

Emerging Legislatures in Africa: Challenges and Opportunities

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Abstract

Notwithstanding that Africa's legislatures have been described as 'emerging institutions of horizontal accountability;' the literature on democratisation pays little attention to parliaments of contemporary political regimes in Africa. The earliest generation of literature on parliaments in Africa, majorly case studies and inputs evaluating a limited number of cases, appraised the impact of numerous fundamental variables, such as legacies of colonial rule, the powers of appointment and dismissal of governing parties, control of state resources by the executive, among others, consistently agreed that these factors played a part in the institutional weakness of the new legislatures vis-à-vis powerful executives as well as in their limited role in law and policy-making. Although, other foremost literature which measured African parliaments in an extensive cross-national comparative structure also stressed these policy-making and institutional weaknesses, they also underscored their function in the legitimisation of government policies, recruitment and socialisation of new elites, and the mobilization of open support for political regimes. The resurgence of democracy in Africa prompted a renewal of scholarly interest in Africa's parliaments but the ensuing literature bears little dissimilarity from the immediate post-independence focus of studies on single countries, habitually indicative of institutional weakness and the limited decision-making function of Africa's legislatures.

Background

It is argued that a key factor in moving from nominal democracy to democracy that delivers development results for people is an effective legislature. Nowhere is this truer than in Africa, where the burden of weak governance structures has tainted the practice of democracy. Since most of the recent causes of bad governance and the defects in development can be attributed to an unaccountable and corrupt leadership, this view can be linked to the need for a more responsive legislature. A lot of studies have been conducted on executive leadership on the continent, and while most scholars would concur with the view that democracy cannot thrive without an effective and influential legislature to balance the power of the executive, little research has been done to explore the role the legislature can play in Africa's development; and the evolution and current state of legislatures in Africa. Case studies of the legislatures in Africa conducted by the authors of "Legislative Power in Emerging African Democracies" begins to rectify this oversight and points to a general trend in politics in Africa.

Of particular importance is the increased role of the legislature. Nearly two decades after the resumption of multiparty politics within Africa, Barkan argues that legislative institutions within the continent are beginning to emerge as an institution to be reckoned with. Although (like the executive) the legislature has existed either continuously or intermittently since the end of the colonial period, when the literature talks about emerging legislature in Africa, focus is on the capacity of this institution to foster horizontal and vertical accountability.¹ With the re-emergence of multiparty politics; the end of absolute autocratic rule; the increased focus on pan-Africanism and integration; and the overall re-look at the issues of African governance and democracy (at the national, regional and continental level), it is no surprise to see why they are best seen as emerging institutions.

Other variables explain this shift, but it is essentially as a result of a coalition of change consisting of external factors (global political environment) and internal factors (legislators). To illustrate, the arrival of new, young, educated, and professional class of parliamentarians, all over Africa has not only advanced the power of legislatures, but has resulted in increased pressure on presidents to embrace democratization. Whether the reason for this push is to increase the power of the legislature has also enriched the debate and suggests that legislators' commitment to democratic values can be uneven at best. As the authors of "Legislative Power in Emerging African Democracies" show, this has meant that legislatures have begun asserting their constitutional prerogatives, notably, the oversight of government spending and activities. They are most likely more powerful, in terms of functions, today than they were at independence. This can be linked to the growing international focus on good governance and democracy, and the role legislation has in intrinsic socio-economic issues such as poverty, unemployment and conflict.

Nowhere else is this more important than in the African Union, where the need to provide a common platform for African peoples and their grass-roots organizations to be more involved in discussions and decision-making on the problems and challenges facing the continent inspired the establishment of the Pan-African Parliament (PAP) in 2004. The ultimate aim of PAP is to evolve into an institution with full legislative

¹Barkan, J. D. (Ed.). (2009). *Legislative Power in Emerging African Democracies*. CO: Lynne Rienner publishing.

powers, whose Members would be elected by universal adult suffrage. More significantly, it marked the recognition of the need for accountability and transparency in the pursuits of democracy in Africa. While virtually every country in the world has followed similar trends which has led to the ratification of conventions or protocols on democratic principle such as universal human suffrage, it is also important to note that legislative functions play a critical sustaining role within these areas. One important aspect of creating an environment within which democracy and good governance can thrive is the creation of an appropriate legislative framework which enshrines this concept. Given these realities, opportunities to the development of legislatures in emerging African democracies exist. It is true that some legislatures in Africa have made more progress than others. For those that have made significant progress in recent years, were able to assert their role in the political process.

Viable (albeit undeveloped) committee systems are also emerging within some of these legislatures; bills introduced by the executive for passage by the legislature are no longer “rubber stamped” but increasingly scrutinized and often amended before being passed into law; involvement of civil society in the legislative process; and more extensive oversight of the executive also appear to have create positive outcomes.¹ On the other hand, fundamental challenges such as the emphasis on representation and constituency service rather than on legislating and oversight; and flaws in electoral systems, appear to have profound effect on the nature and structure of African political parties (where legislators emanate on the platform of), on the relationship between legislators and the public, on the operations of the legislature, and on the nature of legislative-executive relations. These observations only touch the surface of the issues and opportunities legislature faces in emerging democracies. This paper not only hope to elaborate on this but also raises the following questions, in hopes of addressing them: Since the establishment of the institution in national and continental governance, has the legislature operated effectively and efficiently to realise the vision and objectives of Africa? If not, what challenges and problems has these institutions been confronted with, what is the root-cause of these issues, and how, if at all, has they sought to address them? Are the role and mandate of these emerging legislatures clear enough for it to effectively and efficiently discharge its responsibilities?

In Africa, the legislature was never designed, neither has it been allowed to play, the kind of role that similar institutions have and still plays in other political systems. Proceeding from a global scan of the rise and fall of this most important institution of the tripartite government powers in democratic governance, the paper highlights the specific historical and contemporary underpinnings of the inability of the legislatures in Africa to function in a manner consistent with the dictates of representative government. While it notes a worldwide ‘decline’ of the legislatures, identifying the social and political forces that shape such developments, it brings to the fore the specific problems of the legislatures of Africa in their relationships with other centers of political power, notably the executive. It underscores those historical experiences and conditions that compromised and continue to threaten the ability of the legislatures to serve as effective instruments of popular sovereignty and limited government.² The powers and problems of the legislatures are discussed within the framework of the dynamics of the struggle for power and influence in the domestic politics of and the challenges these pose for the independence and relevance of the legislative institutions in, contemporary African nation states.

Emerging Legislatures in Africa

African Legislatures

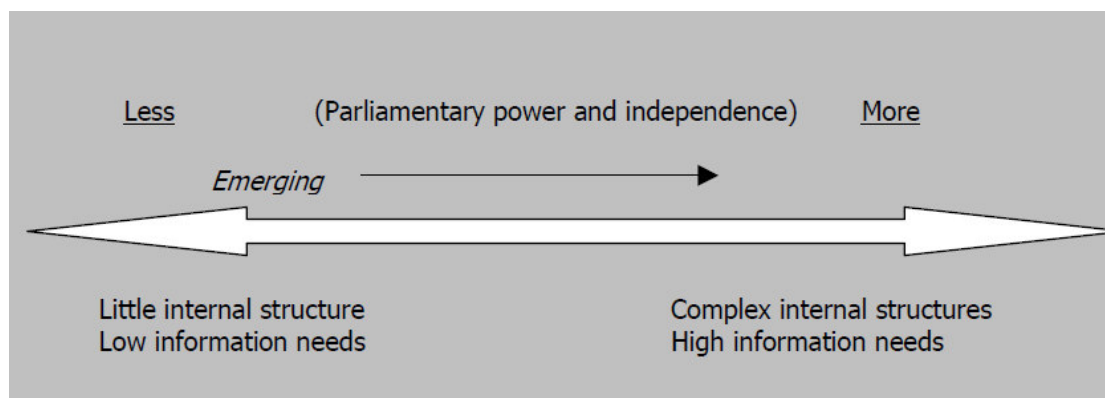
Emerging legislatures³ are parliaments undergoing transformation, via amending rules and procedures, building stronger committees, expanding professional staff, developing improved information systems, among other adjustments, for purposes of exercising greater influence over government policies and conducting their oversight responsibilities more effectively.⁴ Therefore, emerging legislatures in Africa are parliaments that are evolving, and meeting evolutionary demands such as capacity development, in order to enhance their power and function in processes of governance. Below is an effort to illustrate a legislature growing in strength in relation to the executive and other parties.

¹ Barkan, J. D., Mattes, R., Mozaffar, S., & Smiddy, K. (2010). *The African Legislatures Project: First Findings*. Cape Town: Centre for Social Science Research, University of Cape Town.

² Allen, G. (2002). ‘The British Presidency: Parliament’s Position of Weakness,’ *The Parliamentarian* 2: 176-178.

³ Johnson and Nakamura identify emerging legislatures as those in the process of significant change from one type to another, reflecting changes in all aspect of the political system, and granted increased powers and responsibilities in governance. Against this background, one observes that the introduction of democracy in militarized Africa is expected to see African parliaments assume a more active role in lawmaking, oversight, and the representation of diverse interests in politico-socio-economic governance. See Johnson, John K. and Robert T. Nakamura, *A Concept Paper on Legislatures and Good Governance*, Paper prepared for the UNDP, July 1999. <http://mirror.undp.org/magnet/Docs/parliaments/Concept%20Paper%20Revised%20MAGNET.HTM> Accessed November 4, 2013.

⁴ Cheema, Shabbir G., *Building Democratic Institutions: Governance Reform in Developing Countries*, Connecticut: Kumarian Press, 2005.



Source: Parliamentarystrengthening.org

In general, African legislatures, and indeed legislatures elsewhere, continue to exhibit weakness in the exercise of power, particularly in comparison with the executive. Since the demise of colonialism on the African continent, a considerable number of Africa's legislatures, whether constantly or irregularly existent, have been, at best, institutions that are emergent in relation to their capacity to promote horizontal and vertical accountability. Quite a few have evolved into significant actors in the policy-making process, and counterweight institutions vis-à-vis the executive and its powers, as a result. Nonetheless, African legislators have been undergoing development and reform, thus it is arguable that contemporary legislatures in Africa have increased their power and independence. As quite a lot of these legislatures continue to develop the capacity to extend their authority, it is expected their power and autonomy would equally grow.¹

The degree of legislative capacity and power among African legislatures varies deeply across African countries. While the legislature remains weak in some countries despite the third wave of democratisation, in other countries the legislature exhibits vigorous activism in terms of checking the executive, contributing to the processes of policy-making, and indeed as a monitor of policy implementation. Succinctly put, the parliaments of other African countries remain weak, but seek to, and to a limited extent have attained a greater role.² Where there is a rise of an autonomous legislature such as in Kenya, and to a reduced degree in Nigeria, Uganda, and South Africa, it can immensely impact governmental processes. In Kenya, the legislature has successfully established its autonomy from the executive as well as steered that arm of government into acceding to extraordinary amendments to its proposed legislation and budget. Even further, activities of the legislature have exposed corruption within the executive, compelling, in some occasions, the executive's termination of such machinations.³

In South Africa, the legislature's enhancements of executive-proposed legislation has permitted the executive to accomplish policy objectives hitherto reached ineffectively.⁴ In Uganda, professional budget offices have been established to assist parliament engage a more assertive role in the budget process.⁵ Kenya and Uganda expanded professional staff, ensuring they serve at the charge of parliament's leadership, thereby making their administration independent of the executive.⁶ In addition, they now draw up their own budgets.⁷ Conversely, the relatively weaker legislatures such as is existent in Benin, have made little impact on the policy-making process and the operations of the state. Therefore, the contrasting accounts of the performance of African legislatures suggests that some emerging democracies have augmented their strength and capacity, while others have not.⁸

Thinking on Africa's Emerging Legislatures

Notwithstanding that Africa's legislatures have been described as 'emerging institutions of horizontal accountability;' the literature on democratisation pays little attention to parliaments of contemporary political regimes in Africa.⁹ The earliest generation of literature on parliaments in Africa, majorly case studies and inputs

¹ Barkan, Joel. D., (ed.) *Legislative Power in Emerging African Democracies*, Colorado: Lynne Rienner Publishers, 2009.

² Ibid.

³ Ibid.

⁴ Ibid.

⁵ Parliament & Governance Module - Unit 2: A Model of Parliamentary Power <http://www.parliamentarystrengthening.org/governancemodule/2/2d.html>. Accessed November 4, 2013

⁶ Ibid.

⁷ Ibid.

⁸ Barkan, Joel. D. (ed.) *Op. cit.*

⁹ Although the literature on parliaments in emerging democracies continues to rise, it is still dominated by analyses of legislatures and legislators in established Western democracies. 85% of the publications on legislatures in the *American Political Science Review*, the *American Journal of Political Science* and the *Journal of Politics* between 1993 and 2001

evaluating a limited number of cases,¹ appraised the impact of numerous fundamental variables, such as legacies of colonial rule, the powers of appointment and dismissal of governing parties, control of state resources by the executive, among others, consistently agreed that these factors played a part in the institutional weakness of the new legislatures vis-à-vis powerful executives as well as in their limited role in law and policy-making.² Although, other foremost literature which measured African parliaments in an extensive cross-national comparative structure also stressed these policy-making and institutional weaknesses, they also underscored their function in the legitimisation of government policies, recruitment and socialisation of new elites, and the mobilization of open support for political regimes.³

Following the emergence of authoritarian regimes right through post-independent Africa, scholarly interest in African legislatures receded; however, a few studies of national legislatures are existent in the context of a single party state.⁴ In highlighting the major part played by the Kenyan legislature in involving broadly dispersed local constituencies with the state's development of a hugely agrarian society, Barkan's input is significant to predominantly, if not exclusively, agrarian societies that mostly embody African countries.⁵

The resurgence of democracy in Africa prompted a renewal of scholarly interest in Africa's parliaments but the ensuing literature bears little dissimilarity from the immediate post-independence focus of studies on single countries, habitually indicative of institutional weakness and the limited decision-making function of Africa's legislatures.⁶ Mattes and Chiwandamira¹ deviate from previous approaches having surveyed

covered the American experience. The American *Legislative Studies Quarterly* (LSQ) similarly concentrates on American legislative politics. Less than 25% of the articles in *Legislative Studies Quarterly* between 1995 and 2002 covered legislative experiences outside the US. For its part, the British *Journal of Legislative Studies* (JLS) devotes most of its space to parliaments outside the U.S. However, African legislatures are absent from both the LSQ and the JLS. The LSQ is yet to publish on African legislatures, while the JLS has only published an article on African legislature by P. Burnell in 2002. Following the third wave of democratization on the African continent, many African countries resumed multi-party elections and democratic practices but even the growing body of literature on the supposed 'third wave' overlooks legislatures. *World Politics*, a significant journal in studies of comparative politics, is yet to publish on legislatures since 1992. Likewise, since mid-1993, the *Journal of Democracy* primarily published on the legislature or the legislative process. See Gamm, G. and J. Huber, 'Legislatures as Political Institutions: Beyond the Contemporary Congress', in Katznelson I. and H. Milner, (eds.) *The State of the Discipline*, Washington: American Political Science Association, 2004.

¹ Loewenberg's and Patterson's discussion of Kenya in their seminal work was mostly based on the data gathered by Barkan, whose work is highlighted in this paper. See Loewenberg, G. and S. Patterson, *Comparing Legislatures*, Boston/Toronto: Little, Brown and Company, 1979, p. 337. Le Vine offers a comparative analysis of the development of parliaments in 14 countries of francophone Africa during the period from independence to 1975 and concludes that parliaments in the former French colonies are insignificant in policy-making. Rather, their main input has been in the field of nation building. See Le Vine, V. T., 'Parliaments in Francophone Africa: Some Lessons from the Decolonization Process' in Smith J. and L. Musolf, (eds.) *Legislatures in Development*, Durham: Duke University Press, 1979, pp. 125-154. Stultz's examination of 12 'Parliaments in Former British Black Africa' also identifies a limited decision-making role and a number of structural and performance characteristics apparent among legislatures in the former British colonies. See Stultz, N., 'Parliaments in Former British Black Africa', *Journal of Developing Areas*, Vol. 2, 1968, pp. 479-494.

² Hakes' and Helgerson's (1973) examination of the Zambian and Kenyan first parliaments describes how control of state resources and powers to appoint and dismiss members held by the executive is leveraged in bargaining processes, thus compromising the role of individual legislators. See Hakes J. and J. Helgerson, 'Bargaining and Parliamentary Behavior in Africa: A Comparative Study of Zambia and Kenya' in Kornberg A., (ed.) *Legislatures in Comparative Perspective*, New York: David McKay Company, 1973, pp. 335-362. Stultz's study of the first Kenyan legislature, also stresses the relevance of legislature-executive relations and the partisan context in which parliament operates, as well as its function of legitimization. He submits that the decisional function of the Kenyan parliament is relatively insignificant and that the legislators do not possess a sense of purposeful participation in decision-making. See Stultz, N., 'The National Assembly in the Politics of Kenya' in Kornberg A. and L.D. Musolf, (eds.) *Legislatures in Developmental Perspective*, Durham: Duke University Press, 1970, pp. 303-333. Hopkins' study of Tanzania similarly discloses that party influence renders legislators ineffective, as 'the role of the MP in the actual legislature is quite minor'. According to Hopkins, Tanzanian legislators are generally supportive of cabinet ministers because a contrary posture may jeopardize opportunities of appointment to strategically influential positions. See Hopkins, R., 'The Role of MP in Tanzania', *American Political Science Review*, September 1970, pp. 754-771.

³ Mezey, M. L., 'The Functions of Legislatures in the Third World', *Legislative Studies Quarterly*, Vol. 8, No. 4, 1983, pp. 511-550.

⁴ For an instance see Kjekshus, H., 'Parliament in a One-Party State - The Bunge of Tanzania, 1965 -70', *Journal of Modern African Studies*, Vol. 12, 1974, pp. 19-43.

⁵ Barkan, Joel, 'Bringing Home the Pork: Legislator Behavior, Rural Development, and Political Change in East Africa' in Smith J. and Musolf L.D. (eds.) *Legislatures in Development: Dynamics of Change in New and Old States*, Durham: Duke University Press, 1979, pp. 125-154.

⁶ Thomas, M. A. and O. Sissokho, 'Liaison Legislature: The Role of the National Assembly in Senegal', *Journal of Modern African Studies*, Vol. 43, No. 1, 2005, pp. 97-117. See Burnell, P., 'Parliamentary Committees in Zambia's Third republic: Partial Reforms; Unfinished Agenda', *Journal of Southern African Studies*, Vol. 28, No. 2, 2002, pp. 291-313; and Burnell, P., 'Legislative Executive Relations in Zambia: Parliamentary Reform on the Agenda', *Journal of Contemporary African Studies*, Vol. 21, No. 1, 2003, pp. 47-68.

members of and organisations working closely with the Zambian legislature as well as the Zambian public, with the resultant discovery of a massive disconnect between citizens' perceptions of legislators and legislators view of their colleagues. On the one hand, popular disenchantment with the Zambian parliament was detected, and on the other hand, legislators considered themselves to be focused on primary issues of duty and responsive to respective constituencies.²

It was Barkan, Ademolekun and Zhou³ who conducted the foremost methodical comparison of strengths and weaknesses of parliaments in four African countries based on interviews of legislators and associated (legislative) staff, and deduced that the often labelled weak legislatures in Africa vary across cross-national lines. According to the study 'the authority of the legislature ranged from being very weak in Senegal, to moderately strong in Kenya with Benin and Ghana falling somewhere in between' and submits that three sets of variables might assist our understanding of this variation: contextual variables associated with the structure of society; variables relating to constitutional provisions and formal rules; and variables associated with the internal structure of the legislature and the availability of resources to legislators.⁴ These have recently been further examined in a comparative effort at theorizing about the process of legislative development in Africa based on a series of original and complementary field research studies.⁵

Conclusively, there is relatively fledgling literature indicating limited achievements on the part of the South African parliament in terms of oversight and the challenges it faces in terms of representation and connecting with the people.⁶ On a whole, the existing literature of the emerging legislatures in Africa present us with, at best, tentative evidence on the relative power or significance of Africa's parliaments in terms of representation, law- and policy-making, oversight and any other functions performable. While they unpack the structure and operation of some legislatures, many do not factor in a cross-national comparative approach, finding African legislatures to be weak and ineffective without proffering standards for defining and calculating legislative strength and effectiveness. Put differently, the regular finding of African legislatures as weak is predicated on the idea of a strong legislature, when studies provide little criteria for either identifying or measuring the strength of legislatures in a manner that makes cross-national comparison possible. While this is observable in the first generation of literature carried out immediately after independence and even more recent studies, the focus of Mattes and Chiwandamira⁷ which underscores the relevance of public opinion, provides a template for purposeful application in comparative studies of African parliaments. In like manner, a viable framework for further cross-national comparison is offered by Barkan et al.,⁸ suggesting some variables, mainly associated with institutional capacity, that appear to influence the potential of legislative enhancement of democracy in Africa.

Challenges and Opportunities of Emerging Legislatures in Africa

Although, variations existed in the composition, structure, functions and powers as well as performance of the colonial legislatures of the African countries, evidence across geographical entities points to the fact that these institutions were weak on the eve of independence. The emerging legislatures remained junior partners of the executive in the politics and governments of many of these countries. The ecology of public administration and governance under colonial rule could not have dictated otherwise. They were not designed and indeed not

¹ Mattes, R. and L. Chiwandamira, *The National Assembly and Zambian Democracy: A Baseline Assessment for USAID/Zambia and PACT Zambia*, Cape Town: Institute for Democracy in South Africa (IDASA), 2004.

² Ibid.

³ Barkan, Joel. D. et al., 'Emerging Legislatures: Institutions of Horizontal Accountability' in Levy B. and Kpundeh, (eds.) *Building State Capacity in Africa*, Washington: World Bank Institute, 2004, pp. 252.

⁴ Another publication employs a comparative approach in describing the level of representation of women in Sub-Saharan Africa between 1990 and 1999. See Yoon, Y. M., "Democratization and Women's Legislative Representation in Sub-Saharan Africa", *Democratization*, Vol. 8, No. 2, 2001, pp. 169-190.

⁵ See Barkan, Joel. D., (ed.) *Op. cit.*

⁶ For more on the achievements and problems facing the South African parliament See Nijzink, L., "Opposition in the New South African Parliament", *Democratization*, Vol. 8, No.1, 2001, pp. 53-84; Harvey, E., 'Popular Control Over Decision-Makers', in Graham P., (ed.) *In The Balance: Debating the State of South Africa's Democracy*, Cape Town: IDASA, 2002; Murray C. and L. Nijzink, *Building Representative Democracy: South Africa's Legislatures and the Constitution*, Cape Town, Parliamentary Support Programme, 2003; Nijzink L. and J. Piombo, 'Parliament and the Electoral System: How Are South Africans Being Resented?' in Piombo J. and L. Nijzink, (eds.) *Electoral Politics in South Africa: Assessing the First Democratic Decade*, New York: Palgrave/MacMillan, 2005, pp. 64-87; Habib, A. and C. Herzenberg 'Popular Control Over Decision-Makers' in Graham P., ed. *Democracy in the Time of Mbeki: Idasa's Democracy Index*, Cape Town: IDASA, 2005; Barkan, J., "Emerging Legislature or Rubber Stamp? The South African National Assembly after Ten Years of Democracy", Centre for Social Science Research (CSSR) Working Paper No. 134, 2005. <http://www.cssr.uct.ac.za/sites/cssr.uct.ac.za/files/pubs/wp134.pdf>. Accessed November 4, 2013.

⁷ This study focused on Zambia. See Mattes, R. and L. Chiwandamira, *Op. cit.*

⁸ Barkan, Joel. D. et al., *Op. cit.*; also See Barkan, Joel. D., (ed.) *Op. cit.*

independent of the executive arms. In design and operation, they were not empowered sufficiently enough to serve as effective watch dogs, on behalf of the people, over the executive wielders of power. As Schraeder notes of the African political systems generally, the authoritarian legacy of colonialism destroyed “traditional checks-and balances.”¹

The challenges of governance faced by many post independence states in Africa within the last five decades of independence (‘the golden age’) further reinforced the weaknesses of state institutions, particularly the legislatures. Save for Botswana, perhaps, and the white supremacist regimes in the southern part of the continent, many post-independence states soon dissolved into all manners of authoritarian rule, with patrimonial one-party and military regimes. This system, which either put the legislature in abeyance or subjected them to control of the patrimonial executive rulers, lasted until the Third wave of democracy, which also swept across Africa in the last decade of the Twentieth Century. Military regimes have impacted negatively on the development of the legislative institutions in Africa in more than one ways. Military rule, anywhere in the world, is not compatible with representation. Military regimes are regimes of force, and military rulers do not pretend to represent the people more the authoritarian patterns of their rule. A military regime defines the extent of its own powers, and the existence and extent of powers of various institutions of government. Thus, among the first actions of a military regime is the dissolution of pre-existing democratic structures. The greatest casualty of such dissolution is the legislature. It is the only arm that gets permanently encumbered as long as military rule lasts.

Although, the judiciary is weakened and could only blow muted trumpets under a military regime, it is still permitted to exist if only for use as part of the instrumentality of state coercion or to give a semblance of some commitment to governance under the law.² The executive arm of government exists and indeed waxes stronger under a military administration. However, the legislature is put in abeyance, and its powers merged with that of the executive military rulers who, through a supreme military governing organ, wields both the legislative and executive (and at times, judicial) powers. In such a situation, which was prevalent on the continent for more than three decades, the legislatures could not but be seriously weakened as governance institutions. Where they were occasionally permitted to exist under schemes of diarchy, they remained within the stranglehold of the military/authoritarian rulers who used the legislature to create some sense of legitimacy for their administrations. The legislatures of Africa are therefore denied the advantage of experience which is the cornerstone of the enviable tradition of legislative supremacy and significance in the governance of the advanced democracies. Because the African legislatures were hardly permitted to make mistakes and learn from lessons of the past by the military rulers who seized every opportunity of major disagreements in parliaments to truncate democratic rule, the legislatures got weakened and remained inexperienced compared to other arms of government as soon as a return to democratic rule were permitted.

More germane, perhaps, to the discussion here is the tremendous influence which the departed military rulers have wielded in moulding the succeeding legislatures to remain subservient to executive powers even under democratic rule. In the many African countries that have transited from military to civil rule, the transition programmes, including the making of the civilian constitutions, were designed and supervised by the military rulers. Often, post-military constitutions are not genuinely autochthonous and represent the design of the military rulers to transform themselves into civilian rulers.³ Moreover, majority of those conscripted to draft such constitutions or give legitimacy to such exercise, through Constituent Assemblies or referenda that are stage-managed to serve the interest of the ruling class, tend to mould such instruments along the preferred interests of the military rulers.

The general pattern has been to designate the legislature as the first arm of the civil government, while legal provisions are used to make it subservient to executive powers. Thus, majority of the constitutions of the post military era in Africa created strong presidency and a weak legislature. In addition, provisions are enshrined in the constitutions to expressly limit the powers of the legislatures in reviewing the acts of the previous (military) rulers. Moreover, some quasi-legislative powers are given to the executive which are often used by the latter to subvert the legislative process. The implication of this is that while the legislature exists as veritable instruments of representative democracy, they are unable to perform their avowed role of serving as effective checks on the executive.⁴

Infact, the legislative institutions of contemporary Africa perform all the basic functions of a representative assembly – legislation, oversight and representation. Specifically, their functions include law making, approval of executive policies, confirmation of appointments, budget and appropriation, oversight over government agencies, representation and education of the people, training ground for political leaders, removal

¹ Schraeder P.J. (2000). *African Politics and Society: A Mosaic in Transformation*. London: Macmillan.

² Nijzink L., Shaheen, M., Elisabete, A. (2006). ‘Can Parliaments Enhance the Quality of Democracy on the African Continent? An Analysis of Institutional Capacity and Public Perceptions’, CSSR Working Paper 160, Cape Town: Centre for Social Science Research. <http://www.cssr.uct.ac.za/index.html/>.

³ Abia, V.B.E. (2003). *Understanding Nigerian Government and Politics*, Lagos: Concept Publications Ltd.

⁴ Aderinwale, A., Niya A. (1989). *Democratisation of African Parliaments and Political Parties*, World Bank Institute.

of public office holders at the highest level, etc. They are, however, bedevilled by a number of problems that have continued to limit their role as effective instruments of participatory democracy and limited government. While one cannot lose sight of the historical underpinnings of the legislatures' development as distinct institutions of governance, there are other problems that are fall outs of the peculiarities of the legislative institutions on the one hand and the dynamics of government and politics of emerging democracies on the other hand that require close scrutiny for a better appreciation of the conditions of representative institutions in Africa.¹

The viability of any legislature is a function of its position and relevance, within the institutional architecture of the state, in relation to other arms of the government, notably the executive. The relevance of the legislature in any political system is, therefore, a function of the dynamics of its relationships to other arms of government. It is in the examination of such patterns of relations, both mutual and acrimonious, between these two (political) organs of government that the strengths and weaknesses of the legislature become obvious. The twin-legacy of colonialism and militarism weakened the African legislatures vis-a-vis the executive arms of the governments. Since their predecessors served merely as agencies for giving semblance of legitimacy to the several colonial administrations that created them, the patterns and development of the post-independence legislatures largely reflect these antecedents. Also, military interventions in the politics of, and personalized one-party rule in many, countries negatively impacted on the institutional capacity of these parliaments vis-à-vis the executive arms of government which has remained strong with or without democratic rule.

In many countries, constitutional provisions tend to strengthen the executive while the legislatures remain weak. In these circumstances, legislature-executive relationships in African countries remain unbalanced, with governmental powers skewed in favour of the executive to the detriment of the legislature. As "a product of authoritarianism,"² the African legislatures are unable to effectively checkmate the excesses of the executive arms of the governments. Parliamentary control of the executive has, thus, become a major problem, particularly in small parliaments. In the words of a former Chairman of the Executive Committee of the Commonwealth Parliamentary Association, "Parliament performed a rubber stamp function in that the government took Parliament for granted and expected rubber stamping of government Bills and other proposals which are routinely submitted to Parliament for approval." The 'many failings' of the legislature in its inability to serve as an effective counterweight to the executive has been identified by African legislators themselves.

A self assessment of the Uganda legislature did not find a positive correlation between the high academic and professional qualifications of its members and the house's performance.³ The situation is not different in Nigeria where the National Assembly has been variously viewed as an 'irrelevant talking shop', the 'weakest link in the making of public policy', and 'an unnecessary luggage that has to be grudgingly carried along' in the business of governance.⁴ Generally, they are denied effective participation in financial and foreign relations as well as public policy. Attempts by the legislatures to ascertain their relevance are often viewed as indications of serious intra-governmental conflicts with the attendant stress on the entire political system. Manipulation of parliament by the executive is not a peculiarity of Africa or of the developing world generally. What makes the situation precarious in Africa is the lack of proper institutionalization of parliaments. The legislatures in Africa lack the capacity for effective discharge of their constitutional functions. In most cases, parliament lacks adequate resources and effective procedures for scrutinizing the executive through debates, parliamentary questions, investigations, etc.

Severe resource scarcity and lack of financial autonomy of the legislature, weak career service in the legislature, and moral crisis of public administration generally have reinforced the 'relative institutional dwarfing' of the legislature compared to the other arms of government.⁵ The legislatures are lacking in the needed infrastructures, training and capability for effective performance of the legislative duties. Because they are not self-accounting, they are often poorly funded or starved of the needed fund by the executive. Individual legislators also depend on the executive for patronage in contracts/consultancy and for key appointments in governments for themselves and their cronies, which invariably compromise their oversight duties. Moreover, in the absence of freedom of information regimes, they are denied the needed data required for effective performance of their duties.⁶

¹ Allen, G. (2002). 'The British Presidency: Parliament's Position of Weakness', *The Parliamentarian* 2: 176-178.

² National Democratic Institute (2001), *Guidebook on Strengthening the Representative Capacity of Legislatures*, Brussels: NDI/UNDP.

³ Okello-Okello, J.L. (2001). 'No Will to Resist: How the Sixth Parliament of Uganda Failed to Live Up to Its Constitutional Duties', *The Parliamentarian* Issue Four: 338.

⁴ Abia, V.B.E. (2003). *Understanding Nigerian Government and Politics*, Lagos: Concept Publications Ltd.

⁵ Onigbinde, A. (2000). 'Monitoring the Implementation of Budget by the Legislature', Paper Presented at the Workshop on 'Appropriate Handling of Budgeting by the Legislature', for Members of the Osun State House of Assembly, Nigeria, held at MicCom-Golf Resort, Ada, Osun State, Nigeria, 15th January.

⁶ Babatope, A. (2001). *The House in Session: Glimpses from the Second Republic*. Ibadan: Aike Books.

As a Commonwealth study shows, in greater majority of member states, the legislatures are “weak, lacking the resources adequately to enforce government accountability.”¹ Clearly, efforts have been made in some countries to insulate the legislature from unbridled influence of the executive by granting parliament the power to control its own finances. Also, parliamentary service commissions have been sought to be established with responsibility for appointment and control of all parliamentary staff, provision of services needed for efficient and effective operation of parliament and preparation of parliament’s budget. Efforts along this line have, however, met with strong resistance from the executive; while the successes recorded so far have not materially strengthen the legislatures vis-a-vis the executive governments. Executive influence and pressures are not the only sources of threats to parliamentary powers. The judiciary also serves as a veritable check on the excesses of the legislature. While the exercise of the power of judicial review should ordinarily strengthen democratic rule, there are instances where the judiciary have become willing collaborators in the task of limiting legislative powers.

Generally, however, the judiciary is not widely perceived as a major threat to legislative powers. In fact, there are instances of the legislature itself being used to undermine constitutionalism. While the legislature often avoids direct conflict with the judiciary, the latter also adopts the policy of ‘judicial self restraint’. This situation accords with the global trends towards a cautious but firm assertion of the power of judicial review. Like all legislative institutions, African parliaments suffer some drawbacks attendant to the nature and peculiarities of deliberative institutions generally. Bicameral legislatures are particularly susceptible to inter-chambers tussle for supremacy. Such differences/rivalry do make for little coordination, and are exploited by the executive using ‘divide and rule’ tactics. Moreover, the multi-partisan character and composition of an assembly do not make for easy consensus compared to the unified and closely-knit structure of the other arms of government. Rowdy and rancorous sessions, low participation, bench warming and absenteeism have therefore, incapacitated the effectiveness of these weak legislatures in the performance of their constitutional duties.²

Also, many legislatures lack the requisite knowledge of and training in the legislative process. The lack of technical competence has also reinforced the phenomena of absenteeism, lateness, gangersterism and lack of decorum, which are gradually becoming distinctively characteristic of parliamentary assemblies in Africa and other parts of the developing world. The failure of parliaments in Africa to provide checks and balances on the excesses of the executive is also a function of lack of a virile opposition politics. Opposition, as the cornerstone of parliamentary democracy, is muffled in many parts of Africa. Due to a combination of colonial legacy and cultural factors, ability to question elected President is regarded by many, including parliamentarians, as a sacrilege. This is particularly so as the legislatures also suffer from low perception of their relevance and worth among the generality of the populace. The ‘complex and fragmented’ nature of the legislative process itself makes for little understanding and appreciation of the role of parliament by the generality of the people. Because most of these institutions are new relative to the patrimonial executive rulers and military dictators, they tend to be misrepresented to and perceived by the largely poor and uneducated citizenry as irritant bodies. The fact that the government and politics of most of these states are executive-centred has deepened the crises of low perception and unfavourable public opinion/media.³

As the Commonwealth Parliamentary Association notes, the growing disillusion with the process of government weighs more on the legislature as the legislature “is perceived by the public as a subservient mouth piece of an overweening executive”. Finally, the power of legislatures in the Commonwealth countries are limited to the extent that they are creations of constitutions which set limits to their powers.⁴

Conclusion

The legislatures in Africa are victims of the dynamics of historical exigencies. They were created to be weak, and the ‘legacy of legislatures’ subservience to executive control have remained entrenched years after independence. Post-independence political and constitutional developments in many African states further reinforced the weakness. Thus, legislative institutions have suffered outright abolition, suspension or dissolution (and put in abeyance) in the aftermath of successive coup d’état in various parts of Africa. Where they exist, their effectiveness as mechanisms for popular control of governments have been threatened by patrimonial one-party or one party dominance rule. In many states, they have remained visible, being the main symbol of democracy, but with reduced powers and significance in relation to the executive arm of government which has come to take the front seat in any analysis of the reality of domestic power relations.

Indeed, nothing has been taken away from the traditional duties of the legislature, and the volume and

¹ Hatchard, J., Peter S (eds.) (1999). *Parliamentary Supremacy and Judicial Independence: A Commonwealth Approach*. London: Cavendish Publishing Ltd.

² Ibid.

³ Ibid

⁴ Hardgrave, R.L., Stanley, A.K. (1993). *India: Government and Politics in a Developing Nation* 5th (ed.) New York: Harcourt Brace Jovanovich.

duration of legislative work seem to have increased. While many possess enormous powers under the constitution, they, in reality, exercise little authority.¹ A combination of the growing power of the executive, the resurgence of political parties with effective machinery of control and discipline, intra-legislature crises, and a hostile external environment have further reinforced the institutional weakness of the legislatures. The worldwide resurgence of democracy since Gorbachev introduced perestroika and glasnost in the defunct Soviet Union with the attendant collapse of global communism has translated to increased visibility for the legislatures as many African dictatorships got swept away by the waves, forcing a return to democratic rule. Also, the firm positions of the African Union and other regional bodies on democracy have also underscored the importance of representative institutions. The implication of this is that the legislatures would remain increasingly relevant in the politics of many African states as democracy continues to blossom in a globalized world. Their relevance in politics is bound to rise.

However, their weakness as institutions of popular control of governments would remain a major issue to be seriously addressed if democracy must remain consolidated on the continent. There is therefore the need to create the needed enabling environment for robust legislatures' engagement of the governments of African states. This would require a commitment to strengthening the institutional capacity of the legislatures for effective discharge of their mandate. Practical steps along this line may require a number of steps including but not limited to constitutional guarantee of the independence and separateness of the legislature, strengthening the resource base of the legislatures to make them less dependent on the executive in the procurement of basic needs, and freedom permitting of access to vital information necessary for legislative oversight of the executive.² African legislatures, especially the new ones, need to be strengthened with well-trained support-staff that are outside direct control of the executive, adequate and independent means of finance, and infrastructural facilities, including high-tech reprographic equipment to meet the challenges of modern legislations.

¹ Laidi, Z. (1990). *The Superpowers and Africa: The Constraints of a Rivalry, 1960-1990*, Chicago: University of Chicago.

² Lakin, S. (2008). 'Debunking the Idea of Parliamentary Sovereignty: The Controlling Factor of Legality in the British Constitution', *Oxford J. Leg. Stud.* 28 (4): 709-734.

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