER 3-THE UGANDA PARLIAMENT SINCE THE REFORMS

1996 - 2008

Introduction

This chapter uses the four indicators of legislative independence to help determine the autonomy of the Uganda’s parliament over the 1996-2008 period. It covers in some detail the institutional developments in Uganda’s Sixth Parliament (1996-2001; what I am calling the reform parliament) and in somewhat less detail the Seventh (2001-2006) and Eighth Parliaments (2006-2011). Material for this chapter is taken from several authors cited in the chapter, some is based on my observations while working in Uganda over a period of years, and much of it is quoted directly from current and former parliament members.

Uganda’s Sixth Parliament became the most independent and vibrant parliament in Uganda’s history. New constitutional powers, combined with Uganda’s “no-party” electoral system which encouraged MPs to think in terms of their parliament’s institutional interests, led to the Sixth Parliament playing unprecedented lawmaking and oversight roles. But President Museveni pushed back, and the Sixth Parliament’s practice of censuring ministers ceased even before the end of that parliament. President Museveni held greater sway over
the Seventh Parliament than he had over the Sixth. With the restoration of multi-party politics in 2005 and the NRM’s winning control of two-thirds of the seats in the Eighth Parliament, the influence of President Museveni and the NRM over parliament grew, resulting in a decline in parliamentary independence.

**Uganda’s Sixth Parliament, the most independent in Uganda’s history**

Uganda’s Sixth and subsequent parliaments have been radically unlike their predecessors. Through a widely consultative constitutional development process – which resulted in the incorporation of features from other political systems, including from the U.S. Congress – Uganda’s 1995 Constitution vested considerably more power in the legislature than had any of its previous constitutions. The constitution established a somewhat unique electoral system as well. The majority of members are elected through a single-member district electoral system, which helps to ensure close ties between parliamentarians and their constituencies. At the same time, the electoral system provides for special representation for marginalized or special interest groups. According to the constitution, the Uganda Parliament is to be made up of a combination of directly elected constituency representatives, a woman representative for every district; and “such numbers of representatives of the army, youth, workers, persons with disabilities and other groups as Parliament may determine.” (Article 78 (1)).
Another distinguishing feature making Uganda’s Sixth Parliament unlike any of its predecessors is that it was not a party-based parliament. The elected pre-reform parliaments described in Chapter Two were dominated by Milton Obote and the Uganda People’s Congress Party, but parties were not allowed to field candidates for election to the Sixth Parliament. President Museveni, who had presided over the drafting of Uganda’s 1995 Constitution, believed that it was Uganda’s multi-party political system, which was organized around the nation’s ethnic and religious differences, which had divided the nation and made political progress so difficult. Instead of allowing Uganda’s political life to again organize around these divisive forces, Museveni argued that society must have time to develop social classes, and for representation to reflect these classes.

Museveni declares in his autobiography that,

“We in the NRM argued that there are no healthy grounds for party political polarisation in Uganda at this time because of the absence of social classes. In Western democracies, parties have usually been founded on some sort of class basis. . . . On what basis would parties in Uganda be formed, since Ugandans are overwhelmingly one class, peasants? The polarisation one is likely to get in Uganda and countries like it is vertical polarisation - tribe A will join party A, tribe B party B, and so on. They will all be sectarian. What is crucial for Uganda now is for us to have a system that ensures democratic participation until such time as we get, through economic development, especially through industrialisation, the crystallisation of economic groups upon which we can then base healthy political parties.”

Outside of Northern Uganda (where there was little support for Museveni, the NRM, or the new constitution), most Ugandans apparently agreed that elections for the Sixth Parliament should be conducted on a no-party basis. Citizens elected delegates to the constituent assembly who agreed that Uganda’s Sixth Parliament should be a no-party parliament, “that the political parties should neither nominate nor campaign for candidates.”

89 The 1995 Constitution provided that Uganda could later adopt a multi-party political system (Sec. 69, 1995 Constitution), which it actually did in 2005. The constitution defines the movement system much as Museveni described it above.

Given Uganda’s history of overwhelming executive dominance over parliament, the strong support and trust Museveni enjoyed through much of Uganda when the Sixth Parliament took office, and the fact that Ugandan MPs would all be considered to be part of Museveni’s political movement, one would have expected Uganda’s Sixth Parliament to have exhibited very little


90 Section 70 of the 1990 Constitution reads as follows: 70. (1) The movement political system is broad based, inclusive and non-partisan and shall conform, to the following principles - participatory democracy; democracy, accountability and transparency; accessibility to all positions of leadership by all citizens; individual merit as a basis for election to political offices

(2) Parliament may - create organs under the movement political system and define their roles; and prescribe from time to time, any other democratic principle of the movement political system, as it may consider necessary.
independence. But the Sixth Parliament was to become the most independent in Uganda’s history, and two of the major reasons for this were its broad powers under the 1995 Constitution, and the no-party system established under that same constitution.

Parliamentary powers under the 1995 Constitution

The 1995 Constitution vested several new powers in parliament, but I want to begin this discussion where parliament was weakest – its role in establishing the national budget. Like other Westminster parliaments, the powers of the Uganda’s parliament with regard to budget are quite limited. Unlike in the U.S. Congress, bills or motions imposing or altering taxes, imposing charges on the consolidated fund or incurring debt may only be introduced on behalf of the government. Parliament’s budget powers are restricted solely to reducing taxes, or reducing charges to the consolidated fund. We will see later in this chapter how parliament was able to take fuller advantage of these powers, but it is enough to note here that its budget powers are fairly limited.

Parliament’s lawmaking and oversight authority under the 1995 Constitution, however, are unusually robust for an African parliament. Critically

91 Section 93, Constitution of Uganda.
important in this respect is Uganda’s separation of powers system (i.e., the president and legislature are elected separately – parliament does not select the chief executive) which removes a potential structural impediment to parliament’s playing a significant role in policy-making and oversight. All other things being equal, presidential separation of powers political systems provide greater incentives for legislatures to develop strong policy-making capacities in committees than do non-separation of powers systems.

Because it is unusual to find African parliaments with such extensive lawmaking and oversight powers, and because such powers – and their use – are two of the measures of parliamentary independence, I will describe them in detail. It is also useful to contrast them with the less robust powers of the Kenya Parliament, which are more typical of those possessed by parliaments in other African nations. Following are several of the powers of the Uganda Parliament.

- Parliament has the authority to extend its life during national emergencies (77:4). In several systems only the chief executive has the authority to extend the life of the legislature.
• Lawmaking authority is limited to parliament alone (79:1). Again, constitutions frequently require legislatures to share this power with presidents and courts.  

• The speaker and deputy speaker are to be elected by the members (82:2), rather than appointed by the president.

• Parliament, not the president or a board selected by him, has the responsibility for determining parliamentary emoluments (85:1).

• The Sixth (and Seventh) Parliaments were non-party parliaments, so the Constitution established that “the members of standing committees shall be elected from among members of parliament during the first session of Parliament.” (90:2:a). Constitutional reforms in 2005 transferred to political parties the authority to name the members of the committees.

• Committees are granted significant powers (90:3), including the power to initiate bills, assess and evaluate activities of government and other bodies, to carry out relevant research, and report to parliament on their functions;

• To ensure that committees would be able to gather the information they need for conducting oversight and for informed policy-making, Section 90:4 explicitly empowered committees to “call any Minister or any person

---

92 One of the more unusual examples of legislatures sharing their lawmaking powers comes from Guatemala, where the national congress must share its lawmaking power with the national universities.
holding public office and private individuals to submit memoranda or appear before them to give evidence; and to (b) co-opt any member of Parliament or employ qualified persons to assist them in the discharge of their functions.” Committees in African legislatures may have this power, but Uganda’s Constitution spells it out explicitly;

- Part (c) of 90:4 gave committees “the powers of the High Court for - (i) enforcing the attendance of witnesses and examining them on oath, affirmation or otherwise; (ii) compelling the production of documents; and (iii) issuing a commission or request to examine witnesses abroad;”

- The speaker has the power to prorogue parliament (95:3). Kenya parliamentary reformers have battled for years, so far unsuccessfully, to wrest this power from the Kenyan president;

- Parliament is also empowered to call itself into session. Section 95:5 states that if a third of the members request a meeting of parliament, the speaker must summon parliament to meet within 21 days. Again, in Kenya, and in several other African nations, this is an exclusive power of the president. Kenyan presidents have been able to use this power to keep the Kenya Parliament from convening during national crises, thus maintaining control of government responses. Early in 2008, Kenya President Mwai Kibaki refused to call the Kenya Parliament into session, frustrating MPs who wished to convene to discuss the bloodshed and
displacement following the 2007 election debacle and to get involved in the peace negotiations;

- Section 96 of the Constitution specifies that parliament is dissolved only at the end of its mandate. By contrast, several African presidents are empowered to dissolve their parliaments at their discretion;

- Uganda’s president needs the approval of the parliament to appoint cabinet members (Section 113). In many nations this is solely a presidential power, and serves as a ready source of patronage for gaining the support of otherwise unhelpful MPs.

Finally, the 1995 Constitution gave the Parliament a powerful tool to use against badly performing or corrupt ministers – the vote of censure. We will see in this chapter that the Sixth Parliament used this power on more than one occasion. Section 118 gives parliament the right to call a vote of censure with one-third of the members of parliament, and to pass it by a simple majority. Grounds for passing a vote of censure are abuse of office, misconduct or misbehavior, physical or mental incapacity, mismanagement or incompetence. This is an unusual power for an African legislature.
The no-party system and parliament

Ugandan politicians, and political scientists have described how Uganda’s no-party system actually enabled parliament to become a more autonomous and independent institution. Nelson Kasfir and Hippo Twebaze have written about how this combination of new formal powers and the absence of political parties helped parliamentary reformers expand parliament’s powers.93 Nakamura and Johnson, after conducting interviews with several Ugandan politicians and parliament watchers in 1997, wrote that because “. . . the NRM does not define itself as a party . . . those who identify with the NRM do not necessarily act in accord politically when the context is an ambiguous one. So, despite the NRM’s dominance in the governmental and political systems, the dominance has not smothered parliamentary opposition and indeed it may have perversely encouraged it by channeling criticisms into one highly pubic arena.” 94

Hon. Beatrice Kirasso, primary author of Uganda’s Parliamentary Budget Office legislation (discussed in detail below), has written that Uganda’s no-party system actually facilitated her getting her legislation enacted. According to Hon.

Kirasso, because “. . . there was no government or opposition side in Parliament, there was not majority or minority. It was easier for members to support a position favorable to Parliament against the Executive if it benefited or strengthened Parliament as an institution. Government was in a weaker position to whip members to its side.”  As she was preparing to leave the parliament in 2005 to take a position with the East African Community in Arusha, Hon. Kirasso expressed her apprehension with the new multi-party parliament about to take office, that MPs would lose their concern for the institutional interests of parliament and that party concerns would predominate. Parliament’s much greater powers, and the no-party system, combined to provide opportunities for parliamentary reformers to enact measures and generally act in ways that would strengthen parliament as an institution.

Uganda’s no-party system functioned in the Sixth Parliament much as President Museveni predicted that it would, but one is hard-pressed to imagine that he was pleased with how the system made it easier for parliament to challenge his actions. With regard to how issues would be decided in a no-party parliament, Museveni wrote,

“On the question of how issues are to be decided on in Parliament in a no-party system, it was decided that the members should vote as individuals, according to their own judgment of the issue - which is called a ‘free vote’ in a multi-party system. Some motions come from individual members of Parliament and some come from within government . . . The advantage of this system is that the members of Parliament divide differently on different issues. There is more objectivity because members have to consider matters on their own merits as each issue comes up. There are thus no permanent, built-in, unhealthy fissures which would be a danger to our society and which have led to terrible consequences in the past.”

Hon. Dan Ogalo, author of the private member legislation establishing parliamentary independence over its budget and staffing (which we will discuss in detail), described the freedom MPs enjoyed over committee assignments, and the quality of debate in the no-party Sixth Parliament.

“And when you were elected into parliament, you contributed just as an individual. On any issue, any bill, any motion, any individual issue, it was your thinking that mattered. . . . The committees also – we subscribed to the committees by choice, nobody told us, nobody assigned us. We decided that, ‘I am going to the Legal Committee, or the Natural Resources Committee.’ You were only assigned if you oversubscribed in one committee and the Speaker would have to determine that you move to another committee. . . Even in committee, the discussion was only on the merits, as you perceived them as an individual. . . That to me gave members a lot of leeway to contribute to the national debate. And the debate was very lively.”

The no-party parliament also enabled MPs to come up with their own ideas for legislation, and sometimes to see that legislation enacted.

______________________________

97 Museveni, 195.
“Because of that atmosphere of individual merit, it was easy to have self-initiative as a member, to come up with your own ideas, your own laws, and things like that. It is in that context that I was able to move the private member bill on the autonomous parliament.

“I recall the then attorney general . . . saying, ‘If the members of parliament have made up their mind that they’re going to enact this into law the best we as attorney general can do is now to assist them so that there is no conflict with the constitution.’”

Ogalo’s description of the behavior and responsiveness of government ministers when they appeared before the Parliament reminds one of the responsiveness of U.S. government officials to committee members in the U.S. Congress when being questioned at a committee hearing. African legislatures exercising this kind of independence and authority over members of the executive is extremely unusual.

“Because of that freedom of thought, parliament grew into a very strong institution vis-à-vis the executive. That was the time when ministers were really held accountable, and when they came to the parliamentary committees they came prepared. They prepared to give answers, prepared to provide documents. It was the situation when you sat in a committee chair and you knew, parliament is supreme here. . . .”

How did the level of autonomy envisioned by Museveni and described by Ogalo manifest itself in the Sixth Parliament? The section below describes how

parliament took advantage of its new powers and the no-party system to exercise its lawmaking and oversight powers, and to develop as an institution.

**Lawmaking in the Sixth Parliament**

While Commonwealth parliamentary systems make provisions for private member bills, it is unusual that any actually be enacted. They are rare even in the U.K. House of Commons, and in the previous chapter it was noted that of 500 bills introduced in the Kenya Parliament over a period of 18 years, only two private member bills were introduced. Both became law, but one was first taken over by government, and then enacted as a government initiative. Thus it is all the more impressive that reform-minded legislators in Uganda’s Sixth Parliament were able to enact two important private member bills, both of which expanded parliament’s independence and powers vis-à-vis the government. The first was Uganda’s Administration of Parliament Act, enacted in 1997, early in the life of the new parliament, and the second was the Budget Act 2001.

**Administration of Parliament Act:** Like several other newly-elected members of the Sixth Parliament, Hon. Dan Wandera Ogalo of Bukooli South was frustrated by the young parliament’s lack of professional services. Seven clerks served the parliament’s 17 committees, there were no researchers, one staff person served the poorly-equipped library, secretaries and information-
processing equipment were almost non-existent, and even the speaker was without a personal or security assistant. \(^{100}\)

Ogalo realized that the fundamental problem facing parliament was not the lack of staff, equipment, or adequate space, but rather that the parliament, while in theory an independent branch of government, was actually being “…treated as a Government Department.” Parliament had no administrative or financial autonomy. Parliamentary staff, like ministry staff, was employed by the Public Service Commission. The Public Service Commission, not parliament, was responsible for setting staff levels, hiring, firing, and terms of employment. The Public Service Commission could even transfer staff from parliament and into government ministries at its own discretion.

According to Ogalo, “Although in theory Parliament is supposed to control Executive expenditure it was the other way around. I thought there was no way Parliament could fulfill its legislative, representative and oversight functions if its

\(^{100}\) Dan Wandera Ogalo tells the story of how he was able to get his private member legislation enacted in his presentation to members of the Seventh Parliament, ”Legislative Drafting: Private Members’ Bills; A Practical Approach “ (Kampala, Uganda, April 2002), 4. Also see John Johnson, “Parliamentary Commissions in Uganda and Kenya,” Draft PREM Notes, (Washington, D.C., August 2005), 1-2.
staff were under the control of [the] Executive and did not have sufficient funds to do its work. To me, this was the problem to be overcome.”

An attorney and chairperson of the Committee on Legal and Parliamentary Affairs, Ogalo decided to remedy the situation by introducing a private member bill that would make parliament independent of the executive. He modeled his first draft after a bill which had been prepared for introduction in the UK. But later, on the recommendation of Parliament Speaker James Wapakhabulo, Ogalo redrafted the bill to conform to a more detailed parliamentary independence bill from Papua New Guinea (Speaker Wapakhabulo was familiar with the legislation because he had earlier worked as a bill drafter in Papua New Guinea). An expert Ugandan bill drafter put the bill into suitable form for introduction into the Ugandan Assembly.

It is worth pausing to consider how unusual it is for the speaker of an African parliament to assist a member in drafting a bill which could fundamentally shift the balance of power from the executive to the legislative branch – and to consider what might have happened had the speaker attempted this when Obote governed Uganda. Parliamentary speakers in Africa and in other world regions often walk a difficult line between serving the institutional

---

101 Wandera Ogalo, 5.
needs and demands of their institution and their parliamentarians, and the needs and demands of the executive. Even when elected by members (as in Uganda) parliament speakers in many nations are actually chosen by the nation’s chief executive, and are expected to be responsive to the executive - despite their job title. No doubt many have felt an uneasy identification with England’s parliamentary Speakers of old, seven of whom were beheaded by the monarch between 1399 and 1535.  

Wapakhabulo clearly identified with and promoted the interests of his institution, even when they challenged the powers of the president. In an interview with Nelson Kasfir, Speaker Wapakhabulo stated that he had “a vision for Parliament” to act autonomously of the executive. In addition to helping Ogalo with his private member bill, Speaker Wapakhabulo made other decisions in support of parliament’s independence and power, and contrary to positions of President Museveni. He allowed a number of Sixth Parliament motions censuring Museveni’s ministers to proceed, for example, which led to ministers being dismissed (these are discussed below).  

Not surprisingly, Wapakhabulo did not remain speaker for long. He was appointed National Political Commissar (NPC)  

---

103 Kasfir and Twebaze, 33.
of the NRM in July 1998 – just two years into the life of the Sixth Parliament – amid rumors that President Museveni viewed him as potential political threat.

Hon. Ogalo next sought leave of the House to introduce the bill, and despite opposition from many in government, negative newspaper editorials, and the fears of a number of parliamentary staff, leave was granted. He found it necessary to make some amendments to the bill, such as giving the executive a greater say over the parliamentary budget than he had originally proposed. Five ministers attended the meeting of the Committee on Parliamentary and Legal Affairs when the bill was discussed and spoke against it, nonetheless Ogalo and the committee members prevailed (again, a very unusual occurrence). The Committee presented its report to the Plenary, and the Bill was passed into law on 17 July, 1997.  

The Administration or Parliament Act, quite simply, makes parliament, rather than the executive, responsible for parliament’s budget, staffing, and management. Coming from a U.S. separation of powers system, one might be surprised to realize just how strong a role the executive branch often plays in a parliament’s management – and how difficult it can be for many parliaments to

104 Kasfir and Twebaze, 5-12.
act with any degree of autonomy. Ogalo’s description of parliament being treated “as a Government Department” applies in several nations.

The Uganda Act establishes the Parliamentary Commission, comprising the speaker, leader of government business, the finance minister, and three backbenchers elected by parliament. By establishing this corporate body, it became possible, for the first time, for the Uganda Parliament to enter directly into contracts and agreements, rather than going through the government. The Act also establishes the parliamentary service (prior to this, staff of the parliament were government servants) and makes the Commission (rather than government) responsible for their terms and conditions of service. Previously, the parliament would make its budget request to the finance ministry, as if it were just another government ministry, and would be provided whatever funding the finance ministry deemed appropriate. Parliament’s speaker and staff knew that power resided in the executive branch, and they had little incentive to make budget requests which might empower parliament to become an effective counterweight to the executive. And finance ministers, even if they were to receive such requests, would not be inclined to fund them.

But the Act gave the Commission authority over parliament’s budget. The president would no longer have the authority to amend parliament’s budget, but would instead “cause the estimates to be laid before Parliament without revision
but with any recommendations that government may have on them” (Section 19). In other words, the government may recommend changes to parliament’s budget, but parliament is not obliged to adopt them. The Commission maintains bank accounts (Section 21), and establishes procedures for expenditures, including overseas travel and purchases (Section 22). The Act also empowered the Commission to establish parliament’s departments - including a new department of library, research, and documentation; as well as a legislative counsel department (Section 24). The Commission, furthermore, is empowered to create new departments (Section 25), to set salary rates and allowances (Sections 27 & 28) and to establish disciplinary procedures (Section 33). In summary, the Administration of Parliament Act enabled parliament to expand its budget, enlarge and reconfigure its staff, and to refurbish and to add to the parliament’s office space. We will examine what the parliament did with these new powers below, but first I will describe the second private member bill which became law during the Sixth Parliament, the Budget Act 2001.

The Budget Act 2001. Similar to the Administration of Parliament Act, the Budget Act expanded the powers of the parliament vis-à-vis the

---

105 Administration of Parliament Act 1997 (Ch. 257).
executive and helped make the parliament a more independent institution. The Act granted parliament new authority in the budget process and gave it new tools to enable it to exercise this authority, reducing executive discretion over the budget. Common practice in several African parliaments and in Westminster systems generally, is for parliaments to receive the executive budget as a *fait accompli*, allowing them no voice in its development and leaving them with little to do other than to adopt it. Not satisfied with parliament’s negligible budget role, a delegation of twelve MPs from the Sixth Parliament asked the Ministry of Finance to have the attorney general draft legislation that would allow parliament to see the government’s budget estimates several months before the official release of the budget – so that MPs might at least offer their suggestions for shaping the budget.

Ignored by government, Chairman of the Standing Committee on National Economy Isaac Musumba (who had been lead counsel to the committee of the Constituent Assembly that drafted the finance section of the 1995 Constitution, and whose MP wife was one of the three backbench members on the Parliamentary Commission) decided to draft a private member bill, rather than wait for the government to act. Together with Hon. Beatrice Kirasso, chair of the

Committee on Finance, Planning, and Economic Development (and who had previously worked in the Finance Ministry), Musumba worked on legislation to remedy this situation.

Once the legislation was drafted, Musumba and Kirasso lobbied their fellow MPs, and built a solid core of supporters for the legislation by arguing that if parliament had a more substantial role in the budget process, then their constituencies should benefit. (We shall see in Chapter Four that Oloo Aringo used a similar tactic in generating support in the Kenya Parliament for his independence of parliament legislation). The bill was first introduced in Kirasso’s committee, but as part of her lobbying effort she visited other committees as well, explaining the benefits of the legislation and its importance to parliament. At that time the State University of New York was conducting a USAID-funded parliamentary-strengthening program in Uganda, and the project agreed to support the office once it was established.\footnote{David Hirschmann and Kintu Nyago, “Evaluation of the Impact of the Uganda Technical Assistance Project (UPTAP) August 1998 to April 2002” (Management Systems International, 2002), 20.}

Musumba and Kirasso succeeded, and the legislation was enacted in 2001. The new law made several changes to the parliamentary budget process in Uganda, all of which strengthened the hand of the legislature. But the effect of
the law was not confined to expanding the parliament’s power. The legislation was designed to improve Uganda’s budgeting and economic situation by requiring government to share more budget information, by making the budget process more public, and by providing parliament with budget experts to enable members to understand and begin to play a role in the budget process.

Similar to the U.S. Congressional Impoundment and Control Act of 1974, the Uganda Act made two major changes with regard to the legislature and the budget process. First, it established a budget committee in the parliament responsible for managing the legislature’s participation in the budget process (this is similar to the House and Senate Budget Committees established in Washington by the 1974 legislation, and which coordinate the participation of each house in the budget process). And second, it established a professional, non-partisan, independent legislative budget office (similar to, but much smaller than the U.S. Congressional Budget Office), called the Parliamentary Budget Office, or PBO.

Prior to the 2001 Act, parliament would first see the executive’s budget on the day it was released in mid-June, and had minimal authority to amend it. The Act now requires the executive to present the parliament with a draft budget no later than April 1st of each year, two and a half months earlier than before (Section 4:2). Other changes require ministers to submit to parliament their
ministry policy statements and three year budget estimates by June 30 of each year, giving committees an opportunity to review them, and to call ministers to committee meetings to respond to detailed questions (Section 6). The PBO provides expert information to the committees which make observations and recommendations on the estimates. Committees present their recommendations to the Budget Committee which processes the comments and recommendations, develops a coherent set of recommendations, and sends them to the speaker, and then to the Finance Ministry (Section 7, et. al).

Other provisions require that all bills introduced in parliament include expenditure and revenue estimates for the following two years (Section 10). The Act seeks to instill greater fiscal discipline in government by limiting government over-expenditures to 3% over what has been appropriated by parliament, without parliamentary approval (Section 12). Parliament’s ability to conduct substantive oversight of government spending is enhanced by the Act requiring quarterly spending reports from ministries, including value-for-money information (Section 17). The PBO issues several reports to the parliament each year, among them local revenue analysis reports, foreign inflows analyses, and expenditure reports.

According to Kirasso, parliament’s role in the budget process has been greatly strengthened since the Act became effective. Parliament now receives
regular three-year revenue and expenditure projections, and the Budget Committee, with expert assistance of the PBO, reports any inconsistencies to parliament. Second, policy statements from ministries are now provided on time, by June 30, which allows parliamentary committees to adequately scrutinize them. These policy statements have been made easier to understand since the PBO, in partnership with the Ministry of Finance, standardized the policy statement format. With assistance from PBO economists, committees review the policy statements. The statements must include value-for-money information, not just spending data, and report on the extent to which sectoral targets were achieved.

The 2001 Budget Act also requires that the government submit a certificate of financial implications with every bill it presents to parliament. The PBO verifies the accuracy of these certificates and advises on the implications for the budget for that financial year. This provision has led to the government being forced to delay several new initiatives until the following budget year after the PBO determined that there were not funds for them in the current budget. The Budget Act requires that government keep supplementary expenditures to within 3% of what is budgeted, and the PBO has worked with the ministries to ensure that these limits are adhered to.
The PBO is headed by a director. There are positions for about 27 experts, but at times these some of positions have not been filled because of budget constraints. Professional staff members are economists with expertise in macroeconomics, data analysis, fiscal policy, and tax policy. Staff was drawn primarily from the Ministry of Finance, the Uganda Revenue Authority, the Central Bank, and the Uganda Bureau of Statistics.

For local revenue analysis, the PBO analyzes the monthly reports that the Uganda Revenue Authority submits to the Budget Committee and the PBO, identifying whether revenue collections were on target, reasons for shortfalls (if any), and whether revenue targets should be adjusted. Using information from these reports, the PBO has proposed to parliament ways to widen the tax base and suggested possible methods to reduce taxes that would increase consumption.  

These private member bills are only the most visible examples of the greater lawmaking powers of the parliament in Uganda, but perhaps a better indicator of the change may be the numbers of executive bills parliamentary committees amended significantly, beginning in the Sixth Parliament.

Interviewees conducting an evaluation of the SUNY technical assistance project to the Uganda Parliament in 2002 “... spoke of Parliament ‘defacing’ or ‘mutilating’ bills they deem ‘inappropriate.’ This, according to POUs [Parliament of Uganda’s] Chief Legislative Counsel, in essence refers to the concerned Bills being substantially amended, to radically change the original content.”109 Stronger, better equipped, more effective committees were making major changes to bills introduced by the executive.

It is also significant, from a representative government perspective, that several outside groups and organizations influenced the amendments of several of these bills. The Uganda Land Alliance, for example, was invited to work with the Sessional Committee on Natural Resources on the Land Act and contributed to the Land Act Amendment Bill. Amendments to this legislation strengthened rights of women to own land.110 In 2001, the Committee on Legal and Parliamentary Affairs made amendments to the Suppression of Terrorism Bill, based party on testimony from several NGOs, among them the Uganda Joint

110 In some African nations women lack the right to own land or are unaware of their land rights. It is not uncommon for widows to learn that their husband’s brothers have taken or sold the land on which they are living. For a discussion of this matter see Mary Kimani, “Africa: Women Struggle to Secure Land Rights,” Comment posted on May 9, 2008, http://allafrica.com/stories/200805091091.ht.
Christian Council (UJCC), the Africa Women’s Leadership Institute (Akina Mama Wa Africa), and several other NGOs.\textsuperscript{111}

\textbf{Oversight in the Sixth Parliament}

One of a parliament’s fundamental powers is its power of oversight, or “the monitoring of executive activities for efficiency, probity, transparency and fidelity, to ensure that funds appropriated are used legally, effectively, and for the purposes for which they were intended.”\textsuperscript{112} The Sixth Parliament, to a greater extent than any parliament before or since, was able to utilize its powers to oversee the executive, which included using its censure powers.\textsuperscript{113} Select committees of the Sixth Parliament conducted nine investigations of government officials who had been accused of corruption, and two of them led to the censure of the Minister for State for Education and to the resignation of the Minister of State for Privatisation.

\textsuperscript{111} Hirschmann and Nyago, 17.
\textsuperscript{112} Johnson and Nakamura, Orientation Handbook for Members of Parliaments, 23.
\textsuperscript{113} These powers are defined in the constitution, as follows. 118. (1) Parliament may, by resolution supported by more than half of all members of Parliament, pass a vote of censure against a Minister on any of the following grounds - abuse of office or willful violation of the oath of allegiance or oath of office; misconduct or misbehaviour; physical or mental incapacity, namely, that he or she is incapable of performing the functions of his or her office by reason of physical or mental incapacity mismanagement; or incompetence
(2) Upon a vote of censure being passed against a Minister, the President shall, unless the Minister resigns his or her office, take appropriate action in the matter.
At times even the threat of sanctions which might result from parliamentary investigations was sufficient to compel the executive to act. In one instance, President Museveni removed the Minister of Agriculture from her ministerial position because of a parliamentary investigation (the minister was also the Vice President of Uganda). The President’s own brother had to be removed from an important office because of parliamentary inquiries into his actions. It is extraordinary that parliament was able to cause the sacking of such high-level ministers and advisors, especially when one considers how earlier Uganda parliaments had been so thoroughly dominated by Milton Obote. NGOs and the press supported the efforts of Ugandan parliamentarians to curtail government corruption, and were concerned when these censures ceased after the Sixth Parliament (see below).

Since the establishment of Museveni’s rule in 1986, military procurement has been one of the key means of providing patronage in Uganda. Beginning in the late 1990s, the Uganda Government began to acquire more sophisticated and expensive military equipment. Much of it was acquired through third parties, and the process “... has been seriously tainted with corruption.” Tangri and Mwenda cite several corrupt arms purchases in the late 1990s, among them

\[114\] Johnson and Nhundu, 32.
Russian helicopter gun ships which never flew, and for which Uganda was overcharged. President Museveni’s brother and commander of the UPDF military in Northern Uganda, Salim Saleh, was involved in the purchase.\footnote{Roger Tangri and Andrew Mwenda, “Military Corruption and Ugandan Policies since the Late 1990s,” \textit{Review of African Political Economy}, 30, no. 98 (December 2003): 539-552.}

The Sixth Parliament did not allow these actions to go unchallenged, and in 2001 established the Select Committee on the Ministry of Defense on Allegations of Mismanagement, Abuse of Office and Corruption in the Ministry of Defence to investigate both procurement procedures and payroll questions. Specific issues investigated were alleged embezzlement of 1.2 billion Uganda shillings, which were to have been spent on troops in the Democratic Republic of the Congo, the purchase of allegedly rotten canned food for the military, and the Russian helicopter gun ships that could not fly.\footnote{Johnson and Nhundu, 32.}\footnote{Tangri and Mwenda, 548.} According to Tangri and Mwenda, these investigations were flawed, and they note that Hon. Winnie Byanyima and Hon. Norbert Mao criticized the composition of the select committee as well as its report, issued in May 2001, for focusing on trivial matters, rather than on the more serious allegations of military corruption.\footnote{Johnson and Nhundu, 32.}

Nevertheless, at no other time in parliament’s history had it actually conducted such investigations into government practices.
Nelson Kasfir describes how the Sixth Parliament successfully forestalled the privatization of the Uganda Commercial Bank, and forced the president’s brother to resign as Presidential Advisor after it was revealed that he was to have become a major stakeholder in the newly privatized bank. Kasfir notes that it was the absence of party discipline that made it possible for MPs to successfully challenge the president on these censure motions. The broad pool of members supporting the censure motion included both those who identified themselves as supporters of the NRM, and those who did not.

**Infrastructure improvements in the Sixth Parliament**

Parliaments must meet certain basic infrastructure requirements if they are to perform effectively, and particularly if they are to have any level of independence. Our indicators of parliamentary independence include the issue of resources at parliament’s disposal, whether and what kinds of allowances and facilities exist for members, and whether and what kind of support-staff is available to parliament. In Uganda, years of oppressive rulers and military governments had marginalized parliament. Staff was minimal, and parliament’s physical plant was in very poor condition. While visiting parliament in 1997, I

---

noted that the facility lacked computers, the library had one or two staff and very few holdings, the roof leaked, and few members had offices. As if to emphasize how marginal the parliament was to the political life of the nation, the Ugandan government actually occupied much of the parliamentary campus.

But, with the Parliamentary Commission now in control of its budget and staffing, and with outside assistance from the Danes, Americans, and others, the Sixth Parliament transformed its infrastructure. Parliamentary office space was expanded, and the Parliamentary Commission was able to convince the executive branch to vacate the North and East Wings of the parliament building which the government had occupied for years (parliament threatened not to debate the budget unless the executive gave the offices back). With control over parliament’s budget, the Parliamentary Commission was able to refurbish the parliament’s physical plant as well as provide offices for all members and sufficient committee rooms. Parliament made major improvements to its library, and established a well-equipped research and training center. Staffing increased as well. In its first round of recruitment, the Parliamentary Commission added 52 new staff to parliament. Over the life of the Sixth Parliament the number of committee clerks increased from seven to 17, one per committee.\textsuperscript{120}

\textsuperscript{120} Wandera Ogalo, 13-16.
Several new professional services and departments were established in the Sixth Parliament, including the Department of Library, Research and Documentation; Legislative Counsel, and the Public Relations and Information Office. Parliament also established its own satellite uplink, and increased salaries for both MPs and staff. In fact, parliamentary staff salaries increased significantly over those of their public service counterparts. Parliament was able to hire the researchers it needed for the new Department of Library, Research and Documentation, despite a government hiring freeze in effect. In 2002 the parliamentary service employed 13 full-time researchers, and the office was equipped with 15 computers and its own server. Through the State University of New York’s Uganda Technical Assistance Project (UPTAP), parliament had established its own Website (www.parliament.go.ug), and was using the services of interns – many of whom later became full-time employees. The Office of Legislative Counsel was established in 1999, and it assisted committees to make major amendments to legislation.

According to Ogalo, the 1997 Administration of Parliament Act made most of these changes possible. “Encouraged by this new set up the American Government through USAID provided internet services, computers etc. for the benefit of Members of Parliament reason being that there was now a body which

---

121 Hirschmann and Nyago, 18.
could manage properties of parliament and to which equipment could be handed. For internet services, they insisted that it could only be provided if they were sure that the parliament would pay the annual rent for it. Since we could now prepare our own budget, we provided for it in the budget and now we have access to information previously unavailable [original punctuation].”  

With control over its own budget, parliament was also able to pay the subscriptions to the international organizations to which it belonged, such as the Commonwealth Parliamentary Association and the Inter-Parliamentary Union. Uganda had often been in arrears on these payments because of insufficient funds, or because the Ministry of Foreign Affairs did not consider them priorities. Without the financial and administrative independence provided through the 1997 Independence of Parliament Act, parliament would have had to negotiate each of these expenditures with the executive.  

Indicators of parliamentary independence

Uganda’s Sixth Parliament made impressive progress along all four indicators of parliamentary independence, both indicators of institutional

122 Wandera Ogalo, p.13  
123 Author’s interview with Hon. Wandera Ogalo, February 28, 2008.
development, and those regarding formal powers. Parliament’s administration and committees became more autonomous than ever before. Unconstrained by party discipline, parliamentary committees began meeting with interest groups and amending executive legislative proposals. With the support of a speaker who had a vision for parliament, committees conducted investigations of corrupt behavior of ministers and censured some of them. Committee chairs drafted and got enacted reform bills giving parliament greater independence from the executive by granting it power over its own staff and budget.

Using its new powers, parliament expanded the numbers of staff, increased staff and member allowances, added to office space, and developed new staff services. The 1995 Constitution granted parliament new powers over the executive (such as the power to censure ministers, and “powers of the high court” for compelling enforcing attendance of witnesses), and parliament added to those powers. Finally, I have shown that the Sixth Parliament made use of its powers to constrain executive discretion.

Development assistance had been delivered at the right moment to train the new staff, and provide it with needed equipment (including its own satellite uplink), and a new library. Control over its own budgets had enabled parliament to refurbish the parliament building, and to provide offices for all members and for staff. Committees were functioning more effectively than at any time in
Uganda’s history, and with an unprecedented level of autonomy. Select committees were being established to investigate corruption and to censure ministers, and the threat of censure was sufficient to cause others to resign. Parliament had sufficient formal lawmaking powers to radically reshape executive bills, and it was using those powers. By every measure, the Sixth Parliament had become a more autonomous institution.

Figure 9, below, presents in summary form the four indicators of parliamentary independence from Chapter 1. Uganda’s Sixth Parliament showed dramatic advances in parliamentary independence along each of the four indicators when compared to Uganda’s pre-reform parliaments.
**Figure 9.** Indicators of Parliamentary Independence: Uganda, Pre-reform Parliaments, 1962-1995, and Sixth Parliament, 1996-2001

<table>
<thead>
<tr>
<th>Characteristics of more independent legislatures</th>
<th>Uganda, Pre-reform Parliaments</th>
<th>Uganda’s Sixth Parliament</th>
</tr>
</thead>
<tbody>
<tr>
<td>Independence of committees and parliamentary administration.</td>
<td>Weak committees, little administrative independence.</td>
<td>Strong committees, amending legislation, passing private member bills, interacting with NGOs. Independent parliamentary commission responsible for parliament budget and staffing.</td>
</tr>
<tr>
<td>Resources, allowances, facilities for members, staff size and specialization.</td>
<td>Few resources, minimal facilities and staff.</td>
<td>Improved and expanded parliamentary facilities, offices for members, larger more professional staff, new library, new research staff, new committee clerks, new budget office and staff, higher pay and benefits for members and staff.</td>
</tr>
<tr>
<td>Use of powers to constrain executive.</td>
<td>Unable to use the few powers it had.</td>
<td>Effectively using powers to build parliamentary autonomy and limit executive discretion. Ministers sacked, committee investigations conducted, amending executive legislation, passing private member legislation expanding parliamentary authority.</td>
</tr>
</tbody>
</table>
Independence of Parliament Triangle

Figure 10, the Independence of Parliament Triangle representing parliamentary independence for Uganda’s Sixth Parliament, shows that locus of power of the decisions made in parliament has shifted when compared to the pre-reform period. The metal ball indicating parliamentary independence over its decisions is much closer to the top of the triangle (independent parliament), because parliament, and especially its committees, now exercise a great deal of authority over the decisions parliament makes. Parliament’s dominant influence over decisions made by the institution is also symbolized by the large font size for the Independent Parliament.

Figure 10. Independence of Parliament Triangle: Uganda’s Sixth Parliament, from 1996 to 2001

Independent Parliament

![Diagram of Independence of Parliament Triangle]

124
Presidential influence over parliamentary decisions is greatly reduced when compared to the pre-reform period, so the metal ball representing decisions made in the parliament has migrated far from the president’s corner. The president’s type font is now smaller than that of the independent parliament. And in Uganda’s no-party Sixth Parliament, parties exercised minimal influence over parliament’s decisions. There was no party apparatus of whips, nor were there party rewards and penalties to enforce party discipline. Members, not parties, chose committee members and chairs, and committee chairs tended to stay in office for the life of the parliament. Without systems of party discipline in place, President Museveni was forced to utilize more individualized, time consuming and expensive (in terms of his time and effort) methods for enforcing his will over the institution. Parliamentary independence in Uganda was at its zenith.

**Seventh and Eighth Parliaments: Museveni Pushes Back**

Politics, as is well known, is not static. Shifts in power occur, and in this portion of the chapter we shall see how President Museveni responded to the more independent parliament, attempting to enforce his will over independent parliamentarians in an attempt to regain control. The re-establishment of party politics in the Eighth Parliament accelerated the rate at which power moved back.
to the presidency and the NRM. While the trend throughout this period is toward decreasing parliamentary independence, still the greater formal powers, institutional capacities and traditions of parliamentary independence developed in the Sixth Parliament have helped the Uganda Parliament maintain many of the gains it made.

**Seventh Parliament**

Joel Barkan’s description of Ugandan political life in 2005 accurately describes the Museveni administration’s reaction to the growth in democracy of the late 1990s and the beginning of the new century.

“During the last five years, the process of establishing a fledgling democracy has slowed to the point that it is now being reversed, after an extended period of political liberalization which resulted in the strengthening of Parliament, the judiciary, watchdog agencies such as the Inspector General of Government (IGC) and a free media, Uganda has slipped back into a period of neo-patrimonial or “big man” rule. Put simply, the Museveni regime of 2005 increasingly resembles the Moi regime of Kenya at the beginning of the 1990s. It is a regime whose authority rests increasingly on a combination of corruption, patronage, and the use of force, and which seeks to perpetuate itself through the manipulation of transition from single-party to multi-party rule.”  124

Barkan’s statement probably does not adequately portray the resilience of the Uganda Parliament in 2005, or the institutional strength which had been built into parliament. Parliament in 2005 may have been weakened – it was not able to exercise the same independent power it exercised during the Sixth Parliament – but it continued to be a significant political institution. Nevertheless, Uganda’s Seventh (2000-2006) and Eighth (2006-2011) Parliaments are characterized by declining autonomy in response to executive pressure and growing NRM party discipline. Before embarking on a description of the growth of executive and party strength relative to the parliament (the dominant theme for the remainder of this chapter), I describe below some indications of continuing autonomy in Uganda’s Seventh Parliament.

**Indications of Continued Independence in the Seventh Parliament:** Some of the new capacities and powers developed in the Sixth Parliament continued, and were even expanded, during the Seventh. The cadre of parliamentary researchers established by the Sixth Parliament continued to assist committees, accompanying them on field visits, for example, and producing some 170 reports each year. The legislation establishing the new budget process and the PBO passed in 2001, and became operational in 2003 during the Seventh Parliament. Staff retention, which had, not surprisingly, been a problem during the decades of parliamentary instability, improved. The Administration of Parliament Act which had become law early during the Sixth
Parliament established a dedicated parliamentary service, and the Seventh Parliament raised compensation levels for parliamentary staff. The Seventh Parliament also raised MP allowances considerably, though salaries were kept low to avoid public criticism. Salaries in 2005 were still only about US $800 per month, but allowances for travel and constituency expenses were raised to about $3,300 per month. While these allowances were still low, they were higher than those of many other legislators in sub-Saharan Africa.

The parliament’s library and research center had 26 computers for use by MPs; there were 22 clerks (one per committee) out of a total parliamentary staff of 289. MPs passed a constitutional amendment in 2005 granting themselves pensions, and pensions were backdated to 2001. Individual staffing was still minimal (generally one administrative staff person per member) and a constituency fund of some $5,500 per year, while far from adequate, was a positive step and did contribute toward constituent expenses.¹²⁵

Even as it was becoming increasingly difficult for MPs to maintain an autonomous stand on issues in which the president and the NRM had an interest, some parliamentarians – and occasionally many parliamentarians – did take

stands contrary to the national leaders. The Uganda Parliament’s declaration of Northern Uganda as a disaster area was perhaps the most dramatic such event during the Seventh Parliament, and the existence of the Parliamentary Advocacy Forum, and its challenges to the executive, was another.

The Policy Advocacy Forum (PAFO) was a group of reform-minded MPs in the Seventh Parliament, a number of them having served in the Sixth Parliament, who were interested in the parliament continuing to function as a house of real debate and policy-making – an institution with some independence. PAFO members generally supported the return to multi-party democracy in Uganda, and opposed the constitutional amendment lifting the two-term limit (10 years) for presidents. In an interview, a member of the Seventh Parliament described the high quality of the members of PAFO, some of whom had led reforms made in the Sixth Parliament and had served in the Parliamentary Commission. Because they were perceived to be a threat to the authority of the president and the National Resistance Movement, PAFO meetings of sitting MPs were routinely broken up by police, and PAFO members were beaten by NRM supporters, but they refused to be disbanded.¹²⁶

PAFO parliament members and their supporters were also targeted by their constituents, many of whom had been made to understand that development funds for their constituency were tied to presidential support; constituents therefore feared that they would lose these funds if their MP supported PAFO. Many Ugandans were genuinely grateful for the peace Uganda was at long last enjoying under Museveni, and feared that challenges to the President, even on issues of policy, might endanger the peace in the nation.  

A dramatic example of the Seventh Parliament asserting its autonomy was its passing a motion declaring Northern Uganda a disaster area. An 18-year war had raged in the North, leaving countless victims and a humanitarian disaster in its wake. The government had been fighting, unsuccessfully, to end this war, yet opposed the level of outside intervention parliament’s motion would bring. Parliament nevertheless unanimously passed a motion declaring the North a disaster area in February 2004. Supporters of the motion, “... wanted it to be declared a humanitarian disaster so that it could unlock funding at a higher level to be able to assist, bring in the international community...” and really

Parliamentarians withstood government efforts to get them to retract the motion the following day, when representatives from more than 30 donor agencies wishing to provide greater aid to the North attended the session in parliament to show their support for parliament and for the resolution. Passing this resolution made it easier for donors to support NGOs in Northern Uganda providing humanitarian assistance. (Donors fund these operations primarily through NGOs, not through the government). 

**Museveni Pushes Back:** While acknowledging that Uganda’s Seventh Parliament was a vibrant institution when compared to the feeble parliaments under Obote, it is evident that from the beginning of this decade the general shift in power has been away from an independent parliament, and toward a strong president and a dominant NRM. The Sixth Parliament had not yet reached the end of its term and President Museveni was challenging its reformers, attempting to restore the president’s and the NRM’s dominance. Museveni replaced Speaker Wapakhabulo with a less independent Speaker, and before the end of the Sixth Parliament the censures of ministers had ceased. Museveni, together with the NRM used a variety of rewards and penalties to thwart parliamentary independence, and one of their first was to ensure that the

---

129 Author’s interview with Ugandan MPs, February 29, 2008.
130 Author’s interview with Ugandan MPs, February 29, 2008.
political reformers, who had been so successful in making the Sixth Parliament so independent, did not return to the Seventh.

In interviews, reformers from the Sixth and Seventh Parliaments described ways the executive attempted (usually successfully) to keep legislators who had challenged the NRM from being re-elected. One reform leader related how the government put forward, endorsed, and financed a challenger to compete against him. Working through local officials and the military, the government warned that there would be trouble in the district if it were to elect anyone other than the NRM’s chosen candidate. A reformer from the Seventh Parliament described a media smear campaign – making numerous allegations about the candidate’s personal life – designed to ensure that the incumbent not be re-elected. At the same time, the MPs constituency was warned that it would be punished if the electorate returned the MP to office.

Given President Museveni’s popularity and support in much of the country, simply informing the electorate through local officials that a candidate had lost the president’s favor could be sufficient to ensure that he or she was not re-elected. In some cases, the president’s office sent its own staff as well as soldiers to campaign for the president’s candidate, and to warn local

131 Author’s interview with Ugandan MPs, February 29, 2008.
governments and citizens not to support the candidate opposed by the government. Resident district commissioners were prohibited from nominating candidates the president did not approve of, and were required to nominate those he had selected – even when they did not meet the minimum qualifications for office. If MPs the government did not support succeeded in their bids for re-election, government persecution often continued. In October 2004, for example, Ugandan soldiers arrested and beat four MPs for trying to hold a rally in one of their constituencies in Northern Uganda.

Nelson Kasfir adds that members of the president’s inner circle helped finance compliant MPs in their bid for office. But even when reformers were able to defeat government-supported candidates and get back in office, they “were chastened and unable to mobilize their earlier enthusiasm for opposing executive initiatives, particularly when MPs discovered that those opponents who lost elections were blocked from all government appointments.” In short, the Museveni Government did its best to ensure that those who had challenged it were banished politically, while it rewarded compliant MPs with minister or assistant minister positions.

132 Author’s interview with Ugandan MP, February 29, 2008.
Because of such pressure, minister censures ceased, and in October 2004, Uganda Debt Network executive director Zie Gariyo criticized the Seventh Parliament. Contrasting the oversight performance of the Seventh Parliament with that of the Sixth, he called the Sixth Parliament “a vibrant crusader against corruption. It indeed censured several cabinet ministers. The Seventh has since 2001 not been as effective, largely because of the low calibre of the legislators and the executive undermining it by appointing almost one third of the MPs into cabinet. . . Uganda has the largest cabinet in sub-Saharan Africa . . .” 135 The combined presidential and NRM pressure on non-compliant MPs, and the benefits to MPs and their constituencies if they conformed to government wishes, was more than most Seventh Parliament MPs could withstand.

Uganda’s Sixth Parliament had taken advantage of its unusual array of constitutional powers to exert its independence and to exercise power over the executive. In responding to this, President Museveni and the NRM attempted to get the Seventh Parliament to surrender several of its powers that made it so strong relative to the executive. According to Andrew Mwenda, President Museveni endeavored to get the parliament to relinquish its power to approve the president’s ministerial appointments, as well as section 118 of the constitution, parliament’s power to censure ministers. Mwenda also comments

that Museveni also sought the power to dissolve parliament – a power the Kenyan president enjoys, and which Kenyan reformers have been trying for several years to rescind.

To its credit, the Seventh Parliament rejected these proposals, but it did agree to end the constitutional two-term limit for the president. This constitutional change allowed President Museveni to run for president in 2006, and he has already declared that he will be a candidate again in 2011. Should Museveni run, win the 2011 election and complete his term, his rule will have continued from 1986 to 2016 and Uganda will have had only two elected presidents over 54 years of independence. Museveni and the NRM were criticized for the way they garnered support for the constitutional amendment abolishing presidential term limits. According to BBC News, “... the government has started to use cash as a means of opening the door for President Museveni to stand again. MPs who openly supported the move were recently given close to US $3000. The official line is that the money was to enable the MPs to consult with their constituents on the white paper. However, many feel it is simply a bribe to ensure that the required two-thirds of MPs’ vote to lift the two-term limit.”

136 Mwenda, 24.
There is also concern with the continuation of special interest seats for the military because under the multi-party system all military representatives are obliged to vote with their Commander-in-Chief and Leader of the NRM, President Museveni. Essentially, they become constitutionally mandated NRM MPs. This, at least theoretically, was less of a problem when the parliament was a no-party parliament.

In July 2005, the Seventh Parliament passed the constitutional amendment ending the two-term limit on Ugandan presidents, and again making parliament a multi-party institution. Related changes in the amendment which impacted on the functioning and the independence of parliament included:

- Establishing the position of leader of the opposition in the parliament (82A),
- Removing the constitutional provision that provided for members of standing committees to be elected from among the members of parliament (90). (Parties would now determine who served on what committees),\(^\text{138}\)

\(^{138}\) 2006 Parliamentary Rules state (134:2) that "...parties...shall designate through the Whips, Membership to Committees on the basis of Party representation in the House. (3)...Membership of Committees shall reflect proportional Membership in the House. (5) Parties have powers to withdraw and relocate Members in individual Committees. (6) the Party or Organization in Government shall designate the Chairperson and Deputy Chairperson of each Standing Committee of Parliament...\(^{(7)}\)
• Establishing the position of prime minister, who would serve as leader of
government business in parliament (108A). The prime minister would be
selected by the president (majority approval in parliament required) and
could be removed by the president.

Even before the Seventh Parliament passed the constitutional amendment, it
was becoming increasingly evident that the Eighth Parliament would be a multi-
party parliament. Members began to coalesce into pro-NRM and anti-NRM
factions, executive influence over parliament grew, and parliamentary autonomy
declined. One MP related,

"I think the establishment realized that we are going to have parties. And
I think control of parliament again came back to the executive. So
although officially we had a no-party system, you started having
individuals identified on the basis of pro-establishment, meaning, pro-
ruling government, and therefore people would coalesce around those
who believed in that government.

Whether or not MPs supported NRM positions became irrelevant, as
political survival became their dominant concern.

"Eventually those members started pushing government policy even
where they didn't believe it was right. Because you started to realize,
when you have a very powerful president like President Museveni, you

Without prejudice to sub-rule (6), Standing Committees on Public Accounts, Local Government
Accounts, Government Assurances and Commissions, Statutory Authorities and State Enterprises shall
be chaired and deputized by Members designated by the Official Opposition Party or Organization."
start tying your fortunes to the big chief. And you start thinking that if I
don’t tie my fortune to the big chief, maybe my political career will be
over.”

The MP revealed later in that interview that, “MPs who had not left the
NRM, but were perceived to be disloyal, were squeezed out in party
primaries.”

### Eighth Parliament

Uganda’s current (Eighth) Parliament (2006-2011) is comprised of 215
Constituency Representatives, 79 District Woman Representatives, ten Uganda
People's Defence Forces Representatives, five Representatives of the Youth, five
Representatives of Persons with Disabilities, five Representatives of Workers, and
13 Ex-officio Members. The Eighth Parliament is the third since the elections of
1996, making this the longest period of electoral democracy in Uganda’s troubled
history. It is the first multi-party parliament since the restoration of democracy
in 1996.

**Election:** The European Union Election Observation Mission to Uganda
for the 2006 elections gave the government a mixed report, noting that it

---

139 Author’s interview with Ugandan MP, February 29, 2008.
“showed improvement” when compared to previous elections, but that it fell short of international standards for democratic elections.\textsuperscript{140} The full report specifies several shortcomings in the election, among them the lack of a level playing field on which the election campaign was played out. \textsuperscript{141} Given the government’s outright persecution of opposition, including imprisoning the leading opposition candidate, the report’s criticism seems muted.

In Uganda’s 2006 presidential and parliamentary elections, the first multi-party elections since the NRM had taken power twenty years earlier, Dr. Kizza Besigye, Chairman of the Forum for Democratic Change (FDC) was President Museveni’s chief challenger. Besigye, Museveni’s physician when the two fought together to overthrow former President Obote, returned from exile in October 2005 to challenge Museveni for the presidency. A few weeks after his return to Uganda he was charged by the government with treason, terrorism and rape, and was jailed in November 2006. He was finally released on bail in January 2006, and in February the court determined to adjourn trial proceedings and allowed him to participate in the elections that month. Imprisoned for most of the campaign and allowed only a few weeks of freedom throughout this period,

Besigye received 37% of the vote, to Museveni’s 59%. Human Rights Watch recorded several violations during the campaign, mostly by the government and military against the opposition, including imprisoning opposition campaigners on bogus charges, threatening campaigners, and raiding and breaking up meetings, etc.

Final parliamentary results gave the NRM a total of 206 seats, and Besigye’s Forum for Democratic Change 37 seats. Uganda’s older parties, the UPC and the DP won nine and eight seats respectively, and independents won 37 seats. Uganda reserves seats for special interest groups, which include the military, and Uganda People’s Defence Force won 10 seats. Winning 206 of 309 seats gave the NRM a two-thirds majority, and with the addition of the 10 seats reserved for the Uganda People’s Defence Forces, Museveni can count on 70% support in parliament.

**Crossing the floor - in advance** We saw in Chapter Two how Presidents Obote and Kenyatta in the 1960s were able to win opposition MPs to

---


their side by rewarding those who crossed the floor to join the governing party. The issue is more complex in Uganda today, but several independent and non-NRM members are promising to cross the floor in 2011, throwing their support behind President Museveni and the NRM in advance of their promised move. Article 83 of the Constitution states that if a candidate switches parties while in office, or is appointed a public officer, that person can not retain his or her seat [(83)(g)(h)(i)]. But Article 83 does not prohibit MPs from announcing their support for another party’s candidate for president, which is exactly what several opposition MPs are doing. Sensing which way the political winds are blowing, some Uganda opposition members have already announced that they will support Museveni for a fourth presidential term in 2011. And some of these are leaders of opposition parties. FDC MP Alex Onzima, Vice Chairperson of the Forum for Democratic Change in charge of the North, announced in June 2008 that he would support and campaign for President Museveni in 2011. “At one point, Onzima told President Yoweri Museveni that should he play his political cards cunningly and grant them the district status, then he [Onzima] would throw all his support behind him. Museveni granted their wish, but it has not yet taken off due to wrangles over where the headquarters of the Maracha-Terego district should be.”144

President Museveni and the NRM have also been able to add to their overwhelming margins in parliament by getting independent MPs to support government proposals on the floor. In 2007 the government signed a memorandum of understanding with independent members who leaned toward the NRM to have them support government proposals and motions on the floor of the House. Museveni has also adopted Obote’s practice of rewarding selected defectors from their parties with ministries. Omara Atubo, who defected from the UPC, was made Minister of Lands, Housing and Urban Development, and Maurice Kagimu Kiwanuka left DP to join the NRM and was made State Minister for Economic Monitoring.  

Party loyalty and member independence: Some degree of loyalty to one’s political party is required in all party-based political systems, with penalties for disloyalty ranging from ejection from the parliament and the party at one extreme, to scolding and mild disapproval at the other. Because of the no-party nature of Uganda’s Sixth, and to a lesser degree, Seventh Parliaments, members had an unusual degree of independence from pressure to conform to party demands, but this is changing rapidly in Uganda’s Eighth Parliament. MPs

elected the members of the standing committees in the Sixth and Seventh non-party parliaments, and members selected committee chairs as well. When Uganda became a party-based parliament in 2006, however, parties became responsible for choosing the members and leaders of parliamentary committees, and party loyalty became an important consideration.

In June 2008, at the mid-term of the Eighth Parliament, the ruling NRM Party appointed new chairpersons and deputies for the 13 sessional committees in parliament. NRM spokespersons stated the new appointments were based on “expertise, loyalty to the party and an agreed on rotation,” and committee memberships were granted based on the principle of “party loyalty, strategic deployment in interest of the party, performance and member’s interest in a particular committee.” An article in The Monitor Online the day after the replacement of committee chairs and members pointedly stated that party loyalty was the fundamental consideration in determining committee chairs and members. “Love and loyalty for party have taken first place ahead of individual competence, it turns out. Shortly after announcing the new changes, the Chief Whip, Ms Kabakumba Matsiko said the appointments were made depending on one's degree of loyalty to the party. 'We selected these people depending on

It appears that in naming new chairs and members to the committees that party loyalty trumped all other considerations. This change has major implications not only for parliamentary autonomy and independence, but also for the quality of the parliament’s work. Turning over committee chairs midway into parliament’s five-year mandate places the parliament at a great institutional disadvantage vis-à-vis the executive branch. For one, it takes time for parliamentary committee chairs and members to become expert in the affairs of their committee, to familiarize themselves with the ministries they must oversee, and to get to know the high-level ministry officials with whom they must deal. Contrast this with the ministries, which rely on professional, long-term staff members already expert in the affairs of their ministry. Committee chairs and members, especially if they can expect to serve only two years, have little time or incentive to try to develop the expertise needed to understand the details of the ministries, to oversee them adequately, or to challenge their proposals.

Emmanuel Dombo, the well-respected chairperson of Uganda’s parliamentary committee on natural resources, wrote a letter to the editor of Uganda’s *New Vision* after learning that he had lost his position as committee chair, apparently believing that his expertise and commitment to protecting the environment had something to do with his losing his job. Dombo states, “I was surprised to learn that the selection was based on party loyalty” and later comments, “We are still analysing the issue of whether being loyal to the party has enhanced democracy.” Dombo believed that one factor behind his removal was “the issue of the proposed Mabira Forest reserve give-away. I have heard that there is a move to change the National Forest Act to empower the sector minister to degazette the forest, which I completely disagree with. My committee preferred to save Mabira Forest reserve and this did not please some people.”

The most recent example of President Museveni’s and NRM dominance over the parliament occurred late in 2008. In October, parliament’s Committee on Commissions, Statutory Authorities and State Enterprises concluded an investigation and reported that the National Social Security Fund had paid Security Minister Amama Mbabazi 11 billion Uganda Shillings for 463 acres of land outside of Kampala, part of it was wetlands. As parliament prepared to

proceed on the matter, President Museveni and the NRM met in caucus and “... determined that the ministers charged had, ‘no case to answer.’ “Government Chief Whip, Kabakumba Masiko, said that the caucus, in its deliberations, agreed that there was no evidence to show that Security Minister, Amama Mbabazi and Finance Minister, Dr. Ezra Suruma influenced the decisions of the NSSF board to purchase the land at Temangalo. Masiko denied media reports that President Yoweri Museveni, during the caucus meeting, directed that MPs who disagree with the party position will be fought in their constituencies and that they must attend all parliamentary proceedings this week without fail.”¹⁴⁹ That same week, parliament approved a motion to absolve the ministers and the NSSF board.

For those concerned with parliamentary independence and parliament’s ability to act as a check on government, these are disturbing developments. Uganda’s Parliament is being weakened, losing its ability to challenge the chief executive, to improve and to make more representative polices, to amend budgets, and to ensure that government programs are carried out honestly and effectively. Reducing committee chair tenure to 2½ years and making it clear to MPs that their selection and tenure depend on party loyalty, and not creativity,

excellence, or the ability to improve the performance of the ministries they oversee, is a proven method of building mediocrity in a legislature.¹⁵⁰

Parliamentary independence during the reform and post-reform period

Uganda’s merit-based no-party system allowed for an unprecedented and unusual level of autonomy in Uganda’s Sixth Parliament; probably more than President Museveni had anticipated. A no-party system, without whips, without party positions on some issues, allowed reformers in the Sixth Parliament to develop an independent parliament, relatively free of the constraints normally imposed by president and party. The Sixth Parliament was endowed with an impressive array of powers, its members were highly educated and several were motivated to strengthen their institution. Dedicated reformers, such as Hon. Dan Ogalo and Hon. Beatrice Kirasso, led the institutional changes to enhance the legislature’s powers. There existed also a free press hungry for news and able to attend and cover both plenary and committee meetings; new interest groups looked to influence policy, and foreign assistance was ready to assist parliament

¹⁵⁰ One reason for the continued weakness of Latin American legislatures vis-à-vis the executive branches in their nations is the tradition of abbreviated terms for legislative committee chairs and staffs. In most Latin American countries, committee chairs tend to serve no more than a year or two, making it very difficult to develop sufficient expertise with which to challenge, and even effectively oversee their executive branches. An extreme example of short-terms for legislative leaders in Latin America was the lower house of the Mexican Congress, where prior to reforms in the late 1990s, the leader of the lower house served a one-month term.
in its development. These combined to encourage the remarkable development and independence the Sixth Parliament enjoyed. Parliament made progress on all four indicators of an independent parliament.

President Museveni and the NRM did not allow parliamentary independence to continue to grow unchecked, however, and were already working to limit parliamentary autonomy before the end of the Sixth Parliament. Using a combination of rewards (ministries, patronage, campaigning for members) and penalties (setting up candidates to displace independent MPs, and financing the hand-picked candidates, using the yellow press to smear politicians’ names) Museveni and the NRM ensured that several independent-minded MPs were not re-elected, and that Uganda’s Seventh Parliament was more submissive to their desires than its Sixth Parliament had been.

Parliamentary independence has declined even more precipitously in the Eighth Parliament than in the Seventh. Just as President Museveni may have been surprised at how parliament under the no-party system was able to express its independence and thwart his wishes, reform-minded MPs who had fought for a multi-party parliament were likely surprised at how the party system actually made it easier for Museveni and the NRM to control the Eighth Parliament.
Museveni and the NRM continue to employ the rewards and penalties they used to manage MPs in the Seventh Parliament. But now that Uganda has a party-based parliament, the NRM’s supermajority determines who sits on and who chairs most committees. And the whipping system in place strengthens party discipline and the system of rewards and penalties for party members.

Nelson Kasfir has rightly noted that the Uganda Parliament’s greater institutional strength has not allowed it to revert to its former weak state: parliament has not gone back to its sycophantic position of the 1960s. Parliamentary committees are today equipped with professional staff; members and staff have access to a good library and to the internet; Uganda’s new budget process allows members to influence the national budget, and they enjoy the services of budget experts; and committees and professional staff have established relationships with interest groups accustomed to working with parliament on policy issues. All of these factors will continue to encourage parliamentarians to play a significant role in policymaking, and, to some degree, in oversight. But developments in the Eighth Parliament indicate that strong party discipline and the ability and willingness of the NRM and the President to manipulate elections, combined with their strategy of buying-out opposition members, do not bode well for parliament’s continued development as an autonomous institution.
Indicators of parliamentary independence

All four indicators of parliamentary independence are moving in the wrong direction in Uganda today. With regard to the first indicator, parliament’s administration and committees are becoming less independent. The switch to a multi-party system, in which the president and the NRM dominate parliament, allows committee chairs to serve relatively short periods, and grants committee chairmanships and memberships for reasons of party loyalty, has cowed the parliament on censure motions. Other factors weakening administrative and committee independence include the scrapping of presidential term limits and President Museveni’s apparent capacity for continuous re-election.

Indicator two deals with parliamentary resources, and the Uganda parliament continues to be a very well-endowed and wealthy institution when compared to most other legislatures in its region. It enjoys a relatively large professional staff, its allowances are generous in comparison with most other African legislatures, and it continues to exercise greater control over its budget than do most African legislatures. Ugandan MPs also have access to a small constituency development fund (which has now increased to around $8,000 per member per year).
What is interesting, however, is a shift from parliament claiming these perquisites to it receiving them as benefits from President Museveni. Unlike in Kenya, where the parliament fought the executive and passed legislation providing for its very large constituency development fund (as we will see in Chapter 4), in Uganda, President Museveni himself promised to provide a constituency development fund for Ugandan MPs. In his June 2005 State of the Union Address to parliament, Museveni informed MPs that he “... had initiated a Constituency Development Fund (CDF) for MPs to assist them to start development projects in their constituencies and to save them from incessant fundraising pressures.” Perhaps in an effort to forestall parliamentary attempts to establish a Kenya-style CDF, Museveni warned MPs that schools, clinics and roads are built by the State, and that it would be illegal for MPs to fundraise.\footnote{M. Olupot and H. Mukasa, “Speaker Museveni gives MPs funds,” \textit{New Vision Online}, June 8, 2005.} It is not likely that Museveni would have favored a multi-party parliament in which opposition MPs had access to their own government funds to develop their constituencies, or to funds raised through churches, mosques, and business people.

Indicator three concerns parliament’s formal powers. Parliament still possesses significant formal powers with which to constrain the executive, but it has ceased expanding those powers. The 1995 Constitution endowed Uganda’s
Parliament with a good deal of authority over the executive: the power of censure, strong committees able to compel ministers to appear, power to compel the provision of documents, powers to conduct investigations, etc. The Sixth Parliament expanded its authority over its own administration and financing, and gained significant new influence both in the budget formulation process and in the oversight of the budget. Parliament’s powers relative to the executive continue to be significant. The Seventh Parliament, however, succumbed to presidential pressure to lift the ban on presidential term limits, and as a result of 2005 reforms the president now appoints a prime minister who is leader of government business in parliament. The legislature did not grant the president authority to dissolve parliament, however, nor did it relinquish its right to approve ministerial appointments. In terms of formal powers, Uganda’s parliament may still be among the most formidable on the African continent.

The fourth indicator of parliamentary independence concerns how effectively the legislature is using its formal powers to constrain the executive. Uganda’s Eighth Parliament is not using its powers to constrain the executive nearly as aggressively as did the Sixth Parliament. MPs who challenge the executive in Uganda do so at great personal cost. Members I interviewed had their political careers ended for challenging Museveni and the NRM, some were smeared by government, and some have been arrested and beaten. Restoring the party system has made it more difficult to challenge the executive. President
Museveni’s ability to punish and reward MPs, combined with the party discipline in the House, has made it both difficult and dangerous to use the powers parliament possesses to challenge the executive. Indeed, the interests of the president and the dominant NRM party have trumped parliament’s institutional interests.

My expectation is that until NRM dominance ends or the party splits (as Mexico’s Party of the Institutionalized Revolution [PRI] did in the late 1990s and as the African National Congress began to do in 2008, parliament’s contribution to the political vitality of Uganda will decline, and incidences of challenging the president will become yet rarer. A parliament thus constrained provides few opportunities for ambitious MPs to contribute to the political life of their nation or to make a name for themselves in the august house, and a likely result will be poorer quality parliament members. A weaker, dependent parliament, less able to check abuses of power and corruption, will not be able to curtail the growth of a more corrupt political class in Uganda. Government will likely grow less responsive to Ugandans.

The return to multi-party politics has, somewhat counter-intuitively, weakened the parliament and made it a more dependent institution. Parliament’s decisions are based less on professional staff analysis, the desires of
individual members, and the work of the committees: they are becoming more about the desires of President Museveni and the NRM. The combination of a strong president and a strong party with both numerical dominance and the willingness and ability to exercise considerable control over its members, have reduced parliamentary independence.

Figure 11, below, presents in summary form the four indicators of parliamentary independence from Chapter 1. Uganda’s Sixth Parliament showed dramatic advances in parliamentary independence along each of the four indicators when compared to Uganda’s pre-reform parliaments. The Seventh, and especially Eighth Parliaments, however, show declines.
**Figure 11.** Indicators of Parliamentary Independence: Uganda, Pre-reform; Sixth Parliament; Seventh and Eighth Parliaments

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Independence of committees and parliamentary administration.</td>
<td>Weak committees, little administrative independence.</td>
<td>Strong committees, amending legislation, passing private member bills, interacting with NGOs. Independent parliamentary commission responsible for parliament’s budget and staffing.</td>
<td>Committees still strong relative to many in Africa. But growing NRM dominance over committees and parliament administration.</td>
</tr>
<tr>
<td>Resources, allowances, facilities for members, staff size and specialization.</td>
<td>Few resources, minimal facilities and staff.</td>
<td>Improved and expanded parliamentary facilities, offices for members, larger more professional staff, new library, new research staff, new committee clerks, new budget office and staff, higher pay and benefits for members and staff.</td>
<td>Parliament still well-resourced and professional compared to most African parliaments. Yet, NRM and pres. dominance make it difficult for parliament to assert itself vis-à-vis a dominant party and president.</td>
</tr>
<tr>
<td>Formal powers for restraining executive discretion.</td>
<td>Few powers.</td>
<td>1995 Constitution, Admin. of Parl. Act 1997, Budget Act 2001 provided several new powers, included authority to censure ministers, “powers of the high court” for compelling witness to appear, power to convene and prorogue parliament, approval power over cabinet ministers, new budget process allowing parliament a voice in developing the budget and overseeing its implementation.</td>
<td>Formal powers are no longer expanding, some decline. Parliament lifts ban on presidential term limits. President has a whipping system and a prime minister to see that his programs are enacted.</td>
</tr>
<tr>
<td>Use of powers to constrain executive.</td>
<td>Unable to use the few powers it had.</td>
<td>Effectively using powers to build parliamentary autonomy and limit executive discretion. Ministers fired, committee investigations conducted, amending executive legislation, passing private member legislation, expanding parliamentary authority.</td>
<td>NRM and presidential dominance in parliament make it dangerous to an MP’s political career to use parliament’s powers to challenge the executive. Party loyalty becomes the prime criterion for longevity in office. NRM ignores committee investigation against an NRM leader.</td>
</tr>
</tbody>
</table>
Independence of Parliament Triangle

The Independence of Parliament Triangle below represents the Seventh and Eighth Parliament. When compared to the triangle representing Uganda’s Sixth Parliament, one sees that the metal ball representing parliamentary decisions has moved a good distance toward the bottom of the triangle, and has shifted in the direction of parties as well. Uganda’s Eighth, party-based, Parliament, made parties (which did not put up candidates for the Sixth Parliament) much more significant players. The dominant NRM party has become a means through which President Museveni is able to get the parliament to do his will.

Figure 12. Independence of Parliament Triangle: Uganda’s Seventh and Eighth Parliaments, from 2001 to 2008
The independent parliament’s magnet has weakened relative to those of the other two actors, but it is important to note that the independent parliament still has a voice in many of the decisions the body makes; it has not regressed to the rubber stamp status of Obote’s late 1960s parliament. Yet President Museveni exercises the greatest influence over decisions made in the Eighth, and this is represented by the metal decision-ball being placed closest to the president’s magnet, and by the large font size. Second in terms of influence are parties, represented by the second-largest font, and the second-closest proximity to the decision-ball. Significantly, the combination of a strong president and a dominant party moves the decision-ball closest to the bottom of the triangle, pulling power from the independent parliament.

As already noted, Uganda’s parliament continues to possess significant formal powers, an able workforce, and a large budget (by regional standards). Committees are active, they meet with interest groups and amend legislation, and they continue to have the legal and professional capacity to play significant roles in the budget process. But while parliament’s institutional strengths and capacities mean that the legislature continues to exercise some independence, the trend is toward a weaker, more submissive parliament.
CHAPTER 4-THE KENYA PARLIAMENT SINCE THE REFORMS

1998 - 2008

Introduction

This chapter describes the remarkable transformation of the Kenya Parliament in the period between 1998 and 2008. During this time, parliament’s accretion of resources, independence, and power has been sufficiently dramatic to lead to a backlash by citizens, disgusted with what they consider the greed of MPs. This chapter records these changes, documenting the transformation of parliament from a rubber stamp institution under President Moi to what it is today; one of the strongest and most independent in Africa. As in Chapter Three for Uganda, Chapter Four will use the four criteria for an independent parliament to help to determine the level of autonomy of the Kenya’s Eighth (1998-2002), Ninth (2003-2007), and Tenth (2008- ) Parliaments. And, also as in Chapter Three, material for this chapter is taken from authors cited, but some is based on my observations while working in Kenya over a period of years, and much of it is quoted directly from interviews current and former parliament members.

152 I am not adding an end date on Kenya’s parliament for two reasons. First, Kenyan presidents are empowered to dissolve the parliament, so, while parliament’s mandate is likely to be five years, it is not certain. Second, it is possible that the coalition NPU-ODM government will not survive the normal five-year mandate, and new elections might need to be held prior to 2012.
The following overview of some of the political developments in Kenya over this period will provide a backdrop for the in-depth discussion of parliamentary independence that follows.

**Eighth Parliament:** The 1997 elections were the second multi-party elections since parliament passed the 1991 constitutional amendment making Kenya a multi-party state, but it was not until the third election after the restoration of multi-party politics (2002) that opposition candidates won the parliament and the presidency. Kenya’s growing opposition parties, which had failed to unite for the elections in 1992, were again divided for the 1997 election. President Moi once more won the presidency, actually increasing his percentage of votes from 37% in 1992 to 40% in 1997. KANU also narrowly clung to its majority in parliament, winning 107 of 210 seats (51%).

Twelve nominated members also serve in Kenya’s national assembly. Prior to the Eighth Parliament, the president selected all twelve nominated members. But one of the important inter-party reforms negotiated by the IPPG in 1997 (see Chapter Two) was that half of the twelve were now allocated to the opposition, according

---

to individual party strength. While this addition of opposition members did
increase their numbers in parliament, additional nominated KANU members
enabled KANU to strengthen its majority in parliament. KANU also benefited
from a mal-apportioned electoral system that vastly over-represented KANU,
allowing the party to gain 51% of the seats in parliament while winning just 39%
of the votes. KANU’s willingness and ability to use violence to intimidate
voters and to use government funds to buy their support also affected the
results.

Despite these political victories, however, political power in Kenya was
shifting, and those focused solely on President Moi’s and KANU’s apparent ability
to continue to win both the presidency and parliament were missing some
important political changes. President Moi and KANU did return to power in the
1997 elections, but demand for political change, especially from urban areas,
was growing. Much of civil society, some church organizations, and politically
astute and engaged interest groups began to identify a stronger parliament as
one way to challenge the power of the presidency and KANU.

154 “Increased Independence of Selected Government Institutions: Parliamentary Strengthening
Program,” USAID Kenya website. Hon. Oloo Aringo, Kenya’s leading parliamentary reformer,
returned to the 9th Parliament in 2003 as one of these nominated members, and it was during
the 9th parliament that he succeeded in getting enacted Parliament’s Constituency Development
Fund, and Parliament established both the budget committee, and a parliamentary budget office.
155 See Institute for Education in Democracy pamphlet, “Electoral Systems: Majoritarian and
Proportional Systems and Their Impact on Kenya” (no date).
156 Joel D. Barkan & Njuguna Ng’ethe, “Kenya Tries Again, African Ambiguities,” Journal of
Democracy 9, no.2 (1998).
Hon. Joe Donde, author of controversial banking legislation which passed over government objections in the Eighth Parliament, credits some of this changing mood – and belief that political transformation could occur – to the growing number of independent radio stations in Kenya. FM radio stations proliferated leading up to and following the 1997 elections and nearly all of the stations were vocal critics of government. Whereas in the past, people received their news from government-controlled Kenya Broadcasting Corporation, there were now more than 20 FM radio stations willing to criticize government openly. Political dialogue was becoming more open. By the end of the Eighth Parliament in 2002, the National Assembly had enacted some parliamentary reforms similar to those made in Uganda. Although Kenya had not acquired all of the constitutional power vis-à-vis the executive that the Uganda Parliament enjoyed, it had become the most autonomous parliament in Kenyan history.

**Ninth Parliament:** As 2002 ended, Kenyans and Kenya watchers were treated to an electoral spectacle. The Kenya Africa National Union (KANU), which had ruled Kenya since independence in 1963, was roundly defeated by a coalition of Kenyan opposition parties that had failed to unite in the previous two elections. President Moi was constitutionally prohibited from running for

---

157 Author’s interview with Hon. Joe Donde, February 26, 2008.
Mwai Kibaki, presidential candidate for the Democratic Party (DP) in 1997 (and leader of the National Alliance Party of Kenya, NAK, in 2002) and Raila Odinga, presidential candidate for the National Development Party (NDP) in 1997 (and leader of the Liberal Democratic Party, LDP, in 2002) had united to form the National Alliance Rainbow Coalition (NARC). Kibaki won the presidency with 63% of the vote, and NARC won the parliament with 59.5% of parliament’s 210 elected seats. A public that had chanted, “Everything is possible, without Moi!” was, at last, without Moi, and a wave of euphoria swept the nation. But while attention was riveted on the presidency, and on a peaceful transition of government on a continent not known for such transitions, there was another important democratic development under way: the growth of an independent parliament.

The NARC coalition survived until 2005, when the Kibaki and Raila factions divided over a 2005 constitutional referendum which would have consolidated greater powers in the presidency (NAK, for; LDP, against). Prior to the 2002 election, LDP had proposed that executive power in Kenya be shared between a president and a prime minister, anticipating that Kibaki (NAK) would become president, and Raila (LDP) prime minister. But the draft constitution President
Kibaki put before the voters for the constitutional referendum did not provide for the prime minister position. Raila and the LDP opposed the draft constitution, which was defeated 58% to 42%.

With the referendum defeated, President Kibaki expelled LDP members from government and they formed a new opposition party, the Orange Democratic Movement, or ODM. Remaining NARC members, those who continued to support President Kibaki, formed NARC-Kenya. Although the NARC coalition had had a comfortable majority in parliament, divisions within the coalition kept it from acting as a unified force even before the 2005 split. With the coalition broken, there was even less unity during the final two years of the Ninth Parliament than there had been previously. Parliament, however, was playing an independent and increasingly influential role in Kenyan politics.

**Tenth Parliament:** When running for president in 2002, Mwai Kibaki had promised to be a one-term president. He appeared to have forgotten his promise, and ran again in 2007, this time as the candidate for the Party of National Unity (PNU). If one needed any more indication that Kenyan politics is more about individuals than about political parties with ideological bases and platforms, in 2007 the PNU included among its supporters former President Moi (Kibaki had been Moi’s Vice President in the 1980s), and former KANU presidential contender Uhuru Kenyatta. The KANU party also supported Kibaki.
Raila Odinga, leader of the ODM, was Kibaki’s leading challenger. But the ODM was weakened when a faction led by Kalonzo Musyoka split from ODM to form ODM-Kenya in August 2007. The election for president was very close, and the Electoral Commission of Kenya declared Kibaki the winner with 46% of the vote, and Raila with 44%. Musyoka won 9% of the vote, and Kibaki named him Vice President within days after the vote.

Riots erupted around the country as disappointed citizens claimed that President Kibaki had stolen the election. The situation quickly degenerated into tribal clashes, with more than 500,000 Kenyans driven from their homes and 1,500 killed.\textsuperscript{158} Kofi Annan, former Secretary-General of the United Nations, traveled to Kenya and, after weeks of negotiating, brokered a deal between Kibaki and Raila that essentially put in place the power-sharing agreement under which Raila had supported Kibaki’s run for the presidency in 2002. Under the agreement, Kibaki remained as president, Raila became prime minister, and ministries were split between the two parties. ODM won a narrow majority in the parliament, and elected an ODM speaker, Hon Kenneth Otiato Marende.

One might question whether it is possible for parliament to practice any real oversight over a governing coalition comprising the former government and

the former opposition. Yet the lack of party discipline in PNU, and the independence of the members of the Kenya Parliament generally, have ensured that parliament continues to practice oversight.

Constitutional weaknesses at the beginning of the Eighth Parliament

Chapter Three begins with a listing of the impressive array of powers granted the Uganda Parliament under the 1995 Constitution, and this chapter includes a similar description of Kenya’s parliamentary powers. But unlike Uganda, whose adoption of a new constitution in 1995 was in some ways the initiation of the reform period, Kenya has not adopted a new constitution since independence. Instead, Presidents Kenyatta and Moi had the national assembly amend the constitution dozens of times to concentrate more and more state power in the Office of the President. The independence of all other state institutions – the courts, Attorney General, the Kenya Electoral Commission, local governments, the public service, and the parliament – were progressively eroded by what became known as the “Imperial Presidency” of Kenya.  

159 This term for the Kenyan Presidency is commonly used by Hon. Peter Oloo Aringo, which he applied to both the Kenyatta and Moi presidencies.
The 1991 constitutional amendment restoring multi-party democracy in Kenya was the first step toward redressing the long decline in parliamentary independence in Kenya, but Kenya’s National Assembly at the beginning of the Eighth Parliament was still a very weak institution. The assembly’s formal powers were much less robust than those of Uganda’s Parliament. Kenya’s constitutional reform process – with several dramatic fits and starts – has been underway for nearly a decade and a half. Several of the reforms envisioned in draft proposals would reduce the president’s power and increase parliament’s, but a new constitution has not yet been adopted. This chapter will detail some important constitutional changes made during the reform period which have enhanced parliament’s independence and power. Before doing so, however, I want to compare some of the formal powers of the Kenya and Uganda Parliaments.

One fundamental distinction between the Kenyan and Uganda Parliaments is the softer separation of powers between the executive and legislative branches in Kenya. According to Section 30, the parliament of Kenya consists “of the President and the National Assembly.” The vast majority of members of the National Assembly (212) are elected by their single-member district constituencies (Sec. 34), but the President appoints twelve “nominated”

\[160\] While National Assembly is the technically correct term, most Kenyans use the word “parliament” when speaking of the National Assembly. This paper uses both.
members to parliament. These (since the IPPG reforms of 1997) are chosen by
the parties according to the proportion of their numbers in parliament (Sec 33).
Practically, this means that the president, as head of his party, chooses the
nominated members for his party. Previously, the president had the authority to
appoint all twelve nominated members.

Owing to their common Commonwealth heritage, the Kenya Assembly’s
budget powers are limited in much the same way as those of the Uganda
Parliament. The National Assembly may only proceed on financial bills if the
executive branch has initiated them. The assembly has the power to pass (or,
theoretically, not pass) the financial bill, or to make reductions in spending or
taxing (Sec. 48). It may not increase spending. The assembly is empowered to
establish and regulate committees, but, unlike the Uganda constitution, Kenya’s
constitution is silent as to the powers and makeup of committees (Sec. 56). We
will see in this chapter that the national assembly’s establishing departmental
committees has been of fundamental importance to the growth of its power and
effectiveness.

The constitution grants Kenya’s president extensive powers over the
national assembly. As in the House of Commons in the U.K., Kenya’s chief
executive is both a member of parliament, representing a specific constituency,
and the leader of the nation. But unlike in the U.K., candidates for president
must run for two offices simultaneously, both for his or her parliamentary seat in
the constituency, and nationwide as a candidate for president. It is possible that
a candidate could win the presidency, but not the parliamentary seat, which
should then disqualify him or her for the presidency. Section 52 of the
Constitution states that the president may address the national assembly “. . . at
any time he thinks fit to do so” (52:a). He or she need not ask permission of the
House. In addition, as Head of the Government and as a member of the national
assembly, he is entitled “to attend all meetings of the Assembly and to take part
in all proceedings thereof, and to vote on any question before the Assembly”
(52:b).

Hon. Oloo Aringo, the leading parliamentary reformer in Kenya’s Eighth
and Ninth Parliaments, tried valiantly for several years to repeal Sections 58 and
59 of the constitution. Section 58 gives the president the exclusive power to call
parliament into session at the place and “at such time as the President may
appoint.” The reader will remember that if a third of the members of the
Uganda Parliament request that the speaker call parliament into session, then
the speaker must do so within 21 days. This is in contrast to Kenya where,
during the 2008 tribal clashes that following Kenya’s flawed December 2007
national elections, newly elected MPs stood by in frustration unable to weigh in
on peace negotiations because they could not call themselves into session.
President Kibaki refused to convene the parliament until after he and Hon. Raila
had reached a power-sharing agreement. It was only then that he convened parliament to approve the agreement.

Section 59 gives the president the exclusive power to prorogue (call parliament out of session) or to dissolve parliament at any time. This same section gives the assembly the power to declare that it has no confidence in the government. While this might appear to be a significant legislative power, the section further states that once the national assembly passes a resolution of no-confidence in the president, then the president has the option of either resigning from his office or dissolving parliament. Obviously, a parliament thus constrained would not be likely to pass a resolution of no-confidence in the president, given the likelihood that the President would respond by dissolving parliament. Unlike the Uganda Parliament, Kenya’s National Assembly does not have the power to approve ministers. Ministers are appointed by the president and are not subject to parliamentary concurrence.

**Changes to the Eighth Parliament**

Having considered some of the constitutional constraints on parliamentary independence and power in Kenya, we next examine several reforms made during the Eighth, Ninth, and Tenth Parliaments that helped strengthen the institution.
Our first indicators of a more independent parliament are independent committees and parliamentary administration, and Kenya’s Eighth Parliament made dramatic advances on both of these fronts. Donors attempting to help strengthen parliaments often focus on improving their institutional capacity – training members and professional staff, improving equipment and facilities, etc. – but may pay little attention, or have little ability to impact, some of the more fundamental and important issues of parliamentary independence. But unless parliaments are empowered to establish their own budgets, and are financially and administratively responsible for their staffing and operations, the benefits of such capacity-building donor efforts are likely to be temporary. And in nations where the executive branch, rather than the legislative, controls the parliament’s budget and staffing, it will be very difficult for that parliament to develop any significant level of autonomy.161

Like the Uganda Parliament prior to enacting the Administration of Parliament Act in 1997 (and most other parliaments on the continent), the Kenya

Parliament was both financially and administratively dependent on the executive. In Chapter 2 we noted parliament’s unsuccessful attempts to establish an independent parliamentary service commission in the 1970’s. When it came to its budget and staffing, it was, essentially, treated as a department of government. Parliament requested its funding from the Finance Ministry as did government ministries, and, as was true for the ministries, the Finance Ministry provided the funding it deemed appropriate. Parliamentary staff was under the authority of the Public Service Commission and could be transferred to other government ministries, as might any other government staff.

The author moved to Kenya in August 2000 and was regularly in the Kenya Parliament, observing its facilities and operations and meeting with members and staff. Staff quality was below that of the staff of the Ministry of Finance, and parliamentary facilities were in poor condition. There were few computers in parliament, no parliamentary communications network, and only a few computers had dial-up access to the internet. The poor quality of the Kenyan phone system made the service notoriously slow and unreliable; it was practically unusable. The parliamentary library was tiny, messy, poorly staffed, and was nearly impossible to use. In reality, it was a small reading room for members to peruse newspapers and magazines. Members had neither offices nor staff, and committee rooms were inadequate for the number of committees and the demand for their use. The Kenya Parliament suffered from the range of
weaknesses Thomas Carothers describes in *Aiding Democracy Abroad*. “In almost all countries coming out of authoritarian or totalitarian rule, national legislatures are extremely weak. They are usually subordinate to the executive branch; poorly funded, equipped and staffed; lacking law-drafting capacity and political experience; and enjoying only minimal public respect.”

Kenyan MPs were poorly paid, rendering them especially vulnerable to being compromised by government patronage. Government ministries are a rich source of patronage which African presidents use to keep parliaments compliant, and in Kenya’s Eighth Parliament, 73 of the 224 members (approximately 1/3) were ministers or assistant ministers. Ministers and assistant ministers have access to the public coffers for funding for rewarding their constituents, and are able to steer development projects to their districts. These ministers and assistant ministers comprise the Kenyan Government, and it is exceedingly rare for them not to support the wishes of the president in their role as members of parliament. In many cases even the hope of becoming a minister or assistant minister is sufficient incentive to keep MPs compliant with the president or the government.

\[\text{Carothers, 178.} \]
\[\text{Gitau, 57.} \]
Kenyan presidents, as presidents in other patronage cultures, have additional tools at their disposal for ensuring compliant legislators. Backbenchers, whose lack of access to state resources for their constituencies puts them at a major disadvantage in re-election campaigns, may receive cash from the chief executive. Members use the cash to contribute to public works projects such as schools, clinics, roads, building repairs, etc. But they also use the cash to contribute to specific needs of constituents – to pay for school fees, coffins, medical expenses, etc. – expenses to which Kenyan constituents expect their MPs to contribute.\footnote{How severe is this citizen demand for funds from their MPs? Kenya Parliament Speaker Hon. Ole Kaparo wrote in 2002, "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 taken care of by the Government. Originally, \textit{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 \textit{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 still went ahead to humiliate them at the polls. The \textit{harambee} spirit in the form it is practiced at the moment is simply unsustainable." From Johnson, Nhundu, et. al., \textit{SADC MP Orientation Manual}, 2003, 9.} The cash, of course, comes with strings attached; MPs are expected to support the positions and desires of the president and his party in the assembly. President Moi would reward compliant MPs with cash for use in their districts, and at times would provide cash in exchange for votes. One MP interviewed by the author explained that President Moi would invite MPs to State House at the end of the week to hand out cash for MPs to use over the
weekend. Moi’s staff would place different quantities of cash in different colored bags, to make it easy to know who was getting what.165

Independence of parliament legislation, and parliamentary reformers

Efforts to strengthen the Kenya Parliament, which had earlier been thwarted by Kenya’s dominant chief executives, finally began to take root in Kenya’s Eighth Parliament. Soon after the 1997 elections, reform-minded MPs began attending donor-funded and civil society organized workshops to learn about and to discuss areas in which the country needed to reform, such as the budgetary process, problems in the coffee and tea industries, and problems of pastoralists. These workshops helped to galvanize a group of 55-75 reform-minded MPs from both KANU and from opposition parties who wanted the parliament to begin addressing the problems the executive was not addressing effectively, and who were also willing to challenge the executive to bring about change. Chapter Three addressed the importance of parliamentary reformers to the development of the Uganda Parliament, and Joel Barkan has written on this issue with regard to Kenya and to African parliaments generally.166

The 1992 shift to multi-party politics, although it did not immediately lead to President Moi’s defeat and the end of KANU dominance, did provide an opening for a new kind of MP to come to parliament. Some of the parliament members of the late 1990s had come of age politically as civil society activists involved in organizations such as the Law Society of Kenya and other advocacy CSOs. These included, among others, Mukhisa Kituyi, Paul Muite, James Orengo, Professor Anyang’ Nyong’o and Kiraitu Murungi. This new generation of politicians was critical to bringing about many of the reforms Kenya would undergo over the next decade, but the most effective parliamentary reformer, the one who remained focused on this goal for the longest period, was a senior MP from the Lake Victoria Region, Hon. Peter Oloo Aringo. And while three Ugandan MPs (Hon. Dan Wandera Ogalo, Hon. Isaac Musumba, and Hon. Beatrice Kirasso) were behind the two private member parliamentary reform bills enacted by Uganda’s Sixth Parliament, in Kenya, Oloo Aringo was prime actor behind nearly all of Kenya’s private-member parliamentary reform bills. He has been such a significant figure in changing the Kenya Parliament, in its becoming a more autonomous and powerful institution, that he deserves special mention.

---


Aringo was the author of the Parliamentary Service Commission Act,\textsuperscript{169} coordinated donor efforts in support of its enactment, and led the lobbying effort within parliament to get the bill enacted. The legislation passed, Aringo became Vice Chairman of the Parliamentary Service Commission (PSC) in the Eighth and Ninth Parliaments, and struggled to counter the efforts of the parliament’s speaker (who was chairman of the Commission), who tried to curtail the shift in power from the executive toward the parliament. Aringo led the PSC’s efforts to formulate parliament’s 12 Year Strategic Plan (2000 – 2012)\textsuperscript{170} to modernize and strengthen the parliament, and guided donor efforts to strengthen the parliament.\textsuperscript{171}

In Kenya, the executive, rather than the legislature, controls parliament’s business calendar and even determines when parliament meets. Aringo introduced motions in the Eighth and Ninth Parliament to amend Sections 58 and 59 of the Constitution to allow the parliament, rather than the president, to

\begin{footnotesize}
\textsuperscript{169} “The Constitution of Kenya (Amendment) Act on November 11, 1999 was accented by the President on November 17, 1999 and came into effect on November 19, 1999. This move was followed by the introduction and enactment of the Parliamentary Service Act on November 28, 2000.” (Parliament of Kenya website,\texttt{http://www.bunge.go.ke}).
\textsuperscript{171} As the first chief of party for the SUNY/Kenya USAID-funded parliamentary strengthening program, I met frequently with Aringo who assisted me with developing program strategies. He also worked with the members of the Commission to build support for our program efforts.
\end{footnotesize}
control the business calendar of the House. President Kibaki dissolved the Ninth Parliament in October 2007 without Aringo’s measures being enacted. He initiated a motion and then authored the Fiscal Management Bill 2006, legislation patterned after the Uganda Budget Act 2001, which would have created both a budget committee and a parliamentary budget office. The Ninth Parliament did not enact the bill, but instead established both the Budget Committee and the Office. Aringo is also main author of the Kenyan Parliament Constituency Development Fund. All of these measures are discussed below.

Aringo’s understanding of Kenyan politics and MPs, and his long experience in parliament no doubt played an important role in enabling him to succeed in making these reforms. He served as an MP for 33 years, and was National Chairman of the KANU Party from 1986 to 1991. As KANU Chairman, he worked closely with President Moi and was responsible for ensuring that the president’s wishes were carried out in the party. Aringo also served in four Kenyan ministries, in three as a minister, and in one as assistant minister. He was Kenya’s Minister for Information and Broadcasting; Minister for Environment

172 The constitutional section on Summoning, Prorogation and Dissolution of Parliament states, “58. (1) Subject to this section, each session of Parliament shall be held at such place within Kenya and shall commence at such time as the President may appoint” and “59. (1) The President may at any time prorogue Parliament.” and “(2) The President may at any time dissolve Parliament.”
and Natural Resources; Minister for Labour, Education, and Manpower Development; and Assistant Minister for Education.

In a series of interviews in Somalia and Kenya in February 2008, Aringo explained why he attempted to strengthen parliament’s independence, how he encouraged other MPs to support the initiative, and how donors supported the process as well. Regarding his motivation for enacting legislation which would make parliament more independent of the executive, Aringo says,

“Internally we had no control over money, staff, agenda, calendar. This ignited me. I said, ‘where is the weakness? . . . it is in the law that gives the president power to control parliament.’ We became just a government department. That was the wake up call. The question now is how do you disentangle it? It became my sole objective that nothing else was going to work until you cut this appendage, cut this umbilical cord.”173

Making the change Aringo envisioned would require a constitutional amendment, which needed the support of two-thirds of the members. Yet KANU held more than half of the seats in Kenya’s Parliament, and Moi’s cabinet alone made up approximately one-third of parliament. So how could he hope to get the legislation enacted? Aringo realized that his only hope of getting his legislation enacted would be through appealing to the members’ self-interest.

“I told them [MPs] we could then review our own terms and conditions. Rather than the president reviewing our terms and conditions through the committee he recommends, we shall do it ourselves. I had to wave this idea – it was a package I was now selling to them – first, salaries; second allowances; third, medical; fourth, a vehicle. When I met with KANU, I said, ‘Why are you denying yourselves?’

According to Aringo, he “used MP self-interest to motivate them to support parliamentary independence. . . I got even KANU members to support it . . . I had to make something very pleasant.”

What role did donors play? Aringo deftly used the support of donors, whose interests in strengthening the parliament aligned with Aringo’s. The British were the first to support Aringo’s idea for an independent parliament, and they did it through funding workshops for MPs in which Aringo’s concept would be discussed.

“We gave ourselves one year to do workshops in Nairobi and elsewhere, in order to sensitize members to their powers. I went to the British High Commission and . . . they said, ‘Get people across the parties.’ So I got people across the parties. They said, ‘Alright, we are going to fund your first workshop’. The first money came from the British. We had about 25 members. Next in Mombasa, about 30; third in Kisumu. By end of year we had organized workshops for more than 180 members of parliament.”

With the support being built in parliament, Aringo was able to move, and to pass, a private motion on the independence of parliament. With the motion passed, he could then draft and introduce independence of parliament.
legislation. He introduced the bill, lobbied MPs, and built sufficient support to pass the legislation. The National Assembly next did something it had never done: it held a budget amendment hostage until government agreed to allow the legislation to move. Aringo states,

“We moved a motion. The motion allowed me to bring the bill. We drafted the bill... Members had not realized they could deny the budget to the government. I waited till they were bringing supplementary estimates. At that time they had run out of money. They could only act illegally. We paralyzed their work. We said we would reject their budget. But rather than do that, we said we could negotiate. We said if you support our bill, we will pass the budget. We will pass yours, and you will pass ours.”

Aringo’s three-pronged strategy of appealing to member self-interests, educating them as to the benefits the legislation would provide, and making them part of the process to give them ownership of the legislation, worked. Members, even members of Moi’s own party, told President Moi that they would support the legislation.

“When confrontation came, the issues were so clear. When Moi called his KANU group and asked them not to vote with me, they said, ‘No. This is not Aringo’s bill, this is our bill. We have been working on it for over a year. And we have made reasonable changes, so it was not too radical.’ We had sensitized them. Once we claimed our autonomy we could go on
to other reforms. We could convince USAID and the Europeans that we had an agenda of institution building. And parliament was critical.\textsuperscript{174}

The Constitution of Kenya Amendment Act of 1999 passed on November 17, 1999, and was signed by President Moi on November 19. The Parliamentary Service Act of 2000 followed on October 18, 2000, and it facilitated the creation of a Parliamentary Service, distinct from the Public Service of Kenya.

What did the new legislation do? The Acts were patterned after the Ogalo legislation from Uganda, and, not surprisingly, track quite closely with Uganda’s Administration of Parliament Act of 1997. The amendments make Kenya’s National Assembly financially and administratively independent of the executive, and created a Parliamentary Service Commission (PSC) responsible for the National Assembly’s management and budget. According to Section 45B of the Constitution, the PSC is to consist of:

(a) The speaker of the National Assembly who shall be the chairman;

(b) A vice-chairman elected by the Commission from amongst the members appointed under paragraph (e) of this subsection;

\textsuperscript{174} Author’s interview with Hon. Oloo Aringo, in Baidoa, Somalia, February 17, 2008.
(c) The leader of Government business in the National Assembly or a member of the Assembly deputed by him;

(d) The leader of the opposition party with the highest number of seats in the National Assembly or a member of the Assembly deputed by him;

(e) Seven members (other than the President, Ministers, Assistant Ministers and the Attorney-General) appointed by the National Assembly from amongst its members, of whom -

   (i) Four shall be nominated by the Parliamentary party or parties forming the Government; and

   (ii) Three shall be nominated by the Parliamentary party or parties forming the opposition.

The Kenya Parliamentary Service Commission is charged with:

- Constituting and abolishing offices in the Parliamentary service;
- Appointing, disciplining, and removing parliamentary staff;
- Providing necessary services and facilities to enable the efficient functioning of the Assembly;
- Overseeing the Parliament’s administration and budget;
- Preparing Parliament’s budget – and providing for yearly audits;
• Providing for the Parliament’s security;

• Determining the terms and conditions of offices of the Parliamentary service;

• Appointing independent bodies to review and make recommendations regarding member salaries and allowances; and

• Reviewing Parliamentary powers and privileges and such other things as may be necessary for the well-being of the members and staff of the National Assembly.

The constitutional amendment is specific regarding the independence of the Parliament, stating that, “… In the exercise of its powers or the performance of its functions under this Constitution, the Commission shall not be subject to the direction or control of any other person or authority.”\textsuperscript{175}

How has the Kenya Parliament changed since these constitutional amendments? In a word, the institution, staff, members, facilities, budget, and committees have been transformed. We will see that there was significant progress in all four indicators for independent parliaments (i.e., growing autonomy of administration and committees; growing resources, allowances, facilities, and staff for members; expanding formal powers for constraining the

\textsuperscript{175} Constitution of Kenya, 45B (6).
executive; and parliament’s use of its powers to constrain the executive). As a
result of this amendment all staff working in parliament were separated from the
civil service (which serves at the pleasure of the president) and became part of a
new parliamentary service. Each staff member now serves at the pleasure of the
Parliamentary Service Commission. Soon after its creation, the PSC increased
parliamentary staff salaries to approximately double those of their counterparts
in the civil service.

In addition to enacting legislation establishing its formal independence, in
2001 the PSC adopted, and began implementing, a 12-year plan to strengthen
parliament. In terms of parliamentary autonomy, the “Strategic Plan for the
Parliament (2001-2012) plainly states what the PSC considers 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
The PSC plan proposes a new institutional structure for parliament, and new professional services, which parliament has been in the process of implementing for several years. The new structures include a 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, is to provide legislative drafting and bill analysis services to the parliament.

**Budget:** Using the size and growth of parliament’s budget as an indicator of the power and independence, Kenya’s Parliament has certainly become stronger. Parliament’s budget has multiplied several times since enactment of the Parliamentary Service Commission legislation. Speaker Ole Kaparo, in his address to parliament on opening day in 2001 (March 21), informed members that, “...democracy is expensive,” and declared that the State would in the future pay the price for a more effective parliament “in spite of dwindling resources.” He followed through on that promise by more than

---


177 *Daily Nation* online, “All MPs to get offices in the House,” March 21, 2001, 2.
tripling the 2001-2002 budget for the Office of the Clerk over the budget for the previous year (from Kshs 240 million to Kshs 750 million – roughly US $9.5 million), and much of the increase was dedicated to new staff and equipment for a more effective parliament.\textsuperscript{178} In addition to new staff and equipment, parliament refurbished an office building next to the main parliament complex, and members of the Ninth Parliament occupied the new space. As it turned out, parliament’s 2001 – 2002 budget was more than the institution could spend, and parliament wound up returning some of it to Treasury to help cover budget shortfalls in other areas.

Nancy Gitau previously oversaw the USAID–SUNY Kenya parliamentary-strengthening project and is currently working in the Office of the President of Kenya. She has written that the budget for the Kenya Parliament increased by nearly a factor of five in US dollar terms during the first four years of the Eighth Parliament, from approximately $9.5 million per year in 1998-99 to nearly $46 million in 2001-2002 (see Figure 13, below). And parliament’s budget continued to grow.

Figure 13. Approved Budgets for the Kenya Parliament, 1998 to 2003\textsuperscript{179}

<table>
<thead>
<tr>
<th>Year</th>
<th>Kenya Shilling</th>
<th>US Dollar</th>
</tr>
</thead>
<tbody>
<tr>
<td>1998/1999</td>
<td>Ksh 692,760,000</td>
<td>US $9,522,474</td>
</tr>
<tr>
<td>2000/2001</td>
<td>Ksh 1,623,743,460</td>
<td>US $20,514,763</td>
</tr>
</tbody>
</table>

Parliament has purchased and refurbished additional office space, expanding the parliamentary campus and providing an office for every member (including gyms and Jacuzzis for both men and women MPs). The Parliamentary Service Commission has a substantial office building of its own, also adjacent to the main parliament building. The size of Kenya’s parliamentary staff has increased, and new professional services (including budgeting and bill drafting services) are now being offered to MPs. As of 2007, numbers of staff had gone “. . . from a skeleton staff of about 150 to the current level of over 500.” Parliamentary staff members are better paid, and receive benefits their public

\textsuperscript{179} Nancy Gitau, “Relationship Between the Legislature and the Executive 1998 - 2002.” Figures are taken from Government of Kenyan Estimates of Recurrent Expenditures. USD amounts are calculated from Kenya Shilling- US Dollar exchange rates for each of the years.
service counterparts do not receive. These include a transport allowance, car and house loans at low interest rates, and a contributory pension scheme. ¹⁸⁰

**Salaries:** Prior to 2001, Members of the National Assembly earned around $1,000 per month, but parliament voted to dramatically increase their salaries that year. MPs have increased their salaries a number of times since then, such that Kenyan MPs, once among the poorest paid on the continent, are now among the highest. The June 21, 2008 *Kenya Standard* reports that MPs earn Ksh (Kenya Shillings) 800,000 per month (the equivalent of US $12,683.90 on July 1). The article also states that Ksh 600,000 of the total is exempt from taxes. ¹⁸¹ By way of comparison, U.S. Congress members, who are among the world’s highest paid legislators, receive $169,300 per year, or $14,108 per month. ¹⁸² US Congress members do pay taxes on their salaries.

Not surprisingly, in a country as poor as Kenya, these spending increases have been widely criticized, as illustrated in this excerpt from a 2005 newspaper editorial (which, incidentally, vastly understates actually parliamentary spending). ¹⁸³

---

“... few people can understand why the Government wants to spend Sh775 million [approximately $10 million US] when so many critical sectors in the country are crying for funds ... But it is the utter lack of modesty and the sheer profligacy in doing so that gall many Kenyans. This grandiose project has overstepped the bounds of financial modesty in a country where many cannot even afford a square meal.” 183

Parliamentarians also did damage to their public image when they awarded themselves a $22,000 bonus at the end of the Ninth Parliament,184 a factor which may help explain the almost 80% turnover in the National Assembly following the 2007 election. Yet the changes made since the PSC Act have made a dramatic difference in the roles the Kenya Parliament is playing in Kenya, and have given MPs an unprecedented degree of independence from executive branch influence. Questioned by the press about Kenyan MP Salaries, Hon. Oloo Aringo responded, "You must pay MPs sufficiently well to make them more able to manage leadership. It is a fact during Moi rule, MPs spent most of their time


189
lining up at State House for handouts. CDF will now cure the culture of Harambees\textsuperscript{185} that were a conduit for corruption."\textsuperscript{186}

**More autonomous committees:** Another indicator of parliamentary independence has to do with the autonomy and effectiveness of parliamentary committees, and Kenya’s committees have made great strides along this measure as well. Prior to the Eighth Parliament, the only active committees in the Kenya Parliament were the Public Accounts and Public Investments Committees; which are financial investigatory committees overseeing the government’s financial dealings. The Public Accounts Committee reviews government expenditures, and the Public Investments Committee is responsible for overseeing Kenyan state corporations, or parastatals. Both of these committees had been operative prior to the Eighth Parliament but were examining accounts several years in arrears; their impact was, therefore, minimal. The Kenya Parliament is empowered to establish *ad hoc* committees for specific purposes, usually to conduct investigations of government activities.

\textsuperscript{185} *Harambee* is a Kiswahili word which means "working together for a common purpose." The culture of *Harambees* refers to the requirement that MPs contribute to a myriad of community and individual causes. MPs not contributing regularly would be punished at election time, but acquiring the funds needed to participate generally meant engaging in corrupt activities.

Parliamentary departmental committees were included in 1979 rules reforms in parliament, but had never been active, and IPPG reforms in 1997 made recommendations for enhancing their roles. Because of the Acts granting parliament financial independence and the more open political atmosphere in Kenya early in this decade, all three types of committees (i.e., financial investigatory committees, departmental committees, and ad hoc committees) were able to become more independent, active, and aggressive than they had ever been before. The greatest change regarding committees during the Eighth Parliament had to do with departmental committees, which are responsible for overseeing the ministries and for amending legislation in their particular subject areas. Departmental committees were new and had not yet become active early in the life of the Eighth Parliament. But as chairmen and members learned what roles they could play, and as the national assembly’s budget grew and more resources were made available to the committees, chairmen and MPs began to travel and to conduct hearings around the country. In some cases, committees began to take the policy-making initiative from the government.

——

188 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 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.
One of the fascinating developments during Kenya’s Eighth Parliament, especially given President Moi’s and KANU’s decades-long control of parliament, was the accelerating decay of KANU party discipline; especially evident in the parliament’s newly-active committees. Suddenly not just opposition members, but also government backbenchers, and at times even ministers (as was the case with Aringo’s independence of parliament legislation), were willing to disobey their party and counter presidential and party initiatives. Once the parliament had challenged President Moi and succeeded in enacting the Constitution of Kenya Amendment Act of 1999 over his opposition – legislation which fundamentally altered the legislative-executive balance of power – it never returned to its former submissive role. Executive-parliamentary interaction on two important Eighth Parliament legislative proposals, the Kenya Anti-Corruption Authority Constitutional Amendment and the Donde Bill, illustrate the assembly’s willingness to challenge the president and KANU, and to fight for parliament’s institutional prerogatives.

**Kenya Anti-Corruption Authority Constitutional Amendment:**

In December 2000, the Kenya Anti-Corruption Authority (KACA) was declared unconstitutional, and the KACA was disbanded. Having in place an active anti-corruption authority was a condition for receiving IMF funding, and the Kenya Government therefore sought to re-establish the agency in 2001 by passing a
constitutional amendment. Not only would Kenya lose millions of dollars in aid without an anti-corruption agency, but IMF compliance also ensured Kenya access to low-interest loans: not re-establishing some type of KACA would cost Kenya many times more than the loss of aid alone.

Banking on MPs understanding the importance of IMF funding and pressure from the international community to re-establish the KACA, President Moi attempted to pressure parliament into providing the two-thirds majority needed to pass the constitutional amendment. Moi’s government drafted a constitutional amendment establishing a new anti-corruption authority in 2002, and sent it to parliament for approval. The problem, however, was that the amendment was flawed; the African Parliamentarian Network Against Corruption (APNAC) found several problems with the legislation and the way it was being handled. One of its major problems was that it granted amnesty to government officials for corrupt activities committed prior to a certain date, and parliamentarians believed that this would allow too many corrupt Moi-era officials to escape prosecution. President Moi personally lobbied members of his own party (KANU) to support the amendment, but was only partly successful. Several MPs were unwilling to approve the legislation’s blanket amnesty provisions. President Moi himself (in his capacity as an MP) came to parliament to vote for

**Donde Bill:** Another early indication that President Moi and KANU were losing control of the national assembly, even while maintaining majority status in the House, was the assembly passing the Donde bill in 2001. This controversial private member bill, drafted by MP Joe Donde, would have capped interest rates banks could charge Kenyans for loans. The populist legislation made the national assembly the center of political attention in the nation as the drama unfolded, portraying President Moi as out of touch and not concerned with the needs of common Kenyans, and a parliament fighting for citizens' interests. The bill was passed over the president's objection (again, despite a KANU majority in parliament). The government failed to implement the legislation, however, illustrating parliament's inability in 2001 to force government to comply with the law.

Another indicator of the parliament’s growing power in the early 2000s was the establishment – for the first time – of a firm registered to lobby the parliament. Legisconsult registered in 2001 as a Kenyan organization whose sole
activity was to represent the interests of clients before the parliament. No one lobbies a powerless legislature, and the fact that some individuals believed they could make a living by lobbying the Kenya Parliament is an anecdotal indicator of a more powerful parliament.

By 2001, policy initiatives and major amendments were coming more frequently from parliament, and specifically, from its committees. There were more committee sittings in the 2001 parliament (more than 250) than in any previous parliament, and groups and individuals from outside of parliament were being invited to testify in committee meetings. Now that they had their own funding provided by the Parliamentary Service Commission, parliamentary committees were beginning to travel outside of Nairobi to conduct some oversight activities, and to conduct meetings and hearings.

Hours allotted for plenary sessions had to be increased at the end of 2001 so that the House could consider all of the committee reports that had been generated. Three of the most active committees that year were Agriculture, Lands, and Natural Resources; Health, Housing, Labour and Social Welfare; and Finance Planning and Trade. Kenya’s economy is dependent on agriculture, and two dominant sectors of the agricultural economy are coffee and sugar. The

Agricultural Committee held several meetings with stakeholders, both in Nairobi and around the country, to receive testimony on government legislation which became the Coffee Act 2001, and the Sugar Act 2001. Agriculture Committee members generated at 33 amendments to the Sugar Bill based on the input of sugar farmers and others, and parliament passed 22 of them. These amendments increased the authority of sugar farmers (vis-à-vis government corporations), reduced the amount of time they had to wait for payments, and made other similar changes. Amendments committee members proposed to the Coffee Bill were similar to those for the Sugar Act, designed to give the coffee growers greater authority over their industry. The committee proposed 13 amendments to the Coffee Bill, and parliament passed five.

Similarly, the Health Committee made several major changes to important legislation that year. The Committee met with a number of interest groups and received their comments and suggested changes on the Children’s Bill. In the end the Committee proposed 23 amendments to the Children’s Bill and 22 of were accepted by the Health Minister.

For the first time in history, parliament began to recommend specific amendments to the government’s Finance Bill (budget law). The Finance Committee made use of the entire period allotted for discussing the government’s financial statements and tax proposals and recommended 38
amendments to the Finance Bill. The government accepted 65% of the changes the Committee recommended, amending the tax law accordingly. Committee amendments rejected the government’s proposal to charge VAT on commercial property in Nairobi, and, in response to requests by manufacturing interest groups, reduced import duties on several manufacturing inputs. The government had included within the Finance Bill a provision which would have criminalized bouncing checks, but MPs argued that that was not a budget item and should not have been included in the Finance Bill.

A striking indication of how autonomous of executive control the Eighth Parliament had become was that the Chairman of the Finance Committee, who had led the fight for these changes in the Moi-KANU budget, was also the KANU Government’s chief whip (Simeon Mkalla)! The author was living in Kenya working with the parliament at that time and was told by both government and opposition members that, “When we meet in committee, we leave our party affiliation at the door,” and, “In committees, we just look for the best policy.” Party discipline had so degenerated that committees in the Kenya Parliament were beginning to conduct business like those in Uganda’s Sixth Parliament under the no-party system.

192 Author’s conversations with Kenyan MPs in 2001.
Oversight - List of Shame: In 2000, a parliamentary select committee on corruption (Kenya Anti-corruption Committee) conducted an extensive investigation of alleged corrupt activities of several Kenyans, including highly placed political leaders. The Committee released it report, dubbed “The List of Shame,” in May 2000. The report cited several influential Kenyans and the economic crimes they had allegedly committed, among them Vice-President George Saitoti; President Daniel Arap Moi’s son, Phillip; influential minister Nicholas Biwott, as well as several other cabinet ministers. A coalition of KANU and opposition MPs voted to expunge several names from the report. While this was a disappointment to the select committee, it is important to recognize that a select committee in the parliament controlled by KANU conducted a corruption investigation, and cited two of the most powerful politicians and leaders in KANU and the son of the sitting President (and head of KANU) for specific economic crimes.

Although some names were not officially released, media coverage did ensure that both Kenya and the world read about Kenya’s corrupt officials. Parliament’s willingness to conduct the investigation and draft the report naming such officials is indicative of the Eighth Parliament’s growing autonomy. Former

---

Congressional Budget Office director Barry Anderson has said that “sunshine is the best disinfectant,” and even when parliaments do not have the authority to prosecute government officials for alleged corrupt activities, when local and international news sources publish their findings it at least raises the cost of engaging in corruption. More recent parliamentary investigations of government corruption, such as the investigation of the Anglo-Leasing Scandal, have been more costly to high-level government officials, and have led to a number of resignations.
Indicators of parliamentary independence

Kenya’s first reform parliament made progress along each of our four indicators of parliamentary independence, as shown in Figure 14.

**Figure 14.** Indicators of Parliamentary Independence: Kenya, Pre-reform (1963-1997) and Eighth (1998-2002) Parliaments

<table>
<thead>
<tr>
<th>Characteristics of more independent legislatures</th>
<th>Kenya, Pre-reform Parliaments</th>
<th>Kenya, Eighth Parliament</th>
</tr>
</thead>
<tbody>
<tr>
<td>Resources, allowances, facilities for members, staff size and specialization.</td>
<td>Few resources, minimal facilities and staff.</td>
<td>Improving and expanding parliamentary facilities, MP salaries around $1,000/mo. Increase to around $5,000/mo., increased salaries and benefits for staff, offices for members, beginning to increase numbers of professional staff, parliament’s budget increased 5X, higher pay and benefits for staff.</td>
</tr>
<tr>
<td>Use of powers to constrain executive.</td>
<td>Unable to use the few powers it had.</td>
<td>Committee investigations of corruption; publishing List of Shame; amending national budget, Coffee Bill, Sugar Bill, Children’s Bill, stopping KACA Amendment, passing Donde bill over government objections, publishing and implementing parliamentary development plan.</td>
</tr>
</tbody>
</table>
Independence of Parliament Triangle

In Chapter Two, Figure 7, the Independence of Power Triangle representing both the Uganda and Kenya pre-reform parliaments, the metal ball representing the locus of power over decisions made in parliament rested toward the bottom of the triangle, close to the corner representing the president. But in Figure 15, below, the independent parliament is exercising much greater influence over decisions emanating from the Eighth Parliament. A more independent parliament and more independent committees are increasingly challenging the government, and frequently prevailing over the executive.

Figure 15. Independence of Parliament Triangle: Kenya’s Eighth Parliament, from 1998 to 2002
Party influence has also declined. Despite KANU’s continued numerical dominance in parliament, the party is divided and President Moi’s ability to control the members of his party is declining. The metal ball representing parliament’s decisions, however, does lie closer to parties than it does in Uganda’s Independence of Parliament Triangle for its first reform parliament. Uganda’s Sixth Parliament was a no-party parliament, and NRM forces had not yet organized themselves to control members effectively. Unlike in Uganda, where parliament’s independence reached its zenith during the first reform parliament, the independence of the Kenya Parliament will continued to grow.

Changes to the Ninth and Tenth Parliaments

Legislation in the Ninth and Tenth Parliaments

Unlike in Uganda, where President Museveni and the NRM successfully challenged and curtailed the independence of those parliaments succeeding the independent Sixth Parliament, subsequent parliaments in Kenya have built on the gains made by the Eighth Parliament, becoming more independent. In general, committees continue to allow influences other than those of president and party to prevail in their deliberations. The NARC coalition, which propelled Kibaki into the presidency and controlled the Ninth Parliament with a comfortable 59.5% of
MPs, did not dissolve until 2005, but even before its dissolution parliament was enacting private member legislation which increased the power of the national assembly vis-à-vis the executive, and was making major amendments to government-sponsored legislation.

Two private member bills enacted in 2003 illustrate the assembly's continued independence from the executive, even while the new coalition government was young. The first is the Pensions Amendment Act of 2003, which was introduced by Deputy Speaker David Musila. Concerned that the government often failed to pay its pensioners until several years after they had retired (with a significant number of pensioners dying before they collected), Hon. Musila introduced private member legislation requiring the government to begin paying pensioners within 90 days of their leaving government employment. If it failed to do so, the government would be required to pensioners what they were owed, with interest. The legislation passed and became law.

The second private member bill, introduced by Hon. Olo Aringo, establishes a constituency fund for members. This bill, and the CDF concept are discussed in detail below, but it is important to note here that this law, reducing executive authority over funding to localities, was passed by a parliament controlled, at least theoretically, by that same executive.
Not surprisingly, parliamentary committees continued to play an independent lawmaking role after the dissolution of the NARC coalition government. Yet a number of bills which would have shifted greater power to the legislature failed to pass, as several people in both the executive and legislative branches of government were beginning to fear a possible dictatorship of parliament. After permitting a number of Oloo Aringo’s motions to pass, Speaker Ole Kaparo and other parliamentary leaders refused to allow several of Aringo’s bills to pass. These would have given the national assembly control its own calendar (rescinding the president’s power to call, prorogue, or dissolve Parliament) and legislation establishing a Parliamentary Fiscal Office and Budget Committee, to advance for a vote by parliament. Nevertheless, the Kenya Parliament continued to demonstrate a high level of autonomy from the executive, making substantial changes to government bills and to the budget.

Working through the parliament, NGOs and interest groups continued to exercise influence over legislation and the budget, with the parliament introducing, and in many cases passing, amendments on their behalf. During the 2006 session, 54.5% of bills introduced by the executive were substantially amended by the parliament. These include the Finance Bill, where parliament exercised its authority to reduce several tax measures. Other bills which became law and which were substantially amended by parliament include the Kenya Maritime Authority Bill 2006 (which helped bring Kenya’s maritime law into
compliance with several international standards), the Microfinance Bill 2006, the Refugees Bill 2006, and the Witness Protection bill 2006, (which protects whistleblowers). In contrast to the years before departmental committees had become active and parliament generally enacted executive proposals without amendments, “It is now a practice that no bills are tabled before the House without a report from the departmental committee”.¹⁹⁴

The Kenya Parliament dedicated a remarkably high portion of its program budget (one-third) to committee work. And committee amendments generally prevailed on the floor of the House. In 2006, 89.9% of amendments proposed by committees were approved by parliament. A growing number of committees in Kenya’s Ninth Parliament were working from committee work plans, freeing them from the custom of working on an ad hoc basis, and simply allowing the press to set committee agendas. They were interfacing more frequently with interest groups, and, in general, interacting with greater regularity with society.¹⁹⁵

The Ninth Parliament continued playing aggressive budget and lawmaking roles throughout its term. It made important and substantial changes to the Media Bill in 2007, for example. The Legal Affairs Committee held public hearings on the legislation (despite the fact that then-current Standing Orders made no provisions for public hearings) and conducted several workshops on the bill in partnership with civil society organizations. As a result of the hearings and workshops, the committee amendments added media representatives to the board which is to oversee the operations of the communications media, and added a requirement that the media council submit their reports to the Parliament, making the media council answerable to the Parliament. Also during the Ninth Parliament, committees made major amendments to the Political Parties Act and the Procurement Act, as well as several amendments to the Kenyan Anticorruption Commission and Economic Crimes Act, and the Sexual Offences Act.¹⁹⁶

**Kenya budget committee and budget office:**

Part of the genius of Uganda’s 2001 budget reform was that MPs were able to expand parliament’s role in the budget process without altering the basic constitutional limits on their budget powers (which the executive would most likely not have allowed to pass). Section 93 of Uganda’s Constitution limits the

national assembly’s budget authority to reducing taxes or charges on the consolidated fund. The only increases it may authorize are those proposed by the government. But by requiring the government to introduce a draft budget nearly three months in advance of the official budget submission, Uganda’s Parliament has been able to negotiate substantial changes to the budget because, technically, the government has not yet made its proposal.

As Hon. Beatrice Kirasso found a way to work within Ugandan constitutional limitations and still strengthen the Uganda Parliament’s budget role; Oloo Aringo worked to do the same in Kenya. Section 48 of Kenya’s constitution limits the assembly’s role in the budget process in ways similar to the limits placed on Uganda’s Parliament. So when Hon. Aringo crafted legislation to give the assembly greater leverage in determining and overseeing the implementation of the national budget, he made it similar to Uganda’s 2001 Budget Act. Aringo designed the Fiscal Management Bill to ensure that government follows principles of prudent fiscal management, including reducing government debt, increasing transparency, and establishing predictable tax rates. And like the Uganda Act, it would have required the government to provide the national assembly with a draft budget well in advance of the new fiscal year (by 31 March), and would have established an Office of Fiscal Analysis as well as a Fiscal Analysis and Appropriations Committee. The legislation also
would have required that the Finance Minister provide the assembly with several specific economic reports.

The Kenya budget-reform legislation made a similarly artful attempt to ensure that the parliament receive the budget information it needed to conduct oversight adequately, but without giving the parliament explicit power to require or force the government to provide it. While Uganda’s constitution gives parliamentary committees explicit legal authority to compel the executive (or anyone else) to provide information parliament requests, Kenya’s Parliament lacks this explicit authority. Rather than assert parliament’s power to compel the government to provide budget information it requests, Aringo’s finance legislation would have granted the permanent secretary of the Finance Ministry specific authority to obtain the information required under the legislation from public officers, setting severe penalties for those who failed to comply.

To ensure that parliament would have the level and quality of staff needed to play its new budget role effectively, the bill stated that “The Office will comprise qualified budgeteers and economists while the Committee will ideally be composed of members who have demonstrated competence or interest in the subject. Thus the two institutions will not only be reservoirs of expertise and
continuity but also the fulcrum of the budgetary mechanism in the National Assembly.”

Those in the government opposed to allowing parliament to encroach on their budget power, however, succeeded in stalling the legislation in 2006 and again in 2007. Aringo noted wryly in an interview that, “when (Hon. David) Mwiraria was deputy leader of opposition, he led a delegation to Uganda to study the budget office, and he supported it. Later as Minister for Finance, he rejected the idea.” Parliament did succeed in establishing both the Fiscal Analysis and Appropriations Committee and the Office of Fiscal Analysis through amending parliamentary rules in 2007, but this does not give the office and committee the same powers they would have had through legislation.

**Parliament’s calendar:**

An indication that Kenya’s Tenth Parliament (despite the fact that it is made up of a very large majority of members of the PNU-ODM coalition), does not intend to allow the executive or parties to limit its independence, is the continued effort in Parliament to take control of its own calendar. Parliament continues to try to rescind the president’s power to call, prorogue and dissolve

---


198 Author’s interview with Hon. Oloo Aringo, February 17, 2008.
Parliament. Hon. Ekwe Ethuro, continuing in Aringo’s footsteps, has requested leave of the house to introduce a bill to amend Sections 58 & 59 of the Constitution so that the National Assembly can control its own calendar. Oloo Aringo made similar attempts in the Eighth and Ninth Parliaments. Surprisingly, an influential PNU minister has voiced his support for the measure. Energy Minister Kiraitu Murungi spoke in favor of the motion when it was raised in late October 2008, stating, “... The struggle for the second liberation was to tame the imperial president.”

Murungi, apparently, sees the Parliament winning control of its calendar from his own government as part of that liberation.

**Oversight in the Ninth and Tenth Parliaments**

Like the Uganda Parliament, the Kenya Parliament conducts oversight investigations through its departmental and financial investigatory committees and through select committees which it establishes from time to time to conduct investigations. Kenya’s constitution does not spell out the assembly’s investigatory powers as explicitly as Uganda’s, nor does the Kenya parliament have Uganda’s explicit authority to censure ministers. Nevertheless, Kenya’s

---

recent parliaments have conducted several investigations of government corruption and malfeasance. Conducting such investigations and publishing their findings is evidence of greater parliamentary independence. One such investigation was the Ninth Parliament’s investigation of the Anglo-Leasing Scandal.

2006 Public Accounts Committee Report on the Anglo Leasing Scandal:

In 2006, Kenya’s Anticorruption “czar” John Githongo fled to London upon making public his report on an illegal scheme to generate millions of dollars in government patronage. Githongo had discovered that the government had awarded fraudulent contracts to non-competitive bidders. By borrowing the money to pay for these fraudulent contracts, the government had been able to keep them out of the regular budget review process, thus avoiding parliamentary scrutiny through the Public Accounts Committee. To carry out this scam, the fictitious Anglo Leasing Company was created. Anglo Leasing, in theory, was generating special passports and carrying out other activities for Kenya. In his report, Githongo reported that he had informed both the president and the vice president of this illegal activity and that high level officials, including the Finance

200 Generating revenue to pay for patronage was getting increasingly difficult as parliament, watchdog organizations, and the government’s own anti-corruption czar were keeping an eye on government spending and activities. Those wishing to generate such revenue had to come up with increasingly clever schemes for acquiring funds for patronage.
Minister, were involved. Githongo fled for his life to London after being threatened by officials in the government.  

Kenya’s Public Accounts Committee (PAC), chaired by official opposition leader (and 2002 KANU presidential candidate) Uhuru Kenyatta, studied Githongo’s report, visited him in London to receive additional testimony, and held 22 sittings to prepare its report. The PAC interviewed several high-level Kenyan politicians, among them the vice president, the former Minister of Finance David Mwiraria (who resigned as a result of the scandal), the former Minister of Justice Kiraitu Murungi (who had also resigned); the head of Public Service and secretary of the President’s Cabinet, the Attorney General, the Central Bank Governor, and others. They all consented to be interviewed by the Public Accounts Committee. The investigation resulted in three ministers resigning, and the PAC making recommendations to close the loopholes which had enabled government to carry out this ruse.

**2008 Regency Hotel Sale Scandal:**

Finally, one of the most unusual displays of parliamentary oversight was the July 1, 2008 Kenya Parliament’s censure vote against Finance Minister Amos

Kimunya. The incident illustrates that the Kenya Parliament, which functions with virtually no official opposition because nearly all members are associated with the coalition PNU-ODM Government, seems to be acting contrary to the interests of the government.

In June, Minister Kimunya sold the luxury, government-owned Grand Regency Hotel in downtown Nairobi for 1.8 billion Kenya Shillings, which critics contended was a fraction of its true worth. The hotel had been built with public funds stolen through what is known as the Goldenberg Scandal. The government had recovered the funds from businessperson Kamlesh Pattni in exchange for dropping its court cases against him (Pattni, incidentally, ran for parliament in 2007, but lost). President Kibaki had appointed Finance Minister Kimunya, a member of the PNU, and the scandal broke when ODM Lands Minister James Orengo announced the sale and alleged foul play. Parliamentarians, both PNU and ODM, joined public demonstrations against Kimunya, and Parliament refused to act on any finance-related matters as long as Kimunya remained Finance Minister. Kimunya resigned within a week of the censure vote.

\[202\] In what became known as the Goldenberg Scandal, up to 10% of the nation’s annual GNP was stolen: "Kenya lost up to $600m through questionable exports of gold and diamonds between 1990 and 1993." Even President Moi was implicated in investigation. BBC News Online, “'Bribery' halts Kenya graft probe,” January 27, 2004, http://news.bbc.co.uk/2/hi/africa/3433047.stm , (accessed November 1, 2008).
Many members of parliament from both Prime Minister Raila’s ODM side of the governing coalition, and from President Kibaki’s PNU, supported the censure motion. Several PNU members, therefore, voted against their President, Mwai Kibaki. It is also unusual that a minister (Lands Minister Hon. James Orengo) broke the news of the sale, alleging that another minister had broken the law. Orengo may have gotten approval to do so from prime minister and ODM party leader Raila Odinga, but he would have been acting without the approval of PNU leader, President Mwai Kibaki. Another unusual aspect of this case is that both PNU and ODM parliamentarians demanded nearly unanimously that Kimunya resign or be fired.

The parliament appears to have pre-empted the government. Neither President Kibaki (leading the PNU party) nor Prime Minister Odinga (leading ODM) issued a statement on Kimunya, who resigned a week after the censure. Another curious aspect of this case is that MPs from both PNU and ODM came out to the streets and demonstrated with thousands of citizens against Kimunya—again, apparently before the government had come to a decision about how it would address Kimunya’s alleged corrupt activity.  

The important point in parliament’s response to the Kimunya affair as concerns this paper is that the Kenya Parliament, yet again, acted independently of the executive, rather than respond to its wishes. And while the coalition government has put Kenya in the odd situation of not having an official opposition, Parliament appears to be free to act without much regard to the wishes of the nation’s political leaders in the executive branch.

Endowed with a substantial budget, able to travel to conduct investigations both within Kenya and abroad, and equipped with better quality and greater numbers of professional staff than it has had in the past, the Kenya Parliament has been able to conduct more numerous and more effective oversight activities. In addition to tabling (presenting for discussion in parliament) the Anglo-leasing report, which was very critical of the government, Parliament established a select committee which conducted an investigation and issued a report on the Ouko murder (which had occurred during Moi’s administration).\footnote[204]{Foreign Affairs Minister Robert Ouko was murdered and his body burned with gasoline in western Kenya in 1990 following “...a row with his cabinet colleagues over corruption allegations.” \textit{BBC News Online}, “Kenyan MPs urge new murder probe,” May 13, 2005. \url{http://news.bbc.co.uk/2/hi/africa/4544845.stm}, (accessed January 10, 2005).}
Parliament has also made the process of appointing members
of the Kenya National Commission on Human Rights and the Kenya Anticorruption Commission very difficult for the executive, demanding a voice in the selections. In an effort to strengthen their hand in overseeing government appointments, the Legal Affairs Committee traveled to the United States and witnessed a Senate confirmation hearing of a chief justice and then returned to Kenya and wrote a parliamentary confirmation manual on vetting executive appointments. An emboldened parliament now sees itself as equal to the executive branch, and has become less and less reticent about challenging the executive.\textsuperscript{205}

Thus far, this chapter has considered changes made within the Kenya Parliament since the enactment of Parliamentary Service Commission legislation. These have included budget increases, increased salaries and benefits for members and staff, greater numbers of staff, new parliamentary services, expanded office space, more active and independent committees, greater roles in lawmaking, and greater oversight roles. We turn next to changes in the ways MPs relate to their constituents, and, once again, we find Hon. Oloo Aringo leading the reform.

\textsuperscript{205} Author’s interview with a parliament observer, February 23, 2008.
Constituent outreach in the Ninth and Tenth Parliaments

Kenya Constituency Development Fund:

For several years, Hon. Oloo Aringo and other MPs had discussed the idea of parliament providing each member with a constituency fund to be used to support development projects in his or her district. Securing funds for constituents independent of the executive would not only benefit citizens in the MP districts, it would also liberate MPs from dependence on the chief executive. The fund finally became a reality in 2003. As part of an agreement designed to keep the NARC Coalition together, coalition MPs agreed at a weekend retreat in April 2003 that each MP would receive 20 million Kenya shillings each year “…for a development fund to replace the harambees [communal fund raisers] in an effort to end corruption.”  

The concept of constituency development funds (CDFs) has since spread to Uganda, Tanzania and Zambia. Under Kenya’s CDF, central government provides funds to parliamentary districts to finance local government projects. MPs establish constituency committees that determine how funds are to be allocated within the constituency. 2.5% of Kenya’s national budget is now allocated for CDFs, which for Kenya’s 2006-2007 budget-year, amounted to

approximately US $656,000 per district. Funding provided through the CDFs is substantial enough to pay for irrigation projects, construct classrooms, or carry out other kinds of projects needed in a constituency.

Because they are a set percentage of the national budget, CDF amounts per member increase or decrease as the Kenya national budget expands or contracts. For Kenya’s budget year 2007-2008, MPs had Ksh 7.5 billion to spend in their districts. Finance Minister Kimunya announced on Budget Day in June 2008 that the CDF fund would jump to Ksh 10.1 billion in the 2008-2009 budget year. Divided across 210 constituencies, this will give each MP an average of US $763,000 to spend in his or her constituency between mid-2008 and mid-2009.

There are two additional points to make regarding CDFs and parliamentary independence. The first has to do with their amounts. CDF totals are determined not by which party is in power or by a member’s seniority or position in the house, but by formula according to the size of the national budget

\---

and some objective characteristics of MP districts. Further, funding for one’s district has nothing to do with its MP’s relationship with Kenya’s president, or even with political party bosses. Every MP, by virtue of being an MP and representing a district, receives his or her funding. The CDF, therefore, reduces the influence of both the president and political parties over the parliament.

The second point has to do with who is responsible for implementing the projects funded by the CDF. Legislators in the Philippines have access to a similar constituency fund, and, as in Kenya, they decide how the funds are to be spent. But, unlike in Kenya, in the Philippines the executive branch implements the projects. The Kenyan CDF program, by contrast, gives MPs and their district committees the authority to not only determine how funds are to be spent, but it also makes parliament an executor of projects – traditionally the role of the executive branch. When CDF amounts are greater than executive branch’s total budget in the constituency, then the legislative branch, rather than the executive, becomes the major executor of public works and development in some parts of Kenya. To date, the Kenyan government has not used CDFs as an

209 Philippine Congress members have authority to spend $1.2 million in Priority Development Assistance Funds (PDAF), and Senators $3.68 million for projects in their districts, but the government implements the projects. John Johnson and Robert Nakamura, Orientation Handbook for Members of Parliaments, (Washington, DC: World Bank Institute, 2006), 8.
excuse to reduce ministry of local government spending in districts. The shift in power from Kenya’s executive to legislative branch has been profound, and the many of the implications of this shift are yet to be determined.

**Constituency offices:**

Kenyan MPs’ presence and influence in their districts has lately been enhanced not only by the use of Constituency Development Funds, but also by new fully funded member district offices. While parliamentarians in most countries across the continent struggle to find sufficient funding to travel back and forth to their constituencies, often opening their houses to meet with constituents, Kenya’s Parliamentary Service Commission now pays for district offices, staff, and equipment for MPs from each of Kenya’s 210 constituencies. Parliament’s 2004-2005 parliamentary budget set aside approximately US $12,000 per MP for staffing his or her district office. This is sufficient to pay six to ten staff, which includes an executive officer, a secretary, driver, and at least two subordinate staff. MPs dedicate themselves to constituent work and to their constituency offices with differing degrees of skill and dedication, but some of Kenya’s newest MPs appear to be taking their constituency offices and constituency work very seriously.

_________________________

210 Author’s discussion with Kenyan MP, Dr. Boni Khalwale, October 29, 2008, Wilton Park, Steyning, West Sussex, United Kingdom.
One of Kenya’s young professional MPs, Hon Nderitu Muriithi, MP for Laikipia West Constituency, maintains a professional website that a U.S. Congress member would be proud of. It includes Hon. Muriithi’s photo and a short letter from him, photos of his work in the district, information on what his Constituency Development Fund is being used for and what next year’s CDF will cover, information for investors considering investing in his constituency, public service information on schools, police, health services, information on how to reach the constituency office, and more.211

Kenya Parliamentary independence during the reform period

Having considered several of the changes the Kenya Parliament has undergone over the past decade, one cannot doubt that it has become a more independent and powerful institution. It has accrued unprecedented authority

211 The website opens with a photo and “A Word from the MP” and begins: “I am very pleased that the constituency office has created a gateway to Laikipia West. The portal will provide residents, as well as those from Laikipia living elsewhere with a communication tool to keep track of the goings on in Laikipia West. It will provide the latest listings of upcoming events in the constituency, new and exciting developments, business and job opportunities, tips on farming techniques and much much more. It will be for and by the community. In addition, the portal will allow many establishments in Laikipia West to broadcast their presence to a wider audience, and provide useful links with government departments and other service providers. I trust you will find it both useful and enjoyable! Sincerely, Hon. Ndiiiru Muriuthi.”
over its management and resources, now plays a very influential in lawmaking and budgeting, and its role in oversight appears to be expanding as well.

Examining again the four criteria for parliamentary independence, there is abundant evidence that the Kenya Parliament became, and remained, more independent than it was prior to the 1999 and 2000 constitutional amendments establishing its independence. Parliamentary administration and committees have become more autonomous. The amendments established parliament’s administrative and financial autonomy, and enabled parliament to increase its budget, salaries for members, services, facilities, numbers of staff and types of staff, and provide members with constituency offices. The Kenya Parliament may be the most autonomous parliament on the continent in terms of administration, and it may be without peer in its ability to increase its budget. The influence of the executive and parties in the affairs of committees often appears to be negligible. Committee members in the Eighth Parliament boasted of leaving their party affiliation at the door when entering committee rooms, and claimed that they sought to enact the best policies, irrespective of party concerns. The Ninth Parliament continued along this line, freely amending budgets and making major substantive changes to legislation it was sent by the executive. And the Tenth Parliament, which was willing to vote to censure Finance Minister Kimunya, apparently before the governing coalition had
determined what should be done, appears to be willing to act independent of the executive and parties.

**Indicators of parliamentary independence**

The Kenya Parliament has provided for itself growing resources, allowances and facilities for members, and larger, more professional staffs. Once the National Assembly gained control over its budget and staffing, it was able to increase its budget by a factor of five over just four years; more than triple its staff; provide several new benefits and allowances and higher pay for staff; provide new allowances and retirement benefits for MPs, and increase their salaries by a factor of twelve. It expanded and refurbished the parliamentary campus (which included providing an office and personal staff for each member), established and staffed district officers for every constituency member, and provided that 2.5% of the national budget be allotted to Member Constituency Development Funds.

Although Parliament has expanded its formal powers with which to constrain the executive, it has not acquired all of the power reformers had hoped to gain. Despite Aringo’s best efforts, the assembly did not amend sections 58 and 59 of the Constitution, which would have rescinded the president’s exclusive power to convene, prorogue, and abolish Parliament, but the Tenth Parliament is
again considering the proposal. Nor did parliament enact the Fiscal Management Bill, which would have established the Fiscal Analysis and Appropriations Committee, and the Office of Fiscal Analysis. Still, it did expand parliament’s formal powers along several fronts, making parliament a more powerful institution while weakening the influence of both the executive and political parties.

Parliamentary committees became more effective beginning in the Eighth Parliament, making independent policy initiatives, amending executive legislation, and overseeing executive activities. The Parliamentary Service Commission Act cut deeply into executive branch influence over the parliament by giving parliament practically unrestrained power to set its budget, and to hire, fire, and fund its own staff. The PSC also determines salaries and benefits for MPs, and these increased dramatically. And despite its failure to enact the Fiscal Management Bill, parliament did, through its internal rules, create both a budget committee and a professional budget office.

Is Parliament making greater use of the powers it possesses to constrain the executive? Prior to 1998, Kenya parliaments exerted little or no influence over budgets and legislation, and exercised almost no effective oversight over the executive. By contrast, Kenya’s Eighth and Ninth Parliaments convinced the
executive to make numerous changes in the budget, blocked executive legislation it did not support, introduced and enacted its own legislation - sometimes over the objections of the executive - and changed executive proposals at its own discretion, in some cases, dramatically.

Despite opposition from the government, the Eighth Parliament passed the Donde Bill and blocked the KACA amendment, and passed the Parliamentary Service Commission legislation. The Ninth Parliament continued to change legislation at its discretion, and set up its own constituency development fund. And even the Tenth Parliament has demonstrated a willingness to act independently of the executive.

Figure 16, below, indicates that the Kenya Parliament has continued to advance along all four indicators of parliamentary independence, both indicators of institutional growth, and indicators of growing formal powers and their use.
**Figure 16.** Indicators of Parliamentary Independence: Kenya, Pre-reform, Eighth Parliament, Ninth and Tenth Parliaments

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Independence of committees and parliamentary administration.</td>
<td>Weak committees, little administrative independence.</td>
<td>Stronger committees, amending legislation, passing private member bills, interacting with NGOs. Constitution of Kenya Amendment Act 1999 and Parliamentary Service Act 2000 create Parliamentary Service and Parliamentary Service Commission (PSC), making Parliament responsible for budget and staff.</td>
<td>Growing independence of committees and parliamentary administration; limited influence of party or president over committee decisions; one-third of Parliament’s budget dedicated to committee work.</td>
</tr>
<tr>
<td>Resources, allowances, facilities for members, staff size and specialization.</td>
<td>Few resources, minimal facilities and staff.</td>
<td>Improving and expanding parliamentary facilities, MP salaries around $1,000/mo. Increase to around $5,000/mo., increased salaries and benefits for staff, offices for members, beginning to increase numbers of professional staff, Parliament’s budget increased 5X, higher pay and benefits for staff.</td>
<td>Member salaries and allowances surpass $12,000/month, new budget staff, CDF 2.5% of national budget, fully funded and staffed constituent offices.</td>
</tr>
<tr>
<td>Formal powers for restraining executive discretion.</td>
<td>Very limited powers.</td>
<td>1999 and 2000 Acts grant Parliament power over staffing and budget.</td>
<td>New budget committee established constituency development fund (2.5% budget), new district offices.</td>
</tr>
<tr>
<td>Use of powers to constrain executive.</td>
<td>Unable to use the few powers it had.</td>
<td>Committee investigations of corruption; publishing List of Shame; amending national budget, Coffee Bill, Sugar Bill, Children’s Bill, stopping KACA Amendment, passing Donde bill over government objections, publishing and implementing parliamentary development plan.</td>
<td>Committees substantially amend executive legislation, committee amendments prevailing on floor (89% in 2006). PAC investigations of Anglo-leasing scandal lead to minister resignations. Parl. censures Finance Minister, leads to his resignation, even as governing coalition holds overwhelming majority of seats.</td>
</tr>
</tbody>
</table>
Independence of Parliament Triangle

The Independence of Parliament Triangle (Figure 17) illustrates the continued decline in presidential and party influence over the decisions made by Kenya’s Ninth and Tenth Parliaments, and the continued increase in parliament’s power to make its own decisions. Parties continue to be weak and divided, forming and re-forming, and party alliances continue to be unstable. Kenya’s new coalition government has not reduced this party instability. President Kibaki’s PNU supporters, and even his ministers, appear willing to thwart the interests of the president.

Figure 17. Independence of Parliament Triangle: Kenya, Ninth and Tenth Parliaments, from 2003 to 2008
Comparing Figures 8, 15, and 17 (the Independence of Parliament Triangles for Kenya’s pre-reform, Eighth, and Ninth and Tenth Parliaments) one notes the continuation of the trend of power and independence toward the top of the triangle. The metal decision ball has moved closer to the top, and farther from parties and the president.
CHAPTER 5-COMPARING THE TWO CASES

Introduction

Chapter Five answers the two questions raised at the beginning of the dissertation: First, how were the Uganda and Kenya legislatures able to become such independent institutions, and second, why has the Uganda Parliament lost so much of its independence, while the Kenya Parliament has not?

How were the Uganda and Kenya legislatures able to become such independent institutions?

Uganda

I believe that three primary factors and a number of secondary factors help explain the dramatic growth in the independence of the Uganda Parliament which began in 1996. Primary factors behind the growth in independence of the Uganda Parliament are first, the new powers granted the Uganda Parliament in the 1995 constitution. A second factor is the no-party system, which released parliamentarians from partisan restraints, allowing them to pursue their re-election and other objectives through a more powerful, better endowed Parliament. A third factor was the actions of astute parliamentary reformers,
who recognized and acted on the opportunities latent in Uganda’s new political reality. Secondary or contributing factors were: well qualified, highly educated MPs in Uganda’s Sixth Parliament; the financial, expert, and moral support provided to Parliament by Western donors; and political and social changes in Uganda (when compared to earlier periods) that helped encourage the development of a more independent parliament.

**Parliament’s new powers:** Constitutionally, Uganda’s Parliament is one of the strongest and most independent on the continent, endowed with significant formal powers for challenging the executive. The separation of powers political system (the president and legislature are elected separately, as in the U.S., but the president is free to appoint his cabinet from within the legislature, as in pure parliamentary systems) provides incentives for parliament to challenge and oversee the executive in ways pure parliamentary systems do not. The constitution grants committees specific powers, among them the “powers of the High Court,” to compel executive officials to appear before committees and produce materials the committees require. Parliament controls its own calendar (is able to convene itself) and cannot be prorogued or dissolved

---

212 Aggressive oversight, which could embarrass an executive, and strong committees, which could challenge executive policy proposals and budgets, could weaken the government’s hold on power in a parliamentary system, ultimately undermining the political parties in control of government. In pure separation of powers political systems executive longevity in office is generally not threatened by his or her lack of success in getting programs through the legislature. The fortunes of the legislative and executive branches are not so inextricably bound.
by the president, and parliament has explicit constitutional power to censure ministers. Clearly, the drafters of Uganda’s 1995 Constitution designed a system in which the parliament would have substantial authority to act as a check on the executive branch of government. The limited constitutional powers of Kenya’s National Assembly presented in at the beginning of Chapter Four are more typical of African legislatures.

Substantial formal powers, therefore, help explain the Sixth Parliament’s surprising independence and effectiveness in constraining the executive. Formal powers, however, only partly explain the Sixth Parliament’s performance. A second reason for the Uganda Parliament’s independence was Uganda’s no-party political system.

**The no-party political system:** President Museveni’s no-party system liberated members from partisan constraints and interests that drive politics in most political systems. Under the no-party system, members were able to pursue their re-election and power objectives through non-party means, which, some of them soon discovered, was by advancing their agendas through a more independent and influential parliament. In the zero-sum game of Ugandan politics, independent MPs expanded parliament’s power at the expense of President Museveni and his National Resistance Movement.
President Museveni’s stated assumptions about the way parliamentarians would behave in the no-party system were actually very accurate. He declared that in a no-party parliament “. . . the members should vote as individuals, according to their own judgment of the issue - which is called a ‘free vote’ in a multi-party system”. 213 This is exactly what happened in the Sixth Parliament, but Museveni probably did not foresee that without a party apparatus in place for controlling parliament members, that MPs would quickly become adept at calling his ministers to account, discovering botched procurements, or challenging those who attempted to acquire state resources for private gain. Ugandan MPs behaved as James Madison assumed they would in a separation of powers political system. In the words of Federalist 51, “Ambition must be made to counteract ambition. The interests of the man must be connected with the constitutional rights of the place. It may be a reflection on human nature, that such devices should be necessary to control the abuses of government.” 214 And several MPs did attempt to use the powers of parliament to control the abuses of government. They became jealous for the powers and prerogatives of the parliament, sought to expand and protect its powers, and challenged executive misuse of power.

213 Museveni, Sowing the Mustard Seed, 195.
Designed to be an institution of countervailing power, and unconstrained by party interests or party discipline, the institutional – not just private or party – interests of parliament took on great importance, and those interests challenged those of the president. Without the political apparatus in place to whip the members into compliance, the government found it difficult to control the parliament. Having pronounced that the National Resistance Movement was not a party, and that members were free to vote according to their own best judgment, unconstrained by party, how could the NRM then put in place political structures to ensure that its will was carried out in parliament? According to Beatrice Kirasso, because “there was no government or opposition side in Parliament, there was not majority or minority. It was easier for members to support a position favorable to Parliament against the Executive if it benefited or strengthened Parliament as an institution. Government was in a weaker position to whip members to its side.”  

MPs, not the president or parties, controlled the Sixth Parliament. Speaker Wapakhabulo had a vision for parliament, and he promoted the interests of parliament over those of the president and the NRM (as he did when he allowed censure motions to proceed in the House). Wapakhabulo also assisted Hon. Dan Ogalo to develop legislation giving parliament control over its budget

and staffing. As parliament grew, the power, influence, and prestige of members grew as well, and MPs felt, and actually were, empowered. Hon. Ogalo captured what was to become a short-lived period in Uganda’s parliamentary history.

“There is that freedom of thought, Parliament grew into a very strong institution vis-à-vis the executive. That was the time when ministers were really held accountable, and when they came to the parliamentary committees, they came prepared. They prepared to give answers, prepared to provide documents. It was the situation when you sat in a committee chair and you knew, ‘Parliament is supreme here.’” 216

**The role of parliamentary reformers:** Unconstrained by issues of party loyalty or party discipline, with a speaker supporting the institutional development of parliament, and with an executive branch not yet organized to enforce its will within their institution, some MPs were quick to recognize that they had the power to make the changes their nation needed, to expand their own authority and make a name for themselves as individual politicians. Politically astute and ambitious MPs like Hon. Ogalo and Beatrice Kirasso, who recognized the legal, institutional, and resource constraints that kept them from fully realizing the authority they possessed, set about making the legal changes needed to allow them to take full advantage of their powers, and they were remarkably successful.

216 Author’s interview with Hon. Dan Wandera Ogalo, February 29, 2008.
This brings us to the third reason for growth of parliamentary independence in the Sixth Parliament – the role of parliamentary reformers who recognized the potential inherent in their political situation and tried to fully utilize and expand parliament’s powers. The parliamentary reformers included Dan Wandera Ogalo, Beatrice Kirasso, Isaac Musumba, Proscovia Salaam Musumba, and Dora Byamukama. The legislation they enacted and the resulting increased parliamentary budget, improved infrastructure, and more numerous and more professional staff enabled parliament to exercise a more independent role in Ugandan politics vis-à-vis the president. The unusual no-party political situation in which Sixth Parliament MPs found themselves allowed them to transform their legislature. Parliament’s expanded formal powers and the no-party system provided an environment conducive to building a stronger legislature, but unless reformers took advantage of the new environment to strengthen their parliament, the institution would not have changed.

**Secondary factors:** Political and social changes, both within Uganda and worldwide, created an environment in which it was easier for Uganda’s Sixth Parliament to develop such an extraordinary level of independence. These changes include the high-levels of education of MPs in the Sixth Parliament, support from Western donors, and Uganda’s more open political environment.
The 1995 Constitution raised the educational requirements for Ugandan MPs, requiring that before standing for office they have completed their A-level education or its equivalent, making MPs in Uganda’s Sixth Parliament an elite group. Kasfir and Twebaze, using statistics from the directories of the Sixth and Seventh Parliaments, reported that 97.5% of Sixth Parliament Members, and 97% of Seventh Parliament Members had university or advanced level education. Those they classified as reformers were “significantly better educated” than were non-reformers. The quality and confidence of these highly educated Ugandan MPs was likely one of the environmental factors encouraging parliamentary reforms.

A second contributing factor to Uganda’s Sixth Parliament becoming a more independent institution was the expert, financial, and moral support provided by Western donors. Americans, British, Canadian, Danish, and other donors made financial contributions to the parliament’s development. These contributions paid to repair and refurbish the parliamentary campus, install a new library and parliamentary information center (complete with two dozen networked computers), assist with designing new parliamentary services, conduct study tours for members and staff to learn about other parliaments, train new staff, and more.

This kind of donor assistance, replete with visits and meetings with foreign ambassadors and aid officials, helped to raise the profile and significance of the Parliament. When the Parliament passed a 2004 resolution declaring northern Uganda a humanitarian disaster area, the broad and visible support provided by donors and foreign embassies helped the Parliament withstand the efforts of the president to get Parliament to rescind its resolution. Donors viewed the Parliament as an ally in carrying out several of their programs, and their attention and assistance was useful to the parliament’s development institutionally.

A third contributing factor helpful to the establishment of an independent parliament in Uganda was the changed political and social environment in the nation. For most of Uganda’s post-independence history, political life can best be described as nasty, brutish, and short, and the environment as anything but open. Political space was progressively narrowed under Obote in the 1960s as he moved toward making Uganda a one-party state, dismissed or jailed those who opposed him, and concentrated all political power in himself. Free speech was constrained, and the freedom to organize, especially for political purposes, was sharply curtailed. Under the military dictatorship of Idi Amin, any speaking, writing, or organizing that might be perceived as challenging Amin could, and often did, prove fatal. And even after the Amin regime ended, during Obote’s
government in the 1980s, the bloodshed in Uganda continued, and political expression was dangerous.

Press freedoms and freedom of political speech do not normally expand during a dictatorship, but they did during the decade of Museveni’s military dictatorship, and continued in the years immediately following the installation of the Sixth Parliament. Donor funding encouraged the growth of several advocacy NGOs even prior to the return to elected government in 1996, with growth expanding with the return to electoral democracy. However, political expression and organization challenging Museveni and the NRM is being progressively curtailed today, and it was evident in the 2006 elections that the government can be brutal and heavy-handed in its treatment of political opponents. But while it is becoming more dangerous and difficult to challenge the government, there is greater press freedom and freedom to organize than during most of Uganda’s history.

Parliamentary committees in the Sixth Parliament met with NGOs and factored many of their concerns and interest into legislation. And the press covered plenary sessions, openly reporting on executive-legislative conflicts. There was great interest in the press and public in Uganda’s more independent Sixth Parliament. Many in the press and in politically active interest groups applauded the Sixth Parliament for the members’ willingness to challenge
government corruption, and to force the resignation of ministers. In sum, the
government’s more open political environment, as compared with that environment
through most of the nation’s history, has been an additional contributing factor
encouraging the development of a more independent parliament.

Kenya

I believe that there are two primary factors responsible for the growing
independence of the Kenya Parliament. The first is the restoration of multi-party
politics in Kenya, which helped erode presidential and KANU control over the
National Assembly, and second is the actions of parliamentary reformers who
understood the potential the new multi-party system provided for MPs to pursue
their self-interest through an empowered parliament. Some of the secondary
factors contributing to a more independent parliament in Kenya were: Kenya’s
vibrant civil society, which had demanded political change; second, the changing
nature of Kenyan MPs; third, Kenya’s progressively more open civil and political
environment; and fourth, support from Western donors which helped nurture
early efforts toward parliamentary independence.

Return to multi-party politics: The return to multi-party politics had
precisely the opposite effect in Kenya that it had in Uganda. In Kenya, the
restoration of multi-party politics dealt a near-lethal blow to KANU, though it took
three election cycles to see its full impact. Moi’s and KANU’s control of the parliament diminished across the 1990s as opposition (and even KANU) MPs dissatisfied with Kenya’s declining economy and poor governance were emboldened to challenge the government. Through the 1980s Moi and KANU had increasingly relied on intimidation and patronage to maintain their hold on power, but with the reinstatement of multi-party politics in the 1990s it became more difficult to wield those tools effectively. In an increasingly open polity, government intimidation was more difficult to cover up, and Kenya’s failing economy made it more difficult to acquire funds to support patronage. As a result, KANU was losing its capacity to reward the faithful and punish those who opposed it.

With KANU’s demise, however, no other dominant political party or force replaced it. Instead, Kenya’s political environment became fractious and unstable, with parties forming around individuals, and party alliances and coalitions coming together around elections, and later disbanding. In this fluid political environment of shifting political alliances, Kenyan MPs found their common interests served by an independent, well-funded parliament that paid them well, provided substantial resources to distribute in their constituencies (hopefully securing their re-elections), and made them significant players in setting the budgets and policies of Kenya. As presidents and parties weakened,
parliament was becoming the avenue through which MPs could both challenge the government, and secure their own interests.

**The role of parliamentary reformers:** Just as in Uganda, parliamentary reformers were critical to the Kenyan National Assembly developing its unprecedented level of independence. While several members supported these developments in Kenya, Oloo Aringo was the MP who became synonymous with Kenya’s more independent parliament. Oloo Aringo sponsored, had drafted, and lobbied to get passed the 1999 and 2000 constitutional amendments which established the Parliamentary Service Commission and made the Commission responsible for Parliament’s budget and staffing. He was Vice Chairman of the Parliamentary Service Commission, and conducted a continuous campaign to modernize and make more independent the Kenya Parliament.

Hon. Aringo apparently recognized that the moment to strengthen and to make the Kenya Parliament more independent had arrived, and that the 1970’s reforms attempted but never realized might now be possible. An astute politician, he also realized that getting his reforms enacted would require appealing to the common self-interest of the members. If he were to win the support of ministers and assistant ministers of the Moi Government, whose votes he needed to carry a constitutional amendment, those front-bench MPs would
have to recognize the advantages an independent parliament would provide them.

**Secondary factors:** Civil society in Kenya is richer and deeper than Uganda’s, having had more time to develop, and a wealthier, better-educated, more peaceful nation in which to do so. It has arguably made a greater contribution to Kenya’s democratic growth in general, and to the development of an independent parliament, than has Uganda’s. Chapter Two noted the important contribution the Inter-Parties Parliamentary Group made by helping to build a consensus regarding the development of parliament. Kenya civil society organizations (CSOs), such as the multi-faith Ufungamano Initiative, were also significant. The Ufungamano Initiative has maintained the drive for a new Kenya constitution which would reduce the president’s power and guarantee Kenyan human rights. Also included among the dozens of Kenyan CSOs pressing for a more democratic Kenya have been the Law Society of Kenya (LSK), Kenya Federation of Women Lawyers (FIDA), the Institute of Economic Affairs (IEA), and the Kenya branch of Transparency International (TI). Over the past few decades these Kenyan organizations have benefited greatly from donor support from Western nations.

As was true in Uganda, Kenya parliamentarians are an elite, highly educated group when compared to most of Kenyan society. Olo Olo Aringo earned
a Master’s degree in Toronto, and today, though retired from public office, is pursing a law degree. And as MP salaries and benefits have continued to rise, serving as an MP has become increasingly appealing, drawing many of Kenya’s brightest, most ambitious, and most highly educated citizens. In addition, the generally more open political climate in Kenya, especially when compared to the days before the return to multi-party politics, has been beneficial to the development of a more independent Kenya Parliament.

According to Kenyan politicians and parliament-watchers interviewed, donor support has also encouraged the development of Kenya’s more independent parliament. Donor-sponsored workshops to discuss Kenyan policy issues (such as problems with the tea and coffee sectors industries) in the 1990s brought together MPs from across parties, and these meetings helped to facilitate the development of the IPPG. Oloo Aringo has referenced the support provided by the British High Commission and other organizations that helped him to develop his independence of parliament legislation and funded workshops for MPs at which the concept and the benefits it would provide MPs were discussed. It is crucial to affirm, however, that in neither Uganda nor Kenya did donor support create the movements for more independent legislatures.

219 Most of the members of Kenya’s Ninth Parliament’s Health, Housing, Labour and Social Welfare Committee were physicians, for example.
Why has the Uganda Parliament lost much of its independence while the Kenya Parliament has not?

The Uganda Parliament is a less assertive institution today than it was a decade ago, while the Kenya Parliament continues to press for ever greater autonomy. Why have their experiences, once so similar, become so divergent? The principle reason is that President Museveni, and the NRM party, increasingly dominate the Uganda Parliament, expanding their authority over a weakening institution. In Kenya, on the other hand, the nation’s fluid and fractured politics have not allowed the president or any of the nation’s political parties to gain control over parliament. In Kenya’s executive-legislative power struggles, the legislature often prevails.

Uganda

In the wake of the surprising successes of Uganda’s assertive Sixth Parliament, a still popular President Museveni and the NRM (who controlled the military, the police, and many of Uganda’s local governments) were able to unseat many of the MPs who had challenged them in the Sixth Parliament. And those who returned to office discovered that presidential and NRM influence in the Seventh Parliament had grown. Seventh Parliament MPs challenging the
power structure were threatened and harassed, and their constituents were warned that they would suffer if they continued to support their MPs. As the Seventh Parliament progressed, MPs realized that the Eighth Parliament would be a party parliament, that presidential term limits would be abolished, and that Museveni would return as president. As a result, the influence of the president, and of the NRM, over the Seventh Parliament grew, and its parliamentary independence declined. The run-up to 2006 elections for the Eighth Parliament gave MPs a hint of what was ahead, as NRM MPs who were considered disloyal were squeezed out in party primaries.

The NRM won the 2006 elections, and now dominate the Eighth Parliament, controlling an overwhelming majority of seats. Even prior to the Eighth Parliament, Museveni and the NRM had been utilizing an increasingly effective system of rewards and penalties to ensure member compliance with their wishes, but the return to multi-party politics provided them additional advantages. For one, Uganda’s Constitution provides for special seats for several groups in society, among them, ten seats for the military. These ten MPs, whose votes their commander-in-chief could take for granted, added to the already overpowering NRM majority. Another advantage is that NRM party leadership now selects most committee chairs and members, and is able to replace them periodically with members that are more loyal. An NRM prime minister in the
parliament and a whipping system to enforce the party’s will also enhanced the party’s influence.

The NRM’s huge majority meant that the party could ignore committee reports charging NRM members with conflicts of interests or malfeasance, further reducing incentives for committee chairs to consider investigating ministers. Finally, President Museveni’s apparent ability to run for president as many times as he liked (and with some opposition leaders agreeing in advance to campaign for him), has put parliament’s independence in jeopardy.

Kenya

In Kenya, on the other hand, political power has not coalesced around the president, a party, parties, or any coalition of parties. Instead, MPs have found that their common interests are served by an independent, professional, well-financed parliament that provides them with very generous salaries and benefits, as well as a great deal of money to use in their constituencies. MPs exercise unprecedented influence over policy decisions through strong committees. Working through committees they are also able to practice effective oversight, uncovering government corruption, shaming – and sometimes even unseating – ministers. They routinely amend government tax proposals and are poised to expand parliament’s power over the spending side of the budget as well.
Parliamentary reformers have been able to get a larger and larger percentage of the national budget under the control of parliament, and to provide it with the number and quality of staff it needs to do its work.

Politicians who had challenged Presidents Kenyatta or Moi prior to Kenya’s Seventh Parliament would be marginalized, or even killed. But in Kenya’s Eighth Parliament KANU backbenchers openly ignored Moi’s dictates, his chief whip led the effort to amend the 2001 national budget, and even his ministers withstood him on the 1999 and 2000 parliamentary independence constitutional amendments. The situation was no better for President Kibaki and the NARC Government, which took office in 2003. Even prior to the break up of NARC in 2005, members and committees in the Ninth Parliament often acted with little regard for the president or parties. Committees amended government tax plans and executive bills as they saw fit, and parliament’s institutional interests overshadowed the demands of parties or the president.

Unlike in Uganda, parties and the president in Kenya appear have at their disposal few rewards or penalties to enable them to enforce their will. The Tenth Parliament’s nearly unanimous demand in the summer of 2008 that Finance Minister Kimunya resign or be replaced indicates that party discipline, at least in President Kibaki’s PNU, was weak. And even more recently (October 2008), PNU Energy Minister Kiraitu Murungi’s support for a constitutional
amendment rescinding the president’s exclusive power to convene, prorogue and abolish Parliament suggests that parliament’s independence may continue to grow.

In Kenya, a weak president and weak political parties have permitted parliamentary reformers to develop a remarkably strong parliament, despite some continued constitutional limits on parliament’s power. Parliament’s budget, staffing, office space, salaries and influence have all grown dramatically. Parliamentary presence in constituencies (through well-equipped and well-staffed constituency offices) now competes with the executive’s presence in member constituencies. With 2.5% of the national budget to spend in their districts, MPs are able to build local political alliances through their constituency committees, which determine how the funds will are spent. Parliament’s control over the nation’s legislative agenda has grown, as has its power to conduct effective oversight. Well-funded committees can afford to travel throughout Kenya as well as around the world to conduct investigations, and the parliament is building the expertise it needs to draft and amend legislation without having to rely on the Attorney General’s Office.

An observer of Kenyan politics stated the following with regard to the independence and power of the Kenya Parliament. Commenting on the relative
powers of the president, political parties, and an independent Parliament, he said,

“Where executives and parties are weak, [it] tends to strengthen parliamentary power for MPs. . . . As chairman of a committee, you can be as good as a cabinet minister. Your word is law. You can enact a law that will change the path of development in your area. You can threaten the executive and say, ‘I am going to bring a bill to Parliament and do this and that.’ . . .

“. . . with the enactment of the PSC act, the incentives within parliament became strong. Huge salaries. I’m not a cabinet minister, but I can still drive a good car. I’m not a cabinet minister, but I can sit in a committee and negotiate. And I can get this large funding for my constituents. And the president doesn’t determine how much money goes into my constituency. I can call him all the names in the book, but I will have the 40 million shillings.

Referring specifically to presidents, parties, and an independent parliament, he commented,

“Where these two [party and president] are weak, this [legislature] becomes very very strong. What determines the strength of every center is the amount of incentives available. What the incentives here [in the executive branch] are. . . I’ll make you a cabinet minister, or I’ll kill you for that matter, or I could actually go into your constituency and rig you out because I’ll buy the election, sponsor a court case, go to the judiciary and the election is nullified. And then I can move ahead and have you rigged out.”

“In the Ninth Parliament there were no political parties to write home about. NARC was a conglomeration of all manner of things . . . . so there was no cohesive political leadership in government, leave alone on the governing side in the house. So people were free to walk in and out of government, in and out of the opposition benches. Political parties were
weak, the executive was weak, MPs [were] feeling good—we can earn money.”

The reasons for the development of the more independent Uganda and Kenya parliaments and for the subsequent decline in parliamentary independence in Uganda can be summarized as follows. Parliamentary reformers in Uganda’s Sixth Parliament took advantage of the powers provided in Uganda’s 1995 Constitution and its unusual no-party political system to enact legislation strengthening parliament and making it more independent. Reformers in Kenya, meanwhile, took advantage of the declining legitimacy of President Moi and KANU in the late 1990s to enact legislation making parliament independent of the executive. Both legislatures, now more autonomous of presidential and party influence, became more independent institutions.

In Uganda, President Museveni and the NRM targeted those members who had challenged them, stopping many from returning to office. With the re-establishment of party politics in Uganda, the president and his party were able to take back much of the authority that had been ceded to the Sixth Parliament, making the Eighth Parliament a much less independent legislature. But in Kenya, unstable political parties and a weaker president have not been able to reclaim the powers surrendered to Parliament. Instead, Kenya’s continuing fractured

220 Author’s interview with Kenyan political observer, February 23, 2008.
politics has allowed MPs to pursue their political interests through an empowered legislature which has gained control over more of Kenya’s resources and seems ever less beholden to the president or political parties.
CHAPTER 6-INFLUENCES ON INDEPENDENCE

The dissertation thus far has focused on several factors that tend to strengthen, or weaken, the independence of a legislature. In this chapter I want to add to these some additional factors. As the chapter proceeds, it will become more evident why Uganda and Kenya were particularly good candidates for developing a high level of independence. Chapter Six concludes with a summary list of the factors influencing parliamentary independence (Figure 18), which can be a useful tool for making a quick estimation of a legislature’s independence, or its potential for becoming independent.

Type of electoral system

The system through which legislators are elected helps determine to whom they are most directly accountable, and, therefore, their potential level of independence from presidents and parties. While there are a variety of electoral systems in use, for clarity’s sake, I consider the two major electoral systems, plurality majority (PM) and proportional representation (PR). Variations on these two major types can be used to describe the majority of electoral systems. Plurality majority electoral systems tend to tie members more closely to the
geographic constituencies they represent, and proportional representation electoral systems tend to time them more closely to the parties they represent.

In PM systems, constituents in a specific geographic area vote directly for a candidate, and the candidate with the most votes wins the exclusive right to represent the district. How well the legislator serves the needs of the constituency, will, presumably, have a significant impact on whether he or she gets re-elected. Members in PM systems will likely try to bring as many benefits to their constituencies as they can, to vote for what will benefit the constituency, and vote against what is not in its interest. Yet legislators, even in PM systems, are rarely free to focus only on constituent interests. Several factors may enhance party influence over member decisions, and require legislators to balance the desires of both their constituency and their party. Party influence over its members in the legislature is strengthened if members require their party’s endorsement or funds to be re-elected, if members depend on patronage and funding from their party or the chief executive, or if the party and/or chief executive have the ability to affect the outcome of their election.

PR systems will tend to encourage legislator responsiveness to parties. In PR systems, candidates’ names are typically placed on a party list, and citizens vote for the list, rather than for specific candidates. If 50% of the voters in a constituency vote for party X, then the top 50% of party X’s candidates will win
office. A member’s standing in the party determines the candidate’s placement on the party list, so members will tend to seek to please the party leaders who determine their placement on the list in the next election. No matter how effective a legislator might be or how well the legislators serves constituent interests, if the representative receives a poor placement on the party list, he or she will likely not be re-elected.

Most Ugandan and Kenyan legislators are elected through a PM system. Since members depend on the support of voters in their constituencies for re-election, pleasing their constituents is a high priority. All other factors being equal, it is more difficult for party leaders in PM systems to control their members than it is in PR systems. The reader will recall that in Uganda’s 2001 elections President Museveni and the NRM targeted members they opposed, named and funded candidates to oppose them, and threatened unpleasant consequences to constituencies that failed to support the President’s candidate. Replacing independent members required that they spend political capital in several places. If Uganda had had a PR electoral system (and those independent members belonged to the NRM), the NRM could have simply dropped from the list, or placed low on the list, MPs who dared to challenge the party.

A more recent Uganda example was cited in Chapter 3, and it concerned the Uganda Parliament’s 2008 Mbabazi investigation. Under a PR system,
President Museveni and the NRM would not have had to threaten party members that they would battle them their constituencies if they refused to support the party decision to exonerate Minister Mbabazi. They could have saved the effort by merely threatening to leave them off the party electoral list in the next election.

An interesting contrast to the success of the independence of parliament movement in East Africa is its failure in Mozambique, thanks, at least in part, to Mozambique’s PR, or party list electoral system. In 1996, the first vice president of the new Mozambican Parliament attended a SUNY-USAID conference on legislative strengthening held in Santa Cruz, Bolivia. He was so impressed with the Bolivian modernization commission and how it enabled Bolivian political leaders to steer the development of their congress that he established a similar modernization group in the Mozambican Parliament. It functioned well for some time, steering donor programs with the Parliament and strengthening committees in their policymaking role. But his party, FRELIMO, was not pleased with his efforts to make parliament a more independent institution, one that could challenge the ruling party’s authority. The party punished him by granting him a poor position on the party list for the next election. He left politics, and

the modernization group eventually dissolved. Similarly, most electoral systems in Latin America are PR systems. This may help to explain why it has been difficult to build successful legislative institution-building programs in the region.

**Type of political system**

Another factor influencing parliamentary independence is the type of political system. In general, independent legislatures are more likely to develop systems which clearly divide political power between legislative and executive branches, than in systems in which the two branches are more united. In parliamentary political systems, the party or coalition of parties winning the election selects the government, and the parliament is responsible for enacting the government’s platform. In certain parliamentary systems, such as the UK’s, the legislature breaking with the executive on important issues can trigger the collapse of the government, and lead to new elections. In presidential systems, by contrast, the president and the legislature are elected separately and their political fortunes are not as tightly intertwined. Defeating the executive on an issue will not trigger new elections, and in separation of powers systems there are greater incentives for legislatures to act independent of the executive branch.
The Kenya and Uganda political systems share some parliamentary characteristics (such as the chief executive naming the cabinet from within the parliament), but they are, essentially, separation of powers systems. The president and the legislatures are elected separately, and the legislature’s failure to support the executive on a key issue does not necessarily lead to new elections. Separation of powers political systems, such as Kenya’s and Uganda’s, tend to make it easier for legislatures to act independent of the executive.

In the words of Professor Robert Nakamura, however, “architecture is not destiny,” and there are examples of parliamentary systems in which legislatures are quite independent of their executives. In Poland parliamentary system, according to Goetz and Zubek, the Sejm (legislature) sets between 30 and 60% of the legislative agenda. Goetz and Zubek state that “Government is a joint, rather than primary agenda setter as far as domestic, non-EU related legislation in concerned.” When parties or chief executives are weak, even in some parliamentary systems, legislatures have a greater potential to act in their institutional interests. David Olsen has noted with regard to the Polish Sejm that, “The relative weakness of both parties and government as controlling
entities in the legislature provides committees with an opportunity for independent thought and action."^{222}

**Party strength**

The Kenya and Uganda cases indicate that another important factor in parliamentary independence is the strength of the parties in the legislature. Strong parties are able to discipline members and ensure that they vote as the party demands, reducing member, and therefore parliamentary, independence. Because parties in PR systems determine the positioning of candidates on party lists, they often enjoy greater leverage over their members than do parties in PM systems.

Party strength can also refer to numbers and percentages of members in the legislature. Numbers alone, however, do not guarantee that a majority party will always control a legislature. In Kenya’s Eighth Parliament KANU had a majority of members, and opposition members were divided among several parties. Yet when KANU members, especially backbenchers, opposed KANU and Moi (especially in committees), but did not suffer politically, KANU’s power in the

---

parliament quickly eroded. In the Uganda Parliament, however, NRM dominance since the 2006 elections has weakened parliamentary independence and pulled power back toward the bottom of the Independence of Parliament Triangle, toward party and president. Museveni and the NRM appear to be progressively diminishing parliamentary independence in Uganda.

A number of scholars and observers of parliament have commented on the relationship between parties and committees – that stronger parties can mean weaker committees. Barry K. Winetrobe, in *Shifting Control? Aspects of the Executive-Parliamentary Relationship*, quotes S.A. Walkland from a 1983 essay on the House of Commons in which he claimed that, “. . . the movement for a strong committee system in parliament ignored one of the most elementary findings in comparative legislative research – that the strength of a legislative committee systems varies inversely with the strength of the party system in a legislature.” An NDI publication on legislative committees makes a similar observation.

“What explains the varied roles of committees in different legislatures? One answer lies in the relationship between the importance of committees in a legislature and the importance of political parties in that same

institution. The stronger and more disciplined the political parties in a legislature, the less powerful the role of committees. In addition, the prominence of the legislature itself vis-à-vis the executive branch is reflected in the relative significance of the legislature’s committees. Legislatures that play a central role in the lawmaking process tend to have more developed and active committees; legislatures that defer to the chief executive, whether a prime minister chosen from its own ranks or a separately elected president, tend to have weaker committees."²²⁴

Other factors

The discussion in earlier chapters of the independence of the Uganda and Kenya Parliaments proposed a number of factors affecting parliamentary independence. Among these were the legislature’s formal powers, yet we noted in Chapter One that the existence of formal powers does not account for how effectively those powers are used. The Mexican House of Deputies is an excellent example of a legislature that became stronger and more independent, even without major changes in its formal powers.²²⁵

²²⁴ National Democratic Institute, Committees in Legislatures: A Division of Labor, Legislative Research Series #2, 2000, 4.
²²⁵ Mexico’s House of Deputies provides an excellent example of how a political change, even without a major growth in formal powers, can impact on legislative independence. As the PRI lost control of the congress and the presidency in the late 1990s and early 2000s, the House of Deputy’s legislative role grew dramatically, but its legislative powers changed very little. In the 2001 spring term in Congress, 48% of legislation enacted with introduced by the president. That figure fell rapidly over the next few years, such that by the spring 2004 term legislation enacted introduced by the president was only 7.1%. Figures taken from Jeffrey Weldon, “The Spring 2004 Term of the Mexican Congress,” Center for Strategic and International Studies, Washington, D.C: (2004) 25-26.
Political leaders with a vision for parliament (in the words of Uganda Speaker Wapakhabulo), MPs like Hon. Dan Ogalo and Hon. Oloo Aringo, can have a great impact on the development of parliament as an institution. And while a loss of power by chief executives and parties might be provide a suitable environment for strengthening a legislature, leaders with a vision for a stronger parliament must take action, or the legislature will not change.

In like manner and related to this, executives intent on expanding their own power at the expense of the legislature can, not surprisingly, weaken a parliament. President Museveni has ruled Uganda for more than two decades, and his laser-like focus on retaining power has apparently never faltered. He has risked the ire of Western donors by having the constitution changed to make this possible, and worked tirelessly to thwart those who challenge him. Kenya’s President Kibaki, however, has not maintained such a constituent focus. He has not managed his party or his nation’s politics with Museveni’s vigor, determination or constancy.

Another factor mentioned which impacts on a legislature’s independence is the length of time members are allowed to occupy leadership positions, particularly in committees. Museveni and the NRM understood that long-serving committee chairs are better able to develop expertise, to establish relationships with experts and professional associations dealing with their issues, and acquire
confidence to challenge the government. He therefore replaced all of their committee chairs at the mid-point of the Eighth Parliament. Longer terms for committee chairs strengthen legislative independence, while shorter terms strengthen the hand of executives and parties.

Figure 18, below, Factors Encouraging or Discouraging Parliamentary Independence, lists some of the factors presented in this dissertation which are likely to impact on a parliament’s level of independence. Factors likely to encourage parliamentary independence are placed above the independence of parliament triangle, as they are likely to move power toward the independent parliament at the top of the triangle. Factors likely to pull the influence over decisions toward the bottom of the triangle, toward presidents (or chief executives) or parties, are listed below the triangle. Some of these factors may be both causes and effects of a more independent legislature (high allowances, resources, salaries, and professional staff, for example). No single factor determines parliamentary independence, but the list of factors may serve as a useful tool for making preliminary estimates regarding parliamentary independence, or the potential for parliamentary independence.
Figure 18. Factors Encouraging and Discouraging Parliamentary Independence

**FACTORS ENCOURAGING INDEPENDENCE**
- PM electoral system
- Separation of powers political system
- Independent parliamentary administration
- Strong committees
- High allowances, salaries, resources, professional staff
- Strong formal legislative powers
- Legislature using its powers
- Weak parties
- No dominant party in legislature
- Weak president
- Leaders with a vision for parliament
- Long terms for legislative leaders and committee chairs

**FACTORS DISCOURAGING INDEPENDENCE**
- PR electoral system
- Parliamentary political system
- Parliamentary administration and staff controlled by executive
- Weak committees
- Minimal allowances, salaries, resources, professional staff
- Minimal formal legislative powers
- Legislature not using its powers
- Strong parties
- Dominant party in the legislature
- Strong president
- Leaders lack a vision for the parliament
- Short terms for legislative leaders and committee chairs

independent parliament

parties

president
CHAPTER 7-CONCLUSION

This final chapter of the dissertation has three objectives. Its first is to summarize the findings of the Uganda-Kenya comparative case study. Second, it reviews the contributions the dissertation was to have made, as stated in Chapter One. Third, the chapter closes with a number of conclusions based on of the dissertation’s findings, and makes some suggestions for further research.

Summary of findings

Uganda: Figure 19, below, the summary chart of indicators of the Uganda Parliament’s independence, provides a useful overview of the dissertation’s findings regarding Uganda. The chart shows how both institutional development indicators (first two), and formal power indicators of parliamentary independence (second two) changed across the three periods considered.
### Figure 19. Indicators of Parliamentary Independence: Uganda, Pre-reform, Sixth and Seventh and Eighth Parliaments

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Independence of committees and parliamentary administration.</td>
<td>Weak committees, Little administrative independence</td>
<td>Strong committees, amending legislation, passing private member bills, interacting with NGOs. Independent Parliamentary commission responsible for parliament’s budget and staffing.</td>
<td>Committees still relatively strong relative to many in Africa. But growing NRM dominance over committees and parliament administration.</td>
</tr>
<tr>
<td>Resources, allowances, facilities for members, staff size and specialization</td>
<td>Few resources, Minimal facilities and staff.</td>
<td>Improved and expanded parliamentary facilities, offices for members, larger more professional staff, new library, new research staff, new committee clerks, new budget office and staff, higher pay and benefits for members and staff.</td>
<td>Parliament still well-resourced and professional compared to most African parliaments. Yet, NRM and pres. dominance make it difficult for parliament to assert itself vis-à-vis a dominant party and president.</td>
</tr>
<tr>
<td>Formal powers for restraining executive discretion.</td>
<td>Few powers.</td>
<td>1995 Constitution, Admin. of Parl. Act 1997, Budget Act 2001 provided several new powers, included authority to censure ministers, “powers of the high court” for compelling witness to appear, power to convene and prorogue parliament, approval power over cabinet ministers, new budget process allowing parliament a voice in developing the budget and overseeing its implementation.</td>
<td>Formal powers are no longer expanding, some decline. Parliament lifts ban on presidential term limits. President has a whipping system and a prime minister to see that his programs are enacted.</td>
</tr>
<tr>
<td>Use of powers to constrain executive</td>
<td>Unable to use the few powers it had.</td>
<td>Effectively using powers to build parliamentary autonomy and limit executive discretion. Ministers fired, committee investigations conducted, amending executive legislation, passing private member legislation, expanding parliamentary authority.</td>
<td>NRM and presidential dominance in parliament make it dangerous to an MP's political career to use parliament’s powers to challenge executive. Party loyalty becomes the prime criterion for longevity in office. NRM ignores committee investigation of NRM leader.</td>
</tr>
</tbody>
</table>
Uganda’s pre-reform parliaments, from independence to the installation of Uganda’s Sixth Parliament in 1996, were weak both institutionally and in terms of their formal powers and their use. In the 1960s, President Milton Obote concentrated power in himself and in his Uganda People’s Congress. And when parliament did attempt to assert its independence by censuring Obote in 1966, he responded by arresting MPs who challenged him. Obote forced parliament to accede to new constitutions empowering the president at the expense of all other state authorities, and used the rewards and penalties at his disposal to convince nearly all parliamentarians to join the UPC. The first two Obote parliaments were followed by Amin’s military government in the 1970s, another Obote dominated government between 1980 and 1985, and military governments until the restoration of democracy in Uganda in 1996.

Uganda’s Sixth (1996-2001) Parliament made impressive gains both in its institutional and formal indicators of parliamentary independence. Committees freely amended executive legislation, and parliament passed private member bills granting the parliament authority over its budget and staffing. Parliament expanded its facilities and staff, and increased member and staff pay. Parliament used the significant formal powers it possessed to investigate corruption, censure ministers, and force government to change some policies.
But Uganda’s Seventh, and especially its Eighth, Parliaments, became progressively less independent institutions. Party and presidential influence over decisions made in the parliament grew, as indicators of parliamentary independence and indicators of parliamentary power reversed direction. With the re-establishment of party politics and the abolition of term limits, President Museveni and NRM dominance over Ugandan political life grew. Parliamentary censure motions ceased, and member independence declined. The NRM removed committee chairs and members in June 2008, replacing them with more loyal members, and in the autumn of that same year the NRM declared that two ministers being investigated by a parliamentary committee had “no case to answer.” The Uganda Parliament, nevertheless, continues to be one of the more formidable on the continent in terms of its formal powers, but its ability to use those powers is declining.

The series of Independence of Power Triangles (Figure 20), below, present visually the shifting influence of parties, presidents, and independent parties over the decisions emanating from the Uganda parliament throughout the pre-reform, reform, and post-reform periods.
Figure 20. Independence of Parliament Triangles: Uganda Pre-reform, Sixth Parliament, Seventh And Eighth Parliaments


3. Uganda’s Seventh and Eighth Parliaments, 2001-2008
During the pre-reform period, Obote and the UPC dominated parliament, leaving members, committees and leaders little authority power to influence the decisions parliament made. The decision ball rests closest to the president, at the bottom right of the triangle, and the font size representing relative influence is largest for the president. Obote depended on his party, the UPC, to control the national assembly. Parliament’s committees had little influence, and the decision-ball sits farthest from the independent parliament.

The ball representing decision-making in parliament for Uganda’s Sixth Parliament moved toward the top of the triangle, as parliament was relatively unrestrained by the president or by parties. It passed legislation strengthening the parliament as an institution, was able to amend executive proposals through its strong committee system, and checked presidential abuses of power by censuring ministers and threatening to censure others. In this no-party parliament, President Museveni and the NRM leadership were hindered in their efforts to control the institution, partly because there was no party apparatus in place in parliament through which to enforce their will.

But power relations changed again in period three, in the post-reform Seventh and Eighth Parliaments. With their overwhelming majority and the new party apparatus in place in the Eighth Parliament, Museveni and the NRM
dominate the parliament. President Museveni’s control over Uganda’s political life, first realized when he took power through a military coup in 1986, is increasingly being re-asserted. While the Uganda parliament today remains a strong institution relative to most other legislatures others in the region, the real influence of committees and members on its decisions, particularly where those decisions cross the desires of Museveni and the NRM, has declined.

**Kenya:** Indicators representing the institutional strength of Kenya’s Parliament (first two) and indicators of its formal powers (second two) in figure 21, illustrate that it was a weak institution prior to the Eighth Parliament, but it grew in strength during both subsequent periods. It has continued both to acquire, and to use its new formal powers during Kenya’s Eighth, Ninth, and Tenth Parliaments.
**Figure 21.** Indicators of Parliamentary Independence: Kenya Pre-reform, Eighth Parliament, and Ninth and Tenth Parliaments

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Independence of committees and parliamentary administration.</td>
<td>Weak committees, little administrative independence.</td>
<td>Stronger committees, amending legislation, passing private member bills, interacting with NGOs. Constitution of Kenya Amendment Act 1999 and Parliamentary Service Act 2000 create Parliamentary Service and Parliamentary Service Commission (PSC), making Parliament responsible for budget and staff.</td>
<td>Growing independence of committees and parliamentary administration; limited influence of party or president over committee decisions; one-third of Parliament’s budget dedicated to committee work.</td>
</tr>
<tr>
<td>Resources, allowances, facilities for members, staff size and specialization.</td>
<td>Few resources, minimal facilities and staff.</td>
<td>Improving and expanding parliamentary facilities, MP salaries around $1,000/mo. Increase to around $5,000/mo., increased salaries and benefits for staff, offices for members, beginning to increase numbers of professional staff, Parliament’s budget increased 5X, higher pay and benefits for staff.</td>
<td>Member salaries and allowances surpass $12,000/month, new budget staff, CDF 2.5% of the national budget, fully-funded and staffed constituent offices.</td>
</tr>
<tr>
<td>Formal powers for restraining executive discretion.</td>
<td>Very limited powers.</td>
<td>1999 and 2000 Acts grant Parliament power over staffing and budget.</td>
<td>New budget committee established constituency development fund (2.5% budget), new district offices.</td>
</tr>
<tr>
<td>Use of powers to constrain executive.</td>
<td>Unable to use the few powers it had.</td>
<td>Committee investigations of corruption; publishing List of Shame; amending national budget, Coffee Bill, Sugar Bill, Children’s Bill, stopping KACA Amendment, passing Donde bill over government objections, publishing and implementing parliamentary development plan.</td>
<td>Committees substantially amend executive legislation, committee amendments prevail on floor (89% in 2006). PAC investigations of Anglo-leasing scandal lead to minister resignations. Parl. censures Finance Minister, leads to his resignation, even as governing coalition holds an overwhelming majority of seats.</td>
</tr>
</tbody>
</table>
Kenya’s indicators of parliamentary independence, those measuring institutional strength, as well as those specifying formal powers and their use, are similar to Uganda’s during the pre-reform period. Kenya parliaments prior to 1997 had attempted to establish effective committees and independent parliamentary administrations, but these efforts were successfully blocked by Presidents Kenyatta and Moi, and by the dominant KANU party. Instead of parliament expanding its powers to restrain abuses of executive authority, it was forced to pass dozens of constitutional amendments vesting nearly all state power in the office of the president. Opposition parties were prohibited, parliamentary salaries were kept low, and MPs, if they hoped to remain in office, learned to depend on patronage, ministry positions, and handouts from the executive.

The indicators chart shows the growing independence of the Kenya Parliament, both in institutional terms, and in terms of formal powers, during the first reform parliament, the Eighth Parliament. But, unlike in Uganda, the Kenya Parliament continued to grow in independence during subsequent periods, as well. Parliament’s committees and administration continued to act independent of executive and parties, parliamentary resources grew rapidly, parliament granted itself new powers, and it used those powers.
Coming next to Figure 22, below, the Independence of Parliament Triangles corresponding to the three periods in Kenya, we see that presidential and party influence over the decisions made in the Kenya Parliament declined over periods two and three. Although very strong prior to Kenya’s Eighth Parliament, President Moi and KANU began losing their ability to control parliament, even as they maintained a majority of seats in the national assembly. Parliament successfully challenged Moi and KANU on the budget, freely amended executive legislation, and passed important measures establishing parliament’s independence.

The trend continued in the Ninth and Tenth Parliaments. President Kibaki could not count on members’ votes, and it sometimes seemed to matter little whether his coalition held a majority of seats in parliament. Committees were apparently free from party control. Members continued to introduce and pass private member bills (a number of which enhanced parliamentary power relative to that of the executive), and the assembly held budget measures hostage in exchange for presidential approval of measures which would further strengthen parliament and MPs vis-à-vis the executive. Weak political parties, constantly shifting political alliances, and a weak presidency allowed members to pursue their individual and constituency interests through an increasingly independent parliament, relatively free of party or presidential control.
Figure 22. Independence of Parliament Triangles: Kenya Pre-reform, Eighth Parliament, Ninth and Tenth Parliaments


Contributions of this dissertation

Having summarized the dissertation findings, we next consider the contributions this study was to have made, according to Chapter One. First, it was to help fill a gap in the literature about African legislatures, a relatively under-studied field. Next, some African legislatures have begun to play more significant roles in the governing and development of their nations, and these include the Kenya and Uganda Parliaments. This paper was to have helped explain how and why they have been able to do so. Third, the dissertation was to contribute more broadly to the field of legislative strengthening. A better understanding of the ebb and flow of parliamentary independence in Uganda and Kenya, I hoped, would enhance our understanding of issues of parliamentary independence in other nations. Finally, the study sought to discover factors which would encourage, as well factors which discourage, parliamentary independence, not only in Uganda and Kenya but in other nations as well.

With regard to the first objective, this longitudinal study on the changing levels of autonomy of the Uganda and Kenya Parliaments from independence to late 2008 has drawn on scores of sources, and has developed new information through several interviews with key actors involved in strengthening these two
legislatures. As a result, we now have a more complete picture of how the Uganda and Kenya parliaments have developed over several decades. Using a most similar system design comparative case study, I have identified factors responsible for their differing levels of independence. Being a participant observer in the development of the two parliaments over several years gave me the advantage of observing changes to these legislatures over time, and of establishing working relationships with the reformers responsible for those changes.

Second, the Uganda and Kenya Parliaments have been two of the more independent and influential legislatures in sub-Saharan Africa over the past 12 years or so, and the dissertation has helped explain why. Third, the dissertation contributes to the field more broadly by applying four indicators of parliamentary independence to the Kenya and Uganda parliaments across three different periods. The indicators selected combined two types of measures of the strength of a legislature. The first two indicators were drawn from Nelson Polsby’s work measuring the institutional strength of a legislature, which he used to show the growing institutionalization of the United States Congress. The second two indicators were inspired by Steven Fish’s Parliamentary Power Index, which is primarily a measure of the formal powers of legislatures. The combination of these two types of indicators illustrates the changing levels of independence of the two parliaments across several periods. The dissertation
also introduced the Independence of Parliament Triangle, which represents the relative influence of presidents, parties and independent legislatures over decisions emanating from parliaments.

Finally, the study suggested several factors which could be used to help one determine the level of independence, or potential independence, of a legislature. Currently there is a high level of interest in developing standards for democratic legislatures and in systems for measuring legislative effectiveness. Information from the chart on Factors Encouraging or Discouraging Parliamentary Independence can contribute to this discussion.

226 Organizations involved in this effort include the National Democratic Institute (NDI), World Bank Institute (WBI), Inter-Parliamentary Institute (IPU), Commonwealth Parliamentary Association (CPA), the Canadian Parliamentary Centre (CPC) and International IDEA. The author participated in a conference on Parliamentary Benchmarks and Indicators held in Brisbane, Australia in September 2008.
Conclusions and suggestions for subsequent research

Several conclusions, and some suggestions for further research, can be drawn from this dissertation. A first conclusion relates to the limitations of attempting to determine the power and independence of a legislature by focusing exclusively on its formal powers. Defining a legislature’s formal powers is an excellent place to begin to build an understanding of its actual power, but it is only a starting point. The Uganda and Kenya cases illustrate that a legislature’s independence and its ability to use its authority can change dramatically, even if its formal powers are not altered. Uganda’s Sixth Parliament had explicit constitutional authority to censure ministers, and it used that power. The Seventh and Eighth Parliaments had the same authority, but failed to use it. Presidential and party control over MPs keeps them from using their constitutional power. Kenyan MP formal authority to censure ministers has not changed since independence, yet such censures, which never occurred prior to the Ninth Parliament, have almost become routine. This dissertation suggests that it is the lack of presidential and party control over the members of Kenya’s more institutionalized parliament that have permitted members to use this censure power.
The Mexican Congress is another legislature which has become more active in recent years, even without major changes in its constitutional authority. The House of Deputies possessed the constitutional power to amend the executive budget, introduce, and pass its own legislation for decades, yet for most of the twentieth century it rarely used these powers. But with the PRI losing control of the Mexican Congress and the presidency over the past decade, the Congress now routinely makes changes to the national budget. In addition, much of the initiative for legislation in Mexico has shifted from the presidency to the Congress. In the spring 2004 term of the Mexican House of Deputies, for example, more than 90% of the legislation enacted by the Mexican House of Deputies was initiated in the House, not by the executive branch (see footnote 231).

Therefore, while formal powers are an important factor to consider when determining the strength and independence of a legislature, they are only one of a number of factors. Figure 23, below, illustrates this point. It lists several of the powers of the Uganda and/or Kenya Parliaments, followed by a description of how effectively the two parliaments use those powers. The column on the left lists formal powers, and the two columns to the right indicate whether that parliament possesses a specific power, and how effectively it uses it. Both parliaments, for example, are authorized to censure ministers (with more explicit
constitutional power granted to the Uganda Parliament), but only the Kenya Parliament is currently using this authority.
### Figure 23. Uganda and Kenya Parliaments-Use of Formal Powers in 2008

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Power to introduce and pass private member bills.</td>
<td>Yes. But no longer passing private member bills.</td>
<td>Yes. Continuing to pass private member bills.</td>
</tr>
<tr>
<td>Committees granted specific authority to initiate bills, assess and evaluate activities of government, carry out relevant research.</td>
<td>Yes. Powers listed explicitly in constitution. Committees not initiating bills. Gov’t &amp; NRM control what parliament does with committee investigations. Diminishing ability to conduct oversight.</td>
<td>Less explicit powers than in Uganda. Parliament continues to conduct investigations with minimal government influence.</td>
</tr>
<tr>
<td>Power to approve cabinet ministers.</td>
<td>Yes. Strong party control over committees and compliance with NRM and president’s wishes.</td>
<td>No constitutional power. But growing control over appointments to newly established commissions.</td>
</tr>
<tr>
<td>Expanded budget powers and structures.</td>
<td>Yes. Explicit powers in the 2001 Budget Act. But growing power of the president and NRM in parliament reduces parliament’s ability to challenge government.</td>
<td>Yes, but fewer powers than Uganda parliament possesses. Yet, parliament has held the budget hostage in exchange for executive approval of measures expanding parliament’s power (e.g., constituency development fund).</td>
</tr>
<tr>
<td>Power to censure ministers.</td>
<td>Yes, explicit powers. But no longer censuring ministers.</td>
<td>No explicit constitutional power, but censuring ministers leading to their losing their portfolios.</td>
</tr>
<tr>
<td>Constituency development fund.</td>
<td>Yes. Approximately $8,000/year.</td>
<td>Yes. Approximately $700,000/year.</td>
</tr>
</tbody>
</table>
Second, the dissertation challenges the assumption that strong political parties are an unalloyed good for democracy, or even important to the development of strong legislatures. Political parties can and do make several important contributions to their democracies and to the work of legislatures. They can serve as the chief link between citizens and their government. Parties organize choices for voters, and they motivate citizens to participate in the political process by identifying and articulating their interests in campaigns. Opposition parties offer voters alternatives to the government in power. Within legislatures, parties organize the work of the institution, determine who sits on and chairs committees, and manage the flow of legislation. But in the cases of Uganda and Kenya, strong parties reduced parliamentary independence, made the parliaments less effective institutions, and compromised their ability to confront executive corruption.

Uganda’s Sixth Parliament, the nation’s first no-party parliament, was arguably the most effective in Uganda’s history. Strong committees met with interest groups and amended legislation in response to their concerns. Parliamentary investigations led to ministers being censured and removed from office, and parliament was able (for a time at least) to restrain executive abuse of power in the attempted sale of the Uganda Commercial Bank. Ministers appeared before parliamentary committees when summoned, and came prepared to explain the actions of their ministries. Parliament passed two
important pieces of legislation strengthening the parliament vis-à-vis the executive (i.e., the Independence of Parliament Act 1997, and the Budget Act 2001).

As presidential and NRM power in the Uganda Parliament grew, and especially with it becoming a party-based parliament, members ceased censuring ministers. When Parliament’s Committee on Commissions, Statutory Authorities and State Enterprises investigated the National Social Security Fund (NSSF) purchase of land from Uganda’s Security Minister, President Museveni and the NRM were able to kill the investigation, forcing party members to approve a motion absolving the minister and the NSSF board. Further, the NRM party removed all committee chairs and members in 2008, replacing them with members that were more loyal to the party. In Uganda, the NRM party apparatus within parliament has made it progressively more difficult to challenge the president, or the NRM.

In contrast, Kenya’s fluid political situation of relatively weak political parties unable to control MPs has encouraged parliamentary independence, enhancing the institution’s ability to challenge the executive. Members continue to “leave party affiliation at the door” when entering committee meetings, and factors other than party are considered in the decisions parliament makes. Committee investigations have led to a number of highly placed ministers losing
their positions, and this has even occurred when the government, or the governing coalition, has controlled a majority of parliament’s seats.

The Uganda and Kenya cases illustrate that strong parties are not always beneficial to democracy and transparency. If strong parties become a means of killing investigations of government corruption, of reducing the quality of committee work, and of weakening parliamentary effectiveness, then they are detrimental to democracy. When they stand for varying regional, religious, economic and other interests in a nation, represent those interests in the parliament, and are able to forge policies or reach agreements within parliament which effectively balance those interests, they are effective. While this is a high standard for parties in developing (or even developed) countries, the Uganda and Kenya cases illustrate that strong political parties may not always desirable.

A third conclusion is that a legislature’s development does not advance exclusively in one direction: executives which have lost power to more independent legislatures will generally attempt to regain their lost authority. Political power relationships are not static, as the changing influences over decisions made by the Uganda and Kenya parliaments illustrate. President Museveni punished parliament members who challenged him, rewarded those who complied with his wishes, and ultimately, by controlling the dominant (and disciplined) party in parliament, was able to expand his control over the
institution. Presidents Moi and Kibaki, in contrast, were not able to reestablish their control over the Kenya Parliament. Without a disciplined national party through which to control the parliament, Kenyan presidents have been giving ground to an increasingly powerful legislature for a decade.

A fourth conclusion of the case studies, relevant both to would-be parliamentary reformers and to outside actors hoping to help strengthen a parliament, is that one should think in terms of incentives that will motivate members to strengthen their legislature. When power shifts in institutions, there are both winners and losers. Those losing power will generally struggle to maintain it, and those gaining power must struggle to win it. Hon. Oloo Aringo of Kenya, and Hon. Dan Ogalo and Hon. Beatrice Kirasso of Uganda all described their lobbying efforts with members to convince them to support the changes they proposed. Hon. Aringo was especially frank in his description of how he motivated members – from both the government and opposition – to support his parliamentary independence legislation.

“I told them [MPs] we could then review our own terms and conditions. Rather than the president reviewing our terms and conditions through the committee he recommends, we shall do it ourselves. I had to wave this idea – it was a package I was now selling to them – first salaries, second allowances, third medical, fourth a vehicle. When I met with KANU, I said, ‘Why are you denying yourselves?’

Aringo “... used MP self-interest to motivate them to support parliamentary independence... I got even KANU members to support it... I had to make
something very pleasant.” Members realized that reform proposals would benefit
them and their constituents, and this knowledge emboldened them to support
the reforms, despite opposition from their leaders.

A fifth conclusion, drawn from Chapter Six, is that there are several
factors which influence a legislature’s potential to become a strong, independent
institution. Figure 18 listed several of these factors. An understanding of factors
such as these would be useful for scholars interested in the development of
legislative institutions. For practitioners working in the field of parliamentary-
strengthening, understanding such factors might help them more accurately
gauge their expectations of how a legislature might develop, and help them
better determine where to focus, and not focus, their efforts. The list of factors
could be applied to several other legislatures to see whether and how well they
apply in other nations.

As follow-on to this study, it would be interesting to test the Indicators of
Parliamentary Independence, the Independence of Parliament Triangle, and the
list of Factors Encouraging or Discouraging Parliamentary Independence, on
several other legislatures, and on the Uganda and Kenya legislatures at some
future date. Several tools for measuring different aspects of legislative
performance are currently being developed and tested (among them, the Fish
PPI, NDI’s Legislative Standards, CPA’s Legislative Benchmarks, and IPU’s and

286
International IDEA’s self assessment tool). The three tools presented in this dissertation have certain advantages, and they might clarify some aspects of parliamentary independence and power relations the other tools miss.

The Indicators of Parliamentary Independence tool considers legislature’s formal powers (as does the Fish PPI), but it also examines how legislatures use their powers, the independence of committees and parliamentary administration, and the legislature’s human and financial resources. The combination of factors presents a fuller picture than would a focus on formal powers, alone. The Independence of Parliament Triangle helps one conceptualize the relative influence of presidents, parties and independent legislatures over legislative decisions. It makes evident, for example, that an increase in member and institutional influence over legislative decisions occurs at the expense of presidential influence, and/or party influence over those decisions. And the list of Factors Encouraging or Discouraging Parliamentary Independence has the advantage of being a quick benchmark to help one make preliminary estimates of a legislature’s potential to act independently. Those of us who work in the field of parliamentary-strengthening carry rough tools and measures in our heads with which we make preliminary estimations of a legislature’s potential to develop. These three tools might help us make these estimates more systematically, use the comparative data we collect to then refine, and sharpen these tools.
TABLE OF FIGURES

Figure 1. Map of East Africa ................................................................. vi

Figure 2. Independence of Parliament Triangle .................................... 16

Figure 3. Most Similar System Design: Uganda and Kenya Parliamentary Similarities ................................................................. 23

Figure 4. Formal Constitutional or Legal Powers: Uganda and Kenya Parliaments ........................................................................ 31

Figure 5. Indicators of Parliamentary Independence ................................ 36

Figure 6. Indicators of Parliamentary Independence: Uganda 1962-1995 .... 60

Figure 7. Indicators of Parliamentary Independence: Kenya 1963-1997 .... 85


Figure 10. Independence of Parliament Triangle: Uganda’s Sixth Parliament, from 1996 to 2001 ........................................................................ 124

Figure 11. Indicators of Parliamentary Independence: Uganda, Pre-reform; Sixth Parliament; Seventh and Eighth Parliaments ...................................... 155

Figure 12. Independence of Parliament Triangle: Uganda’s Seventh and Eighth Parliaments, from 2001 to 2008 ................................................................. 156

Figure 13. Approved Budgets for the Kenya Parliament, 1998 to 2003 ........ 187

Figure 15. Independence of Parliament Triangle: Kenya’s Eighth Parliament, from 1998 to 2002 ................................................................. 201

Figure 16. Indicators of Parliamentary Independence: Kenya, Pre-reform, Eighth Parliament, Ninth and Tenth Parliaments ............................................. 226

Figure 17. Independence of Parliament Triangle: Kenya, Ninth and Tenth Parliaments, from 2003 to 2008 ................................................................. 227

Figure 18. Factors Encouraging and Discouraging Parliamentary Independence ........................................................................................................ 263

Figure 19. Indicators of Parliamentary Independence: Uganda, Pre-reform, Sixth and Seventh and Eighth Parliaments .............................................. 265

Figure 20. Independence of Parliament Triangles: Uganda Pre-reform, Sixth Parliament, Seventh And Eighth Parliaments .............................................. 268

Figure 21. Indicators of Parliamentary Independence: Kenya Pre-reform, Eighth Parliament, and Ninth and Tenth Parliaments ........................................... 271

Figure 22. Independence of Parliament Triangles: Kenya Pre-reform, Eighth Parliament, Ninth and Tenth Parliaments .................................................... 274

Figure 23. Uganda and Kenya Parliaments-Use of Formal Powers in 2008 .... 281
LIST OF ABBREVIATIONS

ALP - African Legislatures Project
APNAC - African Parliamentarians Network Against Corruption
CDF - Constituency Development Fund
CICON - Centro de Investigaciones del Congreso Nacional - Center for Congressional Research (Bolivia)
CPA - Commonwealth Parliamentary Association
CSO - civil society organization (examples: FIDA, LSK, IEA, TI in Kenya)
DP - Democratic Party (Kenya)
DP – Democratic Party (Uganda)
FIDA - Federation of Women Lawyers (Kenya)
IEA - Institute of Economic Affairs (Kenya)
IDEA (International) - Institute for Democracy and Electoral Assistance
IMF - International Monetary Fund
IPPG - Inter-Parties Parliamentary Group (Kenya)
IPU - Inter-Parliamentary Union
KACA - Kenya Anti-Corruption Authority
KADU - Kenya African Democratic Union (Kenya)
KANU - Kenya African National Union (Kenya)
KBC - Kenya Broadcasting Company (Kenya)
LIST OF ABBREVIATIONS (continued)

KPU - Kenya’s People Union (Kenya)

Ksh - Kenya shillings

KY - Kabaka Yekka Party (Uganda)

LDP - Liberal Democratic Party (Kenya)

LSK - Law Society of Kenya (Kenya)

MP - Member of Parliament

NAK - National Alliance Party of Kenya (Kenya)

NARC - National Alliance Rainbow Coalition (Kenya)

NCC - National Consultative Council (Uganda)

NDI - National Democratic Institute

NDP - National Development Party (Kenya)

NGO - non-governmental organization

NRA - National Resistance Army (Uganda)

NRM - National Resistance Movement (Uganda)

NSSF - National Social Security Fund (Uganda)

ODM - Orange Democratic Movement (Kenya)

PAC - public accounts committee

PM - plurality majority electoral system

PNU - Party of National Unity (Kenya)

PPI - Parliamentary Powers Index

PR - proportional representation electoral system
LIST OF ABBREVIATIONS (continued)

PRI - Partido Revolucionario Institucional - Institutional Revolution Party (Mexico)

PSC – Public Service Commission (Kenya)

PSC - Parliamentary Service Commission (Kenya)

SADC PF - Southern African Development Community Parliamentary Forum

TI - Transparency International

UPC - Uganda People’s Congress

USAID - United States Agency for International Development

USAID SUNY/Kenya - USAID-funded State University of New York project in
Kenya (also called SUNY/Kenya)
BIBLIOGRAPHY


*BBC News Online*, “Kenya’s Cabinet learns the ropes.” May 9, 2008.


Constitution of Kenya.


299


*Nation Online*, “It’s Lunch with Kibaki as MPs Pursue Peace.” April 7, 2003.


Ufungamano website. “Ufungamano Kenya - One Kenya One People: Keeping the Country Together after the General Election,”


