



African Legislative Effectiveness

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by

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Introduction

The study of African politics has long focused on the role of the executive, or on the party, and less commonly on the role of parliament. Big men (and now a few women) dominated national politics, either as autocrats or, infrequently, as democrats. They and their close associates were salient and largely determinative of political machinations and outcomes. Thus the executive branch was for many decades omnipotent in the majority of sub-Saharan African polities.

So were political parties. Civilian rather than military authoritarian regimes usually elevated the single political party to a position of political prominence in order to serve autocratic rulers and to serve themselves; monolithic political parties were thus central to the formative decades of African development. Whether mobilizing mass parties such as Tanzania's Chama Cha Mapinduzi (Revolutionary) Party, Zambia's United National Independence Party, or Malawi's Malawi Congress Party, instrumental assemblages such as Zimbabwe's Zimbabwe African National Union-Patriotic Front, or post-Marxist entities such as South Africa's African National Congress, political parties played a controlling role in national politics alongside presidents-for-life or similarly-anointed heads of state.

Although every sub-Saharan country, no matter the extent of its real democratic design, almost always elected representatives to colonially-inherited single- or double-chamber parliaments, legislatures until recently were secondary actors in the national political dramas¹. Since parliamentarians were often beholden to executives or to parties, and since few parliaments or *conseils legislatifs* ever exerted themselves in opposition to the party or the national leader, the relevance of legislatures to African politics was easy to dismiss. Since for so long in Africa democracy was weak, confined for many years mostly to Botswana and Mauritius, legislators elsewhere were often seen as lackeys and well-paid spongers rather than as functioning members of a dynamic, egalitarian,

¹ Our inquiry into legislative effectiveness in Africa was supported by the North-South Institute (Ottawa). It emerged from an initiative fostered by the Institute in 2012-2013 and followed a meeting at the Institute on the subject in December 2012. See Nathan Bowers-Krishnan (2013) "Do Legislatures Matter? Strengthening Governance in Africa," NSI Summary Report, Ottawa: North-South Institute. Jennifer Erin Salahub was then the Institute's Theme Leader on Fragile and Conflict-Affected States and Robert I. Rotberg, Fulbright Research Professor at Carleton University's Norman Paterson School of International Affairs, is Distinguished Research Associate of the Institute.

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appropriately separated, adequately resourced, political institution. (Barkan, 2008, 125; Barkan, 2009, 1, 12-15s)

The Era of Democracy

Since the turn of the century, many more countries in sub-Saharan Africa have behaved as democracies and their legislatures and legislators have consequently become more relevant to any careful analyses of African politics. Legislatures have begun to make a difference. So have the individual representatives who sit in those chambers. They have begun more effectively than hitherto to represent the persons who elected them and the national interest that is meant to drive them individually and their parties collectively. This major change in the political salience of parliaments reflects not so much better parliamentarians (although that is indeed a factor) as it does the gradual democratization of Africa, the maturation of political decision-making, and the rise of an African middle class that expects much more of its legislators and legislatures. (For “middle class,” see Rotberg, 2013, 6.)

Accompanying these changes, plus a regression to the mean of global democratic norms, has been an acceptance in many legislatures that their key function is to constrain the arbitrary or capricious acts of the executive on behalf of the citizens whom parliamentarians are meant to represent. “Oversight,” Barkan writes, “is essential to any democracy because it ensures both the vertical accountability of rulers to the ruled as well as the horizontal accountability of all other government agencies to the one branch – the legislature – whose primary function is to represent the citizens.” (Barkan, 2008, 125-126; Barkan, 2009, 1)

This acceptance of such a responsibility is new in many legislatures, having previously been honored as an objective only in the breach. Now legislators in at least a number of (not all) African countries affirm that their goal is to serve their people and their nations, not necessarily the executive branches of their countries. They still mostly need to serve their parties, however, and in the proportionally-elected legislatures (as opposed to those whose members are elected by a first-past-the-post method) to serve especially the party executive (or head of state) that allots them places on a closed electoral list and thus determines their actions and votes in parliament. Obviously, oversight of the executive is less easy to arrange in the parliaments using the proportional representation (PR) system, particularly where the PR electoral mechanism is part of a

presidential, or a mixed-presidential, not a pure, Westminster- or pre-Napoleonic-derived parliamentary system.

Parliaments, in tandem with the executive, also set policy. In the best of times and in the more democratic of systems they give direction to governments, curb the independence of cabinet ministers, jointly make the big decisions of national political life in cooperation with the executive through legislation, help to prepare and to approve budgets and expenditures, and act as fully as possible as tribunes of the public that elected their members.

The Oversight Function

African rulers have traditionally – like the undisputed paramount chiefs that they thought they were – welcomed little oversight. But in the last decade or so, legislatures in sub-Saharan Africa have begun to provide at least a modicum of this important separation-of-powers function. As in any Westminster-type parliament, legislators and legislatures can exercise critical and determinative oversight by:

- 1) Interrogating the executive (heads of state or heads of government, cabinet ministers, and officials), compelling them to explain themselves and to justify their actions in order to achieve the twin objectives of enhancing accountability and transparency of governance.
- 2) Using their inherent approval power to grant appointments to executive ranks and to sanction executive personnel actions, and to assent to, delay, or improve executive-introduced legislation.
- 3) Exercising the power of the purse, to obligate or appropriate the funds without which no executive branch can function. Through the use of that power, legislatures can maintain citizen oversight of governmental activities and, if required, constrain and limit the executive. The audit function is also included here, providing opportunities to examine the use and abuse of public monies, but always after the fact.

These three oversight roles are traditional, evolving along with the gradual devolution of state power from a monarch (now the Westphalian state) to those who provided the funds, first the nobles and now the mass of voting humanity. How those roles are being exercised in today's Africa, how the effectiveness of such oversight can best be measured, and how the development of effectiveness can be assisted and strengthened

from the outside are inquiries that drive the core of this examination of African legislative effectiveness. (See also Barkan, 2009, 7.)

Four Cases

Taking four African legislatures (Ghana, Malawi, South Africa, and Zimbabwe) as cases during the pilot phase of our investigation in 2013, we asked legislators, academics, journalists, and expert observers in each country how, given the criteria above, they viewed the effectiveness in practice of their national parliament or equivalent. How and to what extent did each legislature exercise oversight? What were the obstacles to ideal levels of oversight? Were there noticeable constraints, if any, inherent in the way a particular parliament was organized or managed? Were legislators making full use of their legislative prerogatives and rights, or were they intimidated or held on tight leashes by the executive? Or were legislators distracted (as the most important studies of African legislatures have suggested) by the need to supply constituent services and to visit remote constituencies, or inhibited by their lack of physical offices, absence of research services, want of training, and ignorance of a legislator's traditional role? (Barkan, 2008, 130-131)

In addition to interviews with at least a dozen legislators, legislative officials, government functionaries, and expert outsiders in each country (and more in Ghana, Malawi, and South Africa than in Zimbabwe), we also sought to understand, by examining the mechanisms of each parliament, how the sheer organization of each entity inhibited or facilitated oversight. Drawing upon the literature on parliamentary oversight in Africa and beyond, we analyzed how these four African legislatures managed to fulfill their presumed responsibility to hold their executive operations and officials to account.

Note that of the four cases, one is a proportional representational (PR) example. (We also looked too briefly at Namibia, another PR case, and interviewed its Speaker.) The other three are first-past-the-post legislatures, but in Zimbabwe an opposition party was then in the majority, in Malawi the executive's party was narrowly in control, and in Ghana the president's party had a large majority. The four cases were intended to form a pilot panel, not to constitute a representative sample of African parliaments.

It makes a major difference how the legislators are elected. If they are elected on a list whose placements and rank order are controlled (as in South Africa and Namibia) by

the ruling party's national executive (and also personally by the head of state), they naturally can act less independently as legislators. Instead of being primarily responsive to the wishes of their electorates and the areas from which they are elected (or to which they are assigned after the fact), they must perforce pay close attention to the preferences of the party executive and the dictates of the party and its internal machinations. Their independence and their ability to exercise oversight is appropriately compromised much more than it need be if, instead, they are as loyal equally to a true constituency as to the party to which they belong.

Research Results

Malawi

Because Malawi's Parliament has long (since 1994) been the home of many political parties, with the party of the executive not always in the majority, Malawian parliamentarians have a robust tradition of vigorous debate, including regular criticism of the executive, scrutiny of executive appointments, and serious attempts to exercise their rights of oversight. Moreover, in 2013 the Speaker, dressed in wig and gown, seemed painstakingly fair in his rulings and conscientious in his approach to parliamentary business. (For a telling discussion of the role of speakers, see Barkan, 2009, 20, 212-212.) Similarly, his clerks and other staff approached the business of parliament in a professional manner.

Legislators in Malawi strive to be effective and know that one of their main functions is to restrain the unbridled appetite for singular action of the president of the day and her ministers. In contrast to South Africa, fulfilling this obligation is comparatively easy for the Malawian legislators because they belong to several parties and because they are able with relative ease (notwithstanding existing legislation to the contrary) to move back and forth between parties. Their ability to criticize the workings of the executive branch is not limited, either, by any threatened loss of independence as in South Africa (and Namibia). They serve their parties, but are free to listen to and represent their constituencies, and, sometimes because of the makeup of constituencies, their ethnic kin. They also respond to patronage distributed by the party leadership or by factions within the party hierarchies.

But because Malawi is one of Africa's poorest places, and because its legislature has very little control over its own budget, legislative supervision and scrutiny of executive branch actions and decisions remains limited in practice. Members must travel great distances to Lilongwe for meetings, but only very scarce funds are available to house and feed those legislators. Portfolio and other useful committees are thus able to meet only infrequently, and have limited staff. In other words, as much as key chairpersons and members seek genuinely to fulfill their oversight roles, lack of wherewithal in practice limits the occasions on which committees can summon ministers and other representatives of the executive to account for their actions. Likewise, a shortage of resources means that the committees themselves can only with difficulty convene. Effective oversight begins in parliamentary committees, and can be exercised only with greater difficulty in plenary meetings of the full chamber.

This lack of financial support for their activities and initiatives means that even the Malawian Public Accounts Committee and the Budget Committee – both critical to oversight – barely function. The issue is neither competence nor willingness; rather, tangible and operational support is wanting. As a partial result, the Public Accounts Committee in 2013 was wrestling with audit issues from some years earlier, and was not nearly current in its examination of the workings of Malawi's government and its executive branch. Likewise, the Budget Committee was meeting very infrequently and was hardly an equal partner with the minister of finance and his staff.

The ability to summon cabinet ministers before both portfolio and special committees is a cherished prerogative of active legislatures. Ideally, there and also before the full parliament in plenary sitting, prime ministers and cabinet ministers can be cross-examined and asked to give full account of themselves and their ministries. In Malawi, ministers do attempt to answer oral interrogatories on a monthly basis, as does the leader of government business, representing the executive. But, as in so many other African legislatures, ministers can be evasive; they can promise to answer questions at a subsequent sitting (and never do); or they can be somewhat less than fully accountable in their replies. In such cases, legislators have -- in practice – little redress.

Malawian legislators have the freedom to be effective in overseeing the operations of the executive. The dominant parties are not very dominant, the provision of patronage by party leaders is not always sufficient to sway erstwhile adherents, and members cross and re-cross the floor almost at will. As in so many African first-past-the-post systems with limited patronage to dispose, party discipline is weak and legislators (even

those who belong to the ruling party) can operate without necessarily worrying about adverse reactions from the president and her cabinet ministers. But finding the time and gathering the necessary quorums for committee sittings is logistically difficult and financially challenging.

Malawi's legislature has flexed its muscle on a number of occasions in this century. It denied President Bakili Muluzi in 2002-2003 the right to run for a third presidential term by refusing to approve amendments to the Constitution. In 2011, it opposed President Bingu wa Mutharika's attempt to muzzle the national media. In 2013, it denied two attempts by the president to nominate auditors-general who were not perceived by opposition legislators to be sufficiently competent. A third nominee was confirmed only after legislators were persuaded of his impeccable credentials and training, and following a stirring debate in parliament. (The legislators were privately assured that the government would pay allowances then in arrears, and that also made a difference.)

Malawi's parliament has demonstrated that it has been and can be effective. It is no comfortable rubber stamp despite all of its practical weaknesses and the executive branch's ability to control information, fail to be forthcoming, limit the issues raised, and command of timing.

Zimbabwe

Before 1 July 2013, the Movement for Democratic Change (MDC), Zimbabwe's opposition party, held a narrow majority of seats in the country's legislative assembly. Under the nation's cobbled-together Government of National Unity, President Robert Mugabe, an authoritarian leader in office since 1980 and the head of the Zimbabwe African National Union – Patriotic Front (ZANU-PF), had been compelled in 2009 to share at least some governing responsibilities with Prime Minister Morgan Tsvangeraai, leader of the MDC. Although Mugabe and Tsvangeraai were officially operating partners, in practice they were consummate opponents with radically different approaches to almost every significant national issue.

Outside of the parliamentary chamber the parties that they led were also bitter, sometimes violent, antagonists. Each sought exclusive power for themselves and for their principals. But inside parliament, legislators from opposite parties could learn to work together, providing that their mutual objective was oversight of the initiatives of the executive branch. Indeed, some ZANU-PF legislators acted sufficiently independently of

the Mugabe machine to cooperate successfully with MDC counterparts in examining some of the rougher actions of key figures in the ZANU-PF party hierarchy and to influence decisions taken by MDC cabinet ministers. On the other hand, Zimbabwe's parliament has no procedures by which to compel cabinet ministers and officials to testify before committees. Nor can it persuade ministers to reply spontaneously to uncomfortable oral questions. As in so many African parliaments, the worthy institution of question time is ignored or abused, and information with which to oversee executive actions is withheld or obfuscated.

In 2013, Parliament's unexpectedly robust Budget Committee rejected the (MDC) minister of finance's first attempt to revamp the country's method of taxing its citizens. The Budget Committee found the minister's testimony before it wanting and his overall reform proposals ill conceived, forcing him to withdraw them and to prepare a more modest taxing scheme. That kind of success was repeated by few other portfolio committees even though Zimbabwe, despite a shortage of funding, was able to hold committee hearings without the practical impediments endured in Malawi. Because of internal leadership deficiencies, the Public Accounts Committee was not very active, missing opportunities to exercise its responsibilities.

The Budget Committee's example of successful oversight proved difficult, if not impossible, to emulate across Parliament, especially when parliamentary committees – even parliamentary committees chaired by prominent ZANU-PF legislators – attempted to investigate the procedures and policies of several of the more questionable cabinet ministers from their own party. A telling case of simultaneous parliamentary investigative success and failure was the inability of the Committee on Mines and Energy to obtain any pertinent information whatsoever from the Minister of Mines or his staff about Zimbabwe's major munificent diamond discovery in the Marange area in the east.

The committee and its prominent ZANU-PF chair believed that the minister was withholding details concerning how the mining operations in Marange were run, the extent of the government's unofficial control over those diamond fields, and how its lavish proceeds were channeled into high-ranking personal pockets instead of into the national treasury. It and parliament's success came in focusing attention on an issue of national importance that the minister and Mugabe wanted ignored and in issuing a scathing report about the minister and his activities. The failure occurred because the

minister ignored the committee of parliament to which he was obliged to report, and by whom it was his responsibility to be interrogated.

In mid-June 2013, Edward Chindori-Chininga, chairman of the committee on Mines and Energy, a former cabinet minister, and a stalwart member of Mugabe's dominant ZANU-PF, released a searing report condemning the party's involvement in stealing from the country's diamond mines. He criticized the actions and behavior by name of Obert Moses Opopu, Minister of Mines, and, implicitly, Zimbabwe's military leaders and others close to Mugabe for their misappropriation of diamonds and diamond wealth. Doing so constituted a major parliamentary repudiation of Opopu, Mugabe, and those others in ZANU-PF (not in the MDC) who had been profiting personally from what should have constituted a national resource. Chindori-Chininga and his committee demonstrated that parliament constituted a potential force, and that the separation of powers notion was not dead, even in Zimbabwe.

But, a few days after the report became public, Chindori-Chininga was driving his car along a road in his political constituency. Inexplicably, it went off the road and smashed into trees (or some reports say there were no trees at that curving point of the road). Chindori-Chininga died in the same supposedly mysterious manner that previously had led to dozens of "accidental" road deaths in Zimbabwe since the 1980s. Certainly, the regime in power was tough on its critics. In May, Chindori-Chininga had also been involved in a collision and had spent several days in hospital. In the fatal case, his air bag did not inflate, indicating that the collision with the trees could have been staged after, not during, his death.

This tragedy may reflect the rough manner in which politics are played in Mugabe's autocracy. Certainly from a parliamentary perspective the Chindori-Chininga case paradoxically indicates that improving parliamentary procedures and providing sufficient financial support may be the key to greater parliamentary effectiveness only in stable legislative and political surroundings. Everywhere else, especially in contorted places that echo Zimbabwe, embedding or reinforcing a political culture of democracy and democratic performance may be much more central and conducive to capable oversight than better legislative processes, no matter how robust.

Ghana

Ghana is as stable as Malawi and a well-functioning democracy with four consecutive free and fair elections and two peaceful changes of regime to its credit. Although a British legacy parliament existed under the Kwame Nkrumah regime after 1958, Ghana's parliament in its present form is twenty years old. Unlike Zimbabwe before August 2013 and the current Malawi, but more like South Africa, Ghana's victorious ruling party occupies most of the seats in the current parliament. This majority gives the president's party the ability to control debate and to overpower committees, including the Public Accounts Committee. It has also muted legislators' ability to control disbursements from the national purse.

Even though Ghana is relatively wealthy and its parliament is comparatively well supported, the minister of finance draws up and allocates the budget of the legislative assembly, thus limiting its autonomy. Moreover, Ghana's legislators, like so many in Africa, lack offices, constituency minders, and research assistants, thus severely limiting the ability of most legislators meaningfully to exercise oversight of the executive. In parliaments everywhere, "resources count." "Legislatures that cannot acquire or otherwise generate adequate resources to support their members and operations are unlikely to become autonomous and powerful bodies." (Barkan, 2009, 220)

Legislators in Ghana furthermore find it difficult to obtain information and assistance from the staff in the parliamentary research office. Or, from another perspective, they do not know how to utilize the parliamentary research office to best effect. Moreover, in Ghana – ostensibly a republic – many legislators are also cabinet ministers due to the country's hybrid system dictated by its constitution. Rather than drawing on trusted advisors and experts from outside of government to form a cabinet, the president is obligated to appoint the majority of cabinet members from the elected members of the legislature; they can hardly be expected to scrutinize themselves or their colleagues on the ministerial bench. Ordinary legislators also aspire to become deputy or full ministers; if they are thus ambitious, vigorous oversight might prove counterproductive. Furthermore, the Ghanaian parliament (unlike the Zimbabwean and Malawian parliaments) has experienced very heavy membership turnover. In 2013, only 2 of its 275 members and the speaker had served in parliament consistently for more than one or two terms. Thus, even though efforts have been made to build capacity within parliament, many of those members who have gone overseas on courses, visited other parliaments and parliamentary institutions, and been trained extensively at home and abroad, have left the legislature for official governmental positions or the private sector.

As Barkan has shown and the Ghanaian experience exemplifies, being responsive to the needs of constituencies and constituents means less attention to exercising oversight of the executive branch. (Barkan, 2008, 127; Barkan, 2009, 13-14) In Ghana, at least, success (and re-election prospects) consists of spending lots of time in a constituency and of serving voters there well. Satisfying voters and potential voters often requires stepping outside of the de jure responsibilities of a legislator. Ghanaian MPs are often expected to provide highly individualized “local development” projects, including providing cash for school fees, paying for school uniforms, and furnishing community members with vehicles. Ghanaian civil society is very active and comments freely when parliamentarians are not seen in their constituencies; parliamentarians pay appropriate heed. (For civil society considerations, see Barkan, 2009, 218.)

One test of Ghanaian parliamentary effectiveness is the extent to which the legislature has for the most part failed to exert itself over the allocation of permits for oil and gas drilling, the country’s recent resource bonanza. Few legislators have paid sufficient attention as to whether the new oil revenues are being disbursed and allocated appropriately. This instance of lax scrutiny partially reflects a lack of expertise and a lack of information. It may also – in Ghana and elsewhere (Mozambique, Angola, Namibia, etc.) – suggest a reluctance to investigate too many of the sources of executive patronage (unlike the lamentable case of Chindori-Chininga in Zimbabwe.) Oversight of Ghana’s educational failures has also been wanting, as has attention to Ghana’s failure to provide sufficient electrical power for its industries and citizens. On the other hand, parliament has acted to inhibit several important privatization measures.

According to a minority leader interviewed in 2013, oversight is constitutionally mandated. From his perspective, “Parliament is obliged to form committees. The committees oversee the work of the ministries that they mirror.” There are two types of committees: Standing committees that are formed in the legislature to deal with issues concerning the governing of the chamber and select committees that shadow the executive branch ministries and are chaired by majority party figures. Naturally, says the minority leader, “if the government is overly partisan it can influence what happens at the committee level.” The result is “very problematic.” (Salahub, 2013a)

Among the key standing committees is the Public Accounts Committee. It has functioned better since 2005, when its meetings began to be held in public rather than in camera. Until then, the Committee found it onerous to persuade ministries and parastatal bodies being audited to appear before the Committee to defend themselves

and their practices. But, since 2005, the Committee has received much more cooperation, particularly under the leadership of chairs who have been qualified accountants. One easy conclusion is that capable chairs are essential if committees such as the Public Accounts and Budget committees are to succeed in fulfilling their critical mandates. One Ghanaian parliamentary expert reported that “Committees are functioning only to the extent that they have a mother ministry that they oversee and a budget from parliament. But, they depend and wait on the ministry that they oversee to fund their research and oversight activities.” (Salahub, 2013b)

The Public Accounts Committee has received local NGO assistance to examine oil and gas revenue accounts, and model their flow projections. But the reports of the Committee on this subject have not influenced the way in which the government is using such new windfall funds.

South Africa

South Africa’s parliament is the longest established, best funded, and most professionally staffed of our four legislative cases. It is also the one most heavily dominated by one political party, the African National Congress (ANC), which now has nearly two-thirds of the seats. Even more oppressively, the ANC tolerates criticism even from its own members very reluctantly. It neither believes in democracy within its own party ranks nor within parliament and sets rules for debate and other procedural regulations in the House of Assembly (the lower chamber of parliament) that fully favor the ANC. Indeed, on more than one occasion in 2013, the ANC simply decided to allocate no debate time to an opposition no-confidence motion because it “interfered in internal ANC business.” (Salahub 2013c)

The ANC in the House of Assembly is directed from Luthuli House, party headquarters in Johannesburg, and not by the sitting members or even by the Speaker. According to the chair of the opposition Democratic Alliance, “Debate has been stifled by time allocation proportionally based on representation in the House. It’s like running a post office.” (James, 2013a) Most of the members of the House are relatively new, too, making it easier for the ANC whips to control their members and the proceedings of the House.

The national electoral system of pure proportional representation gives Luthuli House and the national party executive the ability to control the behavior of ANC members, and

therefore the operations of the House of Assembly. Despite the relatively recent creation of “constituencies” and the allocation of members to them, South Africa performs according to a PR list system that renders constituency affiliations largely irrelevant in terms of member self-interest and rational choice calculations. To keep their places on the list, and hence their seats, members must obey the dictates of Luthuli House. Members are not accountable to sets of voters, only to the party hierarchy.

The enforcer of the ANC in the House is the Chief Whip. (For a pointed, if dated, analysis of the South African system, and the position of the Chief Whip, see Barkan, 2009, 208-214.) He is the link between the president of the party (who is the same person as the president of the nation) and the ANC membership in the Assembly. He and his staff decide daily what is to be discussed, who is to speak for the ANC, and how opposition private member motions, opposition questions, and so on are to be addressed. He even decides if a minister should be in the House, responding. Daily, when the House is in session, he holds broad-based strategy meetings to ensure that the ANC is neither disadvantaged nor damaged by proceedings in the chamber, or in committees. The Chief Whip and the Speaker, not the membership at large, effectively control the chamber’s budget and set expenditure priorities.

The Chief Whip and his deputies also convene an all-party technical committee that meets once per week to examine all matters that relate to the programming of parliament: legislation, debates, motions, appointments, reports from committees, etc. An all-party Chief Whips’ Forum meets weekly, chaired by the ANC, to share consultative issues, and to coordinate debates, but without taking decisions. Topics discussed in 2013 included time allocation and the timing of debates. It also addresses members’ welfare. The National Assembly Programming Committee also meets weekly. It is chaired by the Speaker or his designate. Ministers are represented as is the office of the Leader of Government Business. At those meetings, the legal office presents the bills that are going to be introduced and provides updates on the legislative process. Other issues, such as parliamentary appointments, are also addressed.

According to the Westminster model, oversight is helpfully exercised at question time, when members can interrogate the executive and its ministers on any and all subjects. In South Africa, the opposition finds it hard to employ question time to its best advantage. On the one hand, only during the “questions for oral reply” opening can opposition members attempt to hold ministers to account. But in the South African case

such occasions take place only once a month and subjects are rotated by thematic cluster every six weeks. (Regular question time is weekly, for two hours, with written questions. But the opposition is limited in terms of question asking time to its relatively small proportion of the full membership of the House.) Those are limiting parameters, but even more limiting is the fact that the leader of government business (the national vice-president) and cabinet ministers often fail to appear to answer questions before the House. And when they do, answers may be incomplete, evasive, misleading, or simply contentious. “The ANC,” said an opposition whip sadly, “was reluctant to engage.” (Kalyan, 2013) More circumspcctly, a non-political staff member of the Assembly reported that “There have been complaints about the quality of answers.” (Confidential interview, 2013) The Speaker, an ANC stalwart, confirmed this impression. (Sisulu, 2013)

Those seeking to oversee the prerogatives of the executive can also introduce private member’s motions on particular subjects, but debate on such motions is limited and effectively controlled by the ANC chief whip. There have been many fewer in this decade than in the first decade of the post-transition Parliament. Likewise, “snap debates” on nationally important issues, such as on the 2013 “Guptagate” scandal, can occur if the opposition pushes for them forcefully enough and can persuade the ANC chief whip to schedule them, with sufficient debating minutes, in a timely manner.

Hasson examined question time, private motions, and the nature of plenary debate in the South African House of Assembly before and after 1994. She found that the quantity and quality of deliberative democracy had suffered dramatically in the post-1994 period. In the earlier period, private members motions were used over and over to bring public attention to major issues of social, political, and economic concern; since 1994 that way of using the deliberative democratic tools of the Westminster system has fallen into disuse. Likewise, question time is much less utilized than it was before 1994 to advance matters of public interest and public policy. She also found that plenary debates had largely become inconsequential. Few of the profound issues affecting South Africa and its people have been aired in the Assembly. Since 1994, and especially since 2002, “The traditional space” for parliamentary debate had become congested with “celebratory, ceremonious, and congratulatory” motions which had “suffocated parliamentary discourse and parliament’s discursive role.” Moreover, “The shift in how the National Assembly since 1994 proceduralises and performs... debate raises normative concerns as to whether it fulfills its constitutional mandate to provide an inclusive forum for the public consideration of issues.” Accordingly, participatory democracy has suffered severely. Challenges to the exercise of arbitrary power have

become notably circumscribed. (Hasson, 2011, 229, 231, 239) Barkan wrote about the emergence in the South African parliament of a “coalition for change” – an informal group of deputies from all parties who seek to alter the balance of power and increase the flow of resources to members. (Barkan, 2008, 128) But if that coalition ever existed, it had vanished by 2013.

The Standing Committee on Public Accounts (SCOPA) is the South African version of the Westminster public accounts committee. It attempted in the early years of this century to use its investigative powers to unearth the facts pertaining to a potential abuse by the ANC of large-scale military contract bids, and also of travel allowances by members of parliament. Rebuffed by the ANC leadership, the Committee’s authority waned. (Feinstein, 2009, 138-214) In 2013, it was chaired by the sole member of the Pan-Africanist Congress (PAC), not by the Democratic Alliance opposition. He was the only holdover member of the Committee, everyone else being new to the Committee and new to the Assembly, thus somewhat limiting its ability to cast a gimlet eye over governmental expenditures. Moreover, the ANC members of SCOPA, said the chair, had to refer every issue to their whips, thus inhibiting planning, debate, and oversight. (Godi, 2013) From the point of view of the chair, and of neutral observers, the deliberations of SCOPA – and of all other committees of the House – were excessively influenced by political considerations. The ANC is anxious to leave nothing to chance. Nevertheless, today’s SCOPA has persuaded ministers to appear before it more frequently than before. Its quarterly reports to the Assembly are reviewed more often than previously by the full house and by the responsible ministers.

Oversight of the executive in South Africa by the House of Assembly in 2013 is made difficult by the prevailing political culture of the ANC, which controls the proceedings and rules of the House, by the ANC’s nearly two-thirds dominance of all committees, by hostility to the DA opposition by the ANC, and by the failure until recently of the DA to exploit all possible methods of raising questions and of employing private members’ motions, snap debates, and other parliamentary maneuvers to examine the actions of the ANC executive.

Indeed, even Benchmarks for Democratic Legislatures in South Africa, a sixteen-page publication produced by the Southern African Development Community (SADC) Parliamentary Forum (Windhoek, 2013), says that an ideal parliament holds the executive to account through comprehensive oversight, makes, laws, approves budgets, ratifies international conventions, and resolves conflict through peaceful

mechanisms but – in southern Africa – “the executive generally dominates Parliament including even setting its agenda...[and] determining its calendar.” Thus there is “decreased parliamentary oversight capacity,” with the executive producing most of the bills. So legislatures become reactive institutions, and the separation of powers principle is severely compromised. Southern African parliaments, SADC says, are “constrained by very powerful executives.” (SADC, 2013, 3)

Findings

Legislators – representatives of the people – have a responsibility according to any separation of powers norm to check the executive branch’s ideas and action. A legislature’s collective power of taxation and the purse – its preeminent power to fund monarchs and their successor governments – should give any contemporary parliament the ability, even the responsibility, to make sure that a state spends money well and wisely, that it delivers good and appropriate policy, and that it steers the nation admirably and surely,

Many African parliaments attempt to carry out those responsibilities conscientiously, and to the best of their too often circumscribed ability. The political culture of each country may constrain parliamentarians from holding a head of state or a head of government to account. Lack of experience (the turnover rate in African legislatures is high), lack of knowledge, lack of time (African legislatures are in session only periodically), lack of funding (some legislatures cannot afford to pay for legitimate member expenses), and lack of basic logistical support all make it harder for African than for European parliamentarians to oversee executive actions. Moreover, within proportional representational systems, legislators are mere employees of a central political structure. They have very restricted abilities to speak out as independent representatives, much less to investigate the doings of the state. If a political party dominates a country’s PR-elected legislature and also holds the national presidency, the executive can often ride roughshod over parliament. In those cases, oversight cannot be expected. Even in countries with first-past-the-post electoral systems, the patronage and party ascendance of the head of state/head of party might be sufficient to prevent party members in the legislature from subjecting their leader and his/her associates to scrutiny. Only in those cases where the executive and the majority of the legislature are not from the same party is a robust examination of a president and cabinet ministers at all likely. And even in those latter cases, parliamentarians may be too weakened by practical deficiencies and hindrances, and by logistical obstacles, to exercise oversight in ways that are meaningful.

Our four pilot cases epitomize many of the problems of being effective. In the South African case, the executive rules the roost so completely (given its large legislative majority and the advantages inherent in a PR system) that the opposition parties all struggle to be heard, to keep the doings of the executive within their beams of light, and to elicit meaningful responses to their attempts to extract enough information properly to oversee the executive.

In Zimbabwe until mid-2013, the opposition was in the majority in parliament even though that majority position had to be leveraged and manipulated extensively to attempt to impose any oversight (usually unsuccessfully) on the autocratic half of the unity government that supposedly ran the country. Oversight of its own team, of the half of the unity government that was composed of opposition ministers, was naturally easier and much more effective.

In Malawi and Ghana, a weak and a strong majority-run parliament respectively, effective oversight is inhibited more by inexperience, logistical and funding deficiencies, other priorities (such as constituency service), and inconsistent internal leadership. In Malawi, for example, the Budget Committee is well led, the Parliamentary Accounts Committee, less so. Similarly portfolio committees are active in some cases, not in others.

A special examination by Transparency International (TI) of the ability of parliaments everywhere to oversee the defense establishments of nation-states revealed that in Africa only Kenya and South Africa are able (narrowly) to exercise minimal control over their military and security sector. All other African legislatures surveyed by TI were unable to offer accountability and audit capacity in this area. They usually have no portfolio committee with access to defense expenditures or policies; they have no role in equipment acquisitions, before or after; and the defense forces generally ignore parliament entirely. (Watchdogs, 2013)

Measuring Effectiveness

Given our pilot testing of hypotheses and many interviews in the field, we can now say that measuring the effectiveness of African legislatures is eminently possible. If it is agreed that effectiveness means salutary oversight of the executive, then we can employ both qualitative and quantitative criteria to score the way in which legislatures are effective in committee, on the floor of the house, in curbing or modifying executive

actions, in making national policy directly, or in influencing the direction of national and executive-determined initiatives. The Parliamentary Centre's Measuring Parliamentary Performance: The African Parliamentary Index (Ottawa, 2013), a self-assessment device for legislatures, to some limited extent provides a template for such a report card. But it is simultaneously too detailed and too imprecise, avoiding the major concerns of effective oversight. Likewise, the Inter-Parliamentary Union's self-assessment toolkit for "Evaluating Parliament" (Geneva, 2008) is brief and bland. A 2013 not-yet-released draft Inter-Parliamentary Union assessment mechanism -- "100 Indicators for Democratic Parliaments" -- contains objective questions, 30 of which are relevant to this attempt to offer a possible pared-down (so as to be more easily administered and more pointed) scoring method. (See also Fish and Kroenig, 2009, 5-14, plus their relevant country sections, for another important checklist and country results.)

The next phase of this "Measuring Legislative Effectiveness" project should proceed to develop a simple score card that builds upon the three major determinants discussed above (on p 4). To wit, as possibilities:

- 1) A) To what extent are heads of government, cabinet ministers, and executive officials interrogated effectively by parliamentary portfolio committees, by specialized committees such as the Public Accounts committees, at periodic plenary question periods, or snap debates? Do members of the executive respond fully, partially, not at all orally and in writing? With what frequency? Does parliament control these mechanisms directly? Is the opposition fairly represented?
B) Has new information been uncovered in this manner? If yes, what are the examples?
C) Has official policy been diverted, redirected, or revised because of parliamentary questions? If yes, examples?
- 2) Has parliament deferred or denied executive appointments, treaties, or economic arrangements? Has it or its committees compelled the re-thinking of possible appointees at any executive level? Examples?
- 3) By exercising the power of the purse, has parliament curtailed or shifted policy initiatives? Has it deferred executive actions? Examples?

4) Does parliament control its own budget? Does it elect its own officers? Is the Speaker responsive to members? Do committees meet when the legislature is not in session?

5) Can and do members introduce private member's motion? Do they sponsor snap debates?

6) Does the executive attend to parliament? Does it pay attention to critiques and criticisms that emanate from the assembly? How often in a year has parliament been prorogued?

7) How often does parliament meet, and for how long?

8) Do parliamentarians have offices? Staff? Access to research facilities? Do committees have offices and staff?

In order to develop this possible scoring matrix, we intend to return to the four pilot cases for further rigorous field testing, adding four more relevant country cases to demonstrate conclusively that such a score card can become a tool capable of being utilized by governments, civil societies, donors, and others seeking to appreciate how important and relevant legislatures and legislators have become. An awareness through these means of legislative strengths and weaknesses could lead to appropriate kinds of outside capacity building and assistance for legislatures. Some of that, but too little, is already underway, and external assistance is usually directed at remedying procedural rather than oversight-related limitations. The results of our project could turn that paradigm around.

African legislatures are more central to African political processes than ever before. Well-functioning legislatures are a key component of well-governed democracies. Building their capacity to operate fully as one of the three separated political institutions of national governance is a worthy objective whose time is now.

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