

DRAFT

# **Appendix 1:**

## **Parliamentary Commissions: A Tool for Building Parliamentary Capacity**

Parliamentary commission legislation enacted in Uganda and Kenya effectively “delinked” the national assemblies from the executive branches, making the assemblies responsible for their own administration and budgets. Since enacting this legislation, Uganda’s and Kenya’s parliaments have become two of the most independent in Africa. This paper originally published as a World Bank PREMNote briefly describes how the legislation was enacted, the makeup and responsibilities of the commissions, several changes to the parliaments since enacting these laws, and concludes with some observations for parliaments and donors.

### **Establishing Parliamentary Commissions in Uganda and Kenya**

Newly elected to Uganda’s Sixth Parliament in 1996 (the first democratically elected parliament in Uganda in several years), MP Dan Ogalo of Bukooli South was frustrated by the parliament’s inability to function effectively and to provide the professional services he and other Members needed. Seven clerks served 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. Ogalo requested additional parliamentary staff but was turned down; Parliament was ineligible because of a ban on Government hiring.<sup>1</sup>

Ogalo realized that the fundamental problem was not a lack of staff, equipment, or adequate space; it was that the Parliament, while in theory an independent branch of government, was actually being treated as a Government Department. It had no administrative or financial autonomy. The parliamentary staff were employed by the Public Service Commission. This Commission, not Parliament, was responsible for setting staff levels, hiring, firing, and terms of employment; it could even transfer staff from parliament and into government ministries. Hon. Ogalo states in a paper on drafting private member bills that,

*“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 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.”<sup>2</sup>*

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<sup>1</sup> Dan Wandera Ogalo tells the story of how he was able to get his private member legislation enacted in a talk he gave in Kampala in 2002 entitled, “Legislative Drafting: Private Members’ Bills; A Practical Approach,” April 2002.

<sup>2</sup> Ibid. p.5.

Ogalo was determined to remedy the situation by introducing a private member bill to make Parliament independent of the executive. He modeled his first draft after a bill prepared for introduction in the UK. But later, on the recommendation of Speaker James Wapakhabulo, Ogalo redrafted the bill to conform to a more detailed parliamentary independence bill from Papua New Guinea. An expert Ugandan bill drafter put the bill into a form that was suitable for introduction into the Ugandan Parliament.

Hon. Ogalo then 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. Five ministers attended the meeting of the Committee on Parliamentary and Legal Affairs and spoke against the bill, but Ogalo, who chaired the committee, and the committee members prevailed. The Committee presented its report to the Plenary, and the Bill was passed into law on July 17<sup>th</sup>, 1997.<sup>3</sup>

Two years later in neighboring Kenya, Hon. Oloo Aringo, then an Opposition parliamentarian but formerly a minister with KANU, the governing party, succeeded in enacting similar private member legislation. Like the Uganda Parliament, the Kenyan Parliament had been administratively and financially dependent on the Executive, its staff was answerable to the Government – not Parliament – and there was a severe shortage of office space and equipment. Aringo drafted legislation similar to Uganda's, and, with the support of a group of reformers within the parliament, was able to enact a constitutional amendment that made parliament financially and administratively independent. At the 11<sup>th</sup> hour, when it was clear that the measure would pass with the support of many of the Government's own members, Government got behind the amendment, which passed in November 1999. Like the law in Uganda, the amendment made Kenya's National Assembly financially and administratively independent from the executive, and creates a Parliamentary Service Commission that is responsible for its management and budget.

## **Makeup and responsibilities of the parliamentary commissions**

Uganda's Parliamentary Commission and Kenya's Parliamentary Service Commission (PSC) have similar memberships. The Speaker chairs the Commission, and Opposition members and backbenchers on the Commission elect the Vice Chair. Key ministers, and additional Government and Opposition MPs make up the remainder of the members.<sup>4</sup>

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<sup>3</sup> Ibid. pp 5 – 12.

<sup>4</sup> Section 45 of the Kenya Constitution states that the PSC shall consist of the Speaker (Chair), a vice- chairman elected by the Commission from amongst its members, the leader of Government business in the National Assembly (or a member of the Assembly deputed by him), seven members (other than the President, Ministers, Assistant Ministers and the Attorney-General) appointed by the National Assembly from amongst its members, of whom four are to be nominated by the parliamentary party of parties forming the Government, and three by the parliamentary party or parties forming the opposition.

PSC's responsibilities are also very similar. Uganda's Parliamentary Commission is responsible for:

- Appointing, promoting, and disciplining persons holding public office in Parliament;
- Reviewing terms of service, standing orders, and the training of parliamentary officers;
- Providing a parliamentary reporting service;
- Providing necessary staff and facilities to ensure the efficient functioning of parliament;
- Preparing parliament's budget; and
- Recommending, or determining (with the approval of the Parliament), allowances and privileges of Parliament members.<sup>5</sup>

The Kenyan 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;
- 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."<sup>6</sup>

## **Changes to the Parliaments since the establishment of the Commissions**

Since establishing their independence and being placed under the direction of Parliamentary Commissions, the Kenya and Uganda Parliaments have improved their physical and professional capabilities, and have expanded their lawmaking and oversight roles. Uganda's parliament was just coming out of a long dormant period when Ogallo's legislation was enacted. Years of oppressive rulers and then military government had marginalized parliament, reducing staff and leaving the physical plant in very poor condition, with government offices actually occupying much of the parliament building. Changes since the new law came into effect include all of the following:

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<sup>5</sup> Parliament of Uganda website

[http://www.parliament.go.ug/admin\\_Parliamentary%20Commission.htm](http://www.parliament.go.ug/admin_Parliamentary%20Commission.htm)

<sup>6</sup> Constitution of Kenya, 45B(6)

- New Department and Equipment: Parliament established a Department of Library, Research, and Documentation. With assistance from USAID and the State University of New York, parliament installed its own satellite uplink, computer equipment, and an information center.
- Increased Office Space: The Commission convinced the Executive branch to vacate the North and East wings of the parliament building, which it had occupied for years. (Parliament threatened not to debate the budget unless the Executive vacated the premises). The Commission had the space refurbished, and today parliament has sufficient offices for members, sufficient committee rooms for meetings, a large library and a well-equipped training center.
- Increased staff: The Commission increased the numbers of clerks from seven to 17 (one per committee). As of 2002, Parliament had recruited 52 additional staff members.<sup>7</sup>
- Improved terms of employment: The Commission increased staff and member salaries and benefits. Staff salaries today are significantly higher than those of their public service counterparts.
- Budget Office: Parliament's independence has also enabled it to create a budget office which assists parliament in debating and overseeing the implementation of the budget.<sup>8</sup>

Without the financial and administrative independence provided through the 1997 Independence of Parliament Act, Parliament would have had to have negotiated each of these changes with the Executive. And since each change helped strengthen parliament's capacity vis-à-vis the Executive, it is unlikely that they would have been embraced by the Executive branch.

Kenya's Parliament has made similar changes. It has not added as many staff members or new functions as Uganda's, but both are increasing.<sup>9</sup> Parliamentary committees have become stronger, routinely amending or blocking government legislation, and, while the numbers have been small, Parliament is even initiating some legislation.<sup>10</sup> Staff pay and

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<sup>7</sup> New staff members were recruited and hired through an open and competitive process.

<sup>8</sup> Dan Wandera Ogalo, "Legislative Drafting: Private Members' Bills; A Practical Approach," April 2002, 13 – 16.

<sup>9</sup> Kenya's parliament, never having been closed by an extra-legal government, was better staffed than Uganda's when the parliamentary commission legislation was passed.

<sup>10</sup> Two private member bills enacted in 2003 illustrate the growing strength of parliament. The Pensions Amendment Act of 2003, introduced by Deputy Speaker David Musila, requires the Government to begin paying government pensioners within 90 days of their leaving service. Failing to do so, Government is now required to pay the pensioner what he or she is owed, with interest. Government had not been paying many retirees, so parliament exercised its oversight power through enacting this law.

The second private member bill establishes a constituency fund for members. MPs had complained for years that government funds were distributed to localities for purely political

benefits have been enhanced relative to their public service counterparts, and they also receive low interest on home and car loans. MP retirement programs have been improved, MPs receive funds for a vehicle, and their pay has increased by a factor of seven (from around US\$800/month prior to the PSC law, to approximately \$6,000 per month).<sup>11</sup>

The Kenyan Parliament acquired a building to house the PSC, and also acquired and refurbished a large office building providing an office for each MP. The PSC drafted a comprehensive, 12 year plan (2000 – 2012), which presents an insistent vision for parliament. The PSC plan states that the Assembly is responsible for legislation, financial appropriation and control, oversight and supervision of governance, checking and balancing the other two arms of government, representing the people before the Government, leading the people and the nation, “making and unmaking of the Government”, and functioning as the watchdog for democracy.<sup>12</sup>

## Observations and Comments

**(1) The power of example:** The extension of independence of parliament legislation illustrates how ideas are carried from one place to another, rather than being reinvented in each new location. Hon. Ogalo used legislation from the UK in developing his idea for a more independent parliament, and legislation from Papua New Guinea for the additional detail he needed. Kenya’s constitutional amendment is very similar to Uganda’s law. Hons. Ogalo and Aringo, and other members and staff of the Ugandan and Kenyan parliaments have traveled throughout the region sharing their experience, and leaders of several parliaments have met with the parliamentary commissions in Kenya and Uganda. Based partially on such contacts, Zambia’s parliament developed a draft Parliamentary Service Commission bill which it unsuccessfully attempted to pass in 2004. A parliamentary lawyer ruled that establishing the PSC would require a prior constitutional amendment, which many expect to be included as part of the new constitution being drafted in Zambia.<sup>13</sup>

Political scientist Samuel Huntington cites “the demonstration effect”, or “snowballing” as one reason for the expansion in the numbers of democracies in the Third Wave.<sup>14</sup> A

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reasons, with those districts supporting the government receiving generous funding, and those not supporting government receiving very little. Under the new law, each parliamentary constituency is to receive an equal allotment per year. A constituency committee in each district determines how the funds are to be spent.

<sup>11</sup> Joel Barkan and Njuguna Ng’ethe, “An Evaluation of USAID-Kenya’s Program to Strengthen the Kenya National Assembly” Final Draft of August 22, 2004, 7.

<sup>12</sup> Parliamentary Service Commission: *Strategic Plan of the Parliament for the Period 2000 – 2012*. The Parliament of Kenya, November 2000, 15 - 16.

<sup>13</sup> PACT website report:

[http://72.14.207.104/search?q=cache:XxMYeMoRXHQJ:www.pactworld.org/programs/country/zambia/zambia\\_prp.htm+parliamentary+service+commission+zambia&hl=en](http://72.14.207.104/search?q=cache:XxMYeMoRXHQJ:www.pactworld.org/programs/country/zambia/zambia_prp.htm+parliamentary+service+commission+zambia&hl=en)

and June 27, 2005 email from Hon. John Bosley, Director of the PACT parliamentary project in Zambia.

<sup>14</sup> Samuel Huntington, “The Third Wave: Democratization in the Late Twentieth Century,” (Norman, OK: University of Oklahoma Press, 1991) 100.

similar demonstration effect helps explain the growth in independence of parliamentary legislation in sub-Saharan Africa.

**(2) Why Kenya and Uganda?** Why have Kenya and Uganda been such leaders in parliamentary independence? There are many country-specific causes, but one factor may simply be that Kenya's and Uganda's hybrid political systems allow for stable divided governments. Some commentators believe that the essential unity of parliamentary and executive powers in pure parliamentary systems (such as India's or South Africa's) is a significant disincentive to parliamentary independence. The government (prime minister and cabinet) in true parliamentary systems is chosen by the ruling parliamentary party or governing coalition, and a vote of no confidence in the government leads to new elections. A parliament acting independently of the government – building strong committees, proposing alternatives to government proposals, practicing aggressive oversight – challenges its own executive branch, and endangers its own hold on power.

In presidential, or separation of powers systems, by contrast, the chief executive is elected directly by the voters (rather than the parliament), and for a fixed term. Legislatures in pure presidential systems can amend government proposals, propose and enact their own initiatives, and, in some cases, significantly amend the budget – all without threatening the tenure of the executive or his party. The political fortunes of the executive and legislative branches are less tightly linked in presidential than they are in parliamentary systems.

Kenya and Uganda's systems are hybrids, combining characteristics of both parliamentary and presidential systems. Cabinet members are selected from among MPs (as in parliamentary systems), but, most importantly, chief executives are elected directly by voters nationwide (as in presidential systems). An independent parliament, substantively amending government policies and proposals, does not present the threat to political stability it might in a pure parliamentary system. A stable system of divided government is possible in such hybrid systems. We might expect, therefore, that similar "independence of parliament" initiatives would be more likely in presidential or hybrid systems, than in pure parliamentary systems.

**(3) Initiatives with local roots work best:** Latin American experience provides a useful counter example to parliamentary commissions in Uganda and Kenya. Several Latin American nations (e.g., Bolivia, Nicaragua, Guatemala, and Colombia), with encouragement and sometimes financial assistance from donors or international lending agencies, have established congressional modernization committees in the mid-late 1990s. These modernization committees responsibilities were similar to those of the East African parliamentary commissions, and were made up of political leaders from the major political parties in the congresses.<sup>15</sup>

In general, modernization committees in Latin America have not been as effective or as long lasting as parliamentary commissions in Uganda and Kenya. One reason may be

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<sup>15</sup> "USAID Handbook on Legislative Strengthening," Office of Democracy and Governance, US Agency for International Development, Washington, DC, February 2000. 28.

that the parliamentary commissions in Uganda and Kenya were local initiatives carried by local champions with local support and enacted over the objections of their governments. Parliamentary leaders fought for these changes which fundamentally restructured power relations between the two branches of government. The modernization committees established in Latin America, by contrast, were developed with strong encouragement from outside actors and little executive opposition (in fact, in Bolivia, the chief proponent was the Vice President of the nation).

Another factor may be the greater strength and institutional consciousness of many Commonwealth parliaments relative to their counterparts in Latin America. With the notable exceptions of Brazil, Chile, and, increasingly, Mexico, annual staff turnover in Latin America legislatures after elections has been as high as 100%. Legislatures in Latin America do not enjoy the longevity of professional staff and the kind of parliamentary tradition instilled through history, and through organizations such as the Commonwealth Parliamentary Association.

#### **(4) Possible Concerns:**

##### Excessive concentration of power in the legislative branch:

Executives and others have raised concerns that stronger, more independent parliaments in Africa pose potential dangers to national stability and can upset the balance of power. The same concern was raised by James Madison in Federalist Paper number 48 in which he warned that "...legislative usurpations, which, by assembling all power in the same hands, must lead to the same tyranny as is threatened by executive usurpations."<sup>16</sup>

In theory, legislatures do have the capacity to upset the balance of power and make a nation ungovernable. But given the post-independence histories of Kenya and Uganda – indeed, of much of Africa – with power concentrated in the hands of military strong-men or presidents for life, of massive corruption and one-party rule, an over-concentration of power in the executive appears still to be a greater risk than excessive power in legislative hands. The executives in both Uganda and Kenya are still a good deal stronger than the parliaments.

##### Parliamentary Overspending

The costs of upgraded parliaments, expanded staff, and higher salaries are a burden on poor nations. Proponents of stronger, more independent parliaments, however, argue that while legislative institutional building is expensive, the benefits should outweigh the costs. More independent parliaments with access to expertise are able to bring additional voices into the policy-making process, potentially sharpening and improving government proposals. Better equipped, more independent parliaments can more successfully oversee implementation of these policies, and should be better able to uncover – and help limit – government corruption. If Parliaments use their greater independence and resources well they can help nations save money.

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<sup>16</sup> James Madison, Federalist No. 48, *These Departments Should Not Be So Far Separated as to Have No Constitutional Control Over Each Other*, from the New York Packet. February 1, 1788.

Higher MP salaries can encourage better qualified individuals to run for parliament. Better educated, more highly paid professionals have begun to run for office in Kenya since salaries were increased. The majority of the members of the Health Committee, for example, are medical doctors. Higher salaries may also reduce incentives for MPs to engage in corrupt behavior. Constituents in Kenya, as in some other African nations, expect MPs to help pay community expenses (for building schools and clinics, etc.) as well as constituent expenses (such as school fees, hospitals, and funeral costs). Reelections hinge, to some degree, on MPs paying these costs. According to Kenyan MPs interviewed by the author, higher MP salaries had liberated them from the need to go to the executive for these funds – which, of course, came with strings attached.

Another concern raised is that parliaments with so much control over their own budgets will simply dole out patronage in the form of jobs for unqualified relatives or supporters. While this is certainly a potential problem, during the period the author was involved with these parliaments (Uganda 1996 – 2000, Kenya 2000 – 2004) he observed that parliamentary commissions were careful to hire professional, qualified staff through competitive processes.

Finally, the greater openness of parliaments (relative to executives) and the media focus on all that is said and done there can act as a brake on spending abuses. Parliament's discussions and decisions take place under the watchful eye of the communications media. Citizens unhappy with parliament's spending decisions can punish their MPs at the ballot box. An editorial critical of parliament's capital improvement plans published in the June 24, 2005 Nairobi Standard newspaper illustrates how open these discussions can be.

*"...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."<sup>17</sup>*

What was impressive is that newspaper and TV reporters were welcome to cover the meeting in which the proposal was discussed, and to witness MPs on both sides of the issue argue publicly for and against the proposal. Executive decisions to spend much greater sums of money are not subject to such media scrutiny.



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<sup>17</sup> "Overstepping the bounds of financial modesty"  
[http://www.eastandard.net/archives/cl/hm\\_news/news\\_s.php?articleid=23457&date=23/06/2005](http://www.eastandard.net/archives/cl/hm_news/news_s.php?articleid=23457&date=23/06/2005)

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